

**CFTC Letter No. 99-24****June 3, 1999****Interpretation****Division of Trading & Markets**

Dear:

In your letter of May 20, 1999, you request on behalf of \_\_\_\_\_, an introducing broker ("IB"), a waiver from including in liabilities the aggregate of a settlement in the amount of \$\_\_\_\_\_, in calculating adjusted net capital under regulation 1.17 (17 C.F.R. §1.17 (1999)).

We understand from your letter that:

- \_\_\_\_\_ and the National Futures Association ("NFA") entered into a settlement in a Business Conduct Committee case wherein \_\_\_\_\_ was to pay a monthly figure of \$\_\_\_\_\_ for 8 months, for a total of \$\_\_\_\_\_.
- \_\_\_\_\_'s request for monthly payments was to avoid a large one-time financial obligation and to pay over time.
- NFA has since audited \_\_\_\_\_ and concluded that it must count the aggregate amount of \$\_\_\_\_\_ (\$\_\_\_\_\_ has already been paid to NFA) against capital under the capital requirements for an IB.
- Additionally, you ask if there is any other information that you may be able to provide to support \_\_\_\_\_'s request and under what basis a waiver may be granted.

Under regulation 1.17(a)(1)(ii)(17 C.F.R. §1.17(a)(1)(ii)(1999)), each person registered as a nonguaranteed introducing broker must maintain adjusted net capital equal to or in excess of the greatest of: (A) \$30,000; (B) the amount of adjusted net capital required by a registered futures association of which it is a member; or (C) for securities brokers and dealers, the amount of net capital required by Rule 15c3-1(a) of the Securities and Exchange Commission (17 C.F.R. 240.15c3-1(a)).

Under regulation 1.17(c)(4)(17 C.F.R. §1.17(c)(4)(1999)), the term "liabilities" means the total money liabilities of an applicant or registrant arising in connection with any transaction whatsoever, including economic obligations of an applicant or registrant that

are recognized and measured in conformity with generally accepted accounting principles. "Liabilities" also include certain deferred credits that are not obligations but that are recognized and measured in conformity with generally accepted accounting principles. For the purposes of computing "net capital" the term "liabilities" excludes those liabilities set forth in sections 1.17(c)(4)(i)-(vi).

Based on the facts as set forth in your letter, it is the view of the Division that \_\_\_\_ is required to include the remaining settlement amount as a liability in calculating its adjusted net capital. The Division further believes that there is no basis on which to grant \_\_\_\_ a waiver from including the remaining unpaid settlement amount as a liability.

If you have any questions, please contact Gary C. Miller, Assistant Chief Accountant at (202) 418-5461.

Very truly yours,

John C. Lawton

Acting Deputy  
Director