

September 2, 2011

**Via Federal Express**

Mr. David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

Re: National Futures Association: Leverage Transaction Merchants Capital Requirements – Proposed Amendments to NFA Financial Requirements Section 6\*

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”) the proposed amendments to NFA Financial Requirements Section 6 regarding leverage transaction merchants' capital requirements. NFA’s Board of Directors (“Board”) approved the proposal on August 18, 2011.

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 6. LEVERAGE TRANSACTION MERCHANT FINANCIAL AND REPORTING REQUIREMENTS.**

(a) Each Leverage Transaction Merchant (hereinafter "Member LTM") must maintain "Adjusted Net Capital" (as defined in CFTC Regulation 1.17) equal to or in excess of the greatest of:

(i) \$20,000,000;

(ii) the amount required by subsection (a)(i) above plus 5% of all liabilities owed to leverage customers (as leverage customer is defined in CFTC Regulation 31.4) exceeding \$10,000,000; or

(iii) for Member LTMs registered in another capacity, any other amount required by these Financial Requirements.

(b) Each Leverage Transaction Merchant (hereinafter "Member-LTM") is required to file any document with or give notice to the CFTC under CFTC Regulations 31.7 [Maintenance of minimum financial, cover and segregation requirements by leverage transaction merchants], 31.13 [Financial reports of leverage transaction merchants], 31.16 [Monthly reporting requirements], and 31.26 [Quarterly reporting requirements] shall also file one copy of such document with or give such notice to NFA at its Chicago office no later than the date such document or notice is due to be filed with or given to the CFTC.

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## **EXPLANATION OF PROPOSED AMENDMENTS**

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The Dodd-Frank Act amended the Commodity Exchange Act to effectively prohibit retail trading in spot commodities (other than Forex), including precious metals. This prohibition became effective on July 15, 2011. As a result of this prohibition, a few FDMs that offered these leveraged metals transactions inquired whether the CFTC would revise its regulations governing Leverage Transaction Merchants (LTMs) so that they can continue to trade these products as an LTM. These inquiries caused NFA to review NFA's LTM requirements and, for the reasons discussed below, we believe that it is appropriate to amend these requirements to impose a \$20 million minimum capital requirement.

CFTC Regulation 31.9 requires an LTM to maintain adjusted net capital equal to or in excess of \$2,500,000, plus 20 percent of the market value of the amount of uncovered physical commodities subject to leverage contracts entered into by the LTM, plus 2.5 percent of the market value of the amount of covered physical commodities subject to short leverage contracts entered into by the LTM. Although Compliance Rule 2-32 provides that any LTM that violates any of CFTC Part 31

Mr. David A. Stawick

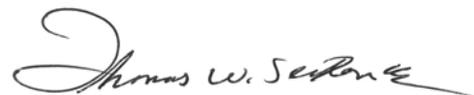
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Regulations shall be deemed to have violated an NFA Requirement, NFA's Financial Requirements do not include a section specifically imposing an adjusted net capital requirement on LTMs.

Given that the current LTM capital requirement was adopted over twenty years ago, as well as the similarities in the products offered by FDMs and LTMs, and the fact that LTMs also act as counterparties to transactions, NFA believes that LTMs should be subject to the same capital requirements as FDMs. Therefore, NFA has amended NFA Financial Requirements Section 6 to impose a capital requirement on LTMs that tracks the capital requirement imposed on FDMs in Financial Requirements Section 11.

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 6 regarding leverage transaction merchants capital requirements 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

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\* The proposed amendments to NFA Financial Requirements Section 6 became effective October 3, 2011.