

June 7, 1985

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

Re: National Futures Association, Proposed Amendment
to NFA Bylaw 305, Schedule A, Sections I(c) and
I(d); Proposed Compliance Rule 2-29

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 amendments to NFA Bylaw 305, Schedule A, Sections I(c) and I(d), and a new Compliance Rule 2-29. The proposed amendments and rule were unanimously approved by NFA's Board of Directors at its meeting on May 23, 1985.

I. THE AMENDMENTS AND NEW RULE

- A. Rules to Deny, Condition, Suspend, Restrict or Revoke Registration (In Section I(c) additions are underlined. Section I(d) is amended by deleting it in its entirety and substituting therefor the following.)

BYLAWS OF NATIONAL FUTURES ASSOCIATION

* * *

CHAPTER 3

MEMBERSHIP AND ASSOCIATION
WITH A MEMBER

* * *

Bylaw 305. Registration and Proficiency Requirements.

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Schedule A

* * *

I. REGISTRATION

(c) Grant, Denial, Suspension and Revocation of Registration.

With respect to persons required to register under the Act pursuant to Section I(a) of this Schedule A, NFA may refuse to register, register conditionally, suspend or place restrictions on the registration or revoke the registration of any such person based upon the grounds for such action and the standards of fitness set forth in the Act applicable to registrations granted by the Commission. Registrations or temporary licenses may be granted by the President or Secretary or their designee. Final written orders denying registration, registering conditionally, suspending or restricting registration or revoking registration shall be made by the President, the Membership Committee or its designated Subcommittee in accordance with the procedures set forth in Section I(d) of this Schedule A; 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.

(d) Proceedings to Deny, Condition, Suspend, Restrict or Revoke Registration.

(1) Service.

(A) For purposes of any proceeding to deny, condition, suspend, restrict or revoke registration, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested, properly addressed to the applicant or registrant at the address shown on the application or any amendment thereto. Service will be complete upon mailing.

(B) A copy of any notice served in accordance with paragraph 1(A) shall also be served upon:

(i) Any registrant sponsoring the applicant or registrant pursuant to CFTC Regulations 3.12 or 3.16 if the applicant or registrant is an individual registered as or applying for registration as an associated person; or



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(ii) Any futures commission merchant which has entered into a guarantee agreement pursuant to CFTC Regulation 1.10(j) with an applicant or registrant applying for registration or registered as an introducing broker.

(C) Documents served by an applicant or registrant upon the Secretary under this Section shall be considered served or filed only upon actual receipt at the offices of National Futures Association, 200 W. Madison Street, Chicago, Illinois 60606.

(2) Withdrawal of application for registration.

(A) Notice. Whenever information comes to the attention of NFA that an applicant for initial registration in any capacity may be found subject to a statutory disqualification under Sections 8a(2), 8a(3) or 8a(4) of the Act, the Director of Compliance or the Director's designee may serve written notice upon the applicant, which shall specify the statutory disqualifications to which the applicant may be subject and notify the applicant that:

(i) The information, if true, is a basis upon which the applicant's registration may be denied;

(ii) Unless the applicant voluntarily withdraws the application, it may be necessary to institute the denial procedures described in the following paragraphs; and

(iii) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application will be deemed to have been withdrawn.

(B) The applicant must serve the written confirmation referred to in paragraph 2(A)(iii) upon the Secretary within twenty days after the date the Notice is served.

(3) 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 required to register under the Act pursuant to Section I(a) of this Schedule A that:



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(i) NFA alleges and is prepared to prove that the applicant or registrant is subject to one or more of the statutory disqualifications set forth in Sections 8a(2), 8a(3) or 8a(4) of the Act;

(ii) The allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be denied, conditioned, suspended, restricted or revoked (if the Notice of Intent proposes conditioning or restricting registration, the Notice shall specify the conditions or restrictions); and

(iii) The applicant or registrant is entitled to have the President consider written evidence of the type set forth in paragraph 3(B) in determining whether the applicant or registrant is subject to such statutory disqualification.

(B) Scope of Written Submission. If the statutory disqualification alleged is set forth in Section 8a(2) of the Act, the scope of the applicant's or registrant's written submission shall be limited to challenging the accuracy of the allegations set forth in the Notice of Intent, including evidence as to (1) the applicant's or registrant's identity, (2) the existence of a clerical error in any record documenting the statutory disqualification, (3) the nature or date of the statutory disqualification, (4) the post-conviction modification of any record of conviction or (5) the favorable disposition of any appeal. If the statutory disqualification alleged is set forth in Section 8a(3) or 8a(4) of the Act, the scope of the applicant's or registrant's written submission shall be limited to the information set forth above and the type of information set forth in paragraph 6(D). Such written submission must be served upon the Secretary within twenty days after the date of service of the Notice of Intent upon the applicant or registrant.

(C) The Notice of Intent shall inform the applicant or registrant of the procedures which will be followed if no written submission is made in accordance with paragraph 3(B).

(4) Authority to Deny Registration Pursuant to Section 8a(2) of the Act.

(A) Reply. If an applicant who has received a Notice of Intent to deny registration based on a statutory disquali-



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fication set forth in Section 8a(2) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of the receipt of such submission submit to the President and serve upon the applicant a written reply.

(B) Determination. After the receipt of the applicant's written submission and any reply thereto, the President shall determine whether the applicant is subject to a statutory disqualification under Section 8a(2) of the Act. Such determination shall be based upon the application, the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submission filed by the applicant, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Order. Within 30 days after receipt of the applicant's written submission and any reply thereto, the President shall issue an order granting or denying registration.

(5) Default of Applicant - 8a(2) Denial.

(A) If an applicant for registration who has received a Notice of Intent to deny registration based on a statutory disqualification set forth in Section 8a(2) of the Act fails to make a timely written submission in accordance with paragraph 3(B):

(i) The applicant will be deemed to have waived the right to submit evidence in writing on all issues, and the facts stated in the Notice of Intent shall be deemed true for the purpose of finding that the applicant is subject to a statutory disqualification under Section 8a(2) of the Act; and

(ii) Twenty days after the date the Notice of Intent to deny is served upon the applicant, such Notice shall become a final order of NFA denying registration. NFA shall serve written confirmation upon the applicant that registration has been denied.

(B) Vacating the order. An applicant for registration against whom an order referred to in paragraph 5(A)(ii) was issued may file a petition and supporting affidavit with the Secretary if the Notice of Intent under paragraph 3 was not



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timely received by the applicant. Upon receipt of the petition, the order shall be vacated, and NFA shall serve upon the applicant a copy of the Notice of Intent required under paragraph 3. The procedures set forth in this paragraph 5(B) shall be available only once to an applicant.

(6) Authority to Suspend and Revoke Registration Pursuant to Section 8a(2) of the Act.

(A) Reply. If a registrant who has received a Notice of Intent to suspend or revoke registration based on a statutory disqualification set forth in Section 8a(2) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the registrant a reply.

(B) Determination. After the receipt of the registrant's written submission and any reply thereto, or if no written submission is made, the President shall determine whether the registrant is subject to a statutory disqualification. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submission, if any, filed by the registrant in response thereto, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Suspension and order to show cause. (i) If the President determines that the registrant is not subject to a statutory disqualification, the President shall issue an order to that effect.

(ii) If the President determines that the registrant is subject to a statutory disqualification, the President shall issue an interim order suspending registration and requiring the registrant to show cause to the Membership Committee or its designated Subcommittee within twenty days of the date of the interim order why, notwithstanding the existence of the statutory disqualification, the registration should not be revoked. The registration shall be suspended effective five days after the interim order is served upon the registrant, and such suspension shall remain in effect until a final order with respect to the order to show cause has been issued: Provided that, if the sole basis upon which the registrant is subject to a statutory disqualification is the existence



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of a temporary order, judgment or decree of the type described in Section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired: Provided, however, that in no event shall the registrant be suspended for a period to exceed six months.

(D) Registrant's Response. Within twenty days of the date of the order to show cause, the registrant may file with the Membership Committee or its designated Subcommittee a written response which may include briefs, affidavits and supporting memorandums, but in any event shall be limited in content to:

(i) Evidence, not previously set forth in any written submission filed under paragraph 3(B), challenging the accuracy of the allegations establishing the statutory disqualification;

(ii) The existence of any facts which constitute a clear and compelling showing that, notwithstanding the existence of the statutory disqualification, the continued registration would be in the public interest; or

(iii) In the case of an associated person, written confirmation by the registrant's sponsor that, notwithstanding the existence of the statutory disqualification, the sponsor is willing to supervise the activities of the registrant subject to such restrictions as the Membership Committee or its designated Subcommittee shall impose: Provided that, with respect to such sponsor, (1) an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of Sections 6(b), 6(c), 6d or 8a of the Act is not pending, and (2) in the case of a sponsor which is a futures commission merchant, the sponsor is not subject to the reporting requirements of CFTC Regulation 1.12(b).

(E) Reply. Within ten days after receipt of the registrant's response, the Director of Compliance may submit to the Membership Committee or its designated Subcommittee and serve upon the registrant a reply.

(F) Oral hearings. Oral hearings shall not be granted except under extraordinary circumstances and upon written request to the Membership Committee or its designated Subcommittee. Such request shall include the issues to be addressed, the evidence to be adduced and a showing of compelling need.



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If the Membership Committee or its designated Subcommittee determines to grant a request for an oral hearing, the hearing shall be conducted pursuant to paragraph 9 as the Membership Committee or its designated Subcommittee deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(G) Order. Within 30 days of the receipt of a registrant's response to the order to show cause, and any reply thereto, the Membership Committee or its designated Subcommittee shall, upon consideration of the record as a whole, make a finding as to whether the registrant has shown cause why the registration should not be suspended or revoked and shall issue an order accordingly. If the Membership Committee or its designated Subcommittee, on the basis of the showing described in paragraph 6(D)(ii), finds that, notwithstanding the existence of the statutory disqualification, the registration should not be revoked, the Committee may issue an order further suspending the registrant for a period not to exceed six months. In the case of an associated person the order may further restrict the registration of the registrant.

(H) Notwithstanding the sponsor's written confirmation under paragraph 6(C)(iii), the Membership Committee or its designated Subcommittee may issue an order revoking or further suspending for a period not to exceed six months the registration of an associated person and, in any event, may not issue an order restricting such registration if:

(i) The associated person is subject to a statutory disqualification under Section 8a(2) of the Act as a result of conviction of a felony or misdemeanor under Section 9 of the Act; or

(ii) The associated person has been the subject of more than one proceeding in which findings of fact constituting a statutory disqualification under Section 8a(2) of the Act have been entered against the associated person; or

(iii) The associated person is subject to an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of Section 6(b), 6(c), 6d or 8a of the Act; or

(iv) The associated person was previously granted a conditional or restricted registration and was found to have failed to conform to such condition or restriction; or



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(v) The associated person willfully made any materially false or misleading statement or willfully omitted to state any material facts in any written submissions filed under this Section as to any facts which would constitute statutory disqualifications under Section 8a(2) of the Act; or

(vi) The registrant with whom the associated person is associated willfully made false or misleading statements of material fact in the confirmation referred to in paragraph 6(D)(iii) or willfully failed to state any material facts which were required to be stated therein.

(I) Default. (i) If the registrant fails to file a timely response to the order to show cause, the registrant shall be deemed in default. The President shall thereafter, upon a finding that service was effected, enter an order revoking, restricting or further suspending the registration. Such finding shall be based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the Notice of Intent in accordance with paragraph 3(B) and any written reply thereto submitted by the Director of Compliance.

(ii) If the President issues an order under paragraph 6(I)(i) revoking, restricting or further suspending registration, the registrant may file a petition and supporting affidavit with the Secretary setting forth the reasons why the registrant failed to file a response to the order to show cause. Such petition must be accompanied by the registrant's response. Upon receipt of the petition, the President may, for good cause shown, vacate the order.

(7) Proceedings under Section 8a(2)(E) of the Act.

NFA will not initiate a proceeding based on a statutory disqualification set forth in Section 8a(2)(E) of the Act, if respondeat superior is the sole basis upon which the registrant may be found subject to such statutory disqualification.

(8) Authority to Deny, Condition, Suspend, Restrict or Revoke Registration Pursuant to Sections 8a(3) and 8a(4) of the Act.

(A) Reply. If an applicant or registrant who has received a Notice of Intent to deny, condition, suspend, restrict or



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revoke registration based on a statutory disqualification set forth in Sections 8a(3) or 8a(4) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the applicant or registrant a reply.

(B) Determination. After receipt of the applicant's or registrant's written submissions and any reply thereto, or if no written submission is made, the President shall determine whether the applicant or registrant has shown why the registration should not be denied, conditioned, suspended, restricted or revoked. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submissions, if any, filed by the applicant or registrant in response thereto, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Notice of Determination. (i) If the President determines that registration should be denied, conditioned, suspended, restricted or revoked, the President shall notify the applicant or registrant and shall inform the applicant or registrant of the right to request a hearing before the Membership Committee or its designated Subcommittee.

(ii) If the President determines that registration should not be denied, conditioned, suspended, restricted or revoked, the President shall issue an order to that effect.

(D) Right to a Hearing. A hearing before the Membership Committee or its designated Subcommittee may be obtained by filing a written request with the Secretary within ten days of the date of service of the Notice of the President's Determination.

(E) Waiver of a Hearing. If no request for a hearing is received by NFA within 10 days after the Notice of the President's determination has been served, the right to a hearing shall be deemed to have been waived and the President shall, upon consideration of the record as a whole, make a finding as to whether the registration should be denied, conditioned, suspended, restricted or revoked and shall issue an order accordingly.



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(F) Request for a Hearing. If an applicant or registrant makes a timely request for a hearing on the question of whether the applicant or registrant is subject to a statutory disqualification under Section 8a(3) or 8a(4) of the Act, or whether notwithstanding the existence of the statutory disqualification, registration should nevertheless be granted or should not be conditioned, suspended, restricted or revoked, a hearing shall thereafter be conducted in accordance with the procedures set forth in paragraph 9 as the Membership Committee or its designated Subcommittee deems appropriate. For purposes of the hearing, the Notice of Intent given in accordance with paragraph 3 shall be treated as a duly authorized complaint by the President seeking the relief specified therein, and the request for hearing shall be treated as an answer.

(G) Order. Within 30 days of the date of the conclusion of the hearing, the Membership Committee or its designated Subcommittee shall make a finding as to whether the applicant has shown that registration should not be denied or conditioned or whether the registrant has shown that the registration should not be suspended, restricted or revoked and shall issue an order accordingly.

(9) Hearing Procedures.

If an applicant or registrant requests a hearing before the Membership Committee or its designated Subcommittee a record of the hearing shall be kept. At such a hearing the applicant or registrant may be represented by counsel, submit evidence, call and examine witnesses, examine the evidence upon which the President made a determination and at the discretion of the Membership Committee or its designated Subcommittee, present oral or written argument.

(10) Orders.

(A) Any order issued by the President, the Membership Committee or its designated Subcommittee under this Section (except an interim order suspending registration pursuant to paragraph 6(C)(ii)) shall become a final order of NFA on the date it is served upon the applicant or registrant. A copy of each final order issued by NFA shall be served upon the Commission at the same time it is served upon the applicant or registrant.



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(B) Any final order of NFA which denies, conditions, suspends, restricts or revokes registration shall inform the applicant or registrant of the right to petition the Commission for review under Section 17(o) of the Act and applicable Commission regulations.

(C) (i) Except as otherwise provided in paragraph 10(C)(iii), any final order of NFA denying or conditioning registration shall remain in effect pending any review initiated or granted by the Commission.

(ii) Except as otherwise provided in paragraph 10(C)(iii), any final order of NFA suspending, restricting or revoking registration shall become effective 15 days after service on the registrant unless within that time a petition for review by the Commission is filed in accordance with Commission regulations, or the Commission initiates review.

(iii) In any case in which a Notice of Intent to deny is issued and the final order of the Membership Committee or its designated Subcommittee does not deny registration, or an interim order suspending registration pursuant to paragraph 6(C)(ii) is issued and the final order of the Membership Committee or its designated Subcommittee does not revoke or further suspend registration, such final order shall become effective 30 days after service on the registrant unless the Commission otherwise directs. Prior to such effective date, registration shall not be granted or, in the case of a suspension, such suspension shall remain in effect.

B. New Compliance Rule 2-29

COMPLIANCE RULES

* * *

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

* * *

Rule 2-29. COMMUNICATIONS WITH THE PUBLIC AND PROMOTIONAL MATERIAL.



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(a) General Prohibition.

No Member or Associate shall make any communication with the public which:

- (1) operates as a fraud or deceit; or
- (2) employs or is part of a high-pressure approach;
or
- (3) makes any statement that futures trading is appropriate for all persons.

(b) Content of Promotional Material.

No Member or Associate shall use any promotional material which:

- (1) is likely to deceive the public; or
- (2) contains any material misstatement of fact or which the Member or Associate knows omits a fact if the omission makes the promotional material misleading;
or
- (3) mentions the possibility of profit unless accompanied by an equally prominent statement of the risk of loss; or
- (4) includes a measurement or description of or makes any reference to hypothetical results which could have been achieved had a particular trading system been employed in the past unless accompanied by the statement prescribed in CFTC Rule 4.41(b)(1);
or
- (5) includes any reference to actual past trading profits without mentioning that past results are not necessarily indicative of future results; or
- (6) includes any specific numerical or statistical information about the past performance of any actual accounts (including rate of return) unless such information is and can be demonstrated to NFA to be representative of the actual performance for the same time period of all reasonably comparable accounts and, in the



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case of rate of return figures, unless such figures are calculated in a manner consistent with that required under CFTC Rule 4.21(a)(4)(ii)(F).

(c) Statements of Opinion.

Statements of opinion included in promotional material must be clearly identifiable as such and must have a reasonable basis in fact.

(d) Written Supervisory Procedures.

Every Member shall adopt and enforce written procedures to supervise its Associates and employees for compliance with this Rule. Such procedures shall require prior review and approval of all promotional material by an officer, general partner, sole proprietor, branch office manager or other supervisory employee other than the individual who prepared such material (unless such material was prepared by the only individual qualified to review and approve such material).

(e) Recordkeeping.

Copies of all promotional material along with a record of the review and approval required under paragraph (d) of this Rule must be maintained by each Member and be available for examination for a period of three years from the date of the last use. Each Member who uses promotional material of the type described in subsection (b)(4) of this Rule shall demonstrate the basis for any hypothetical results to NFA upon request.

(f) Filing with NFA.

The Compliance Director may require any Member for any specified period to file copies of all promotional material with NFA promptly after its first use.

(g) Definition.

For purposes of this Rule "promotional material" includes:
(1) Any text of a standardized oral presentation, or any communication for publication in any newspaper, magazine or similar medium, or for broadcast over television, radio, or other electronic medium, which is disseminated



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or directed to the public concerning a futures account, agreement or transaction; (2) any standardized form of report, letter, circular, memorandum, or publication which is disseminated or directed to the public; and (3) any other written material disseminated or directed to the public for the purpose of soliciting a futures account, agreement or transaction.

II. EXPLANATION OF AMENDMENTS AND NEW RULE

A. Rules to Deny, Condition, Suspend, Restrict or Revoke Registration

The Commission has authorized NFA, pursuant to Section 8a(10) of the Act, to perform the registration function for futures commission merchants, commodity pool operators, commodity trading advisors, introducing brokers and the associated persons for each of these categories. Those registration functions did not include the authority to deny, condition, suspend, restrict or revoke registrations. NFA will soon request the Commission to grant it the authority to deny, condition, suspend, restrict or revoke registration. The proposed rules provide the procedures to enable NFA to assume this responsibility.

B. New Compliance Rule 2-29

Compliance Rule 2-29 deals with communications with the public and promotional material prepared and used in the conduct of a Member's or Associate's futures business. Rule 2-29 is intended to apply to all forms of communication with the public by a Member or Associate without exception if the communication relates in any way to solicitation of an account, agreement or transaction in the conduct of the Member's or Associate's business in futures. In order to avoid impeding the free flow of information to customers on a spontaneous basis, the rule distinguishes routine day-to-day communications with customers and applies a different regulatory standard to such communications. This is accomplished by providing a definition of "promotional material" to identify the kinds of communications with the public which will be subject to the specific content standards and other requirements of Section



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(b). Routine communications remain subject to the general prohibitions of Section (a).

A section-by-section analysis of Rule 2-29 is contained in the Interpretive Notice to NFA Members, a copy of which is attached.

NFA respectfully requests the Commission to declare the proposed amendments effective upon approval by the Commission, as authorized by Section 17(j) of the Act. Once Rule 2-29 becomes effective, NFA will allow Members a reasonable period to establish procedures as required by the Rule and a period of 45 days within which to conform promotional material to the requirements. Hence during that 45-day period NFA staff will not recommend disciplinary action solely due to the failure of the promotional material to conform to the content standards set forth in subsection (b) of the Rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Harrison, Jr.", is written over the typed name.

Joseph H. Harrison, Jr.
General Counsel

JHH:cm
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.
Kenneth M. Rosenzweig, Esq.
Kevin M. Foley, Esq.
Linda Kurjan, Esq.

May 23, 1985

INTERPRETIVE NOTICE TO NFA MEMBERS

NFA Compliance Rule 2-29: Communications with the Public
and Promotional Material

I. INTRODUCTION

Section 17(p)(3) of the Commodity Exchange Act (7 U.S.C. §21(p)(3)) requires that the rules of a registered futures association such as NFA "establish minimum standards governing the sales practices of its members and persons associated therewith...." NFA has established such minimum standards in the form of its Compliance Rules which, among other things, generally prohibit fraud and deceit and require Members and Associates to "observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business." Although these rules supply the required minimum standard, they are general in nature and may not always provide specific guidance as to what particular conduct may be prohibited. It is expected that more detailed content will be given to those general rules through the work of NFA's Business Conduct Committees, which will issue decisions in disciplinary cases applying the rules to specific conduct. It is also expected that NFA's Advisory Committees, through study and recommendation of rule changes, will further the development of uniform industry-wide sales practice standards.

NFA's Board of Directors has adopted a new Compliance Rule, 2-29, which was proposed to the Board by the FCM Advisory Committee ("The Committee"). The Committee published a notice for public comment on its proposed rule on February 21, 1985, and considered the comments received in drafting the final rule.

II. THE CONTEMPLATED RELATIONSHIP OF RULE 2-29 WITH OTHER NFA RULES

Rule 2-29 deals specifically with communications with the public and promotional material prepared and used in the conduct of a Member's or Associate's futures business. However, Member and Associate conduct in that area, as in all others related to futures, is, and under the new rule continues to be, subject to all other NFA requirements. For example, certain other NFA Rules deal specifically with

communications with the public and promotional materials in a narrower context. Compliance Rule 2-13, which incorporates CFTC Rule 4.41, regulates the advertising of Commodity Pool Operators ("CPOs") and Commodity Trading Advisors ("CTAs"); NFA Compliance Rules 2-16 and 2-19 specifically relate to option sales communications and the filing with NFA of option promotional material. In addition, all Member and Associate conduct, including communications with the public, is subject to the requirements of Compliance Rule 2-2 (Fraud and Related Matters) and Compliance Rule 2-4 (Just and Equitable Principles of Trade).

The new Rule is not intended to supplant those or any other NFA Requirements but rather to augment them. Hence, literal compliance with Rule 2-29 will not be a "safe harbor" from NFA disciplinary action if the Member or Associate violates any other NFA Requirement.

III. THE SCOPE OF RULE 2-29

Rule 2-29 is intended to apply to all forms of communication with the public by a Member or Associate without exception if the communication relates in any way to solicitation of an account, agreement or transaction in the conduct of the Member's or Associate's business in futures as the term "futures" is now or may be defined.*

However, in drafting the Rule the Committee recognized that some specific content standards which would be appropriate for communications prepared in advance of delivery to the public might be unenforceable and even inappropriate in the context of routine day-to-day contact with customers. The Committee was concerned that the free flow of information and advice to customers might be impeded to their detriment if spontaneous communications were subjected to rigorous and detailed content standards.

* Article XVIII(k) of NFA's Articles of Incorporation defines futures to include "options contracts traded on a contract market, and such other commodity-related instruments as the Board may from time to time declare by Bylaw to be properly the subject of NFA regulation and oversight." Currently, the only NFA Bylaw expanding that definition is Bylaw 1507, which states that "'futures' as used in these Bylaws shall include 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."

To address this problem, the final Rule distinguishes routine day-to-day communications with customers and applies a different regulatory standard to such communications. This is accomplished by providing a definition of "promotional material" to identify the kinds of communications with the public which will be subject to specific content standards and other requirements beyond those provided in section (a) General Prohibition. Therefore, the definition of promotional material (which is a broadened version of the definition of that term in the CFTC's option pilot program rules) is intended to include all kinds of promotional communications with the public, other than routine day-to-day contact with customers. It includes, for example, any kind of written, electronic or mechanically reproduced message or presentation which is directed to any member of the public, whether broadcast over the media, delivered through the mail or presented personally. It also includes any oral presentation or statements to customers or prospective customers, whether delivered over the telephone or in person, the substance of which is outlined or scripted in advance for delivery to such persons.

IV. SECTION-BY-SECTION ANALYSIS

Section (a) General Prohibition

This section provides the general rule governing all communications with the public and is the only portion of the Rule applicable to routine day-to-day communication with customers. That means that routine customer contact would not run afoul of Rule 2-29 as long as it is not fraudulent or deceitful, is not high-pressure in nature and does not contain any statement that futures trading is appropriate for all persons. NFA believes that the general prohibition should not hamper free and open communication with individual customers on a day-to-day basis. In that regard, it is expected that Business Conduct Committees would not find such communications to operate as a fraud or deceit in the absence of evidence of such intent or recklessness on the part of the Member or Associate.*

* However, it must be noted that much, if not all, of the benefits to customers of the disclosures and cautionary statements required to be included in promotional material by other sections of Rule 2-29 and other disclosure statements required by CFTC and NFA Rules (e.g., the risk disclosure statements required by CFTC Rule 1.55 and NFA Compliance Rule 2-27) can be intentionally diminished in the course of oral communications with customers. To avoid that result it is expected that Business Conduct Committees will presume intentional or reckless deceit in instances where a Member or Associate specifically contradicts or downplays any disclosure statement required to be made by CFTC or NFA rules.

Section (b) Content of Promotional Material

This section sets out the specific prohibitions and requirements applicable to promotional material, as defined. Subsection (1) bans material likely to deceive the public. Proof of violation of this provision does not require proof of a specific intent to deceive. This subsection instead places the burden on the Member to determine whether the material is likely to be deceptive in effect. Of course, to find a violation of this subsection a Business Conduct Committee would have to find that the Member or Associate reasonably should have been able to determine that the material was likely to deceive. The fact that someone was actually deceived would not by itself be enough.

Subsection (2) deals with facts only. It requires that the facts which a Member or Associate chooses to include must be true and that no facts knowingly be left out which are necessary to make the facts stated not misleading. With that exception, this subsection does not require the disclosure of facts. As with subsection (1), a negligence standard would be applied in finding violations of subsection (2) for making material misstatements of fact in promotional material. However, because evaluating omissions is a much more difficult task, this subsection applies only to knowing omissions -- i.e., instances where the person preparing or reviewing the promotional material knew the omitted fact and failed to include it. This knowledge requirement may complicate the proof necessary to establish a violation of this subsection. However, knowledge can be inferred from a pattern of failures to include a material fact, the omission of which makes the promotional material misleading. Once knowledge is established, the decision whether the failure to include a fact makes the promotional material misleading in violation of Rule 2-29 will be made by a Business Conduct Committee under a standard of reasonableness.

Subsection (3) requires a statement of risk to "balance" any discussion of the possibility of profit. The requirement that the statement of risk have equal prominence is not intended to mean that the reference to risk must be as long as the discussion of the possibility of profit or indeed to impose any unbending measure of prominence. It is intended to mean only that in the context of the particular promotional material the reference to risk of loss must not be downplayed or hidden.

Subsection (4) is intended to apply to the presentation of the hypothetical or simulated results of a trading system. It is not intended to apply to references by a Member or Associate to the profit which could have been made if a particular trade had been made or position taken (in order, for example, to illustrate the effect of the

leverage available in futures trading), provided that the balancing statement required under subsection (3) of the Rule is included. Subsection (4) requires all Members and Associates to handle presentation of hypothetical performance results (whether or not presented or discussed in tabular form) in the same manner as is currently required of CPOs and CTAs. All Members and Associates are required to prominently display the following language along with any hypothetical or simulated performance:

"HYPOTHETICAL OR SIMULATED PERFORMANCE RESULTS HAVE CERTAIN INHERENT LIMITATIONS. UNLIKE AN ACTUAL PERFORMANCE RECORD, SIMULATED RESULTS DO NOT REPRESENT ACTUAL TRADING. ALSO, SINCE THE TRADES HAVE NOT ACTUALLY BEEN EXECUTED, THE RESULTS MAY HAVE UNDER-OR-OVER COMPENSATED FOR THE IMPACT, IF ANY, OF CERTAIN MARKET FACTORS, SUCH AS LACK OF LIQUIDITY. SIMULATED TRADING PROGRAMS IN GENERAL ARE ALSO SUBJECT TO THE FACT THAT THEY ARE DESIGNED WITH THE BENEFIT OF HINDSIGHT. NO REPRESENTATION IS BEING MADE THAT ANY ACCOUNT WILL OR IS LIKELY TO ACHIEVE PROFITS OR LOSSES SIMILAR TO THOSE SHOWN."

Subsection (5) requires the Member or Associate to make a statement in the promotional material concerning the predictive value of past results if reference is made in the material to past trading results.

Subsection (6) does not require disclosure of past performance of managed accounts.* It does require that if performance information is given, it must be representative of the actual performance for the same time period of all reasonably comparable accounts. Hence, under subsection (6) a Member could not advertise the performance of a "model" account unless that performance is representative of all reasonably comparable accounts.** Subsection (6) also makes

* CPOs and CTAs are, however, subject to such a requirement through the CFTC's Part 4 Rules.

** The Committee expects that a Member or Associate could exclude from "reasonably comparable accounts" those that were actually traded pursuant to a different trading strategy or those that were traded independently of the accounts in the program for which performance is cited. With respect to the question of independence the indicia of independence listed in the CFTC's statement of policy concerning when accounts should be aggregated for position limit purposes would be useful guides for Members, Associates and Business Conduct Committees. Statement of Aggregation Policy, [1977-80 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,837 (June 13, 1979); 44 Fed. Reg. 33839.

explicit in this context the Members' existing responsibility to be able to demonstrate that performance information is accurate and representative.

The use of performance information in promotional material is, of course, subject to all of the content standards of Rule 2-29, and compliance with subsection (b)(6) will not excuse violations of other subsections. If in presenting performance information for an account or group of accounts, a Member omits facts about those accounts or the differences between those accounts and the account being promoted, and the omission makes the material misleading, the use of the material violates subsection (b)(2) even though the performance information given is accurate and is representative of all reasonably comparable accounts in compliance with (b)(6). This interaction of the requirements of subsections (b)(2) and (b)(6) will come into play whenever a Member chooses to present performance information about an account or program which differs materially from the account or program being promoted -- for example, where performance information about a house account is used, or where trading control or strategies, commission rates or account sizes which applied in the account or program for which performance is being shown differ from those which will apply in the account or program for which the customer is being solicited. Under the Rule, a Member is free to use as a sales tool performance information about accounts which differ from the accounts being promoted, but must take care to ensure first, that the performance information complies with subsection (b)(6), and second, that the differences are explained to the extent necessary to make the promotional material not misleading.

Finally, subsection (6) requires that rate of return must not be calculated in a manner inconsistent with that required under the CFTC's Part 4 Rules, which define rate of return as the ratio between net performance and beginning net asset value for the period. This is not intended to require that the precise Part 4 formula be used in all cases but rather to prohibit the use of methods which lead to rates of return which are materially higher than those produced by the Part 4 method.

Section (d) Written Supervisory Procedures

In recognition of the fact that promotional material may be prepared by many individuals within a Member's organization, this section requires that promotional material be reviewed and approved by someone in a supervisory position before it is used. It should be emphasized, however, that even communications with the public which do not fall within the definition of promotional material must be diligently supervised under other existing NFA and CFTC rules.

Section (e) Recordkeeping

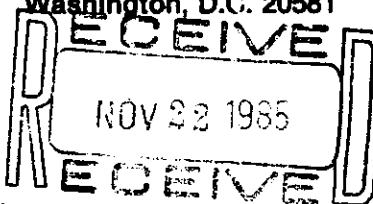
This section is intended to provide a way in which NFA can conduct meaningful sales practice audits which will reveal both the content of promotional material and whether the supervisory procedures required under section (d) are being carried out. In addition, this section contains a requirement that Members who use hypothetical performance results be prepared to demonstrate to NFA's satisfaction the basis for such results. This means that Members must maintain the records necessary to document how the hypothetical results were calculated.

Section (f) Filing with NFA

This section is intended to allow NFA to maintain close review of promotional materials in circumstances where special scrutiny is warranted.

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



November 19, 1985

Joseph H. Harrison, Jr. GENERAL COUNSEL'S OFFICE
General Counsel
National Futures Association
200 West Madison Street, Suite 1600
Chicago, Illinois 60606

Re: NFA Compliance Rule 2-29

Dear Mr. Harrison:

On November 19, 1985, the Commission approved NFA Compliance Rule 2-29 as submitted in your letter of June 7, 1985, pursuant to Section 17(j) of the Commodity Exchange Act. This rule deals with communications with the public (including the use of promotional material) by NFA members and their associated persons during the course of conducting their commodity futures and option business. Consistent with the Commission's usual practice in reviewing and approving rule submissions, the Commission has relied upon representations made to the Commission and its staff as well as upon statements made in previous notices to NFA's membership as to how the rule would be interpreted.

In this regard, you have agreed to provide additional clarifications of various issues in the notice that NFA intends to give to its membership concerning the implementation of Compliance Rule 2-29. The Commission understands that, among other points, you will make clear how the new NFA requirements relate to the content standards for disclosure documents established by Part 4 of the Commission's regulation and that, in particular, Subsection (b) (5) of Rule 2-29 imposes an additional, specific content requirement on such documents. While that requirement is not at present explicitly required by the Part 4 rules, the Commission believes that such disclosure is not inconsistent with those rules and understands, moreover, that such disclosure is also not inconsistent with relevant provisions of applicable securities laws governing the offer, purchase or sale of interests in a commodity pool.

In approving Rule 2-29, the Commission has noted your commitment that NFA will, in the notice to members, clarify the recordkeeping requirement contained in Section (e) of the rule. Specifically, that portion of the rule provides that copies of all promotional material, along with a record of the member's required review and approval, be maintained and be available for examination for a period of three years from the date of the last use. In reviewing the rule, Commission staff was concerned about the implied effect of the plain language of that requirement vis-a-vis the record retention requirements imposed upon NFA's members by the Act and Commission regulations. You have noted in correspondence with Commission staff that this provision can not supersede the Commission's general requirements that records be kept for five years; rather, NFA's provision is intended to

establish a requirement that a member's records be readily accessible for the first three of those five years (not just for two years, as would otherwise be the case under the Commission's regulations). The Commission, therefore, does not view NFA's rule, as so described, as conflicting with the Commission's regulatory scheme so long as NFA's members are not misled as to the full extent of that which is required under both NFA Compliance Rule 2-29 and Commission regulations. Accordingly, while the Commission agrees that a discussion in the notice to members is essential, NFA should also consider adopting a clarifying amendment to Section (e) or inserting a note in NFA's rulebook to make clear that this record retention requirement is supplementary to, and does not diminish, those of the Commission. In particular, NFA members should be specifically aware of the provision of Commission Regulations 1.31(a)(1), 1.35(a), 1.55(c), 4.23(a)(9), 4.32(a)(7), 32.7, and 33.8, all of which relate (at least in part) to the retention of promotional material, including disclosure statements.

The Commission also understands that the applicability of Compliance Rule 2-29 to disclosure of the disparate tax treatment between municipal securities and futures contracts on a municipal securities index will be clarified in the upcoming notice to members. Specifically, the Commission understands that NFA intends to reiterate that neither promotional material nor routine oral communications by any NFA member or associate may be deceptive in that regard, and that omission of such information in customer communications or promotional material would be deemed materially misleading if a customer is encouraged to trade the futures contract as a substitute for investment in the actual underlying municipal securities.

With respect to the rule's general prohibition against high-pressure communications, the Commission believes that the issue of what constitutes a "high-pressure" approach is one for which NFA will need to give further consideration as it continues to develop a full body of uniform, industry-wide sales practice standards. Although the Commission does not believe that additional elucidation of this aspect of the rule is essential at this time, NFA will have to address such questions as to what extent communications are high-pressure. Further guidance by NFA in the future is advisable so that NFA's members will have a better understanding of the standards under which they are expected to conduct themselves. In addition, on a separate but related point, NFA should at this time make clear to its membership that the supervisory requirements of Section (d) of Rule 2-29 mandate not only prior review and approval of all promotional material, as explicitly stated in the rule, but also procedures such as routine monitoring of conversations with customers to ensure that the member's associated persons are not engaging in either high-pressure or other oral sales communications that violate the spirit and letter of Compliance Rule 2-29.

Finally, the Commission notes that under Section (b)(2) of the rule, NFA is prohibiting knowing omissions from promotional material of material facts but not such omissions where the NFA member or associate should have known that the omission makes the promotional material misleading. Your members should nonetheless be aware that compliance with that NFA content standard predicated on an absence of actual knowledge of the misleading nature of an omission in the promotional material does not preclude the Commission from alleging violations of the Act and Commission regulations where the Commission believes that the NFA member or associate should have

Joseph H. Harrison, Jr.
Page 3

known that such an omission would be misleading. Thus, for example, with respect to Part 4 disclosure documents, commodity pool operators and commodity trading advisors are explicitly required by Commission regulations to correct defects in their disclosure documents when they know or should know that the documents are materially inaccurate or incomplete in any respect (Regulations 4.21(b) and 4.31(b)).

In closing, the Commission understands that NFA intends to make Compliance Rule 2-29 effective immediately but expects to allow a "reasonable" period for members to establish the supervisory and recordkeeping procedures required by the rule. The Commission further understands that NFA intends to allow its members approximately 45 days within which to conform their promotional material to the new requirements as may be necessary. Please advise the Commission as to the steps NFA takes with respect to the timing to the new rule's implementation. Moreover, in light of the additional points described in this letter and those which you have otherwise indicated to Commission staff would be incorporated into the notice to NFA's members, the Commission requests that you provide the Commission, through its Division of Trading and Markets, with the opportunity to examine in advance a copy of the proposed notice.

Very truly yours,

Jean A. Webb
Jean A. Webb
Secretary

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



August 22, 1985

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

Re: NFA Bylaw 305, Schedule A, Sections I(c) and I(d)

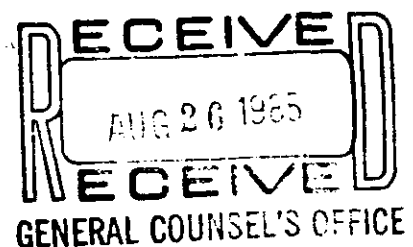
Dear Mr. Harrison:

On August 21, 1985, the Commission approved amendments to the captioned bylaw as submitted in your letters of June 7 and August 19, 1985, pursuant to Section 17(j) of the Commodity Exchange Act. These rules were amended in anticipation of the Commission delegating to NFA the authority to deny, condition, suspend, restrict and revoke registrations in any registration category for which NFA has assumed other registration functions under the Act. The procedures embodied in the amended rules closely parallel those specified by the Commission in Part 3 (Subpart C) of its regulations.

The Commission reminds NFA that these rules, although approved by the Commission, may not be implemented until the Commission issues a formal order to delegate the necessary authority for NFA to deny, condition, suspend, restrict and revoke registrations. As you are aware, the Commission has stated its intention to delegate that authority to NFA no later than October 1, 1985, and the Commission is continuing to proceed toward this goal.

Very truly yours,

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



August 19, 1985

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

Re: National Futures Association, Proposed Amendment
to NFA Bylaw 305, Schedule A, Section 1(d)

Dear Ms. Webb:

By letter dated June 7, 1985, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission for review and approval certain amendments to NFA Bylaw 305, Schedule A, Sections I(c) and I(d). The following revised proposed amendment to Section I(d) was approved by NFA's Board of Directors at its meeting on August 15, 1985, and is hereby submitted pursuant to Section 17(j) of the Commodity Exchange Act ("the Act") as amended, for Commission review and approval. The corresponding portions of the previous submission are accordingly withdrawn.

I. THE AMENDMENT

Amendment to NFA Bylaw 305, Schedule A, Section I(d),
Proceedings to deny, condition, suspend, restrict or revoke
Registration (the following replaces paragraphs 10(c)(i), (ii)
and (iii) of the June 7, 1985, submission):

BYLAWS OF
NATIONAL FUTURES ASSOCIATION

* * *

CHAPTER 3
MEMBERSHIP AND ASSOCIATION WITH A MEMBER

* * *

Bylaw 305. Registration and Proficiency Requirements

* * *

Schedule A

* * *

I. Registration

* * *

(d) Proceedings to Deny, Condition, Suspend, Restrict or Revoke Registration.

* * *

(10) Orders.

* * *

(c) (i) Any final order of NFA denying registration shall remain in effect pending any review initiated or granted by the Commission.

(ii) Any final order of NFA suspending, restricting or revoking registration shall become effective 15 days after service on the registrant unless within that time a petition for review by the Commission is filed in accordance with Commission regulations, or the Commission initiates review.

(iii) Any final order of NFA granting or conditioning registration shall become effective 30 days after service on the applicant unless the Commission otherwise directs. Prior to such effective date, registration shall not be granted.

II. EXPLANATION

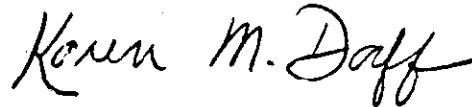
The purpose of this revision is to harmonize NFA's rules for the conduct of proceedings to deny, condition, suspend, restrict or revoke registration ("the Rules") with the regulations which NFA understands the Commission will propose concerning Commission review of any adverse action taken by NFA in such proceedings.

The Commission staff has pointed out that NFA's proposed Rules for the conduct of such proceedings do not detail the procedures for the conduct of hearings before the Membership Committee. It is NFA's intention to conduct such hearings generally in accordance with the standards set forth in NFA Compliance Rule 3-6, which deals with hearings in Compliance matters before the Regional Business Conduct Committees.

The Commission staff has also asked about the absence of a specific time requirement for the rendering of an initial determination by the President of NFA under paragraphs 4(B), 6(B) and 8(B) of the Rules after the parties have made their submissions. NFA will establish internal procedures designed to ensure that proceedings under the Rules are conducted in a timely manner consistent with the Act and the Commission's regulations thereunder.

For the Commission's convenience and information we enclose a separate copy of the Proposed Amendment to Bylaw 305, Schedule A, Section I(d) which sets forth the Rules in their entirety, including the revision submitted in this letter.

Very truly yours,



Karen M. Dorff
Attorney

KMD/del

008/305I(d)

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.

August 15, 1985

PROPOSED AMENDMENT TO BYLAW 305, SCHEDULE A, SECTION
I(d): PROCEEDINGS TO DENY, CONDITION, SUSPEND, RESTRICT
OR REVOKE REGISTRATION

Bylaw 305. Registration and Proficiency Requirements.

* * *

Schedule A

* * *

I. REGISTRATION

(d) Proceedings to Deny, Condition, Suspend, Restrict or Revoke Registration.

(1) Service.

(A) For purposes of any proceeding to deny, condition, suspend, restrict or revoke registration, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested, properly addressed to the applicant or registrant at the address shown on the application or any amendment thereto. Service will be complete upon mailing.

(B) A copy of any notice served in accordance with paragraph 1(A) shall also be served upon:

(i) Any registrant sponsoring the applicant or registrant pursuant to CFTC Regulations 3.12 or 3.16 if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

(ii) Any futures commission merchant which has entered into a guarantee agreement pursuant to CFTC Regulation 1.10(j) with an applicant or registrant applying for registration or registered as an introducing broker.

(C) Documents served by an applicant or registrant upon the Secretary under this Section shall be considered served or filed only upon actual receipt at the offices of National Futures Association, 200 W. Madison Street, Chicago, Illinois 60606.

(2) Withdrawal of application for registration.

(A) Notice. Whenever information comes to the attention of NFA that an applicant for initial registration in any capacity may be found subject to a statutory disqualification under Sections 8a(2), 8a(3) or 8a(4) of the Act, the Director of Compliance or the Director's designee may serve written notice upon the applicant, which shall specify the statutory disqualifications to which the applicant may be subject and notify the applicant that:

(i) The information, if true, is a basis upon which the applicant's registration may be denied;

(ii) Unless the applicant voluntarily withdraws the application, it may be necessary to institute the denial procedures described in the following paragraphs; and

(iii) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application will be deemed to have been withdrawn.

(B) The applicant must serve the written confirmation referred to in paragraph 2(A)(iii) upon the Secretary within twenty days after the date the Notice is served.

(3) 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 required to register under the Act pursuant to Section I(a) of this Schedule A that:

(i) NFA alleges and is prepared to prove that the applicant or registrant is subject to one or more of the statutory disqualifications set forth in Sections 8a(2), 8a(3) or 8a(4) of the Act;

(ii) The allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be denied, conditioned, suspended, restricted or revoked (if the Notice of Intent proposes conditioning or restricting registration, the Notice shall specify the conditions or restrictions); and

(iii) The applicant or registrant is entitled to have the President consider written evidence of the type set forth in paragraph 3(B) in determining whether the applicant or registrant is subject to such statutory disqualification.

(B) Scope of Written Submission. If the statutory disqualification alleged is set forth in Section 8a(2) of the Act, the scope of the applicant's or registrant's written submission shall be limited to challenging the accuracy of the allegations set forth in the Notice of Intent, including evidence as to (1) the applicant's or registrant's identity, (2) the existence of a clerical error in any record documenting the statutory disqualification, (3) the nature or date of the statutory disqualification, (4) the post-conviction modification of any record of conviction or (5) the favorable disposition of any appeal. If the statutory disqualification alleged is set forth in Section 8a(3) or 8a(4) of the Act, the scope of the applicant's or registrant's written submission shall be limited to the information set forth above and the type of information set forth in paragraph 6(D). Such written submission must be served upon the Secretary within twenty days after the date of service of the Notice of Intent upon the applicant or registrant.

(C) The Notice of Intent shall inform the applicant or registrant of the procedures which will be followed if no written submission is made in accordance with paragraph 3(B).

(4) Authority to Deny Registration Pursuant to Section 8a(2) of the Act.

(A) Reply. If an applicant who has received a Notice of Intent to deny registration based on a statutory disqualification set forth in Section 8a(2) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of the receipt of such submission submit to the President and serve upon the applicant a written reply.

(B) Determination. After the receipt of the applicant's written submission and any reply thereto, the President shall determine whether the applicant is subject to a statutory disqualification under Section 8a(2) of the Act. Such determination shall be based upon the application, the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submission filed by the applicant, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Order. Within 30 days after receipt of the applicant's written submission and any reply thereto, the President shall issue an order granting or denying registration.

(5) Default of Applicant - 8a(2) Denial.

(A) If an applicant for registration who has received a Notice of Intent to deny registration based on a statutory disqualification set forth in Section 8a(2) of the Act fails to make a timely written submission in accordance with paragraph 3(B):

(i) The applicant will be deemed to have waived the right to submit evidence in writing on all issues, and the facts stated in the Notice of Intent shall be deemed true for the purpose of finding that the applicant is subject to a statutory disqualification under Section 8a(2) of the Act; and

(ii) Twenty days after the date the Notice of Intent to deny is served upon the applicant, such Notice shall become a final order of NFA denying registration. NFA shall serve written confirmation upon the applicant that registration has been denied.

(B) Vacating the order. An applicant for registration against whom an order referred to in paragraph 5(A)(ii) was issued may file a petition and supporting affidavit with the Secretary if the Notice of Intent under paragraph 3 was not timely received by the applicant. Upon receipt of the petition, the order shall be vacated, and NFA shall serve upon the applicant a copy of the Notice of Intent required under paragraph 3. The procedures set forth in this paragraph 5(B) shall be available only once to an applicant.

(6) Authority to Suspend and Revoke Registration Pursuant to Section 8a(2) of the Act.

(A) Reply. If a registrant who has received a Notice of Intent to suspend or revoke registration based on a statutory disqualification set forth in Section 8a(2) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the registrant a reply.

(B) Determination. After the receipt of the registrant's written submission and any reply thereto, or if no written submission is made, the President shall determine whether the registrant is subject to a statutory disqualification. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submission, if any, filed by the registrant in response thereto, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Suspension and order to show cause. (i) If the President determines that the registrant is not subject to a statutory disqualification, the President shall issue an order to that effect.

(ii) If the President determines that the registrant is subject to a statutory disqualification, the President shall issue an interim order suspending registration and requiring the registrant to show cause to the Membership Committee or its designated Subcommittee within twenty days of the date of the interim order why, notwithstanding the existence of the statutory disqualification, the registration should not be revoked. The registration shall be suspended effective five days after the interim order is served upon the registrant, and such suspension shall remain in effect until a final order with respect to the order to show cause has been issued: Provided that, if the sole basis upon which the registrant is subject to a statutory disqualification is the existence of a temporary order, judgment or decree of the type described in Section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired: Provided, however, that in no event shall the registrant be suspended for a period to exceed six months.

(D) Registrant's Response. Within twenty days of the date of the order to show cause, the registrant may file with the Membership Committee or its designated Subcommittee a written response which may include briefs, affidavits and supporting memorandums, but in any event shall be limited in content to:

(i) Evidence, not previously set forth in any written submission filed under paragraph 3(B), challenging the accuracy of the allegations establishing the statutory disqualification;

(ii) The existence of any facts which constitute a clear and compelling showing that, notwithstanding the existence of the statutory disqualification, the continued registration would be in the public interest; or

(iii) In the case of an associated person, written confirmation by the registrant's sponsor that, notwithstanding the existence of the statutory disqualification, the sponsor is willing to supervise the activities of the registrant subject to such restrictions as the Membership Committee or its designated Subcommittee shall impose: Provided that, with respect to such sponsor, (1) an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of Sections 6(b), 6(c), 6d or 8a of the Act is not pending, and (2) in the case of a sponsor which is a futures commission merchant, the sponsor is not subject to the reporting requirements of CFTC Regulation 1.12(b).

(E) Reply. Within ten days after receipt of the registrant's response, the Director of Compliance may submit to the Membership Committee or its designated Subcommittee and serve upon the registrant a reply.

(F) Oral hearings. Oral hearings shall not be granted except under extraordinary circumstances and upon written request to the Membership Committee or its designated Subcommittee. Such request shall include the issues to be addressed, the evidence to be adduced and a showing of compelling need. If the Membership Committee or its designated Subcommittee determines to grant a request for an oral hearing, the hearing shall be conducted pursuant to paragraph 9 as the Membership Committee or its designated Subcommittee deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(G) Order. Within 30 days of the receipt of a registrant's response to the order to show cause, and any reply thereto, the Membership Committee or its designated Subcommittee shall, upon consideration of the record as a whole, make a finding as to whether the registrant has shown cause why the registration should not be suspended or revoked and shall issue an order accordingly. If the Membership Committee or its designated Subcommittee, on the basis of the showing described in paragraph 6(D)(ii), finds that, notwithstanding the existence of the statutory disqualification, the registration should not be revoked, the Committee may issue an order further suspending the registrant for a period not to exceed six months. In the case of an associated person the order may further restrict the registration of the registrant.

(H) Notwithstanding the sponsor's written confirmation under paragraph 6(C)(iii), the Membership Committee or its designated Subcommittee may issue an order revoking or further suspending for a period not to exceed six months the registration of an associated person and, in any event, may not issue an order restricting such registration if:

(i) The associated person is subject to a statutory disqualification under Section 8a(2) of the Act as a result of conviction of a felony or misdemeanor under Section 9 of the Act; or

(ii) The associated person has been the subject of more than one proceeding in which findings of fact constituting a statutory disqualification under Section 8a(2) of the Act have been entered against the associated person; or

(iii) The associated person is subject to an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of Section 6(b), 6(c), 6d or 8a of the Act; or

(iv) The associated person was previously granted a conditional or restricted registration and was found to have failed to conform to such condition or restriction; or

(v) The associated person willfully made any materially false or misleading statement or willfully omitted to state any material facts in any written submissions filed under this Section as to any facts which would constitute statutory disqualifications under Section 8a(2) of the Act; or

(vi) The registrant with whom the associated person is associated willfully made false or misleading statements of material fact in the confirmation referred to in paragraph 6(D)(iii) or willfully failed to state any material facts which were required to be stated therein.

(I) Default. (i) If the registrant fails to file a timely response to the order to show cause, the registrant shall be deemed in default. The President shall thereafter, upon a finding that service was effected, enter an order revoking, restricting or further suspending the registration. Such finding shall be based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the Notice of Intent in accordance with paragraph 3(B) and any written reply thereto submitted by the Director of Compliance.

(ii) If the President issues an order under paragraph 6(I)(i) revoking, restricting or further suspending registration, the registrant may file a petition and supporting affidavit with the Secretary setting forth the reasons why the registrant failed to file a response to the order to show cause. Such petition must be accompanied by the registrant's response. Upon receipt of the petition, the President may, for good cause shown, vacate the order.

(7) Proceedings under Section 8a(2)(E) of the Act.

NFA will not initiate a proceeding based on a statutory disqualification set forth in Section 8a(2)(E) of the Act, if respondeat superior is the sole basis upon which the registrant may be found subject to such statutory disqualification.

(8) Authority to Deny, Condition, Suspend, Restrict or Revoke Registration Pursuant to Sections 8a(3) and 8a(4) of the Act.

(A) Reply. If an applicant or registrant who has received a Notice of Intent to deny, condition, suspend, restrict or revoke registration based on a statutory disqualification set forth in Sections 8a(3) or 8a(4) of the Act makes a written

submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the applicant or registrant a reply.

(B) Determination. After receipt of the applicant's or registrant's written submissions and any reply thereto, or if no written submission is made, the President shall determine whether the applicant or registrant has shown why the registration should not be denied, conditioned, suspended, restricted or revoked. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submissions, if any, filed by the applicant or registrant in response thereto, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Notice of Determination. (i) If the President determines that registration should be denied, conditioned, suspended, restricted or revoked, the President shall notify the applicant or registrant and shall inform the applicant or registrant of the right to request a hearing before the Membership Committee or its designated Subcommittee.

(ii) If the President determines that registration should not be denied, conditioned, suspended, restricted or revoked, the President shall issue an order to that effect.

(D) Right to a Hearing. A hearing before the Membership Committee or its designated Subcommittee may be obtained by filing a written request with the Secretary within ten days of the date of service of the Notice of the President's Determination.

(E) Waiver of a Hearing. If no request for a hearing is received by NFA within 10 days after the Notice of the President's determination has been served, the right to a hearing shall be deemed to have been waived and the President shall, upon consideration of the record as a whole, make a finding as to whether the registration should be denied, conditioned, suspended, restricted or revoked and shall issue an order accordingly.

(F) Request for a Hearing. If an applicant or registrant makes a timely request for a hearing on the question of whether the applicant or registrant is subject to a statutory disqualification under Section 8a(3) or 8a(4) of the Act, or whether notwithstanding the existence of the statutory disqualification, registration should nevertheless be granted or should not be conditioned, suspended, restricted or revoked, a hearing shall thereafter be conducted in accordance with the procedures set forth in paragraph 9 as the Membership

Committee or its designated Subcommittee deems appropriate. For purposes of the hearing, the Notice of Intent given in accordance with paragraph 3 shall be treated as a duly authorized complaint by the President seeking the relief specified therein, and the request for hearing shall be treated as an answer.

(G) Order. Within 30 days of the date of the conclusion of the hearing, the Membership Committee or its designated Subcommittee shall make a finding as to whether the applicant has shown that registration should not be denied or conditioned or whether the registrant has shown that the registration should not be suspended, restricted or revoked and shall issue an order accordingly.

(9) Hearing Procedures.

If an applicant or registrant requests a hearing before the Membership Committee or its designated Subcommittee a record of the hearing shall be kept. At such a hearing the applicant or registrant may be represented by counsel, submit evidence, call and examine witnesses, examine the evidence upon which the President made a determination and at the discretion of the Membership Committee or its designated Subcommittee, present oral or written argument.

(10) Orders.

(A) Any order issued by the President, the Membership Committee or its designated Subcommittee under this Section (except an interim order suspending registration pursuant to paragraph 6(C)(ii)) shall become a final order of NFA on the date it is served upon the applicant or registrant. A copy of each final order issued by NFA shall be served upon the Commission at the same time it is served upon the applicant or registrant.

(B) Any final order of NFA which denies, conditions, suspends, restricts or revokes registration shall inform the applicant or registrant of the right to petition the Commission for review under Section 17(o) of the Act and applicable Commission regulations.

(C) (i) Any final order of NFA denying registration shall remain in effect pending any review initiated or granted by the Commission.

(ii) Any final order of NFA suspending, restricting or revoking registration shall become effective 15 days after service on the registrant unless within that time a petition

for review by the Commission is filed in accordance with Commission Regulations, or the Commission initiates review.

(iii) Any final order of NFA granting or conditioning registration shall become effective 30 days after service on the applicant unless the Commission otherwise directs. Prior to such effective date, registration shall not be granted.