

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50461; File No. SR-NFA-2004-01)

September 28, 2004

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Adopting Bylaw 1508 Regarding Security Futures Agreements

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-7 thereunder,² notice is hereby given that on September 7, 2004, the National Futures Association (“NFA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as 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, as amended, from interested persons. On September 3, 2004, the NFA filed the proposed rule change with the Commodity Futures Trading Commission (“CFTC”) for approval and invoked the “ten-day” provision of Section 21(j) of the Commodity Exchange Act³ (“CEA”). On September 17, 2004, the CFTC determined not to review the proposed rule change and permitted NFA to make the proposed rule change effective on September 17, 2004.⁴ On September 27, 2004, NFA filed Amendment No. 1 to the proposed rule change.⁵

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 21(j).

⁴ See letter from Lawrence B. Patent, Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, CFTC to Thomas W. Sexton, III, General Counsel, NFA, dated September 17, 2004.

⁵ See letter from Kathryn Page Camp, Associate General Counsel, NFA, to John C. Roeser, Assistant Director, Division of Market Regulation (“Division”), Commission, dated September 27, 2004. Amendment No. 1 clarifies the proposal. Amendment No. 1 is incorporated into this notice.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NFA proposes to adopt NFA Bylaw 1508 regarding securities futures agreements.

The text of the proposed rule change appears below. New language is in italics.

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BYLAWS

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Bylaw 1508. Security Futures Agreements.

Staff may, with the approval of the Executive Committee, enter into one or more agreements with one or more designated contract markets to provide regulatory services to NFA to assist NFA in discharging its obligations under Sections 15A(k) and 19(g) of the Securities Exchange Act of 1934. Any action taken by a designated contract market, or its employees or authorized agents, acting on behalf of NFA pursuant to a regulatory services agreement shall be deemed to be an action taken by NFA; provided, however, that nothing in this provision shall affect the oversight of the designated contract market by the Commodity Futures Trading Commission. Notwithstanding the fact that NFA may enter into one or more regulatory services agreements regarding security futures, NFA shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities under the Securities Exchange Act of 1934, and any such regulatory services agreement shall so provide.

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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. 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

Under the Act, NFA is required, as a limited purpose national securities association, to adopt and enforce SFP sales practice rules for notice-registered broker-dealers. Pursuant to CFTC Regulation 1.52(b),⁶ NFA and the futures exchanges have entered into a plan that delegates auditing responsibilities for joint members to a designated futures self-regulatory organization (“DSRO”). NFA is not the DSRO for twenty-one exchange-member FCMs that are notice-registered as broker-dealers and, therefore, NFA is not responsible for auditing the futures activities of these firms.

NFA is, however, responsible under the Act for auditing the security futures activities of these notice-registered broker-dealers. In order to minimize the number of audits these firms are subject to, NFA Bylaw 1508 authorizes the NFA to enter into a regulatory services agreement with the futures exchanges that audit them. The bylaw also provides that NFA retains full responsibility for its obligations under the Exchange Act. If the futures exchanges do not conduct the appropriate audit steps or report potential violations to NFA, then NFA will be responsible to the Commission for those failures.

2. Statutory Basis

⁶ 17 CFR 1.52(b).

The rule change is authorized by, and consistent with Section 15A(k) of the Act.⁷

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

NFA believes that the proposed 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 CEA. In fact, NFA believes that the rule change will lessen the burdens on competition by avoiding duplicative examinations of notice-registered broker-dealers.

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.

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

The proposed rule change became effective on September 17, 2004. 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 Act.⁸

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:

⁷ 15 U.S.C. 78q-3(k).

⁸ 15 U.S.C. 78s(b)(1). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on September 27, 2004, the date NFA filed Amendment No. 1.

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NFA-2004-01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NFA-2004-01. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of 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-2004-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(75).