

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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 the CHX. All submissions should refer to File No. SR-CHX-2001-33 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47150; File No. SR-NFA-2002-06]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Concerning Delivery of the Risk Disclosure Statement for Security Futures Contracts by Commodity Trading Advisors**

January 9, 2003.

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 29, 2002, the 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 the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On November 27, 2002, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on December 9, 2002.

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

Section 15A(k) of the Act<sup>3</sup> 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 Act.<sup>4</sup> Where security futures accounts are solicited by commodity trading advisors (CTAs), the proposed rule changes shift responsibility for providing the risk disclosure for those products from the CTA to the firms carrying the account, which could be a broker-dealer registered under Section 15(b)(11).

**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.

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

**1. Purpose**

The Managed Funds Association (MFA) recently raised an issue regarding the security futures risk disclosure statement. The Commodity Futures Modernization Act of 2000 provides that, with respect to security futures products, CTAs, as well as other registrants, must be subject to suitability rules comparable to those that apply to NASD members. The "Know Your Customer" requirements in NFA Compliance Rule 2-30 include the requirement to provide appropriate risk disclosure, so when that rule was amended to include suitability requirements for security futures products, CTAs were included in the provisions of that rule relating to the disclosure statement. As Compliance Rule 2-30 and the related Interpretive Notice currently read, a CTA is required to provide the disclosure statement to the customer in the relatively rare instance where the CTA is the Member soliciting the account.

MFA has questioned this requirement for CTAs, pointing out that investment advisers have no similar requirement. Although someone must provide the disclosure statement to the customer, the Board agrees that the CTA does not have to be the source of that document. In fact, if the account is carried by an NASD member that is itself required by NASD rules to provide the document, NFA's current rule could result in both the CTA and the Futures Commission Merchant (FCM) delivering the document. Therefore, the Board amended NFA Compliance Rule 2-30 and the related Interpretive Notice to remove CTAs from the special risk disclosure requirements for security futures products and to place the obligation to provide the statement on the Member carrying an account solicited by the CTA. The CTA must still, of course, consider how well a customer understands the risks when determining if it is appropriate for the customer to trade security futures products or to use the CTA's trading program for that purpose.

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

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

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

<sup>4</sup> 15 U.S.C. 78o(b)(11).

<sup>8</sup> 17 CFR 200.30-3(a)(12).