

3

October 4, 2002

**VIA E-MAIL: [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov)**

Office of Chief Counsel  
Financial Crimes Enforcement Network  
Department of the Treasury  
P.O. Box 39  
Vienna, Virginia 22182

Attention: PRA Comments – SAR – Securities and Futures Industry Form

Ladies and Gentlemen:

I am writing this letter on behalf of National Futures Association (NFA), a registered futures association under the Commodity Exchange Act and self-regulatory organization for the United States futures industry. NFA welcomes this opportunity to comment on FinCEN's proposed form, "Suspicious Activity Report by the Securities and Futures Industry (SAR – SF)."

NFA worked closely with Treasury and the Commodity Futures Trading Commission in developing an NFA Rule and Interpretive Notice for FCMs and IBs regarding anti-money laundering program requirements under Section 352 of the USA PATRIOT Act.<sup>1</sup> As part of our work in this area, NFA encourages FCMs and IBs to voluntarily report suspicious transactions with FinCEN and we support FinCEN's efforts to simplify this reporting by providing FCMs and IBs with a designated form for making these reports.

NFA wishes to stress that our comments on the form are premised on the voluntary use of the form. It is impossible at this time to anticipate or comment fully on issues that may arise with respect to the form when FinCEN issues its proposed rulemaking requiring FCMs (and presumably IBs) to report suspicious transactions. As a result, FinCEN should provide the futures industry with a full opportunity to comment on any required form in conjunction with that anticipated rulemaking.

NFA has a few minor comments on the current voluntary form and notes that some of these issues become material when the form becomes mandatory for the futures industry. One area that NFA believes should be clarified relates to the use of the form by IBs in the futures industry. Although the form itself lists "IB-futures" as a

---

<sup>1</sup> See NFA Compliance Rule 2-9(c), NFA Manual at ¶5065 and Interpretive Notice to NFA Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program, NFA Manual at ¶9044.

Office of Chief Counsel

October 4, 2002

category that may use the form, the preamble refers only to FCMs using the form. NFA recommends that the adopting release make it clear that this form may also be used by IBs.

NFA also believes that the preamble in the adopting release should be clarified with respect to the protection from liability for information on the form and the prohibition against notifying the subject of the form that one has been filed. Specifically, the preamble states that broker-dealers that file the form voluntarily are subject to the protection from liability under 31 U.S.C. 5318(g)(3), but no mention is made of FCMs or IBs that file the form voluntarily. Similarly, the preamble states that broker-dealers that file the form are prohibited under 31 U.S. 5318(g)(2) from notifying any person involved in the suspicious transaction that a SAR has been filed. Again, no mention is made of FCMs or IBs. NFA recommends that the adopting release clarify the applicability of these provisions with respect to FCMs and IBs.

Thank you for the opportunity to comment on this proposal. If you have any questions or would like additional information from NFA, please do not hesitate to contact me (312)781-1413 or [tsexton@nfa.futures.org](mailto:tsexton@nfa.futures.org).

Very truly yours,

Thomas W. Sexton  
Vice President and General Counsel

/nam(LTRS:SAR Comment Letter.caw)