NATIONAL FUTURES ASSOCIATION
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March 12, 1991

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

Re: National Futures Association: Proposed Amendments to NFA Bylaw 301, NFA Compliance Rules 3-10 and 3-12, NFA Registration Rules 506, 507, 508 and 510 and Code of Arbitration Section 10; NFA Compliance Rule 2-9; NFA Compliance Rule 2-29; and NFA Financial Requirements Sections 1 and 6; and NFA Board Resolution to Adopt a Temporary No-Action Position.

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended ("Act"), National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") proposed amendments to NFA Bylaw 301, NFA Compliance Rules 3-10 and 3-12, NFA Registration Rules 506, 507, 508 and 510 and Code of Arbitration Section 10; NFA Compliance Rule 2-9; NFA Compliance Rule 2-29; and NFA Financial Requirements Sections 1 and 6; and an NFA Board Resolution to adopt a temporary no-action position. These amendments and the Board Resolution were approved by NFA's Board of Directors ("Board") at its meeting on February 28, 1991. NFA respectfully requests Commission review and approval of the amendments and the Board Resolution.

I. PROPOSED AMENDMENTS TO NFA BYLAW 301, COMPLIANCE RULES 3-10 and 3-12, REGISTRATION RULES 506, 507, 508 and 510 AND CODE OF ARBITRATION SECTION 10

A. Amendments to NFA Bylaw 301, Compliance Rules 3-10 and 3-12, Registration Rules 506, 507, 508 and 510 and Code of Arbitration Section 10 to conform with CFTC Part 171 Regulations (additions are underscored):

BYLAWS OF

NATIONAL FUTURES ASSOCIATION

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CHAPTER 3

MEMBERSHIP AND ASSOCIATION WITH A MEMBER

Bylaw 301. Requirements and Restrictions.

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(g) Denial and Revocation.

(i) If the President has reason to believe that: an applicant for membership or registration with NFA as an Associate does not meet the qualifications set forth in this Chapter for NFA membership or association with a Member, as the case may be; a Member or registered Associate does not meet the qualifications set forth in this Chapter for continuation as a Member or Associate; or the person has submitted an intentionally incomplete, inaccurate or otherwise false application to NFA for membership or registration as an Associate--the President shall promptly so notify the person in writing and furnish a copy of the notice to the Membership Committee, setting forth the specific grounds for the determination. The person shall be given an opportunity to show to the President that the qualifications are met, or that the application is not intentionally incomplete, inaccurate or false. If the person requests, or if the Membership Committee orders, a hearing shall be held before the Membership Committee or its designated Subcommittee, and a record shall be kept. Such designated Subcommittee shall consist of at least three members of the Membership Committee. Each member of the designated Subcommittee shall be appointed by a majority of the Membership Committee. The person may be represented at the hearing, and submit evidence in the proceeding, call and examine witnesses, examine the evidence upon which the President's determination was based, and, in the discretion of the

Membership Committee or its designated Subcommittee, present written or oral argument.

(ii) If a hearing before the Membership Committee is held, the Committee or Subcommittee shall make a final, written determination upon the record before it, setting forth the specific grounds for its determination. Such determination shall include the specific grounds for the denial, bar, expulsion, or restriction; the findings made concerning those grounds; and an explanation of the result reached in light of the grounds for ineligibility found and the findings made. A copy of the determination shall promptly be sent to the person. If the determination is to deny or revoke membership or registration as an Associate, the Membership Committee or its designated Subcommittee shall, in the denial or revocation notice, inform the person of the right of such person under the Act to petition the Commission, within 30 days after the denial or revocation, for review of the action under Section 17(h) of the Act and of the right to petition the Commission for a stay of the effective date of such denial or revocation in accordance with Commission Regulations, Part 171.

COMPLIANCE RULES

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PART 3 -- COMPLIANCE PROCEDURES

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RULE 3-10. APPEAL; REVIEW.

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(e) Decision.

Promptly after reviewing the matter, the Appeals Committee shall issue a written and dated decision, based on the weight of the evidence. The decision shall include--

(i) the findings and conclusions of the Appeals Committee as to each charge and penalty reviewed, including the specific NFA requirement the Respondent was found by the Regional Committee or its designated Panel to have violated, to be violating, or to be about to violate;

(ii) a declaration of any penalty imposed by the Appeals Committee, the basis for its imposition, and its effective date; [and]

(iii) a statement that any person aggrieved by the disciplinary action may appeal the action pursuant to Commission Regulations, Part 171, within 30 days of service[, within 30 days after the action has been taken, apply to the Commission for review of the action]; and

(iv) a statement that any person aggrieved by the disciplinary action may petition the Commission for a stay of the effective date pursuant to Commission Regulations, Part 171, within 10 days of service.

(f) Finality.

The decision of the Appeals Committee shall be final 30 days after the date of service [on the date it is issued].

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RULE 3-12 MEMBER OR ASSOCIATE RESPONSIBILITY ACTIONS.

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(b) PROCEDURE.

The following procedures shall be observed in actions under this Rule:

(i) The subject of the action (the "Respondent") shall, whenever practicable, be served with a notice before the action is taken. If prior notice is not practicable, the Respondent shall be served with a notice at the earliest opportunity. This notice shall (A) state the action taken or to be taken; (B) briefly state the reasons for the

action; [and] (C) state the time and date when the action became or becomes effective and its duration[.]; and (D) state that any person aggrieved by the action may petition the Commission for a stay of the effective date of the action pending a hearing pursuant to Commission Regulations, Part 171, within 10 days of service. Service may be made by personal delivery (effective upon receipt), by telefax (effective upon transmission), or by mail (effective upon deposit). When service is effected by mail, the time within which the person served may respond shall be increased by five days.

(ii) The Respondent shall be given an opportunity for a hearing promptly after the summary action is taken. Any such hearing shall be conducted before the appropriate Regional Committee (see Bylaw 704) or its designated Panel under the procedures of paragraphs (b)-(d) of Rule 3-6.

(iii) The Respondent shall have the right to be represented by an attorney-at-law or other person in all proceedings after the summary action is taken, but the Regional Committee or its designated Panel may bar from the proceeding any representative for dilatory, disruptive, or contumacious conduct.

(iv) Promptly after the hearing, the Regional Committee or its designated Panel shall issue a written and dated decision affirming, modifying or reversing the action taken, based upon the evidence contained in the record of the proceeding. A copy of the decision shall be furnished promptly to the Respondent and the Appeals Committee, and the Commission. The decision shall contain:

(A) A description of the action taken and the reasons for the action;

(B) A brief summary of the evidence received at the hearing;

(C) Findings and conclusions;

(D) A determination as to whether the summary action that was taken should be affirmed,

modified or reversed; a declaration of any action to be taken against the Respondent as the result of that determination; [and] the effective date and duration of that action; and a determination of the appropriate relief based on the findings and conclusions; [and]

(E) A statement that any person aggrieved by the action may have a right to appeal the action pursuant to Commission Regulations, Part 171, within 30 days of service [apply, within 30 days after the action has been taken, to the Commission for review of the action.]; and

(F) A statement that any person aggrieved by the action may petition the Commission for a stay pursuant to Commission Regulations, Part 171, within 10 days of service.

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CODE OF ARBITRATION

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SECTION 10. AWARD, SETTLEMENT AND WITHDRAWAL.

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(g) Failure to Comply.

The failure of a Member or employee thereof, or Associate, to comply with an award shall be ground for disciplinary action under NFA Compliance Rules (see Compliance Rule 2-5). When any Member or employee thereof, or Associate, fails to comply with an award within 30 days from the date of service of the award by NFA or such other period as specified in the award, and unless there is pending a request to modify the award under Section 10(c) or an application to vacate, modify or correct the award in a court of competent jurisdiction, that Member or Associate may, on [seven] thirty days written notice, be summarily suspended by the President until such award has been satisfied. Any Member or Associate subject to a summary suspension may, within thirty days of the date of service of the Notice of Suspension, appeal the suspension to the Commission and may, within ten days of the date of service

of the Notice of Suspension, petition the Commission for a stay of the suspension.

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REGISTRATION RULES

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

Rule 506. Denial of Registration Based on Section 8a(2) Disqualification.

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(c) **Determination and Final Order.** 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 Act. Such determination shall indicate the statutory disqualification at issue; the findings made concerning the statutory disqualification; and an explanation of the result reached in light of the statutory disqualification shown and the findings made. 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. Within thirty days after receipt of the applicant's written submission and any reply thereto, the President shall issue an order granting or denying registration.

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Rule 507. Suspension and Revocation of Registration Based on Section 8a(2) Disqualification.

* * *

(h) **Final Order.** Within thirty 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, upon consideration of the record as a whole, shall 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. Such order shall indicate the statutory disqualification at issue; the findings made concerning the statutory disqualification; and an explanation of the result reached in light of the statutory disqualification shown and the findings made. If the Membership Committee or its designated Subcommittee, on the basis of the showing described in Rule 507(d)(2), 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.

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Rule 508. Denial, Conditioning, Suspension, Restriction, or Revocation of Registration Based on Section 8a(3) or 8a(4) Disqualification.

* * *

(g) **Order.** Within thirty 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. Such final order shall indicate the statutory disqualification at issue; the findings made concerning the statutory disqualification; and an explanation of the result reached in light of the statutory disqualification shown and the findings made.

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Rule 510. Orders.

(a) **Final Orders.** Any order issued by the President, the Membership Committee, or its designated Sub-committee under this Part 500 (except an interim order suspending registration pursuant to Rule 507(c)(2)(A)) shall become a final order of NFA on the date of service 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. 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[.] and of the right to petition the Commission for a stay of the effective date of the final order in accordance with Commission Regulation 171.22.

(b) **Effective Date.**

Any final order of NFA issued under this section shall become effective thirty days after the date of service of the order on the applicant or registrant, except as otherwise indicated by the Commission pursuant to CFTC Regulations, Part 171.

[(1) Any final order of NFA denying registration shall become effective on the date of service on the applicant and shall remain in effect pending any review initiated or granted by the Commission.

(2) Any final order of NFA suspending, restricting, or revoking registration shall become effective fifteen 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.

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

B. Explanation of proposed amendments to NFA Bylaw 301, NFA Compliance Rules 3-10 and 3-12, NFA Registration Rules 506, 507, 508 and 510 and Code of Arbitration Section 10 to conform with CFTC Part 171 Regulations.

In September 1990, the Commodity Futures Trading Commission ("Commission") published its final Part 171 Regulations governing Commission review of NFA decisions.[1] The regulations establish common procedures for Commission review of NFA disciplinary, membership, registration and member responsibility actions appealed to the Commission on or after October 31, 1990. In addition, the regulations include procedures for petitioning the Commission for stays from NFA actions.

Since the regulations govern the Commission's proceedings after an action leaves NFA, only minor modifications to NFA rules and procedures are required in order to conform them with the Part 171 Regulations. For the most part, the changes relate to the content of the notices of final decisions which NFA is to provide to parties. Therefore, in order to be consistent with the Commission's regulations, minor modifications have been made to NFA Bylaw 301, NFA Compliance Rules 3-10 and 3-12, Registration Rules 506, 507, 508 and 510 and NFA Code of Arbitration Section 10.

Although the information already provided by NFA is adequate for purposes of the regulations, two minor additions have been made to NFA Compliance Rule 3-10 regarding final decisions in disciplinary actions issued by the NFA Appeals Committee and NFA Compliance Rule 3-12 regarding member responsibility actions.[2] Specifically, the proposed amendments to NFA Compliance Rule 3-10 clarify that the Appeals Committee's decision must include the basis for the imposition of the penalty.

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[1] 55 Fed. Reg. 41061 (1990).

[2] Decisions issued by the NFA Regional Business Conduct Committees ("BCCs") are not final decisions and are not directly appealable to the Commission. Therefore, no modifications were needed to the rules governing BCC decisions.

The proposed amendment to NFA Compliance Rule 3-12 requires the decision in a member responsibility action to include a determination of the appropriate relief based on the findings made. It should be noted that the NFA Bylaws and Registration Rules pertaining to membership and registration actions do not include provisions which parallel those of NFA Compliance Rules 3-10 and 3-12 regarding the content of the final decision. Although final orders issued in membership and registration actions have always provided the information which is now required under the regulations, the content requirements have been added as proposed amendments to NFA Bylaw 301 and NFA Registration Rules 506, 507 and 508 for purposes of consistency.

In addition, in order for NFA written decisions in disciplinary, membership, registration and member responsibility actions to constitute an effective notice under the regulations, a statement regarding the right of a party to petition the Commission for a stay of the effective date of the decision will have to be added. The language pertaining to the right to seek a stay has been added as proposed amendments to NFA Bylaw 301, NFA Compliance Rules 3-10 and 3-12 and to Registration Rule 510.

CFTC Regulation 171.22 provides that the effective date of a final action in a disciplinary, membership or registration action shall be 30 days after the service of the notice. Therefore, to be consistent with the regulations, the proposed amendment to NFA Compliance Rule 3-10 changes the effective date from the date the decision is issued to 30 days after service. NFA Registration Rule 510 also provided effective dates for final orders denying registration and final orders suspending, restricting or revoking registration that are inconsistent with this regulation and therefore should be amended to conform with Regulation 171.22.

The Commission has excluded decisions entered by arbitrators in an action filed in NFA's arbitration forum from its scope of review powers. However, the Commission's comments to the regulations indicate that it will review the suspension of a Member for a failure to pay an arbitration award. Currently, under NFA Code of Arbitration Section 10(g), an NFA Member or Associate who fails to pay an award entered against it can be summarily suspended on seven days written notice. In order to be consistent with the final notice requirement of CFTC Regulation 171.22, the proposed amendments to the notice of suspension language in Section 10(g) provide for the suspension to become effective 30 days from the date of service. In addition, the proposed amendments to this section include language referencing the ability to seek a stay and appeal of the suspension.

II. PROPOSED AMENDMENT TO NFA COMPLIANCE RULE 2-9

A. Amendment to NFA Compliance Rule 2-9 to require Associate Members with supervisory responsibilities to diligently exercise those responsibilities (additions are underscored and deletions are [bracketed]):

COMPLIANCE RULES

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Rule 2-9. SUPERVISION

Each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities for or on behalf of the Member.

B. Explanation of proposed amendment to NFA Compliance Rule 2-9 to require Associate Members with supervisory responsibilities to diligently exercise those responsibilities.

NFA Compliance Rule 2-9 requires Members to supervise their employees and agents. Unlike many NFA rules, Rule 2-9 by its terms applies only to Members, not to individual Associates who may have supervisory responsibility. Therefore, NFA cannot directly charge any Associate with a failure to supervise. Rather, an Associate must be named as a cause for a Member's failure to supervise, in accordance with Section 17(b)(3) of the Commodity Exchange Act.

NFA's current procedure to name any Associate who has failed to supervise as cause in an action against its Member is both duplicative and ineffective. The collateral effect, if any, of such a procedure is that the Associate's registration may be adversely affected only if the Member is expelled as a result of its violation of NFA Compliance Rule 2-9. Thus, Associates remain essentially outside the scope of NFA's current enforcement capabilities as regards diligent supervision.

In order to ensure that Associates with supervisory duties take their responsibilities seriously, NFA believes that it should possess the authority to apply NFA Compliance Rule 2-9

to Associates as well as Members. Under such authority, NFA would no longer need to name as cause those Associates in violation of their supervisory requirements. Instead, NFA could directly charge such Associates if and when circumstances warrant.

III. PROPOSED AMENDMENT TO NFA COMPLIANCE RULE 2-29

A. Amendment to NFA Compliance Rule 2-29 to authorize NFA to require a Member to file promotional material with NFA prior to its first use (additions are underscored and deletions are [bracketed]):

COMPLIANCE RULES

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

* * *

(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]. In addition, the Compliance Director may, based on repeated deficiencies in a Member's promotional material, require a Member for any specified period to file copies of all promotional material with NFA 21 days prior to its first use.

B. Explanation of proposed Amendment to NFA Compliance Rule 2-29(f) to authorize NFA to require a Member to file promotional material with NFA prior to its first use.

NFA Compliance Rule 2-29(f) authorizes NFA to require a Member to file all promotional material with NFA promptly after its first use. Since it became effective on November 19, 1985, such limited authorization for NFA review of Member promotional material has remained unchanged.

On May 1, 1989, NFA adopted a pilot program whereby NFA staff reviews Member promotional material prior to its first use. The pilot program has since become a permanent service to Mem-

bers. A Member's participation in the pre-review process is totally voluntary. To date, a number of Members have made use of this service.

Unfortunately, those firms which need the pre-review program the most because of repeated problems in their promotional material are the least likely to use it. In order to address the special concerns created by the promotional material of such firms and individuals, NFA believes that it should possess the authority to require a Member to file promotional material with NFA prior to its first use. Under such authority, NFA would not require all Members to file all promotional material with NFA prior to its first use. Rather, NFA would determine on a case-by-case basis if and when such submission of promotional material would be necessary to protect public investors.

One of the best ways to protect the public from deceptive or misleading promotional material is to keep such promotional material from the public in the first place. By granting NFA the authorization necessary to review promotional material prior to its first use, NFA could decrease the amount of misleading promotional material that ultimately reaches the public, thus improving the overall level of customer protection.

IV. PROPOSED AMENDMENTS TO NFA FINANCIAL REQUIREMENTS SECTIONS 1 AND 6

A. Amendments to NFA Financial Requirements Sections 1 and 6 to strengthen restrictions on Futures Commission Merchant ("FCM") eligibility to guarantee Introducing Brokers ("IBs") (additions are underscored and deletions are [bracketed]):

FINANCIAL REQUIREMENTS

Section 1. Minimum Financial Requirement.

Each NFA Member that is registered or required to be registered with the Commodity Futures Trading Commission (hereinafter "CFTC") as a Futures Commission Merchant (hereinafter "Member FCM") must maintain "Adjusted Net Capital" (as defined in Schedule A hereto) equal to or in excess of--

[(a)] The greatest of--

(i) $250,000, or

(ii) 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each customer shall be limited to the amount of customer funds in such customer's account and foreign futures and foreign options secured amounts; or,

(iii) (for securities brokers and dealers), the amount of net capital specified in Rule 15c3-1(a) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1(a)).

A Member FCM that knows or should have known that its Adjusted Net Capital is less than this required amount must give telegraphic notice to its DSRO within 24 hours. Additionally, within 24 hours after giving telegraphic notice, the Member FCM must file with its DSRO a statement of financial condition, a statement of the computation of the minimum capital requirements, the statements of segregation requirements and funds in segregation for customers trading on U.S. exchanges and for customers' dealers options accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers, all as of the date such Member FCM's Adjusted Net Capital is less than the minimum required.

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Section 6. [Reporting] Early Warning Capital Requirements, Books and Records, Eligibility to Guarantee IBs.

[(a) A Member FCM that knows or should have known that its Adjusted Net Capital is less than the amount required by Section 1 must give telegraphic notice to its DSRO within 24 hours.]

[(b)](a) A Member FCM must file a written notice with its DSRO, within 5 business days, when the FCM knows or should have known that its Adjusted Net Capital is less than the greatest of (i) $375,000, or (ii) 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by

customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each customer shall be limited to the amount of customer funds in such customer's account and foreign futures and foreign options secured amounts, or (iii) for securities brokers and dealers, the amount of capital specified in Rule 17(a)-11(b) of the Regulations of the Securities and Exchange Commission (17 CFR 240.17a-11(b)).

(b) A Member FCM whose Adjusted Net Capital is less than the amount set forth in paragraph (a) of this section must file with its DSRO a Form 1-FR (or, if such Member is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, in lieu of Form 1-FR), containing the statements required by Section D2-b of these requirements, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the Member's Adjusted Net Capital is at all times equal to or in excess of the amounts set forth in paragraph (a). Each financial statement required by this paragraph must be filed within 30 calendar days after the end of the month for which such report is being made.

(c) Whenever a Member FCM is required to give notice to the CFTC pursuant to CFTC Regulation 1.12, the FCM also is required to give such notice to its DSRO.

(d) A Member FCM which is subject to the financial reporting requirements of paragraph (b) of this Section may not enter into a guarantee agreement with an Introducing Broker.

(e) A Member FCM which is a party to a guarantee agreement with an Introducing Broker and whose Adjusted Net Capital is less than the amount set forth in paragraph (a) of this section, must also provide NFA and any Introducing Brokers which it guarantees with a copy of the notice required by paragraph (b). If the FCM cannot demonstrate to NFA and its DSRO, within 30 days after filing the required notice, that its Adjusted Net Capital is greater than the amount required by paragraph (b), the FCM must immediately notify, in writing,

any Introducing Broker which it guarantees that the guarantee agreement will terminate 30 days following the notice. A copy of the notice must also be filed with the CFTC, NFA, and the DSRO of the FCM. If the FCM demonstrates to its DSRO and NFA prior to the effective date of the termination of the guarantee agreement that its Adjusted Net Capital is greater than the amount required by paragraph (b), then it may notify any Introducing Broker which it guarantees, the CFTC, NFA, and its DSRO, that the guarantee agreement will not terminate.

B. Explanation of proposed amendments to NFA Financial Requirements Sections 1 and 6 to strengthen restrictions on FCM eligibility to guarantee IBs.

CFTC Regulation 1.10(j)(2) states that an FCM may not enter into a guarantee agreement if its capital is less than the "early warning" capital level set forth in CFTC Regulation 1.12(b). Early warning capital for FCMs is the greater of $375,000 or 6% of customer funds. Though this regulation is intended to impose a higher capital requirement for FCMs entering into guarantee agreements, experience has shown that the current restriction can sometimes be circumvented.

NFA has observed instances where an FCM whose capital was regularly below early warning would increase its capital slightly above the early warning level in order to enter into guarantee agreements. After entering the guarantee agreements, however, the FCM would allow its capital to decline to previous levels below early warning until it again wishes to enter into a new guarantee agreement. Furthermore, there is nothing to prohibit a guarantor FCM which is under early warning from continuing its current relationships, thereby allowing an FCM to guarantee an unlimited number of IBs while below early warning. Thus, the intended relationship between an FCM's capital and its ability to guarantee IBs is substantially weakened.

NFA believes that there is a two-fold solution to this problem. First, an FCM should be prohibited from entering into guarantee agreements unless it has been above the early warning level for a specified period of time. This would be analogous to the CFTC's "special reporting requirements." An FCM whose capital falls below the early warning level must, according to CFTC Regulation 1.12(b)(3), file a financial report each month until three successive months have elapsed during which its adjusted net capital is above the early warning level. By

providing that FCMs may not enter into guarantee agreements while subject to the CFTC's special reporting requirements, NFA could ensure that the FCM had been above the early warning level for at least three consecutive months before entering into new guarantee agreements.

Second, if a guarantor FCM remains under the early warning level for a certain period of time, the FCM should be required to terminate its outstanding guarantee agreements. As proposed, this process would work as follows. A guarantor FCM which knows or should know that its capital has fallen below the early warning level would be required to give written notice to NFA and its guaranteed IBs, as well as to its DSRO and the CFTC as currently required. These additional notice requirements would only apply to guarantor FCMs. The filing requirements for FCMs which do not guarantee IBs would remain unchanged.

If the guarantor FCM is still under the early warning level thirty days after the notice is given, the guarantor FCM must notify its guaranteed IBs that their guarantee agreements will terminate within thirty days. If the guarantor FCM brings its capital up to the early warning level within the thirty days, it can rescind its notice of termination. Once an agreement is actually terminated, however, the FCM would not be able to enter into a new agreement with that IB until the FCM's capital has remained at or above the early warning level for three consecutive months.

The proposed amendments to Section 6 of the Financial Requirements give a guarantor FCM a total of sixty days to come back up to the early warning level before its guarantee agreements must be terminated. The amount of time given must be long enough to ensure that a transitory change in capital or capital requirements does not require a guarantor FCM to terminate its relationships with its guaranteed IBs, to provide its guaranteed IBs with sufficient notice and time to find a new guarantor, and hopefully to avoid most of the problems generally associated with bulk transfers. On the other hand, the period chosen should be short enough to protect guaranteed IBs and their customers from an FCM that is at risk. NFA believes that sixty days is the optimal period of time to satisfy these competing goals.

As a practical matter, this change will affect only a handful of FCMs. Only 53 of the approximately 320 FCMs guarantee IBs, and most guarantor FCMs maintain net capital well above the early warning level.

V. NFA BOARD RESOLUTION TO ADOPT A TEMPORARY NO-ACTION POSITION

A. NFA Board Resolution to adopt a temporary no-action position in response to a Commodity Exchange, Inc. ("Comex") petition for relief from NFA Registration Rules 203, 206 and 401:

RESOLVED that, for a period of one year from the CFTC's approval of this action, NFA will take no action to enforce the filing requirements set forth in NFA Registration Rules 203 and 206 and the proficiency testing requirements set forth in NFA Registration Rule 401 providing that the applicant's sponsor provides NFA with the full name and CRD number of the applicant and a certification, signed by both the applicant and the applicant's sponsor, stating that:

1) the applicant is currently registered with the National Association of Securities Dealers, Inc. as a general securities representative; and

2) the applicant's sole activities subject to regulation by the Commission are and will continue to be limited to the solicitation and acceptance of customer orders initiating or offsetting long positions in the gold asset participation contract traded at the Comex or the supervision of such activities; and

3) the applicant's sponsor understands that the sponsor must supervise the applicant's compliance with the above limitations on the applicant's activities and that any failure of the applicant to adhere to such limitations may be cause for, among other things, disciplinary action by NFA against the sponsor for violation of NFA Compliance Rule 2-9; and

4) the applicant's sponsor has taken steps to ensure that the applicant is aware of all relevant regulatory requirements relating to the applicant's activities involving the gold asset participation contract; and

5) the applicant and the applicant's sponsor understand that NFA may at some later date require the applicant to comply with the filing requirements set forth in NFA Registration Rules 203 and 206 or the proficiency testing requirements set forth in NFA Registration Rule 401 or both as a condition of remaining registered and that the applicant's failure to do so within the time period which may be specified by the Board will be deemed a request to withdraw the applicant's registration as an associated person; and

6) the applicant is not subject to any statutory disqualifications set forth in Sections 8a(2) and 8a(3) of the Commodity Exchange Act; and

7) the applicant will promptly correct any certification which is no longer accurate or current; and

8) the applicant agrees that the sponsor's home office shall be applicant's official address for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, NFA, any futures self-regulatory organization or any futures customer; and

9) the applicant and the applicant's sponsor understand that the certification required by this resolution acts as an application for registration as an associated person and that willfully making a materially false or misleading statement in the certification or willfully failing to correct any inaccuracy in the certification is cause for denial, suspension or revocation of registration and criminal prosecution.

B. Explanation of the NFA Board Resolution to adopt a temporary no-action position in response to a Comex petition for relief from NFA Registration Rules 203, 206 and 401.

In October of 1990, Comex requested an exemption from the Series 3 testing requirement for NASD registered general securities representatives who limit their futures-related activities to the solicitation and acceptance of orders for its new gold asset participation ("GAP") contract. Comex argued that, based on the unique characteristics of the proposed GAP contract, National Association of Securities Dealers, Inc. ("NASD") registered general securities representatives, who have already passed the Series 7 examination covering securities and securities options, are qualified to solicit orders for the GAP contract.

In addition to an exemption from the Series 3 testing requirement, Comex also requested that NFA adopt special procedures to expedite the registration of qualified general securities representatives. Comex favors an approach in which Member firms would submit to NFA a list of their general securities representatives who wish to become registered as APs for purposes of the GAP contract only. The list would include not only the applicants' names, but other identification information as well,

such as social security number or NASD identification numbers. The individuals would become registered as APs as soon as NFA received both the list and the accompanying certification. Comex feels that this is by far the most expeditious approach, would interest the greatest number of general securities representatives, would adequately identify all of the individuals registered as APs and would, through the certification, provide assurances that the applicants met the registration fitness standards set forth in the Commodity Exchange Act ("Act").

Upon reviewing Comex's petition, the Board found that there is a reasonable basis to believe that the Series 7 examination may provide adequate assurances of proficiency and that NASD registration may provide adequate assurances of fitness for APs dealing only with the GAP contract. The Board therefore adopted a temporary no-action position which would allow general securities representatives who limit their futures activities to the GAP contract to become registered without passing the Series 3 examination or being required to submit a completed Form 8-R.

During this no-action period, the Board feels NFA could gather information regarding the number of APs actually granted registration under this provision, the number of futures customers serviced by those APs, and the existence of any problems relating to those customers' accounts. Based on this information, the Board then could make a more informed decision as to whether the testing substitution for the GAP contract and the suspension of filing requirements should be terminated, made permanent, or extended to other types of products.

Moreover, in making its decision, the Board noted that such a no-action position was not without precedent. NFA previously has granted no-action positions in response to petitions from both the New York Futures Exchange and the National Association of Futures Trading Advisors.[3] In both instances the no-

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[3] In May 1984, the Board considered two petitions for exemptions from the testing requirement or the substitution of different testing requirements. In response to a petition from the New York Futures Exchange ("NYFE"), the Board took a no-action position with respect to APs who, by December 31, 1984, were registered with NASD as general securities representatives (having passed the Series 7 examination) and had also passed the Series 20 examination dealing specifically with stock index products.

action period was used to allow NFA to develop a more comprehensive approach to the issues raised in the respective petitions. The Board believes that its adoption of a temporary no-action position in response to the Comex request will serve the same purpose.

Ultimately, the question of whether general securities representatives who limit their futures activities to the GAP contract or other specified futures products may become registered as APs without passing the Series 3 examination or filing a Form 8-R or fingerprint card hinges on the issue of customer protection. NFA's goal has always been to create rules which are strong enough to ensure protection of futures customers and flexible enough to not inhibit legitimate business activity. The Board concluded that, under certain conditions, granting a temporary no-action position in response to Comex's request is the best way of assuring that NFA's basic goals are met in this instance.

Clearly, however, even a temporary no-action position could not be considered unless there are sufficient safeguards in place to protect the public during the no-action period. In this regard, the Board noted that the general securities representatives who would be covered by the no-action position have been subjected to a fitness screening process in the securities industry which is similar to that performed in the futures industry. In addition, since the no-action position would apply only to the solicitation and acceptance of orders initiating or offsetting long positions in the GAP contract and since long positions in the GAP contract require full payment of the purchase price by the customer, may not result in a futures position and are perpetual in nature, the Series 7 examination provides reasonable assurances of relevant market knowledge by the general securities representatives.

The Series 7 does not, however, test knowledge of futures industry regulatory requirements. Therefore, the Board's temporary no-action position, in addition to the conditions set forth above, requires both the applicant and his sponsor to sign

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At the same meeting the Board considered a petition from the National Association of Futures Trading Advisors ("NAFTA"). The Board adopted a temporary no-action position for APs who were registered with NASD as general securities representatives and who limited their futures-related activities to the solicitation of commodity pool participants or to supervising APs whose activities were so limited.

a certification, which will become the individual's application for registration, affirming that the sponsor will closely supervise the applicant's futures-related activities and has taken steps to ensure that the applicant is fully aware of the relevant regulatory requirements of the futures industry.

Furthermore, the certification signed by the applicant and sponsor will include an affirmation that the applicant is not subject to any of the statutory disqualifications set forth in the Act. This certification must be updated if any of the information becomes inaccurate.

NFA respectfully requests Commission approval of the proposed amendments to NFA Bylaw 301, NFA Compliance Rules 3-10 and 3-12, NFA Registration Rules 506, 507, 508 and 510 and Code of Arbitration Section 10; NFA Compliance Rule 2-9; NFA Compliance Rule 2-29; and NFA Financial Requirements Sections 1 and 6. NFA requests that the amendments be declared effective upon Commission approval.

NFA further requests Commission approval of the NFA Board Resolution to adopt a temporary no-action position. NFA requests that the Board Resolution be declared effective on April 1, 1991, or upon Commission approval, whichever is later.

Respectfully submitted,

Daniel J. Roth
General Counsel

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

JJF:pjf(Ltrs/Webb.1)

NATIONAL FUTURES ASSOCIATION
200 W. MADISON ST. • CHICAGO, IL • 60606-3447 • (312) 781-1300

September 5, 1991

VIA FACSIMILE AND
REGULAR MAIL

Susan C. Ervin, Esq.
Division of Trading and Markets
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581

Re: National Futures Association: Proposed Amendments to NFA Bylaw 301, NFA Compliance Rules 3-10 and 3-12, NFA Registration Rules 506, 507, 508 and 510 and Code of Arbitration Section 10; NFA Compliance Rule 2-9; NFA Compliance Rule 2-29; and NFA Financial Requirements Sections 1 and 6; and NFA Board Resolution to Adopt a Temporary No-Action Position

Dear Ms. Ervin:

By letter dated March 12, 1991, National Futures Association ("NFA") submitted the above-noted proposed amendments to the Commodity Futures Trading Commission ("Commission") for review and approval pursuant to Section 17(j) of the Commodity Exchange Act, as amended. As we discussed over the telephone, except for NFA Board Resolution to Adopt a Temporary No-Action Position, NFA agrees to extend the time for Commission review and approval of the proposed amendments until October 15, 1991. With regard to the Board Resolution, NFA agrees to extend the time for Commission review and approval until December 9, 1991.

If I can be of any further assistance, please contact me.

Very truly yours,

Daniel J. Roth
General Counsel

DJR:jj(ltrs:ervin)

NATIONAL FUTURES ASSOCIATION
200 W. MADISON ST. • CHICAGO, IL • 60606-3447 • (312) 781-1300

September 11, 1991

VIA ALL-NIGHT NATIONAL AIR COURIER

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

Re: National Futures Association: Proposed Amendments to NFA Financial Requirements Sections 1 and 6

Dear Ms. Webb:

By letter dated March 12, 1991, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("Commission"), for approval, proposed amendments to NFA Financial Requirements Sections 1 and 6. It has come to our attention that Section 6(e) contains some incorrect paragraph references. The correct version of Sections 1 and 6 follows.[1] (Additions to NFA's current requirements are underscored and deletions are in brackets.)

FINANCIAL REQUIREMENTS

Section 1. Minimum Financial Requirement.

Each NFA Member that is registered or required to be registered with the Commodity Futures Trading Commission (hereinafter "CFTC") as a Futures Commission Merchant (hereinafter "Member FCM") must maintain "Adjusted Net Capital" (as defined in Schedule A hereto) equal to or in excess of--

[(a)] The greatest of--

(i) $250,000, or

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[1] The only differences between this version and the version in the March 12, 1991 letter are two paragraph references in Section 6(e). However, both Sections 1 and 6 are included here for your convenience.

(ii) 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each customer shall be limited to the amount of customer funds in such customer's account and foreign futures and foreign options secured amounts; or,

(iii) (for securities brokers and dealers), the amount of net capital specified in Rule 15c3-1(a) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1(a)).

A Member FCM that knows or should have known that its Adjusted Net Capital is less than this required amount must give telegraphic notice to its DSRO within 24 hours. Additionally, within 24 hours after giving telegraphic notice, the Member FCM must file with its DSRO a statement of financial condition, a statement of the computation of the minimum capital requirements, the statements of segregation requirements and funds in segregation for customers trading on U.S. exchanges and for customers' dealers options accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers, all as of the date such Member FCM's Adjusted Net Capital is less than the minimum required.

* * *

Section 6. [Reporting] Early Warning Capital Requirements, Books and Records, Eligibility to Guarantee IBs.

[(a) A Member FCM that knows or should have known that its Adjusted Net Capital is less than the amount required by Section 1 must give telegraphic notice to its DSRO within 24 hours.]

[(b)](a) A Member FCM must file a written notice with its DSRO, within 5 business days, when the FCM knows or should have known that its Adjusted Net Capital is less than the greatest of (i) $375,000, or (ii) 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less

the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each customer shall be limited to the amount of customer funds in such customer's account and foreign futures and foreign options secured amounts, or (iii) for securities brokers and dealers, the amount of capital specified in Rule 17(a)-11(b) of the Regulations of the Securities and Exchange Commission (17 CFR 240.17a-11(b)).

(b) A Member FCM whose Adjusted Net Capital is less than the amount set forth in paragraph (a) of this section must file with its DSRO a Form 1-FR (or, if such Member is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, in lieu of Form 1-FR), containing the statements required by Section D2-b of these requirements, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the Member's Adjusted Net Capital is at all times equal to or in excess of the amounts set forth in paragraph (a). Each financial statement required by this paragraph must be filed within 30 calendar days after the end of the month for which such report is being made.

(c) Whenever a Member FCM is required to give notice to the CFTC pursuant to CFTC Regulation 1.12, the FCM also is required to give such notice to its DSRO.

(d) A Member FCM which is subject to the financial reporting requirements of paragraph (b) of this Section may not enter into a guarantee agreement with an Introducing Broker.

(e) A Member FCM which is a party to a guarantee agreement with an Introducing Broker and whose Adjusted Net Capital is less than the amount set forth in paragraph (a) of this section, must also provide NFA and any Introducing Brokers which it guarantees with a copy of the notice required by paragraph (b). If the FCM cannot demonstrate to NFA and its DSRO, within 30 days after filing the required notice, that its Adjusted Net

Capital is greater than the amount required by paragraph (a), the FCM must immediately notify, in writing, any Introducing Broker which it guarantees that the guarantee agreement will terminate 30 days following the notice. A copy of the notice must also be filed with the CFTC, NFA, and the DSRO of the FCM. If the FCM demonstrates to its DSRO and NFA prior to the effective date of the termination of the guarantee agreement that its Adjusted Net Capital is greater than the amount required by paragraph (a), then it may notify any Introducing Broker which it guarantees, the CFTC, NFA, and its DSRO, that the guarantee agreement will not terminate.

Respectfully submitted,

Daniel J. Roth /kpc

Daniel J. Roth
General Counsel

DJR:jac(Ltrs\Webb6.DJR)

cc: Chairman Wendy L. Gramm
Commissioner Fowler C. West
Commissioner William P. Albrecht
Commissioner Sheila C. Bair
Commissioner Joseph B. Dial
Andrea M. Corcoran, Esq.
Dennis A. Klejna, Esq.
Joanne T. Medero, Esq.
Alan L. Seifert, Esq.
Susan C. Ervin, Esq.
Lawrence B. Patent, Esq.
David Van Wagner, Esq.

NFA NATIONAL FUTURES ASSOCIATION
200 W. MADISON ST. • CHICAGO, IL • 60606-3447 • (312) 781-1300

October 11, 1991

David VanWagner, Esq.
Division of Trading And Markets
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581

Re: National Futures Association: Proposed Amendments to NFA Bylaw 301, NFA Compliance Rules 3-10 and 3-12, NFA Registration Rules 506, 507, 508 and 510 and Code of Arbitration Section 10; NFA Compliance Rule 2-9; NFA Compliance Rule 2-29; and NFA Financial Requirements Sections 1 and 6

Dear Mr. VanWagner:

By letter dated March 12, 1991, National Futures Association ("NFA") submitted the proposed amendments noted above to the Commodity Futures Trading Commission ("Commission") for review and approval pursuant to Section 17(j) of the Commodity Exchange Act, as amended. NFA agreed to extend the time for review and approval until October 15, 1991 (as confirmed in a September 5, 1991 letter from Daniel Roth to Susan Ervin). As we discussed over the telephone today, NFA agrees to further extend the time for Commission review and approval of the proposed amendments until October 31, 1991.

If I can be of any further assistance, please contact me.

Very truly yours,

Kathryn Page Camp

Kathryn Page Camp
Associate General Counsel

KPC:pjf(Ltrs/VanWagner)

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION
2033 K Street, N.W.
Washington, D.C. 20581

October 29, 1991

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

Re: The National Futures Association's Proposed Amendments to Bylaw 301; Compliance Rules 2-9, 3-10 and 3-12; Registration Rules 506, 507, 508 and 510; Code of Arbitration Section 10 and Financial Requirements Sections 1 and 6.

Dear Mr. Roth:

By letters dated March 12, 1991 through September 11, 1991, the National Futures Association ("NFA") submitted to the Commission, pursuant to Section 17(j) of the Commodity Exchange Act ("Act"), proposed amendments to its Bylaw 301; Compliance Rules 2-9, 3-10 and 3-12; Registration Rules 506, 507, 508 and 510; Code of Arbitration Section 10 and Financial Requirements Section 1 and 6.

The Commission understands that NFA intends to implement the proposed amendments upon receipt of notice of Commission approval. Please be advised that on this date the Commission has approved the above-referenced proposed amendments under Section 17(j) of the Act.

Very truly yours,

Jean A. Webb
Secretary of the Commission

NATIONAL FUTURES ASSOCIATION
200 W. MADISON ST. • CHICAGO, IL • 60606-3447 • (312) 781-1300

November 15, 1991

Alan L. Seifert
Division of Trading and Markets
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581

Re: National Futures Association: Proposed Amendment to NFA Compliance Rule 2-29.

Dear Mr. Seifert:

By letter dated March 12, 1991, National Futures Association ("NFA") submitted the above-noted proposed amendment to the Commodity Futures Trading Commission ("Commission") for review and approval pursuant to Section 17(j) of the Commodity Exchange Act. The amendment authorizes NFA to require a Member to file copies of its promotional material with NFA 21 days prior to its first use. In conjunction with their review of this amendment, Commission staff has asked NFA to provide certain information regarding NFA's current voluntary pre-screening promotional material program. Commission staff has also requested information on the number of Members which would be affected by the proposed amendment. This letter is in response to Commission staff's inquiries.

There is no question that deceptive or misleading promotional material poses a significant danger to the investing public. The most effective way of protecting the public from this danger is to keep such material from the public in the first place. In the vast majority of cases this is best accomplished by educating Members as to what is and what is not appropriate promotional material.

NFA has continuously endeavored to provide Members with guidelines which will aid Members in the preparation and review of their promotional material. In addition to Member Notices and feedback given during regular audits, NFA has also published an extensive Compliance Guide relating to communications and promotional material utilized by Members in their contact with the public. NFA's most significant endeavor in educating Members in this area, however, is a pre-review program which provides a Member with the opportunity to have its promotional material reviewed by NFA prior to its first use. By utilizing this service, a Member receives immediate feedback on any apparent deficiencies in the material. This feedback is valuable not only

for correcting the subject material but also for developing new material.

Since NFA adopted this program in May 1989, many Members have availed themselves of this pre-review service. In the last 22 months, 560 pieces of promotional material were submitted to NFA for review. Approximately ninety-five percent of this material either complied fully with NFA Compliance Rule 2-29 or contained minor deficiencies which were reported to the firm by a phone call from NFA. These minor deficiencies involved issues such as lack of required disclaimers regarding past performance results or hypothetical results. Only five percent of this material contained deficiencies which were considered significant problems such as misleading or deceptive statements or unsubstantiated claims.

Firms choosing to use NFA's pre-review service have not been disadvantaged by any time delays in receiving feedback. NFA has consistently completed its review of a Member's promotional material well within the 21 day time frame established when the program was initiated. A firm submitting promotional material to NFA for pre-review generally receives a response from NFA within 5 to 7 business days after the promotional material is received. In addition, a firm which demonstrates a need for an immediate response is usually provided with a response within one business day.

In addition to this pre-review program, NFA currently has the authority under Compliance Rule 2-29(f) to require any Member to file its promotional material with NFA promptly after its first use. During the five years in which this provision has been in effect, fifty-three firms have been required to post-file their promotional material with NFA.

Despite NFA's efforts, however, there continues to be a problem with the content of promotional material utilized by some firms. Not surprisingly, those firms which have the most problems with the content of their promotional material are not using the pre-review program. Of the twenty-nine Complaints involving violations of Compliance Rule 2-29(b) (content of promotional material) which NFA has issued since January 1990, only three of the named firms had utilized NFA's pre-review process prior to the issuance of the Complaint. In addition, NFA's post-review requirement has not always prevented firms from repeating their promotional material mistakes in subsequent materials. Of the fifty-three firms which have been subject to this requirement,

nine continued to circulate to the public defective or misleading promotional material after they began post-filing the material with NFA.

NFA believes that the approach of proposed Compliance Rule 2-29(f) is very narrowly tailored and will only affect those firms which repeatedly utilize promotional material with significant deficiencies. By comparison, the NASD requires its Members, for one year from the day the Member first begins using advertisements (material published or designed for use in public media), to submit all advertising material to the NASD prior to its first use. After this one year period, Members must continue to submit all advertising material within 10 days of its first use. In addition, Members must also submit all sales literature (research reports, material included with a prospectus, etc.) material within 10 days of its first use.[1] Furthermore, the NASD charges its Members for reviewing all promotional material.

The approach taken by the proposed amendment to Compliance Rule 2-29(f) is much less burdensome than the NASD's program. Only those firms which repeatedly utilize deficient promotional material will be subject to the pre-review requirement under Compliance Rule 2-29(f). Furthermore, NFA's proposal does not include any charge for the review of any promotional material.

Although it is impossible to estimate precisely the number of firms which would be subject to the proposed mandatory pre-review requirement, NFA anticipates that there will be significantly fewer firms than the number which have been subject to the post-review requirement. The pre-review requirement is intended to address only the most serious situations which indicate a need for a pre-review by NFA, such as a firm which continues to utilize deceptive or misleading promotional material after NFA has notified the firm of similar deficiencies. Based on our experience with the post-review requirement, NFA expects that only a few firms a year would be subject to the pre-review requirement.

NFA is convinced that the authority to require pre-review of promotional material is necessary in order to effectively carry out its responsibility to protect public investors

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[1] Communications With the Public, NASD Manual Rules of Fair Practice, Section 35(c), CCH ¶ 2195 (1991).

from the dangers of misleading or deceptive promotional material. I hope that the information provided will assist the Commission in its review of Compliance Rule 2-29(f). If I can be of further assistance, please do not hesitate to contact me.

Very truly yours,

Daniel J. Roth

Daniel J. Roth
General Counsel

DJR:pjf(Ltrs/Seifert2)

NFA NATIONAL FUTURES ASSOCIATION
200 W. MADISON ST. • CHICAGO, IL • 60606-3447 • (312) 781-1300

November 25, 1991

David Van Wagner, Esq.
Division of Trading and Markets
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581

Re: National Futures Association: Proposed Amendment to NFA Compliance Rule 2-29 and NFA Board Resolution to Adopt a Temporary No-Action Position

Dear Mr. Van Wagner:

By letter dated March 12, 1991, National Futures Association ("NFA") submitted the above-referenced proposed amendment and Board resolution to the Commodity Futures Trading Commission for review and approval pursuant to Section 17(j) of the Commodity Exchange Act, as amended. As we discussed over the telephone today, NFA agreed to further extend the time for Commission review and approval of the proposed amendment and Board resolution until January 15, 1992.

Sincerely,

Daniel J. Roth
General Counsel

DJR:cm(ltr/dvw)

NATIONAL FUTURES ASSOCIATION
200 W. MADISON ST. • CHICAGO, IL • 60606-3447 • (312) 781-1300

February 26, 1992

Alan L. Seifert
Division of Trading and Markets
Commodity Futures Trading
Commission
2033 K Street, NW
Washington, D.C. 20581

Re: National Futures Association: Proposed Amendment to NFA Compliance Rule 2-29

Dear Mr. Seifert:

By letter dated March 12, 1991, National Futures Association ("NFA") submitted the above-noted proposed amendment to the Commodity Futures Trading Commission ("Commission") for review and approval pursuant to Section 17(j) of the Commodity Exchange Act. At the request of Commission staff, NFA provided additional information regarding NFA's current voluntary pre-screening promotional material program in a letter dated November 15, 1991. After reviewing the information provided in our November 15 letter, Commission staff requested certain additional information on NFA's voluntary pre-review program and on NFA's mandatory post-use filing requirement under NFA Compliance Rule 2-29(f). This letter addresses Commission staff's inquiries.

As noted in our November 15 letter, 560 pieces of promotional material had been submitted to NFA for pre-review in the prior 22 months. These 560 pieces were submitted by 209 different firms. Although NFA does not categorize the material received for statistical purposes, the promotional material received is generally in the form of newspaper advertisements, brochures and cover letters which are intended to be sent to customers.

NFA's November 15 letter also informed Commission staff that NFA consistently completes its review of Member promotional material within the 21 day time frame which was established when the program was initiated. In fact, 85% of all material received

has been reviewed within 21 days and 95% has been reviewed within 25 days. In most cases, NFA's inability to complete a review of a Member's promotional material has been tied to difficulties in obtaining additional information from the Member.

Most material received, however, is reviewed in less than 21 days. Furthermore, although the overall average review time is 15.5 days, Members generally receive an initial response within five to seven days. The average review time is somewhat misleading because it includes final review process by a supervisory person.

As noted in our November 15 letter, NFA also has the authority under NFA Compliance Rule 2-29(f) to require any Member to file its promotional material with NFA promptly after its first use. During 1990 and the first ten months of 1991, 24 firms were subject to this post use reporting requirement. During that time period, these firms submitted 83 pieces of promotional material.

Commission staff also questioned whether Members subject to the pre-review process would actually make the changes suggested by NFA staff. Based on our experience with the voluntary pre-review process, NFA staff is confident that Members will incorporate changes suggested by NFA staff prior to disseminating proposed promotional material. Although we do not keep specific data on whether Members using the pre-review process actually make the suggested changes, NFA staff involved in this area generally receive favorable response to suggested changes. Furthermore, in most cases, subsequent material submitted by a firm does not contain the same or similar apparent deficiencies. These factors lead staff to believe that suggested changes are being adopted by Members.

NFA staff also believes that it is only logical that Members will adopt changes proposed by staff. If NFA staff identify what they believe to be apparent deficiencies in a Member's promotional material, the Member can expect that NFA staff will recommend to the appropriate Business Conduct Committee ("BCC") that the Member be sanctioned for using apparently deficient material if the material is disseminated without the suggested changes. If the BCC agrees with staff's assessment of

the material, Member's can also expect that the use of this material in disregard of NFA staff suggestions would likely be considered in determining the appropriate sanction.

I hope this material is responsive to staff's inquiries. Please feel free to contact me if I can be of further assistance.

Very truly yours,

Daniel J. Roth
General Counsel

CAW:pjf(Ltrs/Seifert1)