

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54956; File No. SR-NFA-2006-03)

December 18, 2006

Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Amendment Relating to the Interpretive Notice to Compliance Rule 2-9 Regarding FCM and IB AML Program Requirements

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on November 27, 2006, 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 prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, on November 6, 2006, NFA filed the proposed rule change with the Commodity Futures Trading Commission (“CFTC”). The CFTC approved the proposed rule change on November 16, 2006.<sup>3</sup>

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

Section 15A(k) of the Act<sup>4</sup> 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 Act.<sup>5</sup> NFA’s Interpretive Notice entitled “Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program”

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<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 C.F.R. 240.19b-7.

<sup>3</sup> See Letter from Eileen Donovan, Acting Secretary, CFTC, to Thomas W. Sexton, III, Esq., General Counsel, NFA (Nov. 16, 2006) (“Letter”).

<sup>4</sup> 15 U.S.C. 78o-3(k).

<sup>5</sup> 15 U.S.C. 78o(b)(11).

(“Interpretive Notice”) applies to all futures commission merchant (“FCM”) and introducing broker (“IB”) Members of NFA, including Members registered under Section 15(b)(11).

The text of the proposed rule change is available on NFA’s Web site ([www.nfa.futures.org](http://www.nfa.futures.org)), at the NFA’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, 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. NFA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### **1. Purpose**

Since NFA adopted its Interpretive Notice to NFA Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program in early 2002, there have been a number of additional anti-money laundering requirements applicable to NFA FCM and IB Members.<sup>6</sup> The proposed rule change would amend the Interpretive Notice to include all requirements currently applicable to FCMs and IBs.

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<sup>6</sup> See, e.g., Treasury Department Rule 31 CFR 103.123 governing Customer Identification Programs, discussed in Section A of the revised Interpretive Notice.

The revised Interpretive Notice includes changes in the following areas:

- The addition of Customer Identification Program requirements and guidance issued on these requirements;<sup>7</sup>
- The deletion of the Customer Identification and Verification section because it was replaced with the Customer Identification Program requirements;<sup>8</sup>
- The addition of Suspicious Activity Reporting requirements and guidance that was issued regarding these requirements;<sup>9</sup>
- The addition of Information Request requirements and guidance with which FCMs are required to comply. This section includes the requirement that FCMs designate a point of contact for these requests and that any changes to the point of contact information be immediately reported to NFA;<sup>10</sup>
- The addition of the Private Banking and Correspondent Account requirements and the guidance that was issued regarding these requirements;<sup>11</sup>
- A revision to the independent audit function requirement that would permit FCMs and IBs that do only proprietary business or that are inactive to conduct their independent audit on a 2-year, rather than 1-year, cycle;<sup>12</sup> and
- A relocation of the Allocation of Compliance Program Responsibilities section.<sup>13</sup>

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<sup>7</sup> See Section A of the revised Interpretive Notice.

<sup>8</sup> Id.

<sup>9</sup> See Section B of the revised Interpretive Notice.

<sup>10</sup> See Section C of the revised Interpretive Notice.

<sup>11</sup> See Section D of the revised Interpretive Notice.

<sup>12</sup> This change is consistent with a similar NASD amendment made earlier this year. See the “Independent Audit Function” Section of the revised Interpretive Notice.

<sup>13</sup> This information was previously included in the “Customer Identification and Verification” Section of the 2002 Interpretive Notice. Because the requirements of this section apply to other program requirements, NFA believes it is appropriate to set it out in a separate section. See the “Allocation of Compliance Program Responsibilities” Section of the revised Interpretive Notice.

## 2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.<sup>14</sup>

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

In the filing, NFA stated that it believes that the rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodities Exchange Act. NFA further stated that the proposed rule change primarily updates the Interpretive Notice to include the requirements imposed by CFTC and Treasury Department rulemakings.

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

NFA worked with the Futures Industry Association, National Introducing Brokers Association, Financial Crimes Enforcement Network ("FinCEN") and the CFTC in developing the rule change. NFA did not solicit or receive comment concerning the proposed rule change.

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

The proposed rule change became effective on November 16, 2006, upon approval by the CFTC.<sup>15</sup> 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 refilled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>16</sup>

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<sup>14</sup> 15 U.S.C. 78o-3(k).

<sup>15</sup> See Letter, supra, note 3.

<sup>16</sup> 15 U.S.C. 78s(b)(1).

#### **IV. Solicitation of Comments**

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NFA-2006-03 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate 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-2006-03. 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 Room. Copies of the 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-2006-03 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(75).