

August 29, 1985

Ms. Jean A. Webb  
Office of the Secretariat  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Re: National Futures Association, Proposed Amendments to Bylaws 305 (Schedule A, Section II(a)) and 1301(c); Proposed Compliance Rule 2-28; Proposed Amendments to Compliance Rule 3-6; Proposed Amendments to Financial Requirements (Sections 6 and D2); and Proposed Guideline for the Disclosure by CPOs and CTAs of "Up Front" Fees and Organizational and Offering Expenses.

Guideline Concerning Training Standards for Untested Associates.

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act ("Act"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") for review and approval the following proposed amendments to the above-referenced NFA Bylaws, Compliance Rule and Financial Requirements, and the above-referenced proposed Compliance Rule and Guideline. The amendments, Rule and Guideline were unanimously approved by NFA's Board of Directors at its meeting on August 15, 1985. Also set forth in this letter for the Commission's information is a Guideline on Training Standards, referenced above, which was approved by NFA's Board of Directors at its meeting on August 15, 1985.

**I. THE AMENDMENTS, COMPLIANCE RULE AND GUIDELINE**

- A. Amendment to NFA Bylaw 305, Schedule A, Section II(a) allowing alternative testing requirement for Associated Persons registered as General Securities Representatives whose futures related business is incidental to their securities business (additions are underscored):

BYLAWS OF  
NATIONAL FUTURES ASSOCIATION

\* \* \*

CHAPTER 3  
MEMBERSHIP AND ASSOCIATION WITH A MEMBER

\* \* \*



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Bylaw 305. Registration and Proficiency Requirements.

\* \* \*

Schedule A

II. Proficiency Requirements

(a) Associated Person Qualification Testing Requirement.

Except as provided below in paragraph (b), any individual applying to NFA for registration under the Act as a futures commission merchant, an introducing broker, a commodity pool operator, a commodity trading advisor or as an associated person of any of the foregoing or applying for registration with NFA as an Associate pursuant to NFA Bylaw 301(b) shall not be registered, temporarily licensed or registered with NFA as an Associate unless:

- (1) NFA receives satisfactory evidence that the applicant has taken and passed the National Commodity Futures Examination, or
- (2) NFA receives a certification, which shall be considered incorporated into the application for registration under the Act, signed by both the applicant and the applicant's sponsor, stating that:
  - (i) the applicant is currently registered with the National Association of Securities Dealers, Inc. as a General Securities Representative, and
  - (ii) the applicant's sole activities, subject to regulation by the Commission, are and will continue to be limited to:
    - (a) the solicitation of funds, securities or property for participation in a commodity pool, or
    - (b) referring clients to an associated person who has satisfied the proficiency requirements set forth in this Section II of Schedule A to Bylaw 305, provided that the applicant's referral of clients is solely incidental to his business as a General Securities Representative, or
    - (c) the supervision of persons whose activities are [so] limited as set forth above unless and



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until the applicant submits to NFA satisfactory evidence of having taken and passed the National Commodity Futures Examination, and

(iii) the applicant's sponsor understands that the sponsor must supervise the applicant's compliance with the limitation on the applicant's activities set forth in paragraph (ii) above and that any failure of the applicant to adhere to those limitations may be cause for, among other things, disciplinary action by NFA against the sponsor for violation of NFA Compliance Rule 2-9, and

(iv) the applicant and the applicant's sponsor understand that willfully making a materially false or misleading statement in any part of the application for registration, including the certification described above, is cause for denial, suspension or revocation of registration and criminal prosecution.

B. Amendment to NFA Bylaw 1301(c) allowing NFA's Board of Directors to waive or lower annual dues for particular Members (additions are underscoring and deletions are [bracketed]):

BYLAWS OF  
NATIONAL FUTURES ASSOCIATION

\* \* \*

CHAPTER 13  
DUES AND ASSESSMENTS

\* \* \*

Bylaw 1301. Schedule of Dues and Assessments.

\* \* \*

(c) Other Members.

\* \* \*

[All Members of NFA, other than those previously set forth in this Bylaw, shall pay to NFA annual dues of \$1,000] Subject to category voting as prescribed by Article XI, Section 1(a) the Board may in its discretion waive or establish lower annual



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dues for [such other] particular Members[,]. [excluding Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors.]

- C. Proposed NFA Compliance Rule 2-28 imposing risk disclosure requirement for linked foreign futures exchange transactions. Proposed Compliance Rule 2-28 was submitted to the Commission for approval by letter of March 13, 1985. That submission is hereby withdrawn and the following revised Proposed Rule is submitted:

#### COMPLIANCE RULES

#### Part 2 - RULES GOVERNING THE BUSINESS CONDUCT OF MEMBERS REGISTERED WITH THE COMMISSION

\* \* \*

#### Rule 2-28. LINKED MARKET TRANSACTION AUTHORIZATION AND DISCLOSURE REQUIREMENTS.

Each Member FCM or IB which engages in transactions on a foreign futures exchange pursuant to a linked market agreement between a domestic contract market and a foreign futures exchange on behalf of a customer's account carried or introduced by the Member must have on file an authorization executed by the customer to engage in such transactions. The authorization may either be in the customer agreement or on a separate form and must include the following language in boldface type or print:

"[Name] may from time to time execute transactions as customer's agent on a foreign futures exchange pursuant to an agreement between the foreign futures exchange and a domestic futures exchange that a trade executed on one exchange liquidates or establishes a position on the other exchange. Participation in such a transaction may involve the execution and clearing of trades on a foreign futures exchange. Neither the Commodity Futures Trading Commission ("Commission"), the National Futures Association ("NFA") nor any domestic futures exchange regulates the activities of a foreign futures exchange, including the execution, delivery and clearing of transactions on such an exchange, or has the power to compel enforcement of the rules of the foreign futures exchange and the laws of the foreign country. For these reasons, customers who trade on a foreign futures



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exchange may not be afforded certain of the protective measures provided by the Commodity Exchange Act, the Commission's regulations, and the rules of NFA and any domestic futures exchange, including the right to use reparation proceedings before the Commission and arbitration proceedings provided by NFA or any domestic futures exchange."

In addition to the above requirements, each non-discretionary order executed on one exchange to liquidate or establish a position on another exchange pursuant to a linked market agreement must be authorized by the customer and designated as such when the order is taken. With respect to a discretionary customer account, if the authorization to engage in such transactions is in the customer agreement, the customer must separately acknowledge the section of the customer agreement that contains the risk disclosure language required under this rule. In the case of an introduced account carried by an FCM on a fully disclosed basis, the requirements of this rule apply only to the introducing IB or the introducing FCM unless the carrying FCM has agreed to be responsible for compliance.

- D. Amendment to NFA Compliance Rule 3-6 allowing Regional Business Conduct Committees to appoint panels for certain hearings (additions are underscored and deletions are [bracketed]):

#### COMPLIANCE RULES

##### Part 3 - COMPLIANCE PROCEDURES

\* \* \*

#### Rule 3-6. HEARING.

The Respondent shall be afforded a hearing [before the Regional Committee] on the charges, if the Respondent so requests in the Answer, before the Regional Committee or its designated Panel consisting of no fewer than three individuals, at least one of whom shall be a member of the Regional Committee. Each individual on such Panel shall be appointed by a majority of the Regional Committee. The hearing shall be held at such location as the Regional Committee or its designated Panel shall determine. The hearing shall be held as soon as practicable after the request is received. The failure to request a hearing shall, unless good cause is shown, be deemed a waiver of the Respondent's right to a hearing.



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- If a hearing is held-
- (a) The Respondent shall be given reasonable advance notice of the hearing date and shall be entitled to reasonable pre-hearing examination of all evidence in NFA's possession or under its control that is to be relied upon by the Compliance Office, or that is relevant to the Complaint;
  - (b) The formal rules of evidence need not apply;
  - (c) The Respondent may appear personally, examine any witness, call witnesses and present relevant testimony and other evidence; and
  - (d) A substantially verbatim record of the hearing shall be made (i.e., one that can be accurately transcribed). The cost of transcription shall be borne by the Respondent only if it requests the transcript, appeals the decision under Rule 3-10 below, or applies for Commission review and review is granted (see paragraph (e)(iii) of Rule 3-10). Otherwise, any transcription costs shall be borne by NFA.

No Regional Committee member shall participate in the matter if the member, or any person with which the member is connected, has a financial, personal or other direct interest in the matter under consideration.

E. Amendments to NFA Financial Requirements, Sections 6 and D2 (additions are underscored and deletions are [bracketed]):

#### FINANCIAL REQUIREMENTS

\* \* \*

#### Section 6. Reporting.

[Each Member FCM must file the reports specified in Schedule D hereto with its DSRO.] Any FCM Member who violates CFTC Regulation 1.12 shall be deemed to have violated an NFA Requirement. Each FCM Member for which NFA is the DSRO and which is required to file any document with or give notice to the CFTC under CFTC Regulation 1.12, shall also file one copy of such document with or give such notice to NFA at its Chicago office no later than the date such document or notice is due to be filed with or given to the CFTC. Each Member must also file the reports specified in Schedule D hereto with its DSRO.

\* \* \*



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## Section D2. Interim Reports.

Each Member FCM must file with its DSRO an interim financial report, on Form 1-FR or other format acceptable to the DSRO, as of a date 6 months after the date for which the certified financial report is due. Each Member FCM for which NFA is the DSRO shall also file with NFA an interim financial report on Form 1-FR or other format acceptable on a quarterly basis. (The term "other format acceptable" is used so that Focus Reports may be used to fulfill a Member FCM's filing requirements.) For Member FCMs which use the Focus Report to fulfill their filing requirements, the [6 month] interim report requirement is satisfied by the quarterly Focus Part II or IIA, which under SEC requirements is filed based on the calendar quarter.

\* \* \*

- F. Proposed Guideline for the Disclosure by CPOs and CTAs of "Up Front" Fees and Organizational and Offering Expenses.

### GUIDELINE FOR THE DISCLOSURE BY CPOs AND CTAs OF "UP FRONT" FEES AND ORGANIZATIONAL AND OFFERING EXPENSES

Commodity Futures Trading Commission ("CFTC") Regulation 4.21(a)(7) states that the disclosure document of a CPO must contain a description of each expense which has been or is expected to be incurred by the pool. CFTC Regulation 4.31(a)(4) applies to CTAs and requires that the disclosure document of a CTA describe each fee which the CTA will charge the client. In addition, CFTC Regulations 4.21(h) and 4.31(g), respectively, require CPOs and CTAs to disclose all "material" information. These requirements have been incorporated into NFA Compliance Rule 2-13. Because "up front" fees and charges can have a significant impact on the net opening equity of pools and managed accounts, the above NFA rule requires not only disclosure of the existence and the amount of the up front charges but also disclosure of (1) how the up front charges affect the initial amount of capital available for trading and (2) the impact of the up front charges on net performance as reflected on a CPO's or CTA's performance table.

#### A. Disclosure of Prospective Up Front Fees and Charges

CPOs and CTAs that intend to charge up front fees and expenses to participants in a pool or clients in a managed account must disclose that fact in the disclosure document.



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To ensure that investors are fully aware of not only the amount of such charge but also its impact on the net proceeds that will be available at the outset for futures trading, such disclosure should be highlighted in a tabular format on the cover page of the disclosure document. The suggested format for the table would detail a standardized amount of initial investment, all up front fees and charges, including all organizational and offering expenses, and the net proceeds that would be available for trading after deducting the up front expenses. The extent to which a CPO or CTA breaks down the up front expenses into categories, including, but not limited to, fees, organizational and offering expenses, legal fees and accounting fees, is solely within the discretion of the CPO or CTA as long as the net proceeds for trading and the portion that is deducted from the initial investment are clearly delineated as such.

B. Treatment of Up Front Fees in the Performance Table

CPOs and CTAs that charge up front fees and expenses to participants or clients must reflect contributions to a pool or beginning equity balances of a managed account before consideration of such expenses in preparing the performance table required by NFA Rules. However, a CTA acting as an independent advisor to a commodity pool is not required to incorporate into the beginning equity balance of its performance table the up front fees or organizational or offering expenses charged by the CPO.

All up front fees and organizational expenses must be reflected as a reduction of net performance in the period in which the contribution was made to the pool or clients managed account unless such fees and expenses can be amortized pursuant to Generally Accepted Accounting Principles.\* If organization or syndication expenses can be, and are, amortized, then net performance shall be reduced each month by the monthly amortizable amount. The monthly amortizable amount shall be calculated by dividing the total amount of amortizable expenses by the total number of months over which such expenses shall be amortized.

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\* Section 709 of the Internal Revenue Code, 26 U.S.C. §709, governs whether or not organization and syndication expenses incurred to organize and to promote the sale of interests in a partnership can be amortized.





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## II. EXPLANATION OF AMENDMENTS, RULE AND GUIDELINE

- A. Explanation of amendment to NFA Bylaw 305, Schedule A, Section II(a) allowing alternative testing requirement for Associated Persons registered as General Securities Representatives whose futures related business is incidental to their securities business.

Section II(a) of Schedule A to NFA Bylaw 305 ("Schedule A") requires individuals applying for registration as futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and associated persons of each of these categories to pass the National Commodity Futures Examination ("NCFE") as a condition of registration. Schedule A provides an alternative testing requirement for registered General Securities Representatives whose commodities related activities are limited to the solicitation of prospective commodity pool participants. The rationale for this provision is that given the limited scope of the activities of such individuals, passing the National Association of Securities Dealers ("NASD") Series 7 Examination provides an adequate assurance of proficiency.

The proposed amendment applies the same rationale to registered General Securities Representatives whose only commodity related activity is the referral of their securities customers who express an interest in futures trading to an associated person. Under these circumstances the General Securities Representative, if he shares commission income, is required to be registered as an associated person. If, however, the referral is solely incidental to his securities business, passing the NASD Series 7 Examination would seem to provide adequate assurance of proficiency.

- B. Explanation of amendment to NFA Bylaw 1301(c) allowing NFA's Board of Directors to waive or lower annual dues for particular Members.

As presently stated, NFA Bylaw 1301(c) gives the Board of Directors ("Board") the power to waive or lower annual dues on a case-by-case basis for commercial banks and commercial firms but not generally for the regulated Members. Hence, a reduction in dues for the regulated Members may be accomplished by the Board only through a Bylaw amendment. The proposed amendment to NFA Bylaw 1301(c) will give the Board the power to waive or lower annual dues for regulated NFA Members subject to category voting.



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- C. Explanation of Proposed Compliance Rule 2-28 imposing risk disclosure requirement for linked foreign futures exchange transactions.

The purposes of Proposed Rule 2-28 were discussed in NFA's letter of March 13, 1985. The Proposed Rule has been revised to require that with respect to discretionary accounts, if the authorization to engage in such transactions is in the customer agreement, the customer must separately acknowledge, i.e. initial, the section of the customer agreement that contains the required risk disclosure language. The revision also provides that in the case of an introduced account, the requirements of the Proposed Rule apply only to the introducing IB or FCM unless the carrying FCM has agreed to be responsible for compliance.

- D. Explanation of amendment to NFA Compliance Rule 3-6 allowing Regional Business Conduct Committees to appoint panels for certain hearings.

NFA Compliance Rule 3-6 provides that a Respondent named in a Complaint issued by a Regional Business Conduct Committee ("Committee") shall be afforded a hearing before that Committee if Respondent so requests in its Answer. NFA recognizes that some hearings may last for several days or weeks. In such cases, a quorum of the entire Committee might not be able to attend the entire hearing.

To avoid unnecessary delays, the proposed amendment to Compliance Rule 3-6 provides that the Committee may designate a panel to hear a particular case. The panel must consist of at least three individuals. At least one panel member must be a member of the Committee and each panelist must be appointed by a majority of the Committee.

- E. Explanation of amendments to NFA Financial Requirements, Sections 6 and D2.

In their present form, NFA Financial Requirements do not require FCM Members for which NFA is the DSRO to notify NFA when their capitalization falls below either NFA's minimum requirement or NFA's early warning level. Although a note to NFA Financial Requirements Section 6 (Reporting) explains certain reporting requirements of CFTC Regulation 1.12, those requirements are not explicitly incorporated into NFA's Financial Requirements. Section 6, as proposed, incorporates CFTC Regulation 1.12 requirements into NFA's Financial Requirements.



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In addition, NFA currently requires Member FCMs for which NFA is the DSRO to file interim financial reports on a quarterly basis. In its present form, however, NFA Financial Requirements Section D2 (Interim Reports) requires only that such reports be filed as of a date six months after the FCM's fiscal year end. As a result, NFA has used NFA Financial Requirements Section D3-a (Additional Information Reports) to secure quarterly financial reports from such FCMs. Section D2, as proposed, makes the quarterly financial report filing requirement explicit in NFA's Financial Requirements.

F. Explanation of Proposed Guideline for the Disclosure by CPOs and CTAs of "Up Front" Fees and Organizational and Offering Expenses.

NFA Compliance Rule 2-13, and the CFTC Regulations which are incorporated therein, generally require that CPOs and CTAs disclose all fees and expenses associated with commodity pools and managed account programs, including the amount, if any, that will be charged up front. However, these requirements provide no specific guidance as to the manner in which prospective up front charges shall be disclosed or the manner in which up front fees charged to prior accounts or pools shall be treated in the performance tables included in disclosure documents. The guideline clarifies the obligations of CPOs and CTAs by specifically requiring that prospective up front fees be disclosed in a tabular format on the cover page of the disclosure document and that the performance tables of CPOs and CTAs, except CTAs acting as independent advisors to commodity pools, reflect contributions to a pool or beginning equity balances of a managed account before consideration of up front expenses. With respect to the performance tables, the guideline additionally requires that up front fees and organizational expenses be shown as a reduction of net performance in the period in which the customer's contribution was made unless such fees and expenses can be amortized. If the fees and expenses can be amortized, net performance shall be reduced each month by the monthly amortizable amount.

NFA respectfully requests that the amendments to NFA Bylaws 305 (Schedule A, Section II(a)) and 1301(c), proposed Compliance Rule 2-28, amendments to Compliance Rule 3-6 and amendments to Financial Requirements (Sections 6 and D2) be declared effective upon approval by the Commission. With respect to the proposed Guideline for the Disclosure of "Up Front" Fees, upon approval NFA intends to put the Guideline into prospective effect on January 1, 1986. Thus, NFA intends to require



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all disclosure documents dated on or after January 1, 1986 to contain the dilution table described in Section A of the Guideline, and all contributions to a commodity pool or managed account made on or after January 1, 1986, to be treated in the performance table according to Section B of the Guideline. If performance information in a performance table for any periods prior to January 1, 1986 would be materially different if prepared according to Section B of the Guideline, that fact will have to be disclosed in a footnote to the performance table.

NFA submits for the Commission's information a Guideline Concerning Training Standards for Un-tested Associates, a copy of which is attached. The Guideline is designed to ensure that Members adopt procedures necessary to ascertain that "grandfathered" Associates have gained through experience or training a knowledge of the futures business equivalent to that of an Associate who has taken and passed the National Commodity Futures Examination.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Joseph H. Harrison, Jr.', written in a cursive style.

Joseph H. Harrison, Jr.  
General Counsel

JHH:cm(D8/F6)  
Enclosure

cc: Chairman Susan M. Phillips  
Commissioner Kalo A. Hineman  
Commissioner Fowler C. West  
Commissioner William E. Seale  
Commissioner Robert R. Davis  
Andrea M. Corcoran, Esq.  
Kenneth M. Raisler, Esq.  
Dennis Klejna, Esq.  
Kevin M. Foley, Esq.  
Kenneth M. Rosenzweig, Esq.  
Linda Kurjan, Esq.



GUIDELINE CONCERNING TRAINING STANDARDS  
FOR UNTESTED ASSOCIATES

Any Member who sponsors an Associate who was registered prior to August 1, 1983, as an associated person of an introducing broker or as an associated person of a futures commission merchant, commodity pool operator or commodity trading advisor prior to March 1, 1984, and who has not taken and passed the National Commodity Futures Examination ("NCFE") must have in place procedures necessary to ascertain that such individual has obtained through experience or training a knowledge of the futures business which is equivalent to that of an individual who has taken and passed the NCFE. This would include a working knowledge of NFA, CFTC and exchange rules which govern the activities of the Associate and the market in which the Associate's customers trade as well as a general understanding of the mechanics of the futures markets.

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

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



January 29, 1986

Joseph H. Harrison, Jr., Esq.  
General Counsel  
National Futures Association  
200 West Madison Street  
Chicago, Illinois 60606

Re: Proposed Amendments to Bylaws 305 (Schedule A, Section II(a)) and 1301(c); Compliance Rule 3-6; Financial Requirements, Sections 6 and D2; and Guideline under Compliance Rule 2-13 for Disclosure by CPOs and CTAs of "Up-Front" Fees and Organizational and Offering Expenses

Dear Mr. Harrison:

This is to inform the National Futures Association that the Commission approved the captioned rules proposals and amendments on January 28, 1986. The rule proposals and amendments relate to an exemption from the proficiency testing requirements, the authority to reduce or waive membership dues, the composition of hearing panels for disciplinary matters, the financial reporting and related responsibilities of certain futures commission merchant members, and disclosure of up-front fees and expenses by commodity pool operators and commodity trading advisors. These proposals were submitted on September 5, 1985, for Commission review and approval pursuant to Section 17(j) of the Commodity Exchange Act by your letter of August 29, 1985.

In approving those items, the Commission relied upon representations made by NFA and its staff concerning the application and interpretation of those rules. In particular, the Commission notes your representations regarding the amendment of Compliance Rule 3-6 concerning the composition of hearing panels. Although the submitted amendment permits individuals who are not members of NFA's Business Conduct Committees to be appointed to panels before which disciplinary hearings may be conducted, only BCC members are explicitly prohibited by Compliance Rule 3-6 from participating in a hearing if they, or any persons with which they are connected, have "any financial, personal or other direct interest" in the matters under consideration. In order to rectify that inconsistency, you have committed to recommend Board adoption of a technical, conforming amendment so that the express prohibition will apply to any person serving on a hearing panel. Moreover, you have indicated that any person not a BCC member who is appointed to a hearing

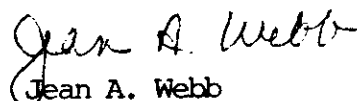
panel will, in any event, be expected to sign a pledge, comparable to that signed by each BCC member, to disclose any interest in any matter coming before the panel, to excuse himself from participation in the panel if such an interest exists, and to safeguard the confidentiality of any information concerning the matter which was made available to the individual during the period that he is a member of a panel designated under Compliance Rule 3-6.

In addition, with respect to the captioned Guideline, you have agreed to make a clarification concerning the use of a "standardized" amount of initial investment in the dilution table required by the Guideline to be provided on the cover page of a CPO or CTA Disclosure Document. Such a table is intended to show how the CPO's or CTA's up-front fees affect the initial amount of capital available for trading. As noted to you by Commission staff, however, further guidance as to the required use of a "standardized" amount of investment would be helpful, especially for those NFA members (particularly CTAs) that do not deal with or require "standardized" amounts, minimums or units of investments from their clients or that charge flat fees which affect different levels of initial investment in differing degrees. You indicated that NFA would clarify for its members the need to select the representative level or levels of initial investment that best reflect the effect of the up-front fees.

Although the Commission has approved the Guideline with the understanding that such clarification would be made, revision of the language of the Guideline would constitute a rule change subject to submission to the Commission pursuant to Section 17(j) of the Act. The Commission believes that while the clarification discussed in this letter should be submitted before the Guideline takes effect, it may nonetheless be appropriate for consideration under the "10-day" provision of Section 17(j). To facilitate that consideration, the Commission's Division of Trading and Markets will be available to confer with you on the specifics of any such clarification.

Finally, the Commission understands that NFA intends to allow its CPO and CTA members a period of time -- specifically, until June 1, 1986 -- within which to conform their Disclosure Documents to the requirements of the Guideline as may be necessary. Please confirm the anticipated schedule of implementation with the Division of Trading and Markets, if you have not already done so, or advise it of any changes in the schedule. While recognizing that there are practical considerations supporting a deferred implementation, the Commission nonetheless expects that the Guideline, as clarified, will be made effective without undue delay.

Very truly yours,



Jean A. Webb  
Secretary of the Commission

January 15, 1986

Ms. Jean A. Webb  
Office of the Secretariat  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Re: National Futures Association, Proposed  
Guideline for the Disclosure by CPOs  
and CTAs of "Upfront" Fees and  
Organizational and Offering Expenses.

Dear Ms. Webb:

NFA submitted pursuant to Section 17(j) of the Commodity Exchange Act, as amended, to the Commodity Futures Trading Commission ("Commission") for review and approval the above referenced Guideline by letter dated August 29, 1985 from Joseph H. Harrison, Jr. The Guideline for the Disclosure by CPOs and CTAs of "Upfront" Fees and Organizational and Offering Expenses ("the Guideline") was unanimously approved by NFA's Board of Directors at its meeting on August 15, 1985.

The Guideline clarifies the obligations of CPOs and CTAs by specifically requiring that prospective upfront fees be disclosed in a tabular format on the cover page of the disclosure document and that the performance tables of CPOs and CTAs, except CTAs acting as independent advisors to commodity pools, reflect contributions to a pool or beginning equity balances of a managed account before consideration of upfront expenses. With respect to the performance tables, the Guideline additionally requires that upfront fees and organizational expenses be shown as a reduction of net performance in the period in which the customer's contribution was made unless such fees and expenses can be amortized. If the fees and expenses can be amortized, net performance shall be reduced each month by the monthly amortizable amount.

Mr. Harrison's letter indicated that NFA planned, upon the Commission's approval, to put the Guideline into effect on January 1, 1986. Given that the Guideline has not yet been approved and January 1, 1986 has passed NFA respectfully submits its intention to alter the effective date to the first day of the second calendar quarter following Commission approval. In communications with the Commission staff NFA staff has been



# NFA

Ms. Jean A. Webb

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January 15, 1986

informed that the review and approval process is underway at the Commission. NFA would like to set an effective date that coincides with the beginning of a calendar quarter, in order to insure that upfront fees and expenses reflected in the performance tables are treated consistently within each quarter, and provides sufficient time to give notice to our Members.

Therefore, NFA intends that all disclosure documents dated on or after the effective date, contain the dilution table described in Section A of the Guideline, and all contributions to a commodity pool or managed account made on or after the effective date be treated in the performance table according to Section B of the Guideline.

Sincerely,



Nancy Burke Connolly  
Director, Regulatory Development

NBC:ng  
(D17/F39)

cc: Linda Kurjan

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

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



November 22, 1985

Joseph H. Harrison, Esq.  
General Counsel and Secretary  
National Futures Association  
200 W. Madison Street  
Chicago, Illinois 60606

Re: NFA Compliance Rule 2-28 — Linked Market Transaction  
Authorization and Disclosure Requirements

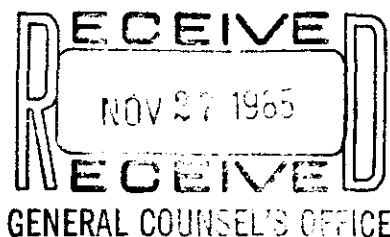
Dear Mr. Harrison:

This is in response to your letters dated March 13, 1985 and August 29, 1985, in which the National Futures Association ("NFA") submitted for approval pursuant to Section 17(j) of the Commodity Exchange Act the above-referenced proposal. The Commission notes that the rule provides that in the case of an introduced account carried by an FCM on a fully disclosed basis, the requirements of this rule apply only to the introducing IB or the introducing FCM unless the carrying FCM has agreed to be responsible for compliance. The Commission reminds NFA that NFA Rule Compliance 2-23 provides that any member FCM which enters into a guarantee agreement with a member IB, shall be jointly and severally subject to discipline under NFA Compliance Rules for actions and omissions of the member IB which violate NFA requirements occurring during the term of the guarantee agreement.

Please be advised that on November 20, 1985, the Commission approved the above-referenced proposal.

Sincerely,

*Jean A. Webb*  
Jean A. Webb  
Secretary of the Commission





DIVISION OF  
TRADING AND MARKETS

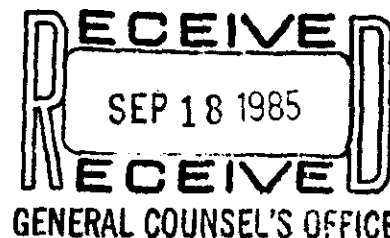
Joseph H. Harrison, Jr.  
General Counsel  
National Futures Association  
200 West Madison Street  
Chicago, Illinois 60606

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

COPY TO :

R. WILMOUTH  
J. TIPPINS  
D. DRISCOLL  
D. ROTH  
K. DORFF  
N. CONNOLLY

September 13, 1985



Dear Mr. Harrison:

On September 5, 1985, the Commission received your August 29 submission that included NFA's newly adopted "Guideline Concerning Training Standards for Untested Associates." Unlike the other rules covered by the letter, this Guideline was not submitted for Commission approval pursuant to Section 17(j) of the Commodity Exchange Act. The Division has examined the Guideline and has determined not to recommend that the Commission review it for approval, as permitted by Section 17(j). Accordingly the Guideline may be made effective immediately.

The Division notes that the Guideline appears to be consistent with the undertaking expressed in your letter of October 25, 1984, to the Commission. In that letter you stated that NFA staff would recommend the promulgation of "guidelines concerning the minimum acceptable elements of training for such APs [who were not previously tested nor required to be examined under NFA's rules] which would be consistent with the supervisory responsibilities of NFA members." The newly prescribed Guideline requires NFA members to adopt procedures necessary to ascertain that such "grand-fathered" associates have gained, through experience or training, a working knowledge of the futures business equivalent to that of an associate who has taken and passed the National Commodity Futures Examination. The Division understands that NFA's compliance auditing programs now include steps to check whether a firm's supervision and training procedures are adequate under the circumstances.

As you are aware, the Commission is actively interested in NFA's ongoing rule development progress in this area. Accordingly, the Division urges NFA to continue to explore, develop and refine its requirements and guidance for the training and proficiency testing of all persons under its jurisdiction who intend to engage in the commodity futures business.

Although the Division is not recommending that the Commission formally review for approval this particular Training Standards Guideline, the Division continues to expect that all NFA rule proposals, whether formally denoted as "rules" or "guidelines," will be submitted to the Commission in accordance with Section 17(j).

Yours truly,

  
Andrea M. Corcoran  
Director