

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NASD has asked that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act<sup>11</sup> to allow the proposed rule change to be implemented on the first day of operation of the NASD/NYSE TRF, which is currently anticipated to be in April 2007. The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow the proposed fees and credits to be in place at the time NASD begins operating the NASD/NYSE TRF. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>12</sup>

### **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-NASD-2007-025 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-NASD-2007-025. 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 NASD. 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-NASD-2007-025 and should be submitted on or before April 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55525; File No. SR-NFA-2007-01]

### **Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Amendment Relating to NFA Compliance Rule 2-10**

March 26, 2007.

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 February 27, 2007, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("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 February 26, 2007, submitted the proposed rule change to the CFTC for approval. The CFTC approved the proposed rule change on March 12, 2007.<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 Compliance Rule 2-10(b) applies to all futures commission merchant ("FCM") Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11) of the Act.

NFA Compliance Rule 2-10 currently requires FCM Members to maintain their books and records in an office located in either the U.S. or a jurisdiction that the CFTC has determined to have a comparable regulatory scheme for purposes of the CFTC's Part 30 regulation.<sup>6</sup> The amendment requires the U.S. or Part 30

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> See Letter from Eileen Donovan, Acting Secretary, CFTC, to Thomas W. Sexton, General Counsel, NFA, dated March 12, 2007, confirming approval of the proposal.

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

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

<sup>6</sup> 17 CFR 30.1-30.12.

jurisdiction office to be under the supervision of an associated person ("AP") principal resident in that office.

## 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

In November 2005, NFA's Board adopted amendments to NFA Compliance Rule 2-10 to require FCMs to maintain their books and records in an office located in either the U.S. or a Part 30 jurisdiction (if the firm is subject to the Part 30 regulatory scheme).<sup>7</sup> The rule does not require the office to be under the supervision of an AP principal resident in that office, however.

This creates several potential problems. First, the rule allows the firm's principals to supervise the office from a remote location. Without a principal on the premise to oversee the office's day-to-day recordkeeping activities, the firm is less likely to discover potential problems quickly. Second, there may be no one in the office who is subject to NFA's disciplinary jurisdiction. Although the firm's AP principals may ultimately be responsible for the firm's books and records violations, their distance from the office could dilute their sense of accountability as well as the accountability of those in the office.

The lack of a resident principal also means that NFA Compliance staff may not have ready access to someone who can answer questions during an audit or investigation. Although Compliance Rule 2-10 requires all Members to have an individual who is authorized to act on the Member's behalf, is fluent in

English, and is knowledgeable about the Member's business and about financial matters, the absence of a resident AP principal can be problematic when NFA is seeking information from an FCM.<sup>8</sup>

Accordingly, NFA amends Compliance Rule 2-10(b) to require that an FCM's books and records be kept in a U.S. or Part 30 office that is under the supervision of an AP principal resident in that office. As is currently the case, a firm could only use an office in a Part 30 jurisdiction if the firm is actually subject to regulation in that jurisdiction.

#### 2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.<sup>9</sup>

### 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 Act and the Commodity Exchange Act.

### C. Self-Regulatory Organization's Statement of 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

NFA, on February 26, 2007, submitted the proposed amendments to NFA Compliance Rule 2-10 to the CFTC for approval. The CFTC approved the proposed rule change on March 12, 2007.

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.<sup>10</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>8</sup> Telephone conversation between Kathryn Page Camp, Associate General Counsel, NFA, and Molly M. Kim, Special Counsel, Division of Market Regulation, Commission, on March 22, 2007.

<sup>9</sup> 15 U.S.C. 78o-3(k).

<sup>10</sup> 15 U.S.C. 78s(b)(1).

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 No. SR-NFA-2007-01 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 No. SR-NFA-2007-01. 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 will also 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 No. SR-NFA-2007-01 and should be submitted on or before April 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>11</sup> 17 CFR 200.30-3(a)(75).

<sup>7</sup> See Securities Exchange Act Release No. 53190 (January 30, 2006), 71 FR 6119 (February 6, 2006).