

March 13, 1985

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

Re: National Futures Association, Proposed Amendments to NFA Bylaws 301(h) and (i), 1301 and 1303 and NFA Code of Arbitration Sections 2(a)(1) and 9(g), and Proposed NFA Code of Arbitration Sections 6(g) and 8 and NFA Compliance Rule 2-28.

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act ("Act") as amended, National Futures Association ("NFA") hereby submits the following amendments to NFA Bylaws 301(h) and (i), 1301 and 1303, and to NFA Code of Arbitration Sections 2(a)(1) and 9(g), and Proposed NFA Code of Arbitration Sections 6(g) and 8 and NFA Compliance Rule 2-28 to the Commodity Futures Trading Commission ("Commission" or "CFTC") for review and approval. The amendments and proposed sections and rules were approved by NFA's Board of Directors at its meeting on February 21, 1985. In the text below, where appropriate, additions are underlined and deletions are bracketed.

I. The Amendments

BYLAWS OF NATIONAL FUTURES ASSOCIATION

\* \* \*

CHAPTER 3

MEMBERSHIP AND ASSOCIATION WITH A MEMBER

Bylaw 301. Requirements and Restrictions.

\* \* \*

(h) Resignation.

A Member, unless under investigation or disciplinary charges by NFA, may resign at any time by filing written notice with the Secretary. In addition, any Member, unless under investigation or disciplinary charges by NFA, that withdraws or



Ms. Jean Webb  
March 13, 1985  
Page Two

fails to renew all registrations under the Act shall be deemed to have resigned from NFA membership. Such resignation shall be effective on the date that the Member's registrations are withdrawn or expire. [, but such] Resignation shall not relieve the Member of any responsibility under the NFA Code of Arbitration or Compliance Rules for activities prior to resignation, or of the obligation to pay any dues, assessments, fines, penalties or other charges theretofore accrued and unpaid.

(i) Name and Address.

Each Member shall at all times register and maintain with the Secretary its correct name and principal address, and the correct name and address of each registered Associate employed by the Member. The principal address of each Member and the address of each registered Associate currently on file with NFA shall be deemed by NFA the correct address for delivery to the Member or Associate of any communication, document or notice from NFA. The failure of a Member to notify NFA of a change in the Member's principal address shall constitute grounds for summary suspension or termination of the NFA membership of such Member by order of the President on seven days' written notice.

\* \* \*

CHAPTER 13

DUES AND ASSESSMENTS

Bylaw 1301. Schedule of Dues and Assessments.

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

\* \* \*

(c) Other Members.

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

- (i) Commodity Trading Advisor-\$250
- (ii) Commodity Pool Operator-\$250
- (iii) Introducing Broker-[\$500 for the year of such entity's initial registration under the Act and,



Ms. Jean Webb  
 March 13, 1985  
 Page Three

thereafter \$1,000] \$250, except [\$150] that for an introducing broker not required to maintain minimum adjusted net capital the dues shall be \$150.

- (iv) Commercial Firm-\$100
- (v) Commercial Bank-\$100

All Members of NFA, other than those previously set forth in this Bylaw, shall pay to NFA annual dues of \$1,000. The Board may in its discretion waive or establish lower annual dues for such other Members, excluding Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors.

\* \* \*

Bylaw 1303. Default and Termination of Membership.

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

CODE OF ARBITRATION

\* \* \*

Section 2. Arbitrable Disputes.

(a) Mandatory Arbitration

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

\* \* \*

- (iv) A dispute for which arbitration is sought between Members in the categories listed in Section 2(a) (1)(i)(D) of this Code, or employees thereof or



Ms. Jean Webb  
March 13, 1985  
Page Four

Associates, where at least one such Member or employer of such employee or Associate is not a member of a contract market.

\* \* \*

Section 6. Initiation of Arbitration

\* \* \*

(g) Consolidation.

When demands for arbitration involving common questions of fact or arising from the same act or transaction are received by the Secretary, the Secretary may, whether or not at the request of any party, order any or all of the proceedings to be consolidated for hearing in the interest of providing a fair, equitable, and expeditious procedure and may take such action concerning the proceedings therein as may tend to avoid unnecessary or unreasonable delay.

[g] (h) Appointment of Panel; Disclosure and Challenge.

\* \* \*

Section 8. Pre-Hearing.

(a) Cooperation of the Parties.

The parties shall cooperate, without resort to issuance of subpoenas, in the voluntary exchange of documents and information (reasonably in advance of the hearing) which may serve to facilitate a fair, equitable and expeditious hearing. The parties shall also cooperate with the Secretary or the Secretary's designee in the formulation of a written hearing plan.



Ms. Jean Webb  
March 13, 1985  
Page Five

(b) Failure to Comply.

The failure of any party to respond fully and completely to a reasonable and timely request for such documents or information may be brought to the attention of the Panel by the Secretary or party seeking such documents or information. The Panel may take such actions in regard to the failure as are just, including, among other things, the following:

- (i) finding that the matters regarding which the request was made or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party making the request;
- (ii) refusing to allow the nonresponsive party to support or oppose designated claims or defenses or prohibiting him from introducing designated matters in evidence;
- (iii) striking out pleadings or portions thereof, staying further proceedings until the nonresponsive party complies with the request, dismissing the action or proceeding or any part thereof, or rendering an award by default against the nonresponsive party.

Section [8] 9. Hearing.

\* \* \*

Section [9] 10. Award.

\* \* \*

(g) Failure to Comply.

The failure of a Member or employee thereof, or Associate, to comply with an award shall be grounds for disciplinary action under NFA Compliance Rules



Ms. Jean Webb  
March 13, 1985  
Page Six

(see Compliance Rules 2-5).. When any Member or employee or Associate thereof fails to comply with an award within 30 days from the date of transmittal 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 may, on seven days written notice, be summarily suspended by the President until such award has been satisfied.

\* \* \*

Section [10] 11. Arbitration Fees.

\* \* \*

Section [11] 12. Arbitration Costs.

\* \* \*

Section [12] 13. Non-Waiver of NFA Rights.

\* \* \*

#### COMPLIANCE RULE

\* \* \*

#### Rule 2-28. Linked Market Transaction Authorization and Disclosure Requirements.

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

"[Name] may from time to time execute transactions as customer's agent on a foreign futures exchange pursuant to an agreement between the foreign futures exchange and a domestic futures exchange that a trade executed



Ms. Jean Webb  
March 13, 1985  
Page Seven

on one exchange liquidates or establishes a position on the other exchange. Participation in such a transaction may involve the execution and clearing of trades on a foreign futures exchange. Neither the Commodity Futures Trading Commission ("Commission"), the National Futures Association ("NFA") nor any domestic futures exchange regulates the activities of a foreign futures exchange, including the execution, delivery and clearing of transactions on such an exchange, or has the power to compel enforcement of the rules of the foreign futures exchange or the laws of the foreign country. For these reasons, customers who trade on a foreign futures exchange may not be afforded certain of the protective measures provided by the Commodity Exchange Act, the Commission's regulations, and the rules of NFA and any domestic futures exchange, including the right to use reparation proceedings before the Commission and arbitration proceedings provided by NFA or any domestic futures exchange.

In addition to the above requirements, each non-discretionary order executed on one exchange to liquidate or establish a position on another exchange pursuant to a linked market agreement must be authorized by the customer and designated as such when the order is taken.

## II. Explanation of Amendments

### Proposed NFA Bylaws 301(h) and (i) and 1303: Termination of NFA Membership.

As a general rule, membership in NFA is perpetual. Unless a Member is expelled by NFA or takes affirmative action to resign from membership, the Member will continue to be carried on NFA's membership records. The amendments to Bylaws 301(h), 301(i) and 1303 are intended to relieve NFA of unnecessary accounting and recordkeeping burdens.

Bylaw 301(h), as amended, provides a self-executing mechanism by which a Member will be deemed to have automatically resigned from NFA membership upon withdrawal or expiration of all registrations. Bylaw 301(a) provides that no person shall be eligible to become or remain an NFA Member unless registered, temporarily licensed or exempt from registration under the Act. Therefore, under Bylaw 301(a), an NFA Member that allows all registrations to expire or withdraws all registrations becomes ineligible to remain an NFA Member. At present, however, a Member often remains on NFA's books



Ms. Jean Webb  
March 13, 1985  
Page Eight

indefinitely unless a letter of resignation is submitted or NFA brings the Member before the Membership Committee in order to have the NFA membership revoked. The amendment to Bylaw 301(h) should eliminate this problem.

Bylaw 301(i), as amended, allows the President to either suspend or terminate a Member that fails to keep NFA apprised of its current principal address. Allowing such membership termination provides an effective means of removing Members who are either out of business or are frustrating NFA's ability to perform its regulatory functions. Moreover, the termination would not necessarily preclude the terminated Member from obtaining NFA membership at a future date. The terminated Member would merely have to reapply and provide NFA with the requisite documentation, information and fees, including current principal address.

The amendment to Bylaw 1303 provides a mechanism to terminate membership from NFA if outstanding dues are not paid within a six month period following a suspension due to non-payment. If the obligation has not been satisfied within that time, and there has been no communication indicating that payment will be forthcoming, then it is unlikely that the suspended Member intends to remit. In these cases, the proposed amendment allows membership to automatically terminate. The time frame was set at six months to ensure removal of the suspended Member's name from NFA's books prior to the time when dues for the next year are invoiced by the Treasurer's Office. As with amended Bylaw 301(i), termination under proposed Bylaw 1303 would not preclude a party from reapplying for NFA membership at a later date. However, all outstanding obligations would have to be satisfied before approval of such application would be considered by NFA.

Proposed NFA Bylaw 1301: Reducing Annual Membership Dues for Independent IBs.

Section 17(b)(6) of the Act and Regulation 170.4 of the Commission require that NFA's rules provide for the equitable allocation of dues among its members to defray reasonable expenses of administration. Further, those rules may not be structured so as to bar the entry of persons seeking to conduct commodity-related business. When the CFTC granted NFA registration as a futures association in 1981, it found that NFA's dues structure was fair and balanced. Several Bylaw amendments affecting dues have subsequently been enacted by NFA's Board of Directors and





Ms. Jean Webb  
March 13, 1985  
Page Nine

approved by the CFTC. The CFTC has expressed its understanding that NFA would periodically reassess its structure of dues, assessments and charges in order to determine that the structure continues to be equitable.

NFA submits for the Commission's approval a new dues structure for independent IBs. NFA Bylaw 1301(c) currently provides for annual independent IB dues of \$500 for the first year of registration and \$1,000 thereafter. NFA believes that in view of the development and refinement of NFA's dues structure since initial dues levels were established, considerations of fairness and equity now favor a reduction of the dues paid by independent IBs, the only category of Member whose dues or assessments have not been reduced from initial levels. Therefore, the amendment to NFA Bylaw 1301(c) reduces annual dues for independent IBs to a flat rate of \$250. Annual dues for guaranteed IBs would not be affected by the proposed amendment.

Proposed NFA Code of Arbitration Sections 2(a)(1), 6, 9(g) and 8.

Section 17(b)(10) of the Act requires that the rules of registered futures associations such as NFA "provide a fair, equitable and expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any Member or employee thereof. . . ." The revisions to the NFA Code of Arbitration ("Code") are designed to make the operation of the nationwide arbitration system more expeditious and efficient.

Member to Member claims are now classified as discretionary under Section 2(b) of the Code. Thus, in order for NFA to hear disputes between Members, both parties must agree or have agreed to NFA arbitration and the President must exercise his discretion to allow NFA to hear the matter. Under the amendment to Section 2(a)(1) of the Code, NFA arbitration would be mandatory when at least one of the Members in the dispute is not a member of a contract market. Arbitration would not be "mandatory" in the sense that all claims related to futures transactions would have to be brought to NFA arbitration. Such claims would only be "mandatory" in the sense that, if a claim is brought to NFA by a Member claimant, the Member respondent must submit to NFA arbitration if at least one member is not a member of a contract market. NFA included the contract market member exception to ensure that NFA arbitration does not interfere with member to member contract market arbitration.



Ms. Jean Webb  
March 13, 1985  
Page Ten

The amendment to Section 6 of the Code will allow the Secretary of NFA, at his discretion, with or without a request from any of the parties, to consolidate matters for hearing and award purposes where there are common questions of fact and where consolidation will provide a fair, equitable and expeditious procedure. The amendment would codify internal procedures used by NFA in the past where consolidation of claims was requested and granted and would serve as an efficient method to streamline the arbitration system. If amended Section 6(g) is approved by the Commission, the Section which is now 6(g) would become 6(h).

The pre-hearing amendment, which would be numbered as new Section 8, will formalize the exchange of documents and information and help encourage voluntary cooperation of the parties without resort to issuance of subpoenas. The amendment would also allow the arbitrators to fashion various sanctions modeled after Rule 37(b) of the Federal Rules of Civil Procedure if a party fails to comply with a reasonable timely request for documents or information. Such sanctions would allow an arbitrator to address any party's failure to comply within the proceeding itself. Approval of amended Section 8 will cause the Sections now numbered 8, 9, 10, 11 and 12 to be renumbered Sections 9, 10, 11, 12 and 13, respectively.

The amendment to Section 9(g) of the Code (which will be renumbered 10(g) upon approval of proposed Section 8) authorizes the President to suspend a Member who has not paid an arbitration award in a timely manner until such award has been satisfied. This revision to Section 9 does not preclude other disciplinary action in accordance with Compliance Rule 2-5. A self-executing suspension provision, however, is more efficient than sole reliance on Compliance Rule 2-5 because under such a self-executing procedure the issuance of a formal complaint would not be required and, accordingly, a Business Conduct Committee would not have to be convened. The amendment to the Code is similar to the operation of NFA Bylaw 1303, which provides for suspension of NFA Members deficient in their payment of dues or assessments, and Compliance Rule 3-11(c), which provides for summary suspension for failure to pay an NFA fine. However, the proposed amendment would stay the suspension when an appropriate challenge to the award is made in a court of competent jurisdiction or when modification is sought under what is now Section 9(c) of the Code, to be changed to 10(c) upon approval by the CFTC of Section 8.



Ms. Jean Webb  
March 13, 1985  
Page Eleven

Proposed NFA Compliance Rule 2-28: Linked Market Transaction  
Authorization and Disclosure Requirements.

The Chicago Mercantile Exchange ("CME") rules presently limit trading on the SIMEX pursuant to the mutual offset system agreement between CME and SIMEX to clearing members of CME ("Members Only Rule"). CME by rule also requires that before a CME member accepts such an order it must have on file a signed authorization from the customer acknowledging disclosure of the risks of such transactions ("SIMEX Risk Disclosure Rule"). It is NFA's understanding that the CFTC's Division of Trading and Markets has determined that it would not oppose CME abrogation of the SIMEX Risk Disclosure Rule and the Members Only Rule if NFA adopts a rule requiring its Members to disclose the risks of trading on a foreign futures exchange pursuant to a linked market agreement between a domestic and a foreign exchange. The CME has indicated that it would abrogate its Members Only Rule and SIMEX Risk Disclosure Rule after NFA has adopted such a rule and the CFTC has approved NFA's rule.

The proposal would provide the necessary rule concerning customer authorization and risk disclosure with respect to trading on a foreign futures exchange which has an offset link with a U.S. contract market. NFA Compliance Rule 2-28 requires that each FCM or IB Member of NFA which engages in transactions on behalf of a customer pursuant to a linked market agreement must have on file an authorization executed by the customer to engage in such transactions. The authorization must include in bold print the risk disclosure language set forth in the proposed rule. The rule further requires that each non-discretionary order executed on one exchange to liquidate or establish a position on another exchange pursuant to a linked market agreement must be authorized by the customer and designated as such when the order is taken.



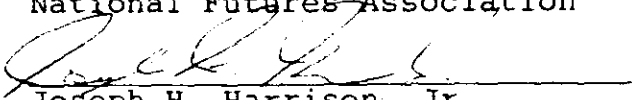
Ms. Jean Webb  
March 13, 1985  
Page Twelve

NFA respectfully requests that the proposed amendments to NFA Bylaws 301(h) and (i), 1301 and 1303 and NFA Code of Arbitration Sections 2(a)(1) and 9(g) and proposed NFA Compliance Rule 2-28 and Code of Arbitration Sections 6(g) and 8 be declared effective upon approval by the Commission.

Very truly yours,

National Futures Association

By:

  
Joseph H. Harrison, Jr.  
General Counsel and Secretary

JHH/dc

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. Rosenzweig, Esq.  
Linda Kurjan, Esq.

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

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



November 22, 1985

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

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

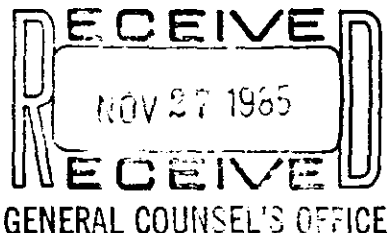
Dear Mr. Harrison:

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

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

Sincerely,

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



July 26, 1985

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

Re: Proposed NFA Compliance Rule 2-28

Dear Ms. Webb:

On March 13, 1985, NFA submitted, inter alia, proposed NFA Compliance Rule 2-28 to the Commodity Futures Trading Commission ("Commission") for review and approval. This letter is to inform the Commission that on July 25, 1985, NFA's Executive Committee considered and approved an amendment to NFA Compliance Rule 2-28 as proposed. NFA staff will next seek the approval of the amendment from NFA's Board of Directors ("Board") on August 15, 1985. Upon review and approval of the amendment from the Board, NFA will submit to the Commission for its review and approval pursuant to Section 17(j) of the Commodity Exchange Act proposed NFA Compliance Rule 2-28, as amended. If and when the subsequent submission of NFA Compliance Rule 2-28 is made, the prior submission on March 13, 1985 shall be deemed withdrawn.

If NFA Compliance Rule 2-28 as it is currently proposed or as it may be amended is approved by the Commission, NFA requests that the Commission declare it effective immediately. NFA will not, however, require Chicago Mercantile Exchange ("CME") members that have authorizations from customers pursuant to CME Rule 874 which were executed prior to the effective date of NFA Compliance Rule 2-28, to get new authorizations to be in compliance with NFA Requirements with respect to SIMEX mutual offset transactions.

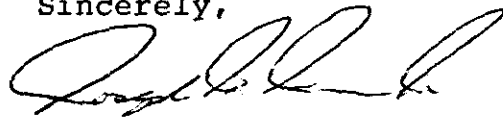
NFA understands that the CME, with the Commission's approval, will abrogate CME Rule 874 when NFA Compliance Rule 2-28 is approved by the Commission. NFA also believes that members of the CME will need time to change their authorizations to trade through the link-up with the SIMEX to include the risk disclosure language required under proposed NFA Compliance Rule 2-28 and to delete the language required under then-abrogated CME Rule 874. Thus, NFA has determined that it will take a "no-action" position for 90 days after the effective date of NFA

# NFA

Ms. Jean A. Webb  
July 26, 1985  
Page Two

Compliance Rule 2-28 with respect to any FCM who receives an authorization to trade through the CME/SIMEX link-up that complies with abrogated CME Rule 874. However, all authorizations to trade on the SIMEX through the link-up executed by customers after the 90 day no-action period must be made pursuant to NFA Requirements. If proposed NFA Compliance Rule 2-28 is approved, NFA will distribute a notice to Members that addresses these concerns.

Sincerely,



Joseph H. Harrison, Jr.  
General Counsel and Secretary

JHH/cad

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. Rosenzweig, Esq.  
Linda Kurjan, Esq.

Susan M. Schultz, Esq.  
Chicago Mercantile Exchange

DRA-001/023

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

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



July 1, 1985

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

Re: Code of Arbitration Sections 2(a)(1)(iv), 6(g),  
8 and 10(g)

Dear Mr. Harrison:

This is to inform the National Futures Association that on June 28 1985, the Commission approved amendments to NFA's Code of Arbitration as specified above (with other sections of the Code renumbered as necessary). The rule changes relate to consolidation, prehearing discovery, failure of a member to comply with an award, and mandatory member-to-member arbitration. They were submitted for Commission review and approval pursuant to Section 17(j) of the Commodity Exchange Act by your letter dated March 13, 1985. That submission was supplemented by a letter dated May 16, 1985, to the Commission's Division of Trading and Markets. As you are aware, the Commission is addressing separately the remaining proposal (Compliance Rule 2-28) discussed in those letters.

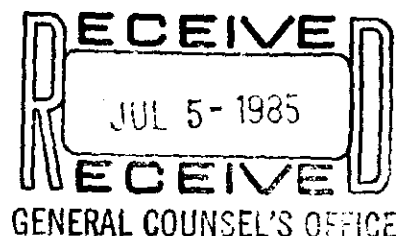
The Commission understands that NFA intends to make the new provisions effective immediately. Despite Commission approval of the mandatory member-to-member arbitration provision, NFA is reminded that such a procedure may not be implemented in any manner that interferes with or delays the fair, equitable and expeditious resolution of customer claims. With respect to the new provision permitting summary suspension of members that fail to satisfy arbitration awards, the Commission expects NFA to document its determinations and to be able to demonstrate to the Commission the reasons for any decision not to suspend a delinquent member.

Very truly yours,

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

COPY TO:

R. WILMOUTH  
J. TIPPINS  
D. DRISCOLL  
G. BYRNE  
A. NAGLER  
L. NORWSTROM  
LEGAL STAFF





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

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



June 5, 1985

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

Re: Bylaws 301(h), 301(i), 1303 and 1301(1)(iii)

Dear Mr. Harrison:

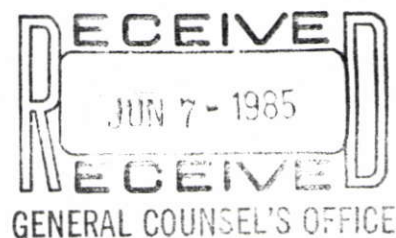
This is to inform the National Futures Association that on June 4, 1985, the Commission approved amendments to the NFA bylaws captioned above. These rules relate to the automatic or summary termination of NFA membership in certain circumstances and to the reduction in the annual membership dues of independent (non-guaranteed) introducing brokers. The proposals were submitted for Commission review and approval pursuant to Section 17(j) of the Commodity Exchange Act by a letter from you dated March 13, 1985. As you are aware, the Commission is separately addressing the remaining rule changes submitted by that letter.

Very truly yours,

Jean A. Webb  
Secretary of the Commission

COPY TO:

R. WILMOUTH  
J. TIPPINS  
D. DRISCOLL  
G. BYRNE  
J. SARAN  
J. LOCASHIO  
LEGAL STAFF



May 16, 1985

Ms. Linda Kurjan  
Division of Trading and Markets  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Dear Ms. Kurjan:

This letter is in reply to your letter dated April 17, 1985, which asked NFA to address certain issues regarding the Code of Arbitration ("Code") amendments submitted to the Commission on March 13, 1985.

Your letter first requests NFA to explain why amended Section 8(b) of the Code does not require an arbitration panel to disclose in writing to the parties the specific action taken under the amended subsection. As the Commission is aware, arbitration awards only state which party prevailed and the amount, if any, the losing party must pay. Arbitrators do not issue awards that explain their decision. Many factors may influence arbitrators in coming to a decision including an analysis of the reasonableness of a party's conduct in connection with the arbitration proceeding. In that regard amended Section 8(b) only makes explicit a power which arbitrators have always been free to exercise. NFA believes that an action taken under amended Section 8(b) may be only one factor in the ultimate decision of the arbitrators. To require such action to be explained in isolation may result in a very partial and misleading statement of the reasons for the ultimate award. NFA further believes that the goal of expedition and efficiency will best be served if all issues in an arbitration, including the discovery related conduct of the parties, are decided together after the hearing on the merits instead of providing for a separate discovery related motion practice. If any party believes that the arbitrators have exceeded their powers or acted unfairly in issuing an award there is an adequate forum for review of the award in a federal district court under the U. S. Arbitration Act, based on the entire record of the arbitration case, including the verbatim record of the hearing.



Ms. Linda Kurjan  
May 16, 1985  
Page Two

Your letter also requests NFA to explain "why NFA decided to make the summary membership supervision provision discretionary with the NFA President rather than automatic and self-executing as it is characterized in the explanatory portion of the submission." Currently, to suspend a Member for failing to satisfy an NFA arbitration award, a Business Conduct Committee must be convened to consider the matter, issue a complaint, consider the answer, and possibly conduct a hearing. Under amended Section 10(g) of the Code, the President of NFA is given the authority to suspend a Member for failure to comply with an NFA arbitration award. The suspension is not automatic upon failure to pay an award; the suspension is self-executing in that the President of NFA may suspend the Member without taking the matter to a Business Conduct Committee. The reason the suspension is not automatic is simple: suspension may harm, or at the very least inconvenience, customers. NFA Bylaw 1101 provides, in part, that no NFA Member may accept customer orders from a suspended Member that is required to be registered. Suspending a Member should not be done without considering all of the factors of a particular case, including whether suspending the Member for failing to pay an award to one customer is in the best interest of all customers of that Member. NFA believes that the public would best be served if the President had some discretion as to when to impose suspension under the amendment.

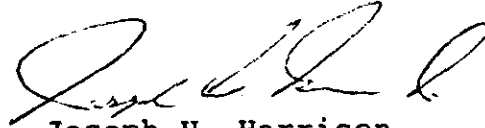
On another subject, NFA is aware of the CFTC's concern that proposed NFA Compliance Rule 2-28 does not require disclosure of the risks of linked foreign market transactions to be acknowledged on a form separate from the customer agreement. It is NFA staff's view that the CFTC's concern in this area is not as critical for nondiscretionary accounts in view of the requirement in proposed Compliance Rule 2-28 that each order to be executed on a foreign market pursuant to a linked market arrangement be specifically authorized and identified as such by the customer. To address the CFTC's concerns, NFA staff will present to the FCM Advisory Committee a proposal that would require the disclosure under proposed NFA Compliance Rule 2-28 to be given and acknowledged on a separate form when the account is discretionary.

NFA

Ms. Linda Kurjan  
May 16, 1985  
Page Three

I trust that these comments will serve to expedite the Commission's approval of the amendments to the Code and proposed Compliance Rule 2-28.

Sincerely,



Joseph H. Harrison  
General Counsel and Secretary

JHH:ki



DIVISION OF  
TRADING AND MARKETS

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

COPY TO:

RKW  
JWT  
ATTORNEYS  
GONZALES  
CHEVAL

April 17, 1985

Joseph H. Harrison, Jr.  
General Counsel and Secretary  
National Futures Association  
200 West Madison Street, Suite 1600  
Chicago, Illinois 60606

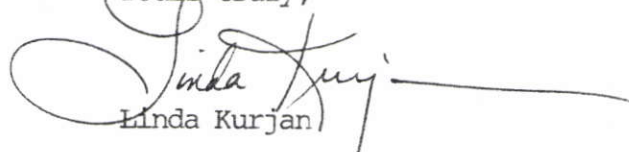
Dear Mr. Harrison:

Commission staff is currently reviewing the rule changes submitted by NFA for Commission approval by your letter dated March 13, 1985. That submission, however, does not appear to address certain issues regarding the Arbitration Code amendments relating to prehearing discovery and failure to comply with an award, which issues were brought to NFA's attention before the rule changes were adopted.

In particular, with respect to the first provision (new Section 8), the filing does not explain why the procedures do not require the arbitrators to disclose in writing to all parties any specific action taken by them pursuant to Subsection (b) to deal with a party's failure to respond fully and completely to a reasonable and timely request for documents or information. With respect to the second provision (Section 10), it also does not explain why NFA decided to make the summary membership suspension provision discretionary with the NFA President rather than automatic and self-executing as it is characterized in the explanatory portion of the submission. These points reflect concerns and recommendations expressed by the Commission's General Counsel in his May 10, 1984 letter to you commenting on modifications to the Arbitration Code then under consideration by NFA.

In order to permit the Commission staff to proceed with its examination of the Arbitration Code amendments prior to their review by the Commission, please supplement the submission to respond clearly to the issues above. Your response should be provided by May 6, 1985.

Yours truly,

  
Linda Kurjan

