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September 6, 2002

Via E-mail – secretary@cftc.gov

Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

COMMENT

Re: Proposed Section 326 Rule – Customer Identification

Dear Ms. Webb:

NFA welcomes this opportunity to express it support for the joint proposal of the United States Department of the Treasury – Financial Crimes Enforcement Network (FinCEN) and the CFTC to implement Section 326 of the USA PATRIOT Act of 2001. In particular, NFA commends FinCEN and the Commission for adopting a risk-based approach to customer identification and verification that is consistent with the overall framework for an anti-money laundering program required under the PATRIOT Act.

FinCEN and the Commission have recognized throughout the development of the anti-money laundering program requirements that there are different risk levels associated with different businesses and customers. The current framework encourages FCMs and IBs to focus their resources on the areas most susceptible to money laundering risks and develop practices tailored to their business model. NFA believes that the six risk factors identified in the proposed regulation should assist firms in assessing risks in the account opening process and using their anti-money laundering resources in the most effective manner.

NFA also applauds the proposed framework with respect to identification and verification of existing accounts. As the Commission is aware, the futures industry has long required FCMs and IBs to obtain certain information regarding its customers. Although in the past there was no specific verification requirement, sound business practice ensured that firms verified that this information was accurate. Given this existing framework, it is consistent with the risk-based approach to have firms focus their resources on new customers or existing customers with changes to their account. In keeping with this approach, NFA also supports the proposed framework that does not require FCMs and IBs to verify existing customers who open new accounts provided that the firm has previously verified the account with procedures consistent with the new

requirements and the firm continues to have a reasonable belief that it knows the true identity of the customer.

NFA requests, however, that the regulation be clarified with respect to a firm's obligation for account transfers. The *Federal Register* release states that an FCM is not required to verify the identity of a customer where the account is transferred from one FCM to another and the customer did not initiate the transfer. NFA fully supports this concept, but notes that it is not specifically included in the proposed regulation. NFA recommends that FinCEN and the Commission amend the proposed regulation to specifically provide for this exception.

NFA also fully supports the proposed framework with respect to the allocation of customer identification and verification responsibilities between FCMs and IBs. The proposed regulation is consistent with NFA's guidance on this issue in its interpretive notice and with the risk-based approach to anti-money laundering requirements.

NFA requests clarification, however, on the requirements with respect to give-up relationships between clearing and executing FCMs. NFA agrees that an executing FCM should be able to rely on the clearing FCM to perform the identification and verification obligations provided that the executing FCM is satisfied that the clearing FCM can be relied upon to carry out these responsibilities. NFA also supports the proposal's suggestion that an executing FCM could obtain a certification from the clearing FCM that it has performed the required customer identification and verification obligations. NFA requests, however, that FinCEN and the Commission clarify the scope of this certification. NFA believes that it is logical for a clearing FCM to provide one certification to the executing FCM that it will perform these functions with respect to all customers for which it acts as the clearing broker. NFA does not believe that it is necessary to require this certification on a customer-by-customer basis.

Additionally, with regard to give-up transactions in particular, NFA believes it would be helpful for the Commission to recognize that these transactions often cross borders. To that end, NFA suggests that the Commission clarify that proposed Section 103.123(b) does not prohibit US FCMs from relying upon their non-US affiliates that have relied upon non-US brokers in connection with performing the identification and verification obligations. NFA recognizes, however, that such reliance must be reasonable in light of the risk based factors identified in the release.

In closing, NFA appreciates FinCEN's and the Commission's continuing efforts to provide guidance with respect to the anti-money laundering compliance program requirements. NFA encourages FinCEN and the Commission to consider NFA's comments and the comments of industry participants in developing the final regulation for identification and verification. As always, if NFA can be of any further

assistance with this or any other issues related to anti-money laundering programs in the futures industry, please do not hesitate to contact me at (312)781-1413 or by e-mail at tsexton@nfa.futures.org.

Sincerely,

Thomas W. Sexton
General Counsel
National Futures Association

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