Dated: May 7, 2002.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45887; File No. SR–NFA–2002–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Futures Association Regarding Futures Commission Merchants and Introducing Brokers Anti-Money Laundering Program

May 7, 2002.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on April 25, 2002, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes 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 changes from interested persons.

On April 22, 2002, NFA submitted the proposed rule change to the Commodities Futures Trading Commission (''CFTC'') for approval. The CFTC approved the proposed rule change on April 23, 2002.[3]

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

Section 15A(k) of the Exchange Act [4] makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[5] NFA Compliance Rule 2–9 and the Interpretive Notice Regarding Futures Commission Merchants (''FCM'') and Introducing Brokers (''IB'') Anti-Money Laundering Program (''Notice'') apply to all Members who open and accept orders for futures accounts, regardless of the underlying product and, therefore, will apply to Members registered under Section 15(b)(11) with regard to their security futures activities.

The proposed rule change responds to the CFTC's request that NFA adopt minimum standards for anti-money laundering programs applicable to the futures industry. Section 352 of the *International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001* (''Title III'') requires financial institutions, as defined under the Bank Secrecy Act (''BSA''), to implement an anti-money laundering program which, at a minimum, must include internal policies, procedures and controls to deter, detect and report suspicious activity; a designated compliance officer to oversee anti-money laundering surveillance; an ongoing training program for employees; and an independent audit function to test the compliance of the program. NFA Compliance Rule 2–9 and the Interpretive Notice Regarding FCM and IB Anti-Money Laundering Program implement this requirement.

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. The text of the proposed rule change is available for inspection at the Office of the Secretary, the NFA, the Commission's Public Reference Room, and on the Commission's website (*http://www.sec.gov*).

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

1. Purpose

As noted above, the proposed rule change responds to the CFTC's request that NFA adopt minimum standards for anti-money laundering programs applicable to the futures industry. Section 352 of the *International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001* (''Title III'') requires financial institutions, as defined under the Bank Secrecy Act (''BSA''), to implement an anti-money laundering program which, at a minimum, must include internal policies, procedures and controls to deter, detect and report suspicious activity; a designated compliance officer to oversee anti-money laundering surveillance; an ongoing training program for employees; and an independent audit function to test the compliance of the program.

Although the BSA explicitly defines ''financial institutions'' to include FCMs, Commodity Pool Operators (''CPOs'') and Commodity Trading Advisors (''CTAs'') (but not IBs), the U.S. Department of the Treasury (''Treasury'') has requested that NFA's anti-money laundering program requirements apply to IBs. Treasury notes that it intends to clarify that IBs are within the BSA's definition of ''financial institutions'' in the near future. In Treasury's view, this amendment is necessary so that Title III's requirements apply to FCMs and IBs in a manner comparable to clearing and introducing broker-dealers in the securities industry.

The proposed Notice makes clear that FCMs and IBs must adopt an anti-money laundering compliance program. The Notice allows FCMs and IBs to allocate their responsibilities by written agreement, but indicates that both parties must have a reasonable basis for believing that the other party is performing their required functions. The Notice also highlights that the Secretary of the Treasury has stated that allocating these responsibilities does not relieve either the FCM or the IB of its independent obligation to comply with the anti-money laundering requirements.

The proposed Notice is divided into four main areas that track the requirements of Section 352. The first section discusses the types of policies, procedures, and internal controls that FCMs and IBs should include in their anti-money laundering program. Specifically, the Notice discusses procedures for obtaining and verifying the true identity of the owner/beneficial owner of an account. The Notice also describes various relationships between carrying FCMs and IBs and other entities and discusses the FCM's and IB's responsibilities when other entities are involved. In particular, the Notice states that when an FCM or IB is doing business with a CPO, the FCM or IB will be required to conduct a risk-based analysis of the money laundering risks posed by the pool and, in most instances, this analysis will not require the FCM or IB to conduct due diligence on the underlying participants or beneficiaries. With regard to the treatment of accounts introduced by regulated foreign intermediaries, the proposed Notice requires an FCM to make a risk-based determination as to whether it can rely on the foreign

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] Letter from Catherine D. Dixon, Assistant Secretary of the Commission, CFTC, to Thomas W. Sexton, Vice President and General Counsel, NFA, dated April 23, 2002.

[4] 15 U.S.C. 78o–3(k)

[5] 15 U.S.C. 78o(b)(11).

intermediary's due diligence with respect to its customers. The Notice also identifies certain factors to consider including whether the intermediary, is located in a FATF member jurisdiction, the FCM's historical experience with the foreign intermediary and the intermediary's reputation in the investment business.

The first section of the Notice also describes procedures for detecting and reporting suspicious activity, hiring qualified staff in areas susceptible to money laundering, and record keeping requirements. The second section of the Notice discusses the requirement that the firm designate an individual or individuals to oversee the surveillance program. This section also highlights the main responsibilities of this individual. The third section discusses the components of an employee training program. Finally, the last section discusses the independent audit review function and the ways a firm can satisfy this requirement.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.[6]

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 are necessary and appropriate in order to protect customers.

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

NFA worked with industry representatives in developing the rule changes. NFA did not, however, publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

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

By law, financial institutions must be in compliance with the requirements of Section 352 of Title III on or before April 24, 2002.

The proposed rule change became effective on April 23, 2002. 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.[7]

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 Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* 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 these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's website (http://www.sec.gov). All submissions should refer to File No. SR–NFA–2002–03 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[6] 15 U.S.C. 78o–3(k).

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45884; File No. SR–NYSE–2002–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend Pilot Relating to Its Allocation Policy for Trading of Exchange-Traded Funds Traded on an Unlisted Trading Privileges Basis

May 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2002, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The proposed rule change has been filed by the NYSE as a ''non-controversial'' rule change under Rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change seeks to extend the pilot relating to the Exchange's policy for allocating Exchange-Traded Funds (''ETFs'') admitted to trading on the Exchange on an Unlisted Trading Privileges Basis (''UTP'') for an additional year. The pilot is set to expire on May 7, 2002. For purposes of the Allocation Policy, ETFs include both Investment Company Units (as defined in paragraph 703.16 of the NYSE Listed Company Manual) and Trust Issued Receipts (as defined in NYSE Rule 1200), which trade UTP.

Since the inception of the Allocation Policy, 30 different ETFs have been successfully allocated. This includes 17 Merrill Lynch Holding Company Depositary Receipts (HOLDRs), a type of Trust Issued Receipt, 9 different types of Select Sector SPDRs, 1 MidCap SPDR, the Nasdaq-100 Index Tracking Stock (symbol QQQ), the Standard & Poor's Depositary Receipts (symbol SPY), and The Dow Industrials DIAMONDS (symbol DIA).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).