

Sepe Harrison

Note copy



# National Futures Association

200 West Madison Street  
Chicago, Illinois 60606

312 726-0070

Robert K. Wilmouth  
President

call 9/14/82  
from Kevin Madison CFIC  
re Arb rules

August 27, 1982

Ms. Jane K. Stuckey  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Re: National Futures Association;  
Proposed Amendments to Articles of  
Incorporation, Bylaws, Code of  
Arbitration, Compliance Rules and  
Financial Requirements.

Dear Ms. Stuckey:

Pursuant to Section 17(j) of the Commodity Exchange Act the National Futures Association ("NFA") hereby files with the Commission and requests the Commission's approval of changes in its Articles of Incorporation, Bylaws, Code of Arbitration, Compliance Rules and Financial Requirements. The proposed changes are set forth below. Additions are underscored and deletions bracketed.

1. ARTICLES OF INCORPORATION

A. The Amendments.

(i) Art. III, Sec. 2 (Purposes).

Section 2: Contract Markets.

(a) Non-applicability of NFA Rules.

\* \* \*

Ms. Jane K. Stuckey  
August 27, 1982  
Page 2

(b) Prohibition Upon Adoption Of Certain Rules.  
NFA shall not adopt, administer or enforce upon any Member or Associate a rule, standard, requirement or procedure which purports to govern or otherwise regulate any of the following:

(i) The minimum level of margin required for any futures contract or type of futures transaction, the method for calculation thereof, or compliance therewith, unless such rule, standard, requirement or procedure conforms and is not inconsistent with applicable contract market requirements.

(ii) Art. VIII, Sec. 3 (Executive Committee).

Section 3: Composition.

The Executive Committee shall be comprised of the following:

(a) NFA's President, and

(b) Eight (8) Directors, as follows:

(i) The Chairman of the Board of Directors, and

(ii) Seven (7) other Directors, as follows, except that whichever of the following categories is represented on the Board of Directors by the Chairman of the Board shall be deemed represented on the Executive Committee by the Chairman (e.g., if the Chairman is an FCM Director, then only two (2) additional FCM Directors shall serve on the Executive Committee):

[(i)](A) Two (2) Directors representing contract markets:

[(A)](1) One (1) representative . . .

[(B)](2) One (1) representative of a contract market that has one (1) Director on the Board and that is in a different region from the contract market represented in paragraph [(A)](1) above: . . .

Ms. Jane K. Stuckey  
August 27, 1982  
Page 3

- [(ii)](B) Three (3) Directors representing FCMs . . .
- [(iii)](C) Two (2) Directors representing Industry Participants . . .
- [(iv)](D) One (1) Director who is a Public Representative.

B. Explanation of Amendments.

(i) Article III. This amendment will enable NFA to make the change in its Financial Requirements that is described in Section 5 of this letter.

(ii) Article VIII. This article has been redrafted to include the Chairman of the Board as a member of the Executive Committee. The duties of both the Chairman and the Executive Committee can be more effectively carried out if the Chairman is a member of this important NFA committee. The Chairman shall be deemed to represent on the Executive Committee the category of NFA Member he or she represents on the full Board of Directors, thereby, in effect, causing that category to "lose" one seat on the Executive Committee for the length of his or her term as Chairman.

2. BYLAWS

A. The Amendments.

- (i) Bylaw 703 (Advisory Committees).

The Board shall appoint advisory committees, not having or exercising the authority of the Board, including a committee to advise the Board on FCM matters and a committee to advise the Board on matters relating to commodity pool operators and commodity trading advisors. No person then serving as a member of the Board shall simultaneously serve as a member of any NFA advisory committee.

- (ii) Bylaw 1301 (Schedule of Dues and Assessments).



Ms. Jane K. Stuckey  
August 27, 1982  
Page 4

Subject to the provisions of Article XII, dues and assessments of Members shall be as follows:

(a) Contract Markets.

\* \* \*

(b) FCMs and Agents.

- (i) Each FCM Member shall pay to NFA an assessment equal to [\$0.\_\_\_\_\*] \$0.30 for each commodity futures contract other than a dealer option contract on a round-turn basis carried by it for a customer other than (A) a person having privileges of membership on the contract market where such contract is entered or (B) a person whose contracts are carried in a proprietary account, as defined in Commission Rule §1.3(y), by a person having privileges of membership on such contract market or (C) an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM; and each FCM Member shall pay to NFA an assessment equal to [\$0.\_\_\_\_\*] \$4.50 for each dealer option contract on a round-turn basis (see paragraph (d), below) carried by it for a customer other than a person whose contracts are carried in a proprietary account, as defined in Commission Rule §1.3(y), by such FCM Member: Provided, however, Such assessments shall be suspended by the Board during any fiscal year when in the judgment of the Board the budget goals of NFA for the fiscal year, as prescribed by the Board under Section 6 of Article VII, have been met. The FCM Member shall invoice these assessments to its customer and shall remit the amount due to NFA; and

(ii) \* \* \*

(iii) \* \* \*

(iv) \* \* \*

(c) [Other Dues.] Other Members.

Annual dues for a Commodity Pool Operator shall be \$500 for the year of such entity's initial registration with the Commission and thereafter shall be \$1,000. Annual dues for a Commodity Trading Advisor shall be \$500. All Members of NFA, other than those previously set forth in this Bylaw, shall pay to NFA annual dues of \$1,000. The Board may in its discretion waive or establish lower annual dues for such other Members, excluding Commodity Pool Operators and Commodity Trading Advisors.

[All other Members shall pay to NFA annual dues of \$1,000, except that the Board may in its discretion waive or establish lower annual dues for such Members, other than Commodity Pool Operators and Commodity Trading Advisors: Provided, however, That the annual dues for a Commodity Pool Operator or Commodity Trading Advisor shall be \$500 for the year of such entity's initial registration with the Commission.]

(d) Commodity Option Contracts.

\* \* \*

[\*This amount is to be determined by the provisional directors upon an analysis of 1981 trading volume and an updated review of anticipated NFA expenses. The Commission will be advised of the figure by supplemental letter to this application.]

B. Explanation of Amendments.

(i) Bylaw 703. This change will promote the fair representation of NFA members on NFA advisory committees and, in general, increase the number and diversity of NFA members involved in the governance of NFA.

(ii) Bylaw 1301(b). These amendments are designed to promote the equitable allocation of dues and assessments among NFA members.



Ms. Jane K. Stuckey  
August 27, 1982  
Page 6

The transaction in subsection (a) (\$.30 per round-turn for futures and \$4.50 for dealer options) were based upon an analysis of 1981 trading volume of futures and dealer options, together with an analysis of the estimated costs of regulating FCM's and dealer options. The assessments are generally expected to defray these costs.

(iii) Bylaw 1301(c). This change will lower the annual dues for CTA's in their second or succeeding year of CFTC registration. The annual dues for a CTA in its first year of registration will remain at \$500. Annual dues for CPO's will remain the same, \$500 for the first year of CFTC registration and \$1,000 thereafter. The lowering of dues for CTAs was deemed to provide a more equitable allocation of costs to such Members.

### 3. CODE OF ARBITRATION

#### A. The Amendments.

##### (i) Section 4 (Arbitration Panel).

##### (a) Appointment of Panel.

All arbitration proceedings under this Code shall be conducted before an arbitration Panel consisting of three NFA Members or individuals connected therewith (one such Member or individual designated as panel Chairman) appointed by the President, except that where the customer's aggregate claim (including interest) does not exceed \$5,000, the Panel shall consist of one such person unless the Secretary directs otherwise: Provided, however, If the customer in an arbitration under Section 2(a) of this Code so requests in the Demand for Arbitration (See Section 6(c) of this Code), the Chairman and at least one other member of the Panel, and the Panel member where there is a single-member Panel, shall not be connected with an NFA Member or NFA (except as NFA arbitrators).

*Contractors?  
not required  
by rule*

Ms. Jane K. Stuckey  
August 27, 1982  
Page 7

(ii) Section 8. Hearing.

(a) Place, Time and Notice of Hearing.

Except as provided in paragraph (f) of this section, as soon as practicable after appointment of the Panel, the place and time of the hearing shall be determined in the sole discretion of the Secretary, who shall endeavor to accommodate, if possible, the preferences of all parties and members of the Panel. The Secretary shall give notice to each party of the place and time of the hearing at least 10 days before the hearing date.

(f) Summary Proceeding.

Where the customer's aggregate claim (including interest) does not exceed \$1,500, the proceeding shall be conducted entirely through written submissions unless the Secretary directs otherwise.

*Contractor  
aggregation  
required by  
180.2(d)*

B. Explanation of Amendments.

These amendments are designed to impart greater speed and flexibility to the arbitration process while lowering expenses. Smaller customer claims (claims which, including interest, do not exceed \$5,000) will be heard before a one-member Panel and claims under \$1,500 will be conducted through written submissions, unless the Secretary directs otherwise (e.g. where testimony is necessary to resolve factual issues). Customers involved in one-member panel arbitrations will be entitled to demand that the arbitrator not be connected with NFA or an NFA member. Thus, these amendments will serve to speed arbitration procedures and yield greater cost effectiveness, while at the same time ensuring fairness. The amendment to Section 8(a) is a technical amendment.

4. COMPLIANCE RULES

A. The Amendments.

2-11. CUSTOMER ACCOUNTS.

No Member FCM, unless a member of a contract market, shall carry customer accounts without prior approval from NFA obtained either at the time of



Ms. Jane K. Stuckey  
August 27, 1982  
Page 8

registration or prior to a change in the nature of business previously authorized. In order to originate and carry on a business with public customers, Member FCMs are subject to the Financial Requirements of NFA as provided therein.

2-12. OMNIBUS ACCOUNTS.

A Member FCM, whether or not a contract market member, carrying omnibus accounts of any kind in commodity futures must maintain with NFA a complete list of all such omnibus accounts, and shall immediately notify NFA when new omnibus accounts are opened and when existing accounts are subsequently closed. Information for each omnibus account must include account name and address, and an indication of the type of account as either house or customer and regulated or unregulated.

[Rule 2-11.] 2-13. COMPLIANCE JURISDICTION.

Any Member or Associate who violates or fails to comply with any NFA requirement shall be subject to appropriate Member or Associate Responsibility Action (see Rule 3-12) or disciplinary action, or both, in accordance with these rules.

B. Explanation of Amendments

(i) 2-11. This rule will enable NFA to regulate non-exchange FCMs more effectively by monitoring the carrying of customer accounts by these FCM's. The rule does not apply to exchange-member FCM's because many of these FCM's are subject to similar exchange rules and because of the effectiveness of exchange regulation in general.

(ii) 2-12. Omnibus accounts present particular regulatory considerations that warrant a procedure by which NFA can identify those FCMs that carry such accounts and can monitor those accounts closely. The rules are designed to establish such a procedure.



Ms. Jane K. Stuckey  
August 27, 1982  
Page 9

5. FINANCIAL REQUIREMENTS

A. The Amendment.

Sec. A8. Performance Margin.

A8-a. Every Member FCM that is not a member of a contract market must collect performance margin (initial and maintenance) for all customer accounts at a level no less than that established for customer accounts by the rules of the applicable contract market.

B. Explanation of Amendment.

This rule, which is similar to CFTC Rule 1.56(b)(3), will assist NFA in auditing and regulating non-exchange FCMs and help to insure the financial stability of non-exchange FCMs.

\* \* \*

Finally, it should also be noted that by resolution of the Board of Directors on June 24, 1982, it was unanimously decided, pursuant to Bylaw 1302, that the level of annual dues charged NFA Members that come within one or more Membership categories shall be only for that category for which the Bylaws of NFA specify the higher amount of annual dues.

NFA respectfully requests the Commission to declare the proposed amendments effective upon approval by the Commission, as is authorized by Section 17(j) of the Commodity Exchange Act.

Very truly yours,

NATIONAL FUTURES ASSOCIATION

By: Robert K. Wilmouth  
Robert K. Wilmouth  
President and Chief  
Executive Officer

cc: Mr. John L. Manley  
Mr. Theodore W. Urban

cc: Jpd Harrison  
9/16/82

COMMODITY FUTURES TRADING COMMISSION  
2033 K STREET, N.W., WASHINGTON, D.C. 20581

SEP 16 1982



DIVISION OF  
TRADING AND MARKETS

September 13, 1982

Mr. Robert K. Wilmouth  
President and Chief Executive Officer  
National Futures Association  
200 West Madison Street  
Chicago, Illinois 60606

Re: Proposed Amendments to Articles of Incorporation Bylaws, Code of Arbitration, Compliance Rules and Financial Requirements of NFA.

Dear Mr. Wilmouth:

The Division is now reviewing NFA's August 27, 1982 submission of the above proposed amendments. In the course of reviewing the submission, Division staff have detected a minor technical problem with the proposed amendment to Section 8(f) of the NFA's Code of Arbitration. Commission regulation 180.2(d)(1) allows resolution of disputes based solely on written submissions by the parties when the claims of the parties, including counterclaims are in the aggregate worth \$2500 or less. NFA's proposed amendment to §8(f) of its Code would allow resolution of disputes based solely on written submissions if the customer's claim does not exceed \$1500. No mention of the value of any counterclaims is made. In order for the Division to recommend Commission approval of the proposed amendment, NFA must submit a revised version of the amendment which includes counterclaims in the assessment of the total value of the claim. The Division also suggests that the NFA make a similar technical amendment to its proposed amendment to §4(a), so that the value of any counterclaims will be taken into account when determining the size of the panel. If such a technical amendment is not proposed by NFA, the current proposal could be construed as violative of §5a(11) of the Commodity Exchange Act and 17 C.F.R. §180.2 because it would be unfair and inequitable to allow one person panels to decide cases in which customers with small claims happen to have large counterclaims against them.

Should you have any questions regarding this matter, please contact me at (202) 254-8955. Division staff will make a recommendation to the Commission as soon as possible after receiving your response to this letter.

Sincerely,

Karen Matteson  
Staff Attorney



UNITED STATES OF AMERICA  
**COMMODITY FUTURES TRADING COMMISSION**

2033 K Street, N.W.  
Washington, D.C. 20581

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September 30, 1982

Mr. Robert K. Wilmoth  
President and Chief Executive Officer  
National Futures Association  
200 West Madison Street  
Chicago, Illinois 60606

Re: Proposed Amendments to National Futures  
Association Articles of Incorporation,  
Bylaws, Compliance Rules and Financial  
Requirements

Dear Mr. Wilmoth:

By letter dated August 27, 1982, the National Futures Association ("NFA") submitted the above proposed rule amendments for Commission approval pursuant to Section 17(j) of the Commodity Exchange Act. NFA also submitted proposed amendments to its Code of Arbitration, but the Commission has deferred consideration of these amendments as requested by NFA's General Counsel, Mr. Harrison, pending Board consideration of further amendments which will ensure that the amended Code conforms to Commission regulations.

This is to inform you that the Commission approved, pursuant to Section 17(j) of the Act, the proposed amendments to NFA's Articles of Incorporation, Bylaws, Compliance Rules, and Financial Requirements on September 30, 1982. Specifically, the Commission approved the amendments to Article III Section 2(b)(i), Article VIII Section 3(b), Bylaw 703, and Bylaw 1301(b) and (c); new Compliance Rules 2-11 and 2-12 and Financial Requirement Section A8-a; and the renumbering of former Compliance Rule 2-11 to 2-13. The Commission has also determined, pursuant to Section 17(j), that these rules may go into effect immediately, rather than thirty days from the date of Commission approval.


In considering the proposed amendments to NFA Bylaws 1301(b) and 1301(c), the Commission recognized that NFA necessarily has devised a structure of fees and assessments without prior experience as to the size of its membership, the number of transactions which may be executed by or through its



Mr. Robert K. Wilmouth  
Page 2

members, or the operational costs which it would incur in fulfilling its self-regulatory responsibilities under the Act. While the Commission is not aware of any information which would suggest that the fees contained in the proposed rules are not fair and equitable, it appreciates that actual experience may be necessary before a definitive conclusion can be reached. Accordingly, the Commission has directed its staff to monitor the operation of these fees in light of NFA's regulatory costs and to request, from time to time, documentation and further justification for the fee schedules.

Very truly yours,

  
Jane K. Stuckey  
Secretary of the Commission