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NFA NATIONAL FUTURES ASSOCIATION
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COMMODITY FUTURES TRADING COMMISSION RECEIVED

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COMMENT

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COMMODITY FUTURES TRADING COMMISSION RECEIVED FOR PUBLIC RECORD

Ms. Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Early Warning Amendments

Dear Ms. Webb:

National Futures Association ("NFA") welcomes this opportunity to comment on the Commodity Futures Trading Commission's ("Commission") recent rule proposal to require FCMs to immediately notify the Commission when the FCM knows or should know that it is in an undersegregated or undersecured condition. The proposal will also require FCMs to immediately notify the Commission if it becomes undercapitalized or when an account must be liquidated, transferred or allowed to trade for liquidations only.

As noted by the Commission in its release, the segregation rules are the primary safeguard against the loss of customer funds resulting from the financial failure of an FCM. The effectiveness of the rules can hardly be denied. Historically, customer losses due to FCM insolvencies have been miniscule. The rare instances in which such losses have occurred have all involved non-exchange member FCMs. Even among non-exchange member FCMs, losses due to insolvencies have been dramatically reduced since NFA began auditing them in 1982. In fact, in the last eight years, there have not been any customer losses due to FCM insolvencies. Notwithstanding the success of the segregation rules, NFA supports the Commission's efforts to further strengthen these rules by requiring firms to provide the appropriate regulators with prompt information on shortfalls in segregated or secured funds.

Under the Commission's current regulations, an FCM must complete its daily segregation computation by no later than noon of the next business day. We agree that FCMs should be able to provide the required notice to regulators by no later than that deadline. In our experience, however, the preparation of the daily segregation computation is often the first time an FCM could reasonably be expected to know of a shortfall in segregated funds. As the Commission's release points out, of course, in extraordinarily volatile markets, an FCM may well know of a shortfall before noon of the next business day, and, in such circumstances, should be required to notify regulators. We would suggest, however, that the Commission notice clarify that such circumstances are the exception rather than the norm. This would avoid potential confusion among registrants and clarify the Commission's intent in adopting the rule changes.

Sincerely,

Daniel J. Roth
General Counsel

DJR:ckm(ltr-dr\early warning)