

August 9, 1989

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

Re: National Futures Association: Request for Authorization to Allow NFA to Perform Regulatory and Registration Responsibilities with Respect to Leverage Transaction Merchants and Associated Persons Thereof and Proposed Amendments to NFA's Articles of Incorporation, Bylaws, Compliance Rules, Code of Arbitration, Financial Requirements and Registration Rules.

Dear Ms. Webb:

National Futures Association's ("NFA") Board of Directors ("Board") voted on February 28, 1989 to seek authorization from the Commodity Futures Trading Commission ("Commission") to perform regulatory and registration responsibilities with respect to persons required to be registered with the Commission as Leverage Transaction Merchants ("LTM") and associated persons ("AP") thereof.\* Therefore, pursuant to Section 19(c)(2) of the Commodity Exchange Act ("Act"), NFA respectfully requests Commission authorization to perform regulatory and registration responsibilities with respect to persons required to be registered with the Commission as LTMs and APs thereof, including the authority to: (1) conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any LTM or AP of an LTM or an applicant for registration in either category, (2) process requests for withdrawal from registration by LTMs, (3) enforce its rules regarding minimum financial, cover, segregation and sales practice requirements, and related reporting requirements for its Member LTMs and their APs, and (4) conduct arbitration proceedings to settle leverage customer claims or grievances.

Pursuant to Section 17(j) of the Act, NFA hereby submits to the Commission proposed amendments to NFA's Articles of Incorporation ("Articles"), Bylaws, Compliance Rules, Code of Arbitration, Financial Requirements and Registration Rules which would allow NFA to perform regulatory and registration respon-

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\* The Commission has previously authorized NFA to process and, where appropriate, grant applications for registration in the categories of LTM and AP of an LTM and to be official custodian of certain registration records of LTMs and APs of LTMs. See 54 FR 19594 (May 8, 1989).



Ms. Jean A. Webb

August 9, 1989

sibilities with respect to persons required to be registered with the Commission as LTMs and APs thereof. These amendments were approved by NFA's Board at its meeting on May 18, 1989. The amendments to the Articles were recently approved by a vote of NFA Members. NFA respectfully requests Commission review and approval of the proposed amendments.

I. PROPOSED AMENDMENTS TO NFA'S ARTICLES, BYLAWS, COMPLIANCE RULES, CODE OF ARBITRATION, FINANCIAL REQUIREMENTS AND REGISTRATION RULES.

- A. Amendments to NFA's Articles, Bylaws, Compliance Rules, Code of Arbitration, Financial Requirements and Registration Rules allowing NFA to perform regulatory and registration responsibilities with respect to persons required to be registered with the Commission as LTMs and APs thereof (additions are underscored and deletions are [bracketed]):

ARTICLES OF INCORPORATION  
OF  
NATIONAL FUTURES ASSOCIATION

\* \* \*

ARTICLE III: PURPOSES

Section 1: Fundamental Purposes.

\* \* \*

(a) **Public Interest.**

The adoption, administration and enforcement as to the following persons of requirements regarding fair practice and designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect the public interest:

- Members that are registered with the Commission as Futures Commission Merchants, Commodity Pool Operators, Commodity Trading Advisors, [or] Introducing Brokers or Leverage Transaction Merchants; and
- Associates (see Article XVIII).

Ms. Jean A. Webb

August 9, 1989

(b) **Financial Standards.**

Notwithstanding the provisions of Section 2(a) of this Article, the adoption with respect to its Members that are Futures Commission Merchants, [or] Introducing Brokers or Leverage Transaction Merchants of financial and related requirements designed to protect against insolvency, bankruptcy, or unsafe or unsound financial condition of such Members; the conduct, directly or through agents, of audits and reviews of the financial condition and related matters of such Members; and the adjudication and enforcement of compliance with NFA's financial and related requirements for all such Members, except as may otherwise be provided under Commission Regulations: Provided, however, it is expressly understood that contract markets and clearing organizations shall have the right to adopt, administer and enforce financial and related requirements governing the eligibility of Members for membership privileges on such contract markets or clearing organizations.

\* \* \*

(f) **Doing Business with Non-Members.**

The prohibition of Members from carrying accounts, accepting orders, or handling transactions, in commodity futures contracts, for or on behalf of any non-Member, or suspended Member, that is required to be registered with the Commission as a Futures Commission Merchant, Commodity Pool Operator, Commodity Trading Advisor, [or] Introducing Broker or Leverage Transaction Merchant and that is acting in respect to the account, order, or transaction for a customer, a commodity pool or participant therein, a client of a commodity trading advisor, or any other person, unless (i) such non-Member is a member of another futures association registered under Section 17 of the Act or is exempted from this prohibition by the Board or (ii) such suspended Member is exempted from this prohibition by the Board or a committee thereof. The prohibition of Members from accepting orders in commodity futures contracts to cover leverage transactions, for or on behalf of any non-Member, or suspended Member that is required to be registered with the Commission as a Leverage Transaction Merchant, unless (i) such non-Member is a member of another futures association registered under Section 17 of the Act or is exempted from this prohibition by the Board or (ii) such suspended Member

Ms. Jean A. Webb

August 9, 1989

is exempted from this prohibition by the Board or a committee thereof.

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## ARTICLE VI: MEMBERS

\* \* \*

### Section 2: Membership Category.

Each Member which qualifies for membership status in one or more of the following categories--

- (a) FCMs;
- (b) commercial firms;
- (c) CPOs;
- (d) CTAs;
- (e) commercial banks;
- (f) IBs;
- (g) LTMs

--shall be deemed to be a Member for the purposes of Articles VII, VIII, and X only in that single category to which its business activities primarily relate. Each Member shall have one vote on all matters on which the Member's category is entitled to vote, except that a CPO, CTA, or IB Member shall not be entitled to vote in such category if:

- (a) it is an employee of an FCM Member;
- (b) an FCM Member or employee thereof holds a majority equity interest in the Member; or
- (c) the Member is otherwise directly or indirectly controlled by an FCM Member, except that an IB Member which has entered into a guarantee agreement with an FCM Member shall not be deemed for purposes of this Section to be directly or indirectly controlled by such FCM Member solely by reason of such agreement;

Provided, however, that such CPO, CTA, or IB Member shall be entitled to vote in any one of such other categories (e.g., FCM) in which it qualifies for membership status.

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Ms. Jean A. Webb

August 9, 1989

## ARTICLE VII: BOARD OF DIRECTORS

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### Section 2: Composition of Board.

The Board of Directors shall be comprised as follows:

\* \* \*

(b) Futures Commission Merchant, Leverage Transaction Merchant and Introducing Broker Representatives.

(i) Sixteen (16) elected representatives of registered Futures Commission Merchant (hereinafter "FCM") Members, registered Leverage Transaction Merchant (hereinafter "LTM") Members, and registered Introducing Broker (hereinafter "IB") Members, divided into five categories as follows:

- (A) Four (4) representatives of such FCMs and LTMs having 1-15 offices.
- (B) Four (4) representatives of such FCMs and LTMs having 16-50 offices.
- (C) Six (6) representatives of such FCMs and LTMs having 51 or more offices.
- (D) One (1) representative of IBs required to maintain minimum adjusted net capital.
- (E) One (1) representative of IBs not required to maintain minimum adjusted net capital.

An FCM and an LTM Member's offices shall include the offices of any affiliate through which offices the FCM or LTM Member conducts its FCM or LTM business.

(ii) Not more than one-half of the total number of FCM and LTM representatives on the Board shall reside (as defined in Article XVIII) in the same NFA region. If more than one-half of the individuals receiving sufficient votes for election to the Board reside in the same NFA region, only the seven such individuals receiving the greatest number of votes among those individuals shall be elected, subject to the category



Ms. Jean A. Webb

August 9, 1989

apportionment requirements of paragraph (b)(i) above; the remaining seven FCM and LTM representatives on the Board shall be those individuals not within that region who receive the greatest number of votes among such individuals, subject to the category apportionment requirements of paragraph (b)(i) above: Provided, however, the prohibition on more than one-half of the FCM and LTM representatives residing in the same region shall not be applied to the extent it would create a vacancy or vacancies on the Board. Ties shall be resolved by the Board by random draw.

- (iii) The IB Directors shall not reside in the same NFA region.
- (iv) No FCM, LTM or IB shall have more than one representative on the Board at any one time. For purposes of this limitation, a person shall be deemed a representative of an FCM, LTM or IB Member if the person is an officer, director, partner, employee or beneficial owner of more than 10% of the equity stock of the FCM, LTM or IB, and the person is not a contract market representative.

**(c) Industry Participant Representatives.**

- (i) Ten (10) individuals related to participants in the commodity futures industry other than contract markets, FCMs, LTMs, or IBs (hereinafter "Industry Participants"), as follows:

\* \* \*

**Section 3: Nominations; Election.**

The elected Directors shall be chosen as follows:

\* \* \*

**(b) Petition Procedure.**

Nominations may be made for elected Director positions by:

- (i) Petition signed by 50 or more NFA Members in the category for which the nomination is made (i.e., FCM and LTM; IB; commercial firm; CPO; CTA; and commercial bank); or



Ms. Jean A. Webb

August 9, 1989

- (ii) Petition submitted by any organization or association recognized by NFA as fairly representing the category (see (b)(i) above) for which the nomination is made.

Petitions shall be submitted in the manner specified in the Bylaws. No petition may nominate more than one candidate for the same position.

\* \* \*

**ARTICLE VIII: EXECUTIVE COMMITTEE**

\* \* \*

**Section 3: Composition.**

The Executive Committee shall be comprised of the following:

\* \* \*

- (b) Nine (9) Directors, as follows:

\* \* \*

- (ii) Eight (8) other Directors, as follows:

\* \* \*

- (B) Three (3) Directors representing FCMS, LTMs or IBs, except that no more than two (2) of the Directors may represent FCMS, LTMs or IBs residing in the same region;

\* \* \*

**Section 4: Election of Members; Vacancies.**

The elected members of the Executive Committee shall be chosen by the Board at the regular annual meeting as follows: The Directors representing contract markets with two Directors on the Board shall elect the Committee member in category (b)(ii)(A)(1) above; the Directors representing contract markets having one Director on the Board shall elect the Committee member (or members, if there are no contract markets with two Directors on the Board) in category (b)(ii)(A)(2) above; the Directors representing FCMS, LTMs and IBs shall elect the Committee members in

Ms. Jean A. Webb

August 9, 1989

category (b)(ii)(B) above; the Directors representing Industry Participants shall elect the Committee members in category (b)(ii)(C) above; and the Public Director shall be elected by the Board. A vacancy that occurs on the Executive Committee shall be filled in like manner. Tie votes may be resolved by the Board by random draw.

**Section 5: Voting; Quorum.**

Each member of the Executive Committee shall have one vote on Executive Committee matters. A quorum of the Committee shall consist of one contract market member of the Committee, one FCM, LTM, or IB member of the Committee, and any three (3) other Committee members.

\* \* \*

**ARTICLE X: NOMINATING COMMITTEE**

**Section 1: General.**

There shall be a Nominating Committee, composed of six (6) Sub-Committees, one for each of the following categories of Members: FCMs and LTMs; IBs; commercial firms; CPOs; CTAs; and commercial banks. Each Sub-Committee shall nominate at least one candidate for each position to be filled on the Board in the Sub-Committee's category, in accordance with the eligibility requirements of Article VII.

**Section 2: Composition; Term of Members.**

- (a) Each Sub-Committee of the Nominating Committee shall be composed of three (3) representatives of the Sub-Committee's category, except that:
  - (i) The FCM and LTM Sub-Committee shall be composed of one (1) representative of FCMs or LTMs with 1-15 offices, one (1) representative of FCMs or LTMs with 16-50 offices, and one (1) representative of FCMs or LTMs with 51 or more offices; and

\* \* \*





Ms. Jean A. Webb

August 9, 1989

**ARTICLE XI: BYLAWS**

**Section 1: Adoption, Amendment and Repeal.**

Bylaws of NFA may be adopted, amended or repealed by a majority of all Directors in office at the time, except that:

**(a) Category Voting.**

The Board shall not take the following actions unless a majority of all Directors in each of the membership categories set forth in Section 2(a)-2(c) of Article VII (contract markets[, ]i FCMs, LTMs and IBs[, ]i and Industry Participants) approves:

\* \* \*

**ARTICLE XVII: ADOPTION, AMENDMENT AND REPEAL OF ARTICLES**

No provision of these Articles may be adopted, amended or repealed except in the manner prescribed in this Article. Each such proposed change to the Articles shall be reviewed by the Board, and shall be submitted to the Members of NFA only upon ratification of the proposal by two-thirds of the Directors in the category set forth in Section 2(a) of Article VII (contract markets), and a majority of the Board members in each of the two categories set forth in Sections 2(b) and 2(c) of that article (FCMs, LTMs, and IBs[, ]i and Industry Participants). If any such proposed change relates to Article III, Section 2, such proposed change shall not be considered by the Board for ratification unless at least 60 days written notice of the proposed change has been given to each contract market Member. Upon such ratification, the proposal shall be submitted to a ballot vote of the Members and shall be adopted upon the affirmative vote of two-thirds of those Members in the category set forth in Section 2(a) of Article VII who submit a proper ballot in a timely manner and a majority of those Members in each of the categories set forth in sections 2(b) and 2(c) of Article VII who submit a proper ballot in a timely manner.

**ARTICLE XVIII: DEFINITIONS**

As used in these Articles--

\* \* \*

Ms. Jean A. Webb

August 9, 1989

- (c) **"Associate"**--means a person who is associated with a Member within the meaning of the term "associated person" as used in [Section 4(k) of] the Commodity Exchange Act or Commission Rules and who is required to be registered as an "associated person" with the Commodity Futures Trading Commission; and any other person designated by the Board to be an Associate.

\* \* \*

- (m) **"Industry Participant"**--refers to a participant in the commodity futures industry, other than a contract market, [or] futures commission merchant, leverage transaction merchant or introducing broker, as described in paragraph 2(c)(i) of Article VII.

\* \* \*

- (o) **"Leverage Transaction Merchant" or "LTM"**-- means a leverage transaction merchant as that term is used in Commission Rules, and that is required to be registered as such under the Commodity Exchange Act and Commission Rules.

[(o)](p) **"Member"**--means a member of NFA.

[(p)](q) **"Person"**--includes individuals, corporations, partnerships, trusts, associations and other entities.

[(q)](r) **"Public Representative"**--refers to those members of NFA's Board of Directors having no present direct association with a business enterprise in the commodity futures industry. (See paragraph 2(d) of Article VII.)

[(r)](s) **"Region"**--means an NFA region as described in Article V.

[(s)](t) **"Reside"**-- a person other than an Associate shall be deemed to "reside" where the entity the person represents maintains its headquarters office. (See, e.g., paragraph (b)(ii) of Article VII.) An Associate shall be deemed to reside in the Region where the Associate is employed.

[(t)](u) **"Requirements"**--includes any duty, restriction, procedure, or standard imposed by a charter, bylaw, rule, regulation, resolution or similar provision.

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Ms. Jean A. Webb

August 9, 1989

**BYLAWS  
OF  
NATIONAL FUTURES ASSOCIATION**

\* \* \*

**CHAPTER 3  
MEMBERSHIP AND ASSOCIATION WITH A MEMBER**

**Bylaw 301. Requirements and Restrictions.**

\* \* \*

**(b) Registration of Associates.**

No person may be associated with a Member of NFA unless the person is registered with NFA as an Associate or is an NFA Member. As used in these Bylaws, the term "associated with a Member" means any person who is associated with a Member of NFA within the meaning of the term "associated person" as used in [Section 4k of] the Act or Commission Rules and who is required to be registered as such with the Commission. Registration with NFA as an Associate is not registration as an associated person under the Act.

**(c) Restrictions on Becoming or Remaining a Member or Associated with a Member.**

A person may be deemed disqualified to become or remain a Member or associated with a Member --

\* \* \*

- (iii) If such person is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction, including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from: (1) acting as a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person of any registrant under the Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company or affiliated person or employee of any of

Ms. Jean A. Webb

August 9, 1989

the foregoing; or (2) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under Section 4c or 19 of the Act, or concerning securities;

- (iv) If such person has been convicted of any felony or if such person has been convicted within ten years preceding the filing of the application for membership or at any time thereafter of any misdemeanor that: (1) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under Section 4c or 19 of the Act, or concerning a security; (2) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person of any registrant under the Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; (3) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (4) involves the violation of section 152, 1341, 1342, or 1343, or chapter 25, 47, 95, or 96 of title 18, United States Code;

\* \* \*

**(d) Qualification.**

Except as provided in paragraph (e) below, no person may become or remain an FCM, CTA, CPO, [or] Introducing Broker, or LTM Member or associated with such a Member unless qualified to do so in conformity with such standards of training and experience and proficiency testing requirements as NFA shall establish and such other qualification standards as NFA finds necessary or desirable.

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Ms. Jean A. Webb

August 9, 1989

**CHAPTER 4  
MEMBER MEETINGS AND ELECTIONS**

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**Bylaw 406. Elections.**

Beginning with the calendar year of 1983, the Annual Election shall be held on the second Tuesday in January, at which the vacancies on the Board and Nominating Committee shall be filled. Before the October 15 preceding the election, the Secretary shall (i) notify all Members in the FCM and LTM; [and] IB; and Industry Participant categories of the elected Directors and the members of the Nominating Committee whose terms will expire at the Annual Election and (ii) request the submission to the Nominating Committee of the names of eligible persons to fill those positions. Before the November 20 preceding the election, the Nominating Committee shall submit its list of nominees for the positions to the Secretary, who shall promptly notify the Members of the nominations. Other nominations may be made by petition, as prescribed in the Articles. Each petition must identify the position to which the nomination pertains. Petitions must be received by the Secretary within 21 days of the issuance of the Secretary's notification of the candidates proposed by the Nominating Committee. Promptly after the expiration of the period within which petitions may be submitted, the Secretary shall cause written ballots to be sent to all FCM[,] and LTM; IB; and Industry Participant Members.

\* \* \*

**CHAPTER 5  
BOARD OF DIRECTORS**

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**Bylaw 503. Removal of Directors.**

Any FCM and LTM, IB or Industry Participant Director may be removed by a majority of the Members eligible to elect the Director whenever, in their judgment, the best interests of NFA will be served thereby. Any Public Representative Director may be removed by a majority of the Board, under the same standard.

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Ms. Jean A. Webb

August 9, 1989

**CHAPTER 7  
COMMITTEES**

\* \* \*

**Bylaw 705. Finance Committee.**

There shall be a Finance Committee not having or exercising the authority of the Board, to advise the Executive Committee on matters of NFA financial policy including the establishment of major plans and priorities regarding the commitment and expenditure of NFA funds and the establishment of dues, assessments, fees and other charges upon Members and others. The Finance Committee shall consist of six (6) members as follows:

- (a) NFA's President[, ]i
- (b) NFA's Vice Chairman (who shall act as Chairman of the Finance Committee)[, ]i and
- (c) Four (4) other Directors as follows who shall not also be members of the Executive Committee and who shall be proposed by the Executive Committee and appointed by the Board at the first Board meeting in each fiscal year:
  - (i) One (1) Director representing contract markets[, ]i
  - (ii) One (1) Director representing FCMs, LTMs or IBs[, ]i
  - (iii) One (1) Director representing CPOs or CTAs[, ]i and
  - (iv) One (1) Director who is a public representative.

\* \* \*

**CHAPTER 11  
DOING BUSINESS WITH NON-MEMBERS**

**Bylaw 1101. Prohibition.**

No Member may carry an account, accept an order or handle a transaction, in commodity futures contracts, for or on behalf of any non-Member of NFA, or suspended Member, that is required to be registered with the Commission as an FCM, Introducing Broker, Commodity Pool Operator, [or] Commodity Trading Advisor, or Leverage Transaction Merchant, and that is acting in respect to the account, order or transaction for a customer, a commodity pool or participant therein, a client of a commodity trading advisor, or any other person, unless (a) such non-Member of NFA is a member of another futures association registered with the



Ms. Jean A. Webb

August 9, 1989

Commission under Section 17 of the Act, or is exempted from this prohibition by Board resolution, or (b) such suspended Member is exempted from this prohibition by the Appeals Committee. No Member may accept orders in commodity futures contracts to cover leverage transactions, for or on behalf of any non-Member of NFA, or suspended Member, that is required to be registered with the Commission as a Leverage Transaction Merchant, unless (a) such non-Member is a member of another futures association registered under Section 17 of the Act, or is exempted from this prohibition by Board resolution, or (b) such suspended Member is exempted from this prohibition by the Appeals Committee.

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CHAPTER 13  
DUES AND ASSESSMENTS

Bylaw 1301. Schedule of Dues and Assessments

\* \* \*

(c) LTM Members.

(i) Each LTM Member shall pay to NFA an assessment equal to \$0.12 for each leverage contract purchased from or sold to the LTM by a customer. Provided, however, such assessments shall be suspended or adjusted by the Board for a period not to exceed three months when in the judgment of the Board such action is appropriate in light of NFA's overall financial goals. The LTM Member shall invoice these assessments to its customer and shall remit the amount due to NFA; and

(ii) Each LTM Member shall pay to NFA annual dues of \$1,000.

[(c)](d) Other Members.

Annual dues for the other membership categories shall be as follows:

- (i) Commodity Trading Advisor -- \$250;
- (ii) Commodity Pool Operator -- \$250;
- (iii) Introducing Broker -- \$250, except that for an introducing broker not required to maintain minimum adjusted net capital the dues shall be \$150[.];



Ms. Jean A. Webb

August 9, 1989

(iv) Commercial Firm -- \$100; and

(v) Commercial Bank -- \$100.

Subject to category voting as prescribed by Article XI, Section 1(a), the Board may in its discretion waive or establish lower annual dues for particular Members.

**Bylaw 1302. Payment of Dues and Assessments.**

Annual dues shall be payable in advance on the first day of January of each year, or at such other time or times as the Board shall determine. Members paying dues after the date such dues are payable shall be subject to a late payment charge of \$25 per month or portion thereof. Assessments based upon futures transactions shall be payable to NFA within thirty (30) days after the end of each NFA fiscal quarter for transaction effected during that quarter. In addition to such assessments each FCM and LTM shall pay to NFA an amount equal to one month's interest at an annual rate of 10% (or such other rate of interest as the President, with the concurrence of the Executive Committee, may determine from time to time) on the amount of any such assessment payable by that FCM or LTM for every month or fraction thereof such assessment payment is late. If a Member claims overpayment of its assessments based upon futures transactions, the Member may request a refund at any time prior to the end of the eighteenth calendar month following the due date for payment of assessments for the NFA fiscal quarter with respect to which such claimed overpayment was made. After that time, no refunds, adjustments or offsets will be made or allowed. Except as the Board may otherwise provide by resolution, each Member shall pay dues and assessments, as applicable, for each category in which the Member -- or an affiliate thereof, unless such affiliate is a Member in its own right -- is registered with the Commission and conducts business.

**Bylaw 1303. Default and Termination of Membership.**

When any Member shall be in default in the payment of dues, [or] assessments or audit fees for a period of three months after such dues, [or] assessments or audit fees became payable, that Member's membership may thereupon be suspended by the President until all such obligations are met. When any Member shall fail to meet all such obligations within a period of six months following the date of such suspension, that Member's membership





Ms. Jean A. Webb

August 9, 1989

may thereupon be summarily terminated by the President on seven days written notice.

**Bylaw 1304. Audit Fees for LTMs.**

Each LTM Member shall pay an audit fee to NFA each year within thirty (30) days of the date the invoice is mailed by NFA. The Board of Directors shall determine the audit fee each year based on the anticipated cost of such audits. If the fee paid is less than the actual cost of auditing the LTM during the calendar year for which it was paid, NFA will invoice the LTM for the difference, and the LTM Member shall pay the invoiced amount within 30 days. If the fee paid is greater than the actual cost of auditing the LTM, the excess will be applied to the fee for the following year. In addition to such audit fee, each LTM shall pay to NFA an amount equal to one month's interest at an annual rate of 10% (or such other rate of interest as the President, with the concurrence of the Executive Committee, may determine from time to time) on the amount of any such audit fee payable by that LTM for every month or fraction thereof such audit payment is late.

\* \* \*

**CHAPTER 15  
MISCELLANEOUS PROVISIONS**

\* \* \*

**Bylaw 1506. Amendments to Bylaws.**

No Bylaw may be adopted, amended or repealed except as specified in a written notice sent to each Director at least two weeks prior to the meeting at which the Board considers the same: Provided, however, that such prior notice is not required in an emergency as defined by Bylaw 507, or where a majority of all Directors in each of the membership categories set forth in Sections 2(a)-2(c) of Article VII (contract markets[,], FCMS, LTMs, and IBs; and Industry Participants) approves.

**Bylaw 1507. Definitions.**

The terms used in these Bylaws shall have the same meaning as in the Articles: Provided, however, that the term "futures" as used in these Bylaws shall include:



Ms. Jean A. Webb

August 9, 1989

- (1) option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts[,]; [and]
- (2) foreign futures and foreign options transactions made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's rules[,]; and
- (3) leverage transactions as that term is defined in the Commission's rules.

Such contracts are hereby declared to be a proper subject of NFA regulation and oversight (see Article XVIII, paragraph (k)).

\* \* \*

#### COMPLIANCE RULES

##### Part 1 -- DEFINITIONS

###### Rule 1-1. DEFINITIONS.

As used in these Rules --

\* \* \*

- (c) **"Associate"**--means a person who is associated with a Member within the meaning of the term "associated person" as used in [Section 4k of] the Commodity Exchange Act and Commission Rules and who is required to be registered as an "associated person" with the Commodity Futures Trading Commission; and any other person designated by the Board to be an Associate.

\* \* \*

- (j) **"Futures"** includes:

- (1) option contracts traded on a contract market;
- (2) option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has



Ms. Jean A. Webb

August 9, 1989

notified the Commission under the Commission's rules that it is qualified to grant such option contracts; [and]

- (3) foreign futures and foreign options made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's rules[.]; and
- (4) leverage transactions as that term is defined in the Commission's rules.

\* \* \*

(m) "Leverage Transaction Merchant" or "LTM"--means a leverage transaction merchant as that term is used in Commission Rules, and that is required to be registered as such under the Commodity Exchange Act and Commission Rules.

[(m)](n) "Member"--means a Member of NFA that is required to be registered with the Commission, except a person required to register as a floor broker.

[(n)](o) "Person"--includes individuals, corporations, partnerships, trusts, associations and other entities.

[(o)](p) "Regional Committee"--means a Regional Business Conduct Committee established under Section 704 of NFA Bylaws.

[(p)](q) "Requirements"--includes any duty, restriction, procedure or standard imposed by a charter, bylaw, rule, regulation, resolution or similar provision.

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

\* \* \*

**Rule 2-24. QUALIFICATION TESTING OF ASSOCIATED PERSONS OF FCMS.**

(a) Testing Requirement

Subject to the provisions of paragraphs (d) and (e) of Bylaw 301, no FCM, IB, CPO, [or] CTA or LTM Member of NFA shall have as an Associate (see Bylaw 301(b)) any person who has



Ms. Jean A. Webb

August 9, 1989

not satisfied the applicable proficiency requirements set forth in [Section II of Schedule A to Bylaw 305] Registration Rule 401.

(b) Limitations on Activities

- (i) No person registered with NFA as an Associate of an [FCM, IB, CPO or CTA Member of NFA] NFA Member (see Bylaw 301(b)) whose application for registration as an associated person under the Act or for registration with NFA as an Associate incorporated a certification concerning the limited scope of such Associate's activities described in [Section II of Schedule A to Bylaw 305] Registration Rule 401 shall exceed the limitations set forth in such Associate's certification.
- (ii) No [FCM, IB, CPO or CTA] Member of NFA shall have associated with it (see Bylaw 301(b)) any person whose application for registration as an associated person under the Act or for registration with NFA as an Associate incorporated any of the certifications concerning the limited scope of such person's activities described in [Section II of Schedule A to Bylaw 305] Registration Rule 401 and who exceeds those limitations.

\* \* \*

**Rule 2-30. CUSTOMER INFORMATION AND RISK DISCLOSURE.**

\* \* \*

- (d) The risk disclosure to be provided to the customer shall include at least the following:
  - (1) the Risk Disclosure Statement required by CFTC Regulation 1.55, if the Member is required by that Regulation to provide it;
  - (2) the Disclosure Document required by CFTC Regulation 4.31, if the Member is required by that Regulation to provide it; [and]
  - (3) the Options Disclosure Statement required by CFTC Regulation 33.7, if the Member is required by that Regulation to provide it[.]; and



Ms. Jean A. Webb

August 9, 1989

- (4) the Disclosure Document required by CFTC Regulation 31.11, if the Member is required by that Regulation to provide it.

\* \* \*

**Rule 2-32. LEVERAGE TRANSACTIONS.**

Any Member or Associate who violates any of the CFTC Part 31 Regulations shall be deemed to have violated an NFA Requirement.

\* \* \*

**CODE OF ARBITRATION**

**Section 1. Definitions. As used in this Code -**

\* \* \*

(i) **"Futures"**-includes:

- (1) options contracts traded on a CFTC-licensed exchange;
- (2) options contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such options contracts or has notified the Commission under the Commission's Rules that it is qualified to grant such options contracts; [and]
- (3) foreign futures and foreign options transactions made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's Rules; and
- (4) leverage transactions as that term is defined in the Commission's Rules.

\* \* \*

(k) "Leverage Transaction Merchant"- means a leverage transaction merchant as that term is used in Commission Rules, and that is required to be registered as such under the Commodity Exchange Act and Commission Rules.



Ms. Jean A. Webb

August 9, 1989

- [(k)][(l)] **"Member"**-means a Member of NFA or a person that was a Member at the time the acts or transactions that are the subject of the dispute occurred.
- [(l)][(m)] **"NFA"**-means National Futures Association.
- [(m)][(n)] **"Panel"**-means the arbitration panel appointed pursuant to Section 4(a) of this Code.
- [(n)][(o)] **"Person"**-includes individuals, corporations, partnerships, trusts, associations and other entities.
- [(o)][(p)] **"President"**-means the President of NFA.
- [(p)][(q)] **"Respondent"**-means a person against whom a claim is asserted under this Code.
- [(q)][(r)] **"Secretary"**-means the Secretary of NFA.

**Section 2. Arbitrable Disputes.**

**(a) Mandatory Arbitration.**

(1) **Claims.** Except as provided in Sections 5 and 6 of this Code with respect to timeliness requirements, the following disputes shall be arbitrated under this Code if the dispute involves commodity futures contracts and does not require for its adjudication the presence of witnesses or other third parties over whom NFA lacks jurisdiction and who are not otherwise available:

- (i) a dispute for which arbitration is sought by a customer against a Member or employee thereof, or Associate, provided that-

\* \* \*

- (C) if brought against a Member or employee thereof, the Member is a futures commission merchant, an introducing broker, a commodity pool operator, [or] a commodity trading advisor, or a leverage transaction merchant.

\* \* \*



Ms. Jean A. Webb

August 9, 1989

**Section 3. Pre-Dispute Arbitration Agreements.**

Any pre-dispute arbitration agreement between a customer and a futures commission merchant, introducing broker, commodity pool operator, [or] commodity trading advisor or leverage transaction merchant Member or Associate thereof that does not comply with Commission Rule 180.3 shall be unenforceable under this Code.

\* \* \*

**FINANCIAL REQUIREMENTS**

\* \* \*

**Section 10. Leverage Transaction Merchant Reporting Requirements.**

Each Leverage Transaction Merchant (hereinafter "Member LTM") required to file any document with or give notice to the CFTC under CFTC Regulations 31.7 [Maintenance of minimum financial, cover and segregation requirements by leverage transaction merchants], 31.13 [Financial reports of leverage transaction merchants], 31.16 [Monthly reporting requirements], and 31.26 [Quarterly reporting requirements] 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.

\* \* \*

**REGISTRATION RULES**

\* \* \*

**PART 100. DEFINITIONS**

**Rule 101. Definitions.**

As used in these Rules -

\* \* \*

- (g) **"Sponsor"** - means the registered or pending futures commission merchant, introducing broker, commodity pool operator, [or] commodity trading advisor, or leverage



Ms. Jean A. Webb

August 9, 1989

transaction merchant which makes the certification required by Rule 206 of this Chapter for the registration of an associated person of such sponsor or with whom a principal is affiliated.

**PART 200. REGISTRATION REQUIREMENTS AND PROCEDURES**

\* \* \*

**Rule 203. Registration Fees.**

(a) Amount.

\* \* \*

(5) Leverage Transaction Merchant. Each application for registration as a leverage transaction merchant must be accompanied by a fee of \$250.

\* \* \*

**Rule 204. Registration of Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, [and] Commodity Trading Advisors, and Leverage Transaction Merchants.**

(a) Initial Registration.

(1) Application for initial registration as a futures commission merchant, introducing broker, commodity pool operator, [and] commodity trading advisor, and leverage transaction merchant must be on a Form 7-R, completed and filed with NFA in accordance with the instructions thereto.

\* \* \*

(C) Each application for initial registration as a leverage transaction merchant must also be completed and filed in accordance with CFTC Regulation 31.13(a).

\* \* \*

(2) Each application for initial registration as a futures commission merchant, introducing broker, commodity pool operator, [and] commodity trading





Ms. Jean A. Webb

August 9, 1989

advisor, and leverage transaction merchant must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by NFA for that purpose. The Form 8-R and fingerprint card need not be filed, however, by a principal who is currently registered with the Commission in any capacity or a listed principal of a current Commission registrant.

- (b) **Duration of Registration.** A person who becomes registered as a futures commission merchant, introducing broker, commodity pool operator, [or] commodity trading advisor, or leverage transaction merchant in accordance with paragraph (a) of this Rule will remain so registered until such registration is suspended, revoked, terminated, or withdrawn.
- (c) **Periodic Filings.** Any person who becomes registered as a futures commission merchant, introducing broker, commodity pool operator, [or] commodity trading advisor, or leverage transaction merchant in accordance with paragraph (a) of this Rule shall be required to file a properly completed Form 7-R with NFA annually on a date specified by NFA. Failure to file the Form 7-R within 30 days following such date will be deemed a request for withdrawal from registration. On at least 30 days written notice, and following such action, if any, deemed necessary by the CFTC or NFA, NFA may grant the request for withdrawal from registration.

\* \* \*

**Rule 206. Registration of Associated Persons of Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, [and] Commodity Trading Advisors, and Leverage Transaction Merchants.**

\* \* \*

**Rule 207. Multiple Affiliations of Associated Persons.**

- (a) **Certain Dual and Multiple Associations Prohibited.** No person may be simultaneously associated as an associated person with:



Ms. Jean A. Webb

August 9, 1989

- (1) more than one futures commission merchant, [or with] more than one introducing broker or more than one leverage transaction merchant;

\* \* \*

- (3) a futures commission merchant and a leverage transaction merchant;

- (4) an introducing broker and a leverage transaction merchant;

[(3)](5) a futures commission merchant and a commodity trading advisor for which that futures commission merchant solicits or intends to solicit clients or prospective clients: Provided, that a person registered as an associated person of a futures commission merchant who solicits clients by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such case be deemed to be associated solely with the futures commission merchant[ , ];

[(4)](6) subject to the provisions of paragraph (a)[(3)](5) of this Rule, a futures commission merchant and a commodity trading advisor for which that futures commission merchant carries or introduces, or intends to carry or introduce, clients' or prospective clients' discretionary accounts;

[(5)](7) a futures commission merchant and a commodity pool operator for which that futures commission merchant solicits or intends to solicit funds, securities, or property: Provided, that a person registered as an associated person of a futures commission merchant who solicits funds, securities, or property by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the futures commission merchant;

[(6)](8) subject to the provisions of paragraph (a)[(5)](7) of this Rule, a futures commission merchant and a commodity pool operator for which that futures commission merchant carries or introduces, or



Ms. Jean A. Webb

August 9, 1989

intends to carry or introduce, the account of a commodity pool operated by that commodity pool operator;

[(7)](9) an introducing broker and a commodity trading advisor for which that introducing broker solicits or intends to solicit clients or prospective clients: Provided, that a person registered as an associated person of an introducing broker who solicits clients by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker;

[(8)](10) subject to the provisions of paragraph (a)[(7)](9) of this Rule, an introducing broker and a commodity trading advisor for which that introducing broker introduces, or intends to introduce, clients' or prospective clients' discretionary accounts;

[(9)](11) an introducing broker and a commodity pool operator for which that introducing broker solicits, or intends to solicit, funds, securities, or property: Provided, that a person registered as an associated person of an introducing broker who solicits funds, securities, or property by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker; [or]

[(10)](12) subject to the provisions of paragraph (a)[(9)](11) of this Rule, an introducing broker and a commodity pool operator for which that introducing broker introduces, or intends to introduce, the account of a commodity pool operated by that commodity pool operator[.];

(13) a leverage transaction merchant and a commodity trading advisor;

(14) a leverage transaction merchant and a commodity pool operator; or



Ms. Jean A. Webb

August 9, 1989

(15) a leverage transaction merchant and registered as a floor broker.

\* \* \*

**Rule 208. Changes Requiring a New Registration.**

- (a) If the registrant is a futures commission merchant, introducing broker, commodity pool operator, [or] commodity trading advisor, or leverage transaction merchant, and except as provided in paragraphs (b) and (c) of this Rule, registration is deemed to terminate and a new registration is required (See Rule 204) whenever a person not listed as a principal on the registrant's initial registration application or any amendment thereto:

\* \* \*

**Rule 209. Alternative to the Fingerprint Filing Requirement in Certain Cases.**

\* \* \*

- (b) Each photocopy and statement filed in accordance with the provisions of paragraph (a)(1) or (a)(2) of this Rule must be signed and dated. Such signature shall constitute a certification by that individual that the photocopy or statement is accurate and complete and must be made by:

\* \* \*

- (2) with respect to the fingerprints of a principal: an officer, if the futures commission merchant, introducing broker, commodity pool operator, [or] commodity trading advisor, or leverage transactions merchant with which the principal will be affiliated is a corporation; a general partner, if a partnership; or the sole proprietor, if a sole proprietorship.

**Rule 210. Deficiencies, Inaccuracies, and Changes to Application Information Must Be Reported.**

- (a) Each applicant or registrant as a futures commission merchant, introducing broker, commodity pool operator,

Ms. Jean A. Webb

August 9, 1989

[or] commodity trading advisor, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in a Form 7-R or Schedules A, B, or C to the Form 7-R which no longer renders accurate and current the information contained therein. Each such correction must be made on a Form 3-R and must be prepared and filed in accordance with the instructions thereto. When a Form 3-R is filed by a registrant for purposes of reporting a change in the form of the organization of the registrant, the Form 3-R must be accompanied by a letter, signed by an appropriate signatory, certifying that the newly formed organization will be liable for all obligations of the pre-existing organization which arose out of the Act or the Regulations thereunder.

\* \* \*

**Rule 212. Registration in One Capacity Does Not Include Registration in Any Other Capacity.**

- (a) Except as may be otherwise provided in the Act or in any Rule, Regulation, or order of the Commission, each associated person, futures commission merchant, introducing broker, commodity pool operator, [and] commodity trading advisor, and leverage transaction merchant must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity.

\* \* \*

**PART 400. PROFICIENCY REQUIREMENTS**

**Rule 401. Qualification Testing Requirement.**

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, a leverage transaction merchant, 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 an Associate Member of NFA unless:

\* \* \*



Ms. Jean A. Webb

August 9, 1989

- (b) the applicant has been duly registered under the Act as a futures commission merchant, an introducing broker, a commodity pool operator, a commodity trading advisor, a leverage transaction merchant, or an associated person of any of the foregoing, at any time during the two-year period immediately preceding the date the application is received by NFA; or

\* \* \*

**PART 500. PROCEEDINGS TO DENY, CONDITION,  
SUSPEND, RESTRICT, OR REVOKE REGISTRATION**

**Rule 501. Authority to Deny, Condition, Suspend, Restrict, and Revoke Registration.**

NFA may refuse to register, register conditionally, suspend or place restrictions on the registration, or revoke the registration of any person registered or applying for registration as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, or associated person of any of the foregoing, based upon the grounds for such action and the standards of fitness set forth in the Act applicable to registrations granted by the Commission. Final written orders denying registration, registering conditionally, suspending, restricting, or revoking registration shall be made by the President, the Membership Committee, or its designated Subcommittee in accordance with the procedures set forth in this Part 500: Provided, however, that pending final determination, in cases submitted by the President to the Membership Committee or its designated Subcommittee, registration shall not be granted. Such designated Subcommittee shall consist of at least three members of the Membership Committee, all of whom shall be appointed by a majority of the Membership Committee.

\* \* \*



Ms. Jean A. Webb

August 9, 1989

**Rule 504. Notice of Intent to Deny, Condition, Suspend, Restrict, or Revoke Registration.**

- (a) **Notice of Intent.** On the basis of information obtained, NFA may at any time serve a Notice of Intent upon any person registered or applying for registration as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, or associated person of any of the foregoing stating that:

\* \* \*

**PART 600. WITHDRAWAL FROM REGISTRATION**

**Rule 601. Withdrawal from Registration.**

\* \* \*

- (b) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity pool operator, [or] commodity trading advisor, or leverage transaction merchant must be on a Form 7-W completed and filed with NFA in accordance with the instructions thereto.

[[Note: A request for withdrawal from registration as a leverage transaction merchant must be directed to the Commission pursuant to Commission Regulation 3.33.]]

\* \* \*

The foregoing proposed rule amendments are mainly technical in nature. Generally, the proposed rules would apply all of NFA's current requirements to LTMs and their APs unless the wording of a particular requirement is inconsistent with Commission rules or the nature of the leverage business.

NFA respectfully requests Commission authorization to perform regulatory and registration responsibilities with respect to persons required to be registered with the Commission as LTMs and APs thereof. In connection therewith, NFA also requests Commission approval of the foregoing proposed amendments to NFA's Articles, Bylaws, Compliance Rules, Code of Arbitration, Financial Requirements and Registration Rules which would allow NFA to perform regulatory and registration responsibilities with respect to LTMs and their APs. NFA further requests that these amend-



Ms. Jean A. Webb

August 9, 1989

ments be declared effective concurrent with the effective date of the amendments to the Part 31 Regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel J. Roth", is written over the typed name.

Daniel J. Roth  
General Counsel

DJR:cm (RUL)

cc: Chairman Wendy L. Gramm  
Commissioner Kalo A. Hineman  
Commissioner Fowler C. West  
Commissioner Robert R. Davis  
Commissioner William P. Albrecht  
Andrea M. Corcoran, Esq.  
Dennis P. Klejna, Esq.  
Alan L. Seifert, Esq.  
Susan C. Ervin, Esq.  
Lawrence B. Patent, Esq.



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

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

September 29, 1989



Daniel J. Roth, Esq.  
General Counsel  
National Futures Association  
200 West Madison Street  
Chicago, Illinois 60606

Re: Proposed Rule Changes Related to the National  
Futures Association's Request to Perform  
Regulatory and Registration Responsibilities  
with Respect to Leverage Transaction  
Merchants and Associated Persons Thereof

Dear Mr. Roth:

By letter dated August 9, 1989, the National Futures Association ("NFA") submitted pursuant to Section 17(j) of the Commodity Exchange Act ("Act") proposed new Bylaw 1304, new Compliance Rule 2-32 and new Financial Requirements Section 10 and proposed amendments to Articles III, VI-VIII, X, XI, XVII and XVIII of its Articles of Incorporation; Bylaws 301, 406, 503, 705, 1101, 1301-03, 1506 and 1507; Compliance Rules 1-1, 2-24 and 2-30; Code of Arbitration Sections 1-3; and, Registration Rules 101, 203, 204, 206-10, 212, 401, 501, 504 and 601. NFA's proposed new rules and rule amendments would enable NFA to perform regulatory and registration responsibilities with respect to persons registered or required to be registered with the Commission as leverage transaction merchants ("LTM") or as associated persons of LTMs.

The Commission understands that NFA has requested that the Commission approve these proposed new rules and rule amendments so that they may be implemented concurrently with the effective date of the proposed amendments of the Commission's Regulations relating to leverage transactions.

Please be advised that on this date the Commission has approved the above-referenced proposed new rules and rule amendments under Section 17(j) of the Act.

Sincerely,

*Jean A. Webb*

Jean A. Webb  
Secretary of the Commission

