

November 27, 2012

**Via Federal Express**

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

Re: National Futures Association: Use of Technology to Monitor FCM  
Segregation Compliance – Proposed Amendments to NFA Financial  
Requirements Section 4\*

Dear Ms. Warfield:

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”) the proposed amendments to NFA Financial Requirements Section 4 regarding the use of technology to monitor FCM segregation compliance. NFA’s Board of Directors (“Board”) approved the proposal on November 15, 2012.

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.

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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 4. FINANCIAL REQUIREMENTS AND TREATMENT OF  
CUSTOMER PROPERTY.**

- (a) Any Member FCM, RFED, or IB who violates any of CFTC Regulations 1.10, 1.12, 1.16, 1.17 1.20 through 1.30, 1.49, 5.6, 5.7, ~~or 30.7~~ or 22.2 through 22.16 (as applicable) shall be deemed to have violated an NFA Requirement.
- (b) Each Member FCM must ~~provide its Designated Self-Regulatory Organization (DSRO) with on-line access to view information, in a form and manner prescribed by NFA, regarding all of the customer segregated funds account(s) maintained pursuant to CFTC Regulation 1.20 by the FCM at a bank or trust company and all of the customer secured amount account(s) maintained pursuant to CFTC Regulation 30.7 by the FCM at a bank or trust company.~~ instruct each depository, as required by NFA, holding customer segregated funds under CFTC Regulation 1.20, customer secured amount funds under CFTC Regulation 30.7 or cleared swaps customer collateral under CFTC Regulation 22.2 to report the balances in the FCM's customer segregated funds, customer secured amount funds and cleared swaps customer collateral accounts to a third party designated by NFA in the form and manner prescribed by NFA.
- (c) In addition to the requirements of CFTC Regulation 1.49(d), in order ~~for a bank or trust company~~, to be an acceptable depository to hold customer segregated funds accounts identified in CFTC Regulation 1.20, the ~~bank or trust company~~ depository must ~~provide the FCM's DSRO with on-line access to view information, in a form and manner prescribed by NFA, regarding~~ report the balances in the FCM's customer segregated funds account(s) held at the depository to a third party designated by NFA in the form and manner prescribed by NFA.
- (d) In addition to the requirements of CFTC Regulation 30.7(c), in order ~~for a bank or trust company~~ to be an acceptable depository to hold customer secured amount accounts identified in CFTC Regulation 30.7, the ~~bank or trust company~~ depository must ~~provide the FCM's DSRO with on-line access to view information, in a form and manner prescribed by NFA, regarding~~ report balances in the FCM's customer secured amount account(s) held at the depository to a third party designated by NFA in the form and manner prescribed by NFA.
- (e) In addition to the requirements of CFTC Regulation 22.4, in order to be an acceptable depository to hold cleared swaps customer collateral accounts identified in CFTC Regulation 22.2, the depository must report balances in

the FCM's cleared swaps customer collateral account(s) held at the depository to a third party designated by NFA in the form and manner prescribed by NFA.

~~Any Member FCM that receives money, securities and/or other property from, for or on behalf of a customer to margin, guarantee or secure the customer's positions in cleared OTC derivatives (as defined in CFTC Regulation 190.01(oo)) must comply with CFTC requirements and the requirements established by the applicable contract market and/or derivatives clearing organization for such activity.~~

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### EXPLANATION OF PROPOSED AMENDMENTS

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At its August meeting, NFA's Board took a number of steps to upgrade NFA's use of technology to monitor FCMs for compliance with customer segregated and secured amount requirements. First, the Board approved amendments to Financial Requirements Section 4 that would require FCMs to provide their DSRO with direct, view-only, online access to all customer segregated and secured amount funds bank accounts. Second, the Board agreed that NFA would develop a larger daily segregation confirmation system that would require all depositories holding customer segregated and secured amount funds, including banks, clearing FCMs, broker-dealers and money market accounts, to file daily reports reflecting the funds held in segregated and secured amount accounts with each FCM's DSRO. The DSRO would then perform an automated comparison of that information with the daily segregation and secured amount reports filed by the FCMs to identify any material discrepancies. That system would be phased in, starting with banks and adding other categories of depositories over time.

NFA originally expected that monitoring FCM compliance through direct, view only online access to customer segregated and secured amount bank accounts would be done manually. Given the number of FCMs and the number of different segregated and secured amount bank accounts maintained by each FCM, that would be a cumbersome process but one that could be implemented quickly, while the larger system was in development. As part of NFA's research into developing the larger system, we spoke with a number of vendors to see how much of the data accumulation process could be achieved through existing functionalities. Based on those discussions, it became clear that it is possible to implement quickly an automated system via a third party vendor for the daily monitoring of all customer segregated and

secured amount accounts held in banks, without relying upon direct, on-line access functionalities.

In light of the changes associated with implementing the daily monitoring system, the proposed amendments to NFA Financial Requirements Section 4 will delete the requirements related to an FCM providing its DSRO with view-only, online access to its segregated and secured funds accounts. The proposed amendments to Financial Requirements Section 4 will require an FCM to instruct its depositories holding segregated, secured amount and cleared swaps customer collateral to report the balances in the FCM's segregated, secured amount and cleared swaps customer collateral accounts to a third party designated by NFA. The amended rule also provides that in order for a depository to be an acceptable depository it must report the FCM's customer segregated and secured amount balances and cleared swaps customer collateral balances to a third party designated by NFA.

Although the amendments apply to all depositories holding segregated and secured amount funds and cleared swaps customer collateral, NFA intends to implement this process as the system is built in phases beginning with banks. NFA will notify FCMs that at this point they are only required to instruct their segregated, secured amount and cleared swaps customer collateral banks to provide this information to the third party. As we add other types of depositories, we will give FCMs sufficient lead time to instruct those institutions to provide that information to the third party. In addition, in order to facilitate the process of FCMs providing their banks with instructions to provide this information to the designated third party, NFA developed a template letter, which may be used by FCMs, although FCMs are permitted to use their own authorization letter as long as it contains certain information required by NFA.

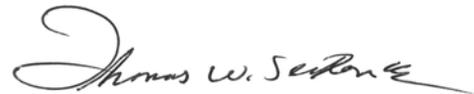
These changes were discussed with NFA's FCM Advisory Committee in October. The Committee supported the changes to NFA Financial Requirements Section 4.

Ms. Sauntia Warfield

November 27, 2012

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 Section 4 regarding the use of technology to monitor FCM segregation compliance 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 flourish extending to the right.

Thomas W. Sexton  
Senior Vice President and  
General Counsel

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\*The proposed amendments to NFA's Financial Requirements Section 4 become effective February 15, 2013.