



NATIONAL FUTURES ASSOCIATION

SECURITIES AND EXCHANGE COMMISSION
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April 1, 2005

Via Overnight Mail **DIVISION OF MARKET REGULATION**

Elizabeth King, Esq.
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Web Site Rule-Posting Requirements; Request for No-Action Relief

Dear Ms. King:

As you know, Sections 15A(k)(3) and 19(b)(7) of the Securities and Exchange Act of 1934 (Exchange Act) require National Futures Association (NFA) to file proposed rule changes relating to notice-registered broker-dealers and security futures products with the Securities Exchange Commission (SEC), and the SEC has codified this process in SEC Rule 19b-7. With limited exceptions, these NFA rule changes become effective as provided in the Commodity Exchange Act (CEA) without any action by the SEC or its staff.¹

Under Section 17(j) of the CEA, NFA can make a rule change effective ten days after it is filed with the Commodity Futures Trading Commission (CFTC) unless NFA asks that the CFTC review and approve it or the CFTC notifies NFA that it has decided to review it. Although NFA can technically make the rule change effective on the tenth day if NFA did not ask for approval and did not receive notice that the CFTC has decided to review the rule change, in practice NFA does not make rule changes effective until NFA receives a letter from CFTC staff stating that it has decided not to review the rule change (which normally occurs on the tenth day). This means that NFA rule changes can become effective either ten days after they are filed with the CFTC (based on a letter from CFTC staff stating that review is not necessary) or upon CFTC approval, although NFA may adopt a later effective date to give Members time to comply or for administrative purposes.

¹ The exceptions are for rule changes setting lower margin requirements – which NFA is unlikely to adopt since it has traditionally deferred to the exchanges to set margin requirements for exchange-traded products – and rules that the SEC has abrogated.



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Effective May 9, 2005, SEC Rule 19b-4(m) will require NFA to post and maintain a complete version of its rules on its Web site (electronic rulebook) and to update it within two business days after the Commission's notice of a proposed rule change filed under section 19(b)(7) of the Exchange Act.² The SEC's notice is unlikely to be concurrent with the CFTC's approval or its determination that review is not necessary, however. Since the Exchange Act allows most NFA rule changes to take effect under the CEA provisions, and since NFA cannot make a rule change effective prior to that time without running afoul of the CEA, a strict reading of Rule 19b-4(m) would require NFA to post rules that have not yet been approved or for which the 10-day period has not run.³

We do not believe it was the Commission's intent to require NFA to post rules before they have been approved by the CFTC or before the 10-day period has run. Therefore, NFA is asking Commission staff to confirm that it will not recommend enforcement action if NFA posts rule changes filed with the Commission pursuant to Section 19(b)(7) and Rule 19b-7 thereunder to its electronic rulebook within two business days after the CFTC approves the rule change or CFTC staff notifies NFA that review is not necessary, whichever is applicable. If we adopt a later effective date we will, of course, state the delayed effective date immediately preceding the rule text.

If you have any questions or need any additional information, please contact me (312-781-1413 or tsexton@nfa.futures.org) or Kathryn Camp (312-781-1393 or kcamp@nfa.futures.org).

Very truly yours,

Thomas W. Sexton
Vice President and General Counsel

cc: Lawrence B. Patent, CFTC
(kpc/Security Futures/No-Action Request (Rules))

² NFA already posts and maintains a complete version of its rules on its Web site and updates those rules within two business days.

³ There could also be timing issues where a rule change becomes effective under the CEA before the Commission's notice.