

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57640; File No. SR-NFA-2008-01)

April 9, 2008

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Amendments to the Interpretive Notice Regarding Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Exchange Act”)¹, and Rule 19b-7 under the Exchange Act², notice is hereby given that on March 17, 2008, National Futures Association (“NFA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (“CFTC”).

NFA, on December 5, 2007, submitted proposed rule changes to the CFTC for approval. The CFTC approved the proposed rule changes on January 15, 2008. On March 17, 2008, NFA requested that the CFTC make a determination that review of a technical amendment to the approved rule changes (correcting a Federal Register notice citation) is not necessary. On March 28, 2008, the CFTC notified the NFA that the CFTC has determined not to review the technical amendment for approval.³

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ See letter from Barbara S. Gold, Acting Deputy Director, CFTC to Thomas W. Sexton, III, Esq., General Counsel, NFA dated March 28, 2008.

The proposed rule changes approved by the CFTC on January 15, 2008, were previously filed with the SEC in File No. SR-NFA-2007-06. That filing is being withdrawn by NFA and this filing, which includes both the rule changes approved by the CFTC and the technical amendment, is being filed in its place.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Over the last several months, the Financial Crimes Enforcement Network ("FinCEN") has taken a number of actions that impact the content of NFA's AML Interpretive Notice. These actions include:

- Adopting a final rule under the Bank Secrecy Act ("BSA") as amended by Section 312 of the USA Patriot Act to require Futures Commission Merchants ("FCMs") and Introducing Brokers ("IBs")⁴ to apply enhanced due diligence measures to correspondent accounts maintained for certain foreign banks. This rule will become effective in two parts. Beginning on February 5, 2008, the rule applies to accounts established from that date forward. On May 5, 2008, the rule will apply to all existing accounts established prior to February 5, 2008.⁵
- Issuing guidance clarifying that in a give-up arrangement the clearing FCM, and not the executing FCM, is required to apply its CIP to the customer.⁶

⁴ An IB that limits its activities to soliciting and accepting orders for the purchase or sale of commodity futures contracts is not required to comply with the due diligence provisions of the correspondent account rule.

⁵ 17 CFR 103.175. See also Special Due Diligence Programs for Certain Foreign Accounts, 72 FR 44768 (Aug. 9, 2007).

⁶ FinCEN Guidance on Application of the Customer Identification Program Rule to Future Commission Merchants Operating as Executing and Clearing Brokers in Give-Up Arrangements, FIN-2007-G001 (Apr. 20, 2007), available at

- Issuing guidance clarifying that, upon request, FCMs and IBs are required to provide appropriate law enforcement and regulatory agencies with any supporting documentation related to a Suspicious Activity Report filed with FinCEN.⁷

The amendments to NFA’s AML Interpretive Notice incorporate the requirements of FinCEN’s final rule under the BSA as amended by Section 312 of the USA Patriot Act and the additional guidance issued by FinCEN.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 15A(k) of the Exchange Act⁸ makes NFA a national securities association for the limited purpose of regulating the activities of NFA members (“Members”) who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the

http://www.fincen.gov/cftc_fincen_guidance.html.

⁷ FinCEN Guidance on Suspicious Activity Report Supporting Documentation, FIN-2007-G003 (June 13, 2007), available at http://www.fincen.gov/Supporting_Documentation_Guidance.html.

⁸ 15 U.S.C. 78o-3(k).

Exchange Act.⁹ The amendments to the interpretive notice apply to all Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11).

The amendments to NFA's AML Interpretive Notice incorporate the requirements that are imposed by FinCEN's final rule under the BSA as amended by Section 312 of the USA Patriot Act and the additional guidance issued by FinCEN.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act. This Section requires NFA to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest in connection with security futures products. The proposed rule change accomplishes this by requiring that Members comply with applicable AML requirements and providing guidance on how to achieve such compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the CEA. Any burdens imposed by the rule change are already required under Federal laws or regulations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

⁹ 15 U.S.C. 78o(b)(11).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NFA, on December 5, 2007, submitted the proposed Interpretive Notice entitled “NFA Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program” to the CFTC for approval. The CFTC approved the rule change on January 15, 2008. On March 17, 2008, NFA submitted a technical amendment to Footnote 22 of the Interpretive Notice entitled “NFA Compliance Rule 2-9: “FCM and IB Anti-Money Laundering Program” (correcting a Federal Register notice citation) to the CFTC requesting that the CFTC make a determination that review of the technical amendment is not necessary. The CFTC notified the NFA that it has determined not to review the technical amendment for approval.¹⁰

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments:

¹⁰ See letter from Barbara S. Gold, Acting Deputy Director, CFTC to Thomas W. Sexton, III, Esq., General Counsel, NFA dated March 28, 2008.

¹¹ 15 U.S.C. 78s(b)(1).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NFA-2008-01 on the subject line.

Paper Comments:

- Send nine copies of paper comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NFA-2008-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NFA-2008-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(73).