

February 22, 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: Forex Dealer Member Financial Requirements – Proposed Amendments to NFA's Financial Requirements Sections 11(b) and (c) 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 Financial Requirements Sections 11(b) and (c) regarding Forex Dealer Member financial requirements and the Interpretive Notice regarding Forex Transactions. NFA’s Board of Directors (“Board”) approved this proposal on February 18, 2010. NFA respectfully requests Commission review and approval of the proposed amendments.

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

FINANCIAL REQUIREMENTS

* * *

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 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) an insurance company regulated by any U.S. state;
- ~~(vi) an entity regulated as a foreign equivalent of any of the above if regulated in a money center country as defined in CFTC Regulation 1.49; or~~
- (vii) any other entity approved by NFA.

* * *

INTERPRETIVE NOTICES

* * *

¶9053—FOREX TRANSACTIONS

* * *

3. Financial Requirements Section 11(b)

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

- (i) a financial institution 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) an insurance company regulated by any U.S. state;
- ~~(v) an entity regulated as a foreign equivalent of any of the above if regulated in a money center country as defined in CFTC Regulation 1.49; or~~
- (vi) any other entity approved by NFA.

EXPLANATION OF PROPOSED AMENDMENTS

Financial Requirements Section 11(b) and (c) prohibit Forex Dealer Members (FDMs) from including assets held at unregulated persons as current assets for purposes of determining adjusted net capital and from using such unregulated persons to cover currency positions.¹ The rule defines a person as unregulated unless it is one of the persons enumerated in the rule. The enumerated persons include, among others, futures commission merchants registered with the CFTC and broker-dealers registered with the SEC, as well as certain entities regulated as a foreign equivalent.

¹ The Commission has proposed similar limitations in the Federal Register release regarding the regulation of retail off-exchange foreign exchange intermediaries. 75 Fed. Reg. 3282 (Jan. 20, 2010).

Mr. David A. Stawick

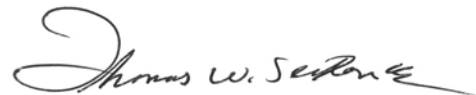
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In August 2008, in response to the CFTC Reauthorization Act of 2008, NFA's Board of Directors amended the list to include retail foreign exchange dealers ("RFED") registered with the CFTC. Accordingly, the rule, as currently drafted, defines as regulated the foreign equivalent of an RFED. NFA is concerned that this will permit NFA FDMs to use lightly regulated and thinly capitalized foreign forex firms to hold FDM assets and cover currency positions, thereby putting FDMs and their customers at risk.

The amendments to NFA Financial Requirements Sections 11(b) and (c) remove foreign equivalents from the list of enumerated regulated persons. The rule will continue to permit NFA to approve the use of foreign entities that are appropriately regulated and capitalized. Additionally, NFA is proposing to make amendments to the related Interpretive Notice to conform it to the amended Financial Requirements.

NFA respectfully requests that the Commission review and approve the proposed amendments to Financial Requirements Sections 11(b) and (c) regarding Forex Dealer Member financial requirements and the related Interpretive Notice.

Respectfully submitted,



Thomas W. Sexton
Senior Vice President and
General Counsel

* The proposed amendments to NFA's Financial Requirements Section 11 and the Interpretive Notice regarding Forex Transactions become effective October 1, 2010.