

November 20, 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: Cleared Swaps Customer Collateral
Accounts – Proposed Amendments to NFA Financial Requirements
Section 16 and the Related Interpretive Notice*

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 16 and the related Interpretive Notice entitled *NFA Financial Requirements Section 16: FCM Financial Practices and Excess Segregated Funds/Secured Amount Disbursements*. 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.

PROPOSED AMENDMENTS

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

FINANCIAL REQUIREMENTS

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

- (a) Each Member FCM must maintain written policies and procedures regarding the maintenance of the FCM's residual interest in its customer segregated funds account(s) as identified in CFTC Regulation 1.20, ~~and~~ in its foreign futures and foreign options customer secured amount funds account(s) as identified in CFTC Regulation 30.7 and in its cleared swaps customer collateral account(s) as identified in CFTC Regulation 22.2. The written policies and procedures must target amounts (either by percentage or dollars) that the FCM seeks to maintain as its residual interest in ~~both~~ customer segregated funds, ~~and in its~~ foreign futures and foreign options customer secured amount funds and in its cleared swaps customer collateral and be designed to reasonably ensure the FCM maintains these target amounts. The FCM's Board of Directors or similar governing body, Chief Executive Officer (CEO) or Chief Financial Officer (CFO) must approve in writing the FCM's targeted residual amount, any change(s) thereto, and any material change(s) in the FCM's written policies and procedures regarding the maintenance of the FCM's residual interest in either the customer segregated funds account(s), ~~or~~ the foreign futures and foreign options customer secured amount funds account(s), or the cleared swaps customer collateral accounts.
- (b) No Member FCM via a single or multiple transaction(s) may withdraw, transfer or otherwise disburse funds (disbursement) from any customer segregated funds account(s) as identified under CFTC Regulation 1.20 that exceed twenty-five percent (25%) of the FCM's residual interest in customer segregated funds based upon the most current daily segregated funds calculation performed pursuant to CFTC Regulation 1.32 unless:
- (i) The FCM's CEO, CFO or other designated individual(s) who holds a position with knowledge of the FCM's financial requirements and financial position and is listed as a principal on the firm's Form 7-R (for purposes of this Section only, a "Financial Principal") pre-approves in writing the segregated funds disbursement whereby the FCM exceeds or will exceed the twenty-five percent (25%) threshold referred to in (b) above; and
 - (ii) The FCM files written notice signed by the FCM's CEO, CFO or Financial Principal in the form and manner prescribed by NFA immediately after the FCM's CEO, CFO or Financial Principal pre-approves in writing the disbursement whereby the FCM exceeds or will exceed the twenty-five percent (25%) threshold referred to in (b) above, which includes the following:
 - (1) Notification that the FCM has made or intends to make a disbursement(s) from segregated funds that exceeds or will exceed twenty-five percent (25%) of the FCM's residual interest in customer segregated funds based upon the

- most current daily segregated funds calculation performed pursuant to CFTC Regulation 1.32;
- (2) A description of the reason(s) for, the amount and recipients of the single or multiple transaction(s) that results or will result in the disbursement(s) that exceeds the twenty-five percent (25%) threshold;
 - (3) Confirmation that the FCM's CEO, CFO or Financial Principal (and the identity of that person if different from the person who signed the notice) 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 customer segregated funds account(s) after the disbursement, and a representation that to the best of the person's (i.e. notice signatory's) knowledge and reasonable belief the FCM remains in compliance with the segregation requirements after the disbursement.
- (iii) In calculating whether an FCM has exceeded or will exceed the twenty-five percent (25%) threshold, an FCM shall exclude any segregated funds disbursement(s) that is made to or for the benefit of commodity and option customers.
- (iv) After making a disbursement that requires the approval and notice filing described in subsections (b)(i) and (b)(ii) above, and until such time that the FCM completes its next daily segregated funds calculation required by CFTC Regulation 1.32, no Member FCM may make any subsequent disbursement(s) in any amount from any customer segregated funds accounts (except to or for the benefit of commodity and option customers) without for each disbursement obtaining the approval required in subsection (b)(i) and filing a written notice signed by the CEO, CFO or Financial Principal that discloses the amount and recipient(s) of the disbursement and the reason(s) for the disbursement, confirming that the CEO, CFO or Financial Principal (and the identity of that person if different from the person who signed the notice) pre-approved the disbursement in writing, indicating the current estimate of the FCM's remaining total residual interest in the customer segregated funds account(s) after the disbursement, and containing a representation that to the best of the person's (i.e., notice signatory's) knowledge and reasonable belief the FCM remains in compliance with the segregation requirements after the disbursement.
- (c) No Member FCM via a single or multiple transaction(s) may withdraw, transfer or otherwise disburse funds (disbursement) from foreign futures and foreign options

customer secured amount funds account(s) as identified under CFTC Regulation 30.7 that exceed twenty-five percent (25%) of the FCM's residual interest in foreign futures and foreign option customer secured amount funds based upon the most current daily secured amount funds calculation performed pursuant to CFTC Regulation 30.7 unless:

- (i) The FCM's CEO, CFO or Financial Principal pre-approves in writing the secured amount funds disbursement whereby the FCM exceeds or will exceed the twenty-five percent (25%) threshold referred to in (c) above; and
- (ii) The FCM files written notice signed by the FCM's CEO, CFO or Financial Principal in the form and manner prescribed by NFA immediately after the FCM's CEO, CFO or Financial Principal pre-approves in writing the disbursement whereby the FCM exceeds or will exceed the twenty-five percent (25%) threshold referred to in (c) above, which includes the following:
 - (1) Notification that the FCM has made or intends to make a disbursement(s) from secured amount funds that exceeds or will exceed twenty-five percent (25%) of the FCM's residual interest in secured amount funds based upon the most current daily secured amount funds calculation performed pursuant to CFTC Regulation 30.7;
 - (2) A description of the reason(s) for, amounts and recipients of the single or multiple transaction(s) that results or will result in the disbursement(s) that exceeds the twenty-five percent (25%) threshold;
 - (3) Confirmation that the FCM's CEO, CFO or Financial Principal (and the identity of that person if different from the person who signed the notice) 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 secured amount funds account(s) after the disbursement, and a representation that to the best of the person's (i.e. notice signatory's) knowledge and reasonable belief the FCM remains in compliance with the secured amount requirements after the disbursement.
- (iii) In calculating whether an FCM has exceeded or will exceed the twenty-five percent (25%) threshold, an FCM shall exclude any secured amount funds disbursement(s) that is made to or for the benefit of foreign futures and foreign options customers.

- (iv) After making a disbursement that requires the approval and notice described in subsections (c)(i) and (c)(ii) above, and until such time that the FCM completes its next daily secured amount funds calculation required by CFTC Regulation 30.7, no Member FCM may make any subsequent disbursement(s) in any amount from any customer secured amount funds accounts (except to or for the benefit of commodity and option customers) without for each disbursement obtaining the approval required in subsection (c)(i) and filing a written notice signed by the CEO, CFO or Financial Principal that discloses the amount and recipient(s) of the disbursement and the reason(s) for the disbursement, confirming that the CEO, CFO or Financial Principal (and the identity of that person if different from the person who signed the notice) pre-approved the disbursement in writing, indicating the current estimate of the FCM's remaining total residual interest in the customer secured amount funds account(s) after the disbursement, and containing a representation that to the best of the person's (i.e., notice signatory's) knowledge and reasonable belief the FCM remains in compliance with the secured amount requirements after the disbursement.

- (d) 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 most current daily cleared swaps customer collateral calculation performed pursuant to CFTC Regulation 22.2(g) unless:
 - (i) The FCM's CEO, CFO or other designated individual(s) who holds a position with knowledge of the FCM's financial requirements and financial position and is listed as a principal on the firm's Form 7-R (for purposes of this Section only, a "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
 - (ii) The FCM files written notice signed by the FCM's CEO, CFO or Financial Principal in the form and manner prescribed by NFA immediately after the FCM's CEO, CFO or Financial Principal pre-approves 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 most current daily cleared swaps customer collateral calculation performed pursuant to CFTC Regulation 22.2(g)
- (2) A description of the reason(s) for, the amount and recipients of the single or multiple transaction(s) that results or will result in the disbursement(s) that exceeds the twenty-five percent (25%) threshold;
 - (3) Confirmation that the FCM's CEO, CFO or Financial Principal (and the identity of that person if different from the person who signed the notice) 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 that to the best of the person's (i.e. notice signatory's) knowledge and reasonable belief the FCM remains in compliance with the cleared swaps customer collateral requirements after the disbursement.
- (iii) In calculating whether an FCM has exceeded or will exceed the twenty-five percent (25%) threshold, an FCM shall exclude any cleared swap customer collateral disbursement(s) that is made to or for the benefit of cleared swap collateral customers.
- (iv) After making a disbursement that requires the approval and notice filing described in subsections (b)(i) and (b)(ii) above, and until such time that the FCM completes its next daily cleared swaps customer collateral calculation required by CFTC Regulation 22.2(g), no Member FCM may make any subsequent disbursement(s) in any amount from any cleared swaps customer accounts (except to or for the benefit of cleared swap customer collateral customers) without for each disbursement obtaining the approval required in subsection (b)(i) and filing a written notice signed by the CEO, CFO or Financial Principal that discloses the amount and recipient(s) of the disbursement and the reason(s) for the disbursement, confirming that the CEO, CFO or Financial Principal (and the identity of that person if different from the person who signed the notice) pre-approved the disbursement in writing, indicating the current estimate of the FCM's remaining total residual interest in the cleared swaps customer collateral account(s) after the disbursement, and containing a representation that to the best of the person's (i.e., notice signatory's) knowledge and reasonable belief the FCM remains in compliance with the cleared swaps customer collateral requirements after the disbursement.

- (e) Each Member FCM must report the following financial and operational information to NFA in the form and manner prescribed by NFA and in accordance with the respective time periods specified:
- (i) On a monthly basis, within 17 business days after the end of each month, the following information as of the close of business on the last business day of the month:
- (1) Adjusted net capital, minimum net capital, and excess net capital (listed in U.S. dollar figures);
 - (2) Whether any depository used to hold customer segregated funds, ~~or~~ foreign futures and foreign options customer secured amount funds or cleared swaps customer collateral during the month is an affiliate of the FCM; and
 - (3) The firm's measure of leverage (i.e., total balance sheet assets, less any instruments guaranteed by the U.S. government and held as an asset or to collateralize an asset (e.g., a reverse repo) divided by total capital (the sum of stockholder's equity and subordinated debt)) all computed in accordance with U.S. GAAP.
- (ii) By 11:59 P.M. Eastern time on the business day following the 15th and the last business day of each month, the following information as of the close of business on the 15th (or the following business day if the 15th falls on a weekend) and the last business day of each month:
- (1) The dollar amount of customer segregated funds held in cash and each type of permitted investments identified in CFTC Regulation 1.25(a);
 - (2) The identity of each depository holding customer segregated funds and the dollar amount held at each depository;
 - (3) The dollar amount of foreign futures and foreign options customer secured amount funds held in cash and each type of permitted investments identified in CFTC Regulation 1.25(a);
~~and~~
 - (4) The identity of each depository holding foreign futures and foreign options customer secured amount funds and the dollar amount held at each depository.

- (5) The dollar amount of cleared swaps customer collateral held in cash and each type of permitted investments identified in CFTC Regulation 1.25(a); and
 - (6) The identity of each depository holding cleared swaps customer collateral and the dollar amount held at each depository.
- (iii) By noon of each business day, the daily segregated funds computation, ~~and~~ the daily secured amount funds computation and the daily cleared swaps customer collateral calculation as of the close of the preceding business day.
- (iv) The FCM's CEO, CFO or other individual designated by the CEO or CFO to file on his/her behalf, or where applicable, a person described in CFTC Regulation 1.10(d)(4)(ii), must submit the information required by subsections (i)-(iii) above, and by submitting the information the CEO or CFO certifies that to the best of his/her knowledge and belief the information is true, correct and complete.
- (v) Any information filed after its due date shall be accompanied by a fee of \$1,000 for each business day that it is late. Payment and acceptance of the fee does not preclude NFA from filing a disciplinary action under the Compliance Rules for failure to comply with the deadlines imposed by NFA Financial Requirements.

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INTERPRETIVE NOTICE

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

A futures commission merchant's (FCM) segregation of customer funds forms the foundation of the futures industry's customer protection regime. NFA Financial Requirements Section 16 is designed to establish requirements regarding the maintenance of an FCM's residual interest in the customer segregated funds, ~~and~~ customer secured amount, and cleared swaps customer collateral account(s). Additionally, to enhance transparency and regulatory risk monitoring relating to each Member FCM's protection of customer funds, Section 16 places requirements upon FCMs relating to certain withdrawals of their residual interest, and requires FCMs to

report certain financial and operational information to NFA in the form and manner prescribed by NFA. This Notice provides a subsection-by-subsection analysis of Financial Requirements Section 16 and further describes certain regulatory requirements that FCMs must adopt to implement Section 16's specific requirements.

Funds that customers deposit with an FCM, or that are otherwise required to be held for the benefit of customers, to margin futures and options on futures contracts traded on futures markets located in the United States must be held in a customer segregated funds account pursuant to Section 4d(a)(2) of the Commodity Exchange Act and Commodity Futures Trading Commission (CFTC) Regulation 1.20. Funds that customers deposit with an FCM, or that are otherwise required to be held for the benefit of customers, to margin futures and options on futures contracts traded on foreign boards of trade must be held in a foreign futures and foreign options secured amount account in accordance with CFTC Regulation 30.7. Funds that customers deposit with an FCM, or that are otherwise required to be held for the benefit of customers, to margin, guarantee or secure a cleared swap, must be segregated and held in accordance with CFTC Regulation 22.2. CFTC Regulation 1.22 prohibits an FCM from using one customer's funds to meet the obligations of another customer. Similarly, CFTC Regulation 22.2(d) prohibits an FCM from using one cleared swaps customer's collateral to meet the obligations of any other person. Therefore, if a customer fails to have sufficient funds on deposit with an FCM to meet the customer's obligation, then the FCM must use its own funds to make up any deficiency in a customer's account. NFA Financial Requirements Section 4 adopts by reference CFTC Regulations 1.20, 1.22, 22.2 and 30.7.

To comply with Regulation 1.22 and 22.2(d), an FCM is permitted pursuant to Regulation 1.23 to maintain excess funds in the customer segregated and secured amount accounts and is permitted pursuant to Regulation 22.2(f)(3) to maintain excess funds in the cleared swaps customer collateral accounts. The excess funds in these accounts are referred to as the FCM's residual interest and the funds are for the exclusive benefit of the FCM's customers while held in these accounts.

CFTC Regulation 1.32, ~~and~~ Regulation 30.7 and Regulation 22.2(g) require FCMs to complete a segregated funds calculation, ~~and/or~~ secured amount funds calculation, and/or cleared swaps customer collateral calculation respectively for each business day by noon of the following business day. Under Financial Requirements Section 16, in determining the FCM's secured amount requirement, the FCM must use the method that calculates net liquidating equity plus the market value of any securities held in customers' accounts.

Subsection 16(a) requires each Member FCM to maintain written policies and procedures regarding the maintenance of the FCM's residual interest in the customer segregated funds account(s) as identified under CFTC Regulation 1.20, ~~and~~ in its foreign futures and foreign options customer secured amount funds account(s) as identified in CFTC Regulation 30.7, and in its cleared swap customer collateral account(s) as identified in CFTC Regulation 22.2. The FCM's policies and procedures must target an amount (either by percentage or dollars) that the FCM seeks to maintain as its residual interest in these accounts and be designed to reasonably ensure that the FCM remains in compliance with the segregation, ~~and secured amount~~ and cleared swaps customer collateral requirements. The target amount can be expressed with descriptive terms (e.g. at least "x" dollar amount or percent of segregated/secured amount funds or cleared swaps customer collateral) or as a range (e.g. between "x" dollar amount and "y" dollar amount or percent). The FCM's Board of Directors or similar governing body, Chief Executive Officer (CEO) or Chief Financial Officer (CFO) must approve in writing the FCM's targeted residual amount and any material change in either the targeted amount or the FCM's policies and procedures regarding the maintenance of the FCM's residual interest in ~~either the customer segregated funds account(s), or the foreign futures and foreign options customer secured amount funds account(s) or the cleared swaps customer collateral account(s).~~

In establishing the target amount of residual interest, the Board of Directors or similar governing body, CEO, CFO must perform a due diligence inquiry and consider various factors, if applicable, relating to the nature of the firm's business, including but not limited to: the firm's type of customers, their general creditworthiness, and trading activity; the type of markets and products traded by the firm's customers and the firm itself; the general volatility and liquidity of those markets and products; the firm's own liquidity and capital needs; and historical trends in customer segregated/secured amount funds or cleared swaps customer collateral balances and customer debits. Member FCMs are required to create a written record containing a description of the analysis of the factors used by the FCM to determine its targeted residual amount. The primary purpose of the residual interest is to ensure that sufficient funds are on deposit with an FCM to meet customer obligations and to remain in compliance at all times with the segregation requirements.

Falling below the target amount of residual interest is not, in and of itself, a violation of the segregated, secured amount or cleared swaps customer collateral requirements. In those instances where an FCM withdraws a portion of its residual interest via disbursement(s) not for the benefit of customers thereby causing the firm to fall below its target amount of residual interest, then the FCM by the close of business on the next business day should either deposit funds into the segregated, secured amount funds or cleared swaps customer collateral account(s) necessary to restore the respective account'(s) balance to the target amount of residual interest or, if appropriate,

revise the FCM's target amount of residual interest and follow the requirements in doing so set forth in subsection 16(a) and this Notice relating to establishing and changing the targeted residual amount. Unless the nature of an FCM's business materially changes, NFA would not expect material and/or frequent modifications to either an FCM's targeted amount or the FCM's policies and procedures regarding the maintenance of the FCM's targeted residual interest.

An FCM's disbursement(s) of its residual interest in any dollar amount from customer segregated funds, ~~and secured amount funds, and cleared swaps customer collateral~~ account(s) not made for the benefit of customers must be done in a manner that ensures that the FCM maintains sufficient funds to remain in continual compliance with the customer segregated funds, ~~and customer secured amount and cleared swaps customer collateral~~ requirements. In making a disbursement(s) from customer segregated funds, ~~and customer secured amount funds and cleared swaps customer collateral~~ account(s), an FCM's internal procedures must require the FCM to not only consider the most current calculation completed pursuant to CFTC Regulation 1.32, ~~or CFTC Regulation 30.7 or CFTC Regulation 22.2(g)~~, but also the impact of any known unsecured debit(s), deficit(s), and previous disbursements that could cause material adjustments to its most current segregated, ~~and-secured amount funds and cleared swaps customer collateral~~ calculations.

Subsection 16(b) adopts requirements relating to an FCM's internal approval and notification to NFA of any significant disbursement, as defined, of customer segregated funds that is not made for the benefit of customers. Specifically, this subsection provides that no Member FCM via a single or multiple transaction(s) may withdraw, transfer or otherwise disburse funds from any customer segregated funds account(s) as identified under CFTC Regulation 1.20 exceeding 25% of the FCM's residual interest in customer segregated funds based upon the most current daily segregated funds calculation performed pursuant to Regulation 1.32 (hereinafter the "25% threshold") unless the FCM's CEO, CFO or other designated individual(s) who holds a position with knowledge of the firm's financial requirements and financial position and is listed as a principal on the firm's Form 7-R (for purposes of Section 16 only, a "Financial Principal") pre-approves in writing the segregated funds disbursement whereby the FCM exceeds or will exceed the 25% threshold.

In addition to obtaining the CEO's, CFO's or Financial Principal's approval, subsection 16(b)(ii) requires the FCM to file a written notice with NFA immediately after the FCM's CEO, CFO or Financial Principal pre-approves in writing the disbursement whereby the FCM exceeds or will exceed the 25% threshold. The notice to NFA must be signed by the FCM's CEO, CFO or Financial Principal and subsection 16(b)(ii)(1)-(4) provides that the notice must include the following: (1) notification that the FCM has made or intends to make a disbursement(s) from segregated funds that exceeds or will

exceed 25% of the FCM's residual interest in customer segregated funds based upon the most current daily segregated funds calculation performed pursuant to CFTC Regulation 1.32; (2) a description of the reason(s) for, the amount and recipients of the single or multiple transaction(s) that results or will result in the disbursement(s) that exceeds the 25% threshold; (3) confirmation that the FCM's CEO, CFO, or Financial Principal (and the identity of that person if different from the person who signed the notice) pre-approved in writing the disbursement whereby the FCM exceeds or will exceed the 25% threshold; and (4) the current estimate of the FCM's remaining total residual interest in the customer segregated funds account(s) after the disbursement, and representation that to the best of the person's (i.e. notice signatory's) knowledge and reasonable belief the FCM remains in compliance with the segregation requirements after the disbursement.

Financial Requirements subsection 16(b)(iv) addresses disbursement(s) made from an FCM's segregated funds account(s) subsequent to an FCM making a disbursement(s) that exceeds the 25% threshold that required the approval and notice described in subsections 16(b)(i) and (b)(ii). In those circumstances, from the time of the original disbursement that exceeds the 25% threshold until the FCM completes its next required daily segregated funds calculation, the firm may not make any subsequent disbursement(s) in any amount from the segregated funds account(s), except to or for the benefit of commodity and options customers, without obtaining for each disbursement the pre-approval of the CEO, CFO or Financial Principal and filing a written notice signed by the CEO, CFO or Financial Principal that discloses the amount and recipient(s) of the disbursement and the reasons for the disbursement, and which confirms that the CEO, CFO or Financial Principal (and the identity of that person if different from the person who signed the notice) pre-approved the disbursement in writing, indicates the current estimate of the FCM's remaining total residual interest in the customer segregated funds account(s) after the disbursement, and contains a representation that to the best of the person's (i.e. notice signatory's) knowledge and reasonable belief the FCM remains in compliance with the segregation requirements after the disbursement.

Financial Requirements subsection 16(c) replicates subsection 16(b)'s internal approval and notice requirements applicable to customer segregated funds account(s) for foreign futures and foreign options customer secured amount funds account(s) as identified under CFTC Regulation 30.7. Similarly, subsection 16(d) replicates subsections 16(b)'s internal approval and notice requirements applicable to customer segregated funds accounts for cleared swaps customer collateral account(s) as identified under CFTC Regulation 22.2.

~~Once the CFTC finalizes its requirements applicable to cleared OTG derivatives, then NFA will adopt similar approval and notice requirements for~~

disbursements that exceed 25% of the FCM's residual interest in sequestered account(s).

Importantly, Financial Requirements subsections 16(b)(iii), ~~and (c)(iii) and (d)(iii)~~ place a key qualification on the disbursements utilized to calculate whether an FCM has or will exceed the 25% threshold. Specifically, ~~these~~ subsections ~~(b)(iii) and (c)(iii)~~ provide that for purposes of calculating the 25% threshold an FCM shall exclude any segregated funds disbursement(s), ~~or~~ secured amount funds disbursement(s) or cleared swaps customer collateral disbursement(s) that are made to or for the benefit of customers.

Therefore, certain disbursements, transactions and/or occurrences for the benefit of customers should not be included in an FCM's calculation of the 25% threshold. Specifically, a reduction in segregated or secured amount funds or cleared swaps customer collateral caused by, for example—a loss in the market value of the segregated or secured amount funds' or cleared swaps customer collateral investments; an increase in customer unsecured debits/deficits from one day to the next; the transfer of a particular futures customer's cash from a segregated funds account for the customer's domestic futures trading to a secured amount account for that customer's trading on foreign markets and/or to a cleared swaps customer collateral account or vice-versa; the transfer of a particular futures customer's cash from a segregated funds account to a delivery account for that customer to take delivery of a commodity; the transfer of a particular futures customer's equity and cash to that customer's securities or foreign exchange account at either the FCM/broker-dealer (BD) or a BD affiliate of the FCM; and the simultaneous exchange of cash for the same dollar value of securities allowable pursuant to Regulation 1.25 or vice-versa—are not the type of disbursements, transactions and/or occurrences to be considered by an FCM in calculating the 25% threshold. The aforementioned examples are not intended to encompass all transactions, disbursements or occurrences that are for the benefit of a customer.

Additionally, subsections 16(b)(ii)(1), ~~and (c)(ii)(1) and (d)(ii)~~ require an FCM to utilize the most current daily segregated funds, ~~and~~ secured amount funds and cleared swaps customer collateral calculations, 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, ~~and~~ secured amount funds and cleared swaps customer collateral. CFTC Regulations 1.32, ~~and~~ 30.7 and 22.2(g) require FCMs to complete these calculations of segregated and secured amount funds and cleared swaps customer collateral, respectively, by noon of each business day as of the close of business of the preceding business day. Any FCM that fails to complete ~~either~~ any of these calculations in a timely manner by noon is prohibited from making any disbursement(s) from the account for which the calculation has not been completed (i.e. the customer segregated, ~~or~~ 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 as required by subsection ~~16(d)(iii)~~ 16(e)(iii).

Lastly, Subsection ~~16(e)(d)~~ requires Member FCMs to submit certain financial and operational information to NFA on a monthly or semi-monthly basis. NFA's Board of Directors (Board) has recently authorized certain of this financial and operational information (as described below) to be posted to and made publicly available on NFA's website.

Subsection ~~16(e)(d)(i)~~(1)-(3) requires FCMs on a monthly basis, within 17 business days after the end of each month, to submit the following information as of the close of business on the last business day of the month: (1) total adjusted net capital, minimum net capital and excess net capital (listed in dollar figures); (2) whether any depository used to hold customer segregated funds, ~~or~~ customer secured amount funds or cleared swaps customer collateral during the month is an affiliate of the FCM; and (3) the firm's measure of leverage (i.e., total balance sheet assets, less any instruments guaranteed by the U.S. government and held as a asset or to collateralize an asset (e.g., reverse repo) divided by total capital (the sum of stockholder's equity and subordinated debt) all computed in accordance with U.S. GAAP.

Subsection ~~16(e)(d)(ii)~~ requires FCMs by 11:59 P.M. Eastern time on the business day following the 15th (or the business day following the "as of" reporting day if the 15th falls on a weekend) and the last business day of each month to submit the following information as of the close of business on the 15th (or the following business day if the 15th falls on a weekend) and the last business day of each month: (1) the dollar amount of customer segregated funds held in each permitted investment identified in CFTC Regulation 1.25(a); (2) the identity of each depository holding customer segregated funds and the dollar amount held at each depository; (3) the dollar amount of foreign futures and foreign options customer secured amount funds held in cash and each permitted investment identified in CFTC Regulation 1.25(a); ~~and~~ (4) the identity of each depository holding foreign futures and foreign options customer secured amount funds and the dollar amount held at each depository; (5) the dollar amount of cleared swaps customer collateral held in cash and each permitted investment identified in CFTC Regulation 1.25(a); and (6) The identity of each depository holding cleared swaps customer collateral. Subsection ~~16(e)(d)(iii)~~ requires FCMs to submit by noon of each business day, the daily segregated funds, ~~and~~ secured amount funds and cleared swaps customer collateral computations as of the close of the preceding business day.

Although NFA will collect this information and utilize it for monitoring each Member FCM's financial condition, the Board has authorized certain of the information be made publicly available. For example, NFA's Board has authorized information to be made publicly available on a semi-monthly basis (as of the 15th and last day of the

month) about the FCM's total segregated funds/secured amount/cleared swaps customer collateral requirements and how much is held as excess customer segregated funds/secured amount funds/cleared swaps customer collateral (listed in a dollar figure), and the percentage of customer segregated funds, ~~and~~ secured amount funds and cleared swaps customer collateral held in cash and each permitted investment identified in Regulation 1.25(a). Other information regarding an FCM's leverage, customer funds depositories, and capital position will be posted on a monthly basis.

Member FCMs will be held liable for willfully submitting materially false or misleading information to NFA in connection with the information required to be submitted pursuant to Financial Requirements Section 16. Moreover, to the extent that an FCM purposefully manipulates the information submitted pursuant to subsection 16~~(e)(d)~~ so that the information posted on NFA's website on the dates specified is not reflective of the firm's general financial condition during the month, then the FCM may be liable for submitting misleading information to NFA and for a violation of just and equitable principles of trade.

Pursuant to subsection 16~~(e)(d)~~(iv), either the FCM's CEO, CFO or other individual designated by the CEO or CFO to file on his/her behalf, or where applicable, a person described in CFTC Regulation 1.10(d)(4)(ii) is required to submit the information required by subsections 16~~(e)(d)~~(i)-(iii). For purposes of submitting the information, the FCM's CEO or CFO must complete a User Identification Request Form (Form). If the CEO or CFO designates a person on this Form to submit the information on his/her behalf, the CEO/CFO must identify that person on the Form and acknowledge that he/she remains responsible for the accuracy of the information submitted by the designated submitter. Additionally, the CEO or CFO will have to represent that with respect to the electronic submission of certain financial reports, supplemental information and regulatory notifications the use of his/her User ID or his/her designated submitter's User ID is a representation in accordance with any applicable CFTC or other federal agency requirement that, to best of her/his knowledge and belief, all information contained in the reports and supplemental information is true, correct and complete.

Subsection 16~~(e)(d)~~(v) is designed to ensure that the information required to be submitted pursuant to subsections 16~~(e)(d)~~(i)-(iii) is actually submitted in a timely manner. Therefore, any information filed after its due date shall be accompanied by a fee of \$1,000 for each business day that it is late. Payment and acceptance of the fee does not preclude NFA from filing a disciplinary action under NFA's Compliance Rules for failure to comply with the required time periods.

As noted above, NFA Financial Requirements Section 16 is designed to establish requirements regarding the maintenance of an FCM's residual interest in the

customer segregated funds, ~~and~~ secured amount and cleared swaps customer collateral account(s). Additionally, to enhance transparency and regulatory risk monitoring relating to each Member FCM's protection of customer funds, Section 16 places requirements upon FCMs relating to certain withdrawals of their residual interest, and requires FCMs to report certain financial and operational information to NFA in the form and manner prescribed by NFA. NFA and a Member FCM's designated self-regulatory organization will closely monitor the information submitted pursuant to Financial Requirements Section 16 to ensure that an FCM maintains sufficient funds to remain in continual compliance with the customer segregated funds, ~~and~~ customer secured amount and cleared swaps customer collateral requirements. If NFA believes that an FCM's financial condition poses a concern that it may not have sufficient funds to remain in continual compliance with these obligations, then NFA's President, with the concurrence of NFA's Board of Directors or Executive Committee, may issue a Member Responsibility Action against the Member FCM pursuant to NFA Compliance Rule 3-15. This emergency action may suspend or restrict the FCM's operations or otherwise direct the firm to take remedial action, which may include infusing additional residual interest funds into the customer segregated funds, ~~and/or~~ customer secured amount and/or cleared swaps customer collateral accounts accounts or additional capital into the firm's operating accounts.

EXPLANATION OF PROPOSED AMENDMENTS

The compliance date for the CFTC's Part 22 rules relating to cleared swaps was November 8, 2012. Among other things, an FCM is now required to segregate any cleared swaps customer collateral that it receives, is prohibited from using the cleared swaps customer collateral of one customer for the benefit of another and is required to do a daily segregated account calculation for its cleared swaps customer collateral accounts that is similar to the calculation required for segregated and secured amount funds accounts, including a determination of the FCM's residual interest in its cleared swaps customer collateral accounts.

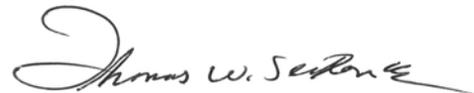
When NFA adopted Financial Requirements Section 16 and its related Interpretive Notice entitled *NFA Financial Requirements Section 16: FCM Financial Practices and Excess Segregated Funds/Secured Amount Disbursements*, the Board indicated that when the CFTC finalized its requirements for FCMs applicable to cleared swaps NFA should revise Section 16 and the Interpretive Notice to afford the protections contained therein to cleared swaps. Therefore, the proposed amendments to Section 16 and the Interpretive Notice impose requirements on FCMs relating to cleared swaps customer collateral that are currently applicable to customer segregated and secured amount funds.

NFA also intends to include an FCM Cleared Swaps Customer Collateral page on BASIC for each FCM holding these funds that will display the identical type of information NFA displays with respect to Customer Segregated Funds and Customer Secured Amount Funds.

These changes were discussed with NFA's FCM Advisory Committee and the Committee fully supported the changes.

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 16 and its related Interpretive Notice entitled *NFA Financial Requirements Section 16: FCM Financial Practices and Excess Segregated Funds/Secured Amount Disbursements* 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,



Thomas W. Sexton
Senior Vice President and
General Counsel

*The proposed amendments to Financial Requirements Section 16 and the related Interpretive Notice will become effective July 1, 2013.