

March 5, 2014

**Via Federal Express**

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

Re: National Futures Association: Late Disciplinary Disclosure Fees -  
Proposed Amendments to NFA Registration Rules 203 and 210\*

Dear Ms. Jurgens:

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 Registration Rules 203 and 210 regarding late disciplinary disclosure fees. NFA’s Board of Directors (“Board”) approved the proposal on February 20, 2014.

NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”) and plans to make these proposals effective on approximately April 30, 2014 pending operational changes 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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**REGISTRATION RULES**

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**RULE 203. REGISTRATION FEES.**

(a) **Amount.** The following fees shall apply:

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(12) ~~Reserved.~~ **Late Disciplinary History Disclosure Fee: \$1,000 for non-disclosure of disciplinary history matters on a Form 7-R or a Form 3-R in accordance with Registration Rule 210(c)(1) and \$1,000 for non-disclosure of disciplinary history matters on a Form 8-R or a Form 3-R in accordance with Registration Rule 210(c)(2) and (3).**

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**RULE 210. DEFICIENCIES, INACCURACIES AND CHANGES TO APPLICATION INFORMATION MUST BE REPORTED.**

(a) Each applicant or registrant as an FCM, RFED, SD, MSP, IB, CPO, CTA, LTM, FB or FT must promptly correct any deficiency or inaccuracy in a Form 7-R or Form 8-R which no longer renders accurate the information contained therein. Each such correction must be made on a Form 3-R and must be completed and filed in accordance with all pertinent instructions. Except when changing to or from a sole proprietorship, an applicant or registrant may file a Form 3-R for purposes of reporting a change in its form of organization. If a Form 3-R is filed to report a change in the applicant's or registrant's form of organization, the newly formed organization will be liable for all obligations of the pre-existing organization which arose out of the Act or the Regulations thereunder. A registrant or applicant that is changing form of organization to or from a sole proprietorship must file a Form 7-R for the newly formed organization and a Form 7-W for the pre-existing organization.

(b) Each applicant or registrant as an AP and each principal of an applicant or registrant must promptly correct any deficiency or inaccuracy in the Form 8-R which no longer renders current and accurate the information contained therein. Each AP applicant or registrant and each principal must promptly notify his sponsor of any deficiency or inaccuracy and the information necessary to correct it. Each applicant or registrant must promptly correct any deficiency or inaccuracy in its APs' or principals' registration information of which it is or should be aware. Each such correction must be made on a Form 3-R, completed and filed in accordance with all pertinent instructions.

(c) (1) Each applicant or registrant as an FCM, RFED, SD, MSP, IB, CPO, CTA, LTM or FT shall pay the fee specified in Rule 203(a)(12) for non-disclosure of disciplinary matters on such applicant's Form 7-R and for such registrant's failure to file a Form 3-R to disclose disciplinary matters.

(2) The sponsor of each AP applicant or principal shall pay the fee specified in Rule 203(a)(12) for non-disclosure of disciplinary matters on such AP applicant's or principal's verified Form 8-R and for such sponsor's failure to file a Form 3-R to disclose disciplinary matters related to such AP registrant or principal.

(3) Each applicant as an FB or FT shall pay the fee specified in Rule 203(a)(12) for non-disclosure of disciplinary matters on such applicant's Form 8-R and for such registrant's failure to file a Form 3-R to disclose disciplinary matters.

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### **EXPLANATION OF PROPOSED AMENDMENTS**

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Section 8a(2)(G) and 8a(3)(G) of the Commodity Exchange Act disqualify persons from registration if, among other things, they willfully fail to disclose a material disciplinary history matter in applications for registration or in an update to their applications. Prior to 2007, NFA's policy was to only use a failure to disclose as a basis for an adverse registration action if the non-disclosed matter itself was also used as a basis for disqualification in the action. The policy was based on the premise that the failure to disclose a matter that served as a disqualification evidenced a motive for the non-disclosure, which would undermine any claim of good faith belief that disclosure was not required.

In 2007, based on CFTC staff guidance, NFA began to take adverse registration actions against applicants or registrants due to the failure to disclose or update information on a registration application despite the fact that the underlying information is not itself a disqualification or as a matter of policy NFA does not use the underlying information to institute an adverse registration action.

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Since the issuance of the CFTC staff guidance, NFA has initiated 285 formal adverse registration actions, 106 of which were based solely on a failure to disclose a disciplinary matter,<sup>1</sup> and not the underlying matter. Based on subsequent guidance, NFA concluded these cases by the issuance of a conditioned registration. Nonetheless, even this approach is not without difficulty, particularly where a principal who is not an AP has failed to disclose a disciplinary matter. In those cases, because the principal is not a registrant, the principal's firm is the subject of the action and conditioning the firm is problematic at best.<sup>2</sup>

Recently, CFTC staff advised NFA that it would consider the imposition of a monetary consequence alone when the failure to disclose does not involve a disciplinary matter that NFA would use as a basis to disqualify the person with two caveats. First, the amount of the monetary consequence must be sufficient to create the deterrent effect against non-disclosure. Second, NFA would institute adverse registration actions based solely on a failure to disclose that independently demonstrated unfitness for registration.

NFA has determined that the best approach is to implement a fee for late disciplinary history filings by firms and individuals. The fee would be set at \$1,000 for individuals and firms. For late disclosure by individuals, the fee would be assessed against the sponsor of the AP or principal to avoid collection issues. A disclosure would be considered late if NFA discovers the matter as part of its background check and must take steps to require disclosure. These fees would be assessed irrespective of whether or not NFA institutes an adverse registration action or the reason why the matter was not disclosed. The fees are intended to recover NFA's approximate costs in uncovering and obtaining disclosure and to deter non-disclosures.

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<sup>1</sup> These statistics are comprised of all withdrawal letters and all Notices of Intent that were issued without a withdrawal letter.

<sup>2</sup> Although principals file a Form 8-R (individual application form), principals do not apply for and are not registered under the Act. However, Sections 8a2(H) and 8a3(N) disqualify the principal's firm if the principal is subject to a statutory disqualification.

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Additionally, NFA has formally documented and included in its fitness policies those factors that NFA has historically used to determine whether a failure to disclose is due to something other than negligence or carelessness, thereby evidencing unfitness for registration, including whether the AP, principal or FB/FT has previously failed to disclose a disciplinary matter. Application of these factors to the review of non-disclosures, generally speaking, will result in the actions described below.

The first time a matter that either (a) does not constitute a statutory disqualification or (b) NFA, as a matter of policy, does not use the undisclosed matter itself as a basis for an adverse registration matter is not disclosed, and the facts and circumstances surrounding the non-disclosure do not otherwise evidence unfitness for registration, then:

- An AP's or principal's failure to disclose a disciplinary history matter or matters on a verified Form 8-R or failure to inform his or her sponsor of a subsequent disclosable matter reportable on a Form 3-R shall subject the AP's or principal's sponsor to the late filing fee only;
- An FB's or individual FT's failure to disclose a disciplinary history matter or matters on a Form 8-R or failure to file a Form 3-R to report a subsequent disclosable matter shall be subject to the late filing fee only;
- An FCM's, IB's, CTA's, CPO's, LTM's, RFED's, SD's, MSP's or entity FT's failure to disclose a disciplinary history matter or matters on a Form 7-R shall be subject to the late filing fee only; and
- An FCM's, IB's, CTA's, CPO's, LTM's, RFED's, SD's, MSP's or entity FT's failure to disclose a disciplinary history matter or matters on a Form 3-R for itself or for an individual principal or AP who has notified the firm of such a disciplinary matter shall be subject to the late filing fee only.

All subsequent non-disclosures shall subject the AP's or principal's sponsor, the FB/FT and the firm to the late filing fee. The decision regarding whether to

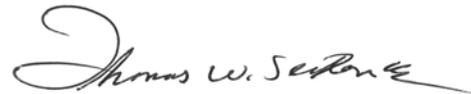
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institute an adverse registration action against the AP or principal based solely on the non-disclosure shall be made in accordance with all other applicable policies and procedures, including an assessment of the factors that may evidence unfitness for registration. With respect to APs, principals and FB/FTs, a prior non-disclosure will generally result in an adverse registration action because standing alone, that factor demonstrates that the non-disclosure was not negligent, inadvertent or careless.

As mentioned earlier, NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make the proposed amendments to NFA Registration Rules 203 and 210 regarding late disciplinary disclosure fees effective on approximately April 30, 2014, 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", 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 Registration Rules 203 and 210 will become effective June 1, 2014.