

March 8, 1994

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 Bylaws 305 and 708 and NFA Registration Rules 101,
201, 203, 501, 502, 504, 505, 506, 507, 508, 509 and
510

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") proposed amendments to NFA Bylaws 305 and 708 and NFA Registration Rules 101, 201, 203, 501, 502, 504, 505, 506, 507, 508, 509 and 510. The amendments were approved by NFA's Board of Directors ("Board") on February 24, 1994. NFA respectfully requests Commission review and approval of the proposed amendments.

THE PROPOSED AMENDMENTS

The proposed amendments to NFA Bylaws 305 and 708 and NFA Registration Rules 101, 201, 203, 501, 502, 504, 505, 506, 507, 508, 509 and 510 are as follows (additions are underscored and deletions are bracketed):

**BYLAWS
OF
NATIONAL FUTURES ASSOCIATION**

* * *

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

* * *

Bylaw 305. Registration Rules.

Subject to Articles III and XI and Bylaw 1506, the Board shall adopt Registration Rules in accordance with which NFA shall perform the portion of the registration functions under the



Ms. Jean A. Webb

March 8, 1994

Act which it is required or authorized by the Commission to perform pursuant to Section 8a(10) or Section 17(o) of the Act and in accordance with which NFA shall determine proficiency for purposes of determining fitness to be registered under the Act [(except with respect to floor brokers)] and for purposes of determining membership qualification under Bylaw 301(d), which rules shall be deemed a part of these Bylaws.

* * *

**CHAPTER 7
COMMITTEES**

* * *

Bylaw 708. Qualifications and Obligations of Members of NFA Committees.

- (a) No individual shall be eligible to serve as a member of any NFA Committee or any subcommittee thereof if such person:
 - (i) [(a)] is subject to any of the disqualifications set forth in CFTC Regulation 1.63(b);
 - (ii) [(b)] has been convicted of a felony within the prior ten years; or
 - (iii) [(c)] is subject to a Member Responsibility Action or Associate Responsibility Action which is currently in effect.

- (b) No member of any NFA committee or subcommittee shall use or disclose material, non-public information, obtained as a result of participation on the committee or subcommittee, for any purpose other than the performance of official duties as a member of the committee or subcommittee.

REGISTRATION RULES

* * *

PART 100. DEFINITIONS



Ms. Jean A. Webb

March 8, 1994

Rule 101. Definitions.

As used in these Rules --

* * *

- (b) **"Applicant"** - means a person seeking registration under the Act as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, [or as] an associated person of any of the foregoing, floor broker or floor trader.

* * *

- (o) **"Registrant"** - means a person registered under the Act as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, [or as] an associated person of any of the foregoing, floor broker or floor trader.

* * *

PART 200. REGISTRATION REQUIREMENTS AND PROCEDURES

Rule 201. Registration Requirements and Procedures.

NFA shall perform registration functions in accordance with the provisions set forth in these Rules for persons other than floor brokers and floor traders for whom it has been granted registration responsibilities pursuant to Section 8a(10) or Section 17(o) of the Act. NFA shall perform registration functions with respect to persons required to register under the Act as floor brokers or floor traders in accordance with all of the Regulations governing the registration of floor brokers and floor traders contained in Part 3 of the Commission's Regulations, except that Rule 203 of these Rules shall govern floor broker and floor trader registration fees, Part 500 of the Rules shall govern adverse registration proceedings involving floor brokers or floor traders and Part 700 of these Rules shall govern access to and certification of floor broker and floor trader records maintained by NFA.

* * *



Ms. Jean A. Webb

March 8, 1994

Rule 203. Registration Fees.

(a) Amount.

* * *

- (11) **Disqualification Fee.** A written submission to the [President] Membership Committee or a designated Subcommittee filed under Rule 504 or 505 shall be accompanied by a fee of \$1,000 for the first submission only. The fee shall be refunded if [the President or] the Membership Committee or [its] a designated Subcommittee finds that the applicant or registrant is not subject to a statutory disqualification.

* * *

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

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

- (a) Registration of Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, Commodity Trading Advisors, Leverage Transaction Merchants and Associated Persons.** NFA may refuse to register or register conditionally, any person applying for registration as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant or associated person of any of the foregoing, or suspend, restrict or revoke the registration of any registrant in those categories, based upon the standards of fitness set forth in the Act. Final written orders denying or revoking registration, registering conditionally, suspending or restricting registration shall be made by the Membership Committee or [its] a designated Subcommittee in accordance with the procedures set forth in Part 500 of these Rules. Such designated Subcommittee shall consist of three members of the Membership Committee. In cases submitted by the President to the Membership Committee or [its] a designated Subcommittee, registration shall not be granted pending a final determination by the Membership Committee or [its] a designated Subcommittee. No member of the Membership Committee or [its] a designated Subcommittee shall



Ms. Jean A. Webb

March 8, 1994

either review a registration matter or participate in a registration action if the member, or any person with whom the member is connected, has a financial, personal or other direct interest in the matter under consideration.

- (b) Registration of Floor Brokers and Floor Traders.** NFA may refuse to register or register conditionally, any person applying for registration as a floor broker or floor trader, or suspend, restrict or revoke the registration of any person registered as a floor broker or floor trader, based upon the standards of fitness set forth in the Act. Interim Orders and Final Orders denying, revoking, conditioning, suspending or restricting registration as a floor broker or floor trader shall be made by the Membership Committee or a designated Subcommittee in accordance with the procedures set forth in Part 500 of these Rules. Such designated Subcommittee shall consist of at least three persons, the majority of whom are members of the Membership Committee and the remainder of whom are registered floor brokers or floor traders approved by NFA's Board of Directors to be a member of such a Subcommittee. No member of the Membership Committee or a designated Subcommittee shall either review a registration matter or participate in a registration action if the member, or any person with whom the member is connected, has a financial, personal or other direct interest in the matter under consideration.

Rule 502. General Provisions.

(a) Service.

- (1) For purposes of any proceeding to deny, condition, suspend, restrict or revoke registration, service upon an applicant or registrant will be sufficient if mailed by certified mail return receipt requested, delivered to [an] a generally recognized overnight courier service or delivered to a messenger service, properly addressed to the applicant or registrant at the address shown on his most recent registration application or any amendment thereto. Service will be complete upon mailing, delivery to [an] a generally recognized overnight courier service or delivery to a messenger service. Where a party effects service by mail, the time within which the person served may respond thereto shall be increased by three days.



Ms. Jean A. Webb

March 8, 1994

- (2) A copy of any notice served in accordance with paragraph (a)(1) of this Rule also shall be served upon:
 - (A) [A]any sponsor of the applicant or registrant, if the applicant or registrant is an individual registered as or applying for registration as an associated person and such sponsor's guarantor, if any; or
 - (B) [A]any futures commission merchant which has entered into a guarantee agreement pursuant to CFTC Regulation 1.10(j) with an applicant or registrant applying for registration as or registered as an introducing broker[.]; or
 - (C) any contract market that has granted or is reviewing an application for trading privileges if the applicant or registrant is an individual registered as or applying for registration as a floor broker or floor trader.
 - (3) Documents served by an applicant or registrant upon NFA under this Part 500 shall be considered served or filed only upon actual receipt by the Legal Docketing Department of National Futures Association, 200 West Madison Street, Chicago, Illinois 60606.
- (b) **Extensions of Time for Filing.**
- (1) Except as otherwise provided by law or by these Rules, for good cause shown, the Membership Committee or [its] a designated Subcommittee before whom a proceeding brought under these Part 500 Rules is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by such Rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Membership Committee or [its] a designated Subcommittee may set a time limit for that action.
 - (2) Absent extraordinary circumstances, in any instance in which a time limit that has been prescribed for an action to be taken exceeds seven days from the date of the order or Rule establishing the time limit, requests for extension of time shall be filed at least five days



Ms. Jean A. Webb

March 8, 1994

prior to the expiration of the time limit and shall explain why an extension of time is necessary.

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

Rule 503. Withdrawal of Application for Registration.

- (a) Whenever information comes to the attention of NFA that an applicant for registration in any capacity may be disqualified from registration under Section 8a(2), 8a(3), or 8a(4) of the Act, the Vice-President of Compliance or the Vice-President's designee may serve written notice upon the applicant which shall specify the statutory disqualifications to which the applicant may be subject and notify the applicant that:
- (1) the information, if true, is a basis upon which the applicant's registration may be denied;
 - (2) unless the applicant voluntarily withdraws his application, it may be necessary to institute the denial procedures described in Part 500 of these Rules; and
 - (3) if the applicant does not confirm in writing that he wishes to have his application given further consideration, his application will be deemed to have been withdrawn.
- (b) The applicant must serve the written confirmation referred to in paragraph (a) (3) of this Rule upon NFA's Legal Docketing Department within twenty days of the date the written notice from NFA was served.



Ms. Jean A. Webb

March 8, 1994

Rule 504. Procedures Governing Applicants and Registrants, Except Floor Brokers and Floor Traders, Disqualified From Registration Under Section 8a(3) or 8a(4) of the Act and Applicants, except Floor Brokers and Floor Traders, Disqualified From Registration Under Section 8a(2) of the Act.

(a) Applicants Subject to a Section 8a(2), 8a(3) or 8a(4) Disqualification and Registrants Subject to a Section 8a(3) or 8a(4) Disqualification.

(1) [(a)] Notice of Intent. On the basis of information which NFA [it] has obtained, the President of NFA may at any time serve a Notice of Intent upon any person registered or applying for registration in any capacity except that of floor broker or floor trader, stating that:

(A) [(1)] NFA alleges and is prepared to prove that the applicant or registrant is subject to one or more of the statutory disqualifications set forth in Section 8a(2), 8a(3) or 8a(4) of the Act;

(B) [(2)] the allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be denied, conditioned, suspended, restricted or revoked (if the Notice of Intent proposes conditioning or restricting registration, the Notice shall specify the proposed conditions or restrictions);

(C) [(3)] the applicant or registrant is entitled to have the Membership Committee or [its] a designated Subcommittee consider written evidence of the type set forth in paragraph (a) (2) [(b)] of this Rule. The Notice of Intent shall inform the applicant or registrant of the procedures which will be followed if no written submission is made in accordance with this Rule; and



Ms. Jean A. Webb

March 8, 1994

(D) [(4)] if an applicant for registration has been granted a temporary license, such temporary license shall terminate five days after service on the applicant of the Notice of Intent.

(2) [(b)] **Written Response to the Notice of Intent.**

(A) [(1)] In response to a Notice of Intent alleging a disqualification from registration set forth in Section 8a(2), 8a(3) or 8a(4) of the Act, the applicant or registrant may submit a written response challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to:

- (i) the applicant's or registrant's identity;
- (ii) the existence of a clerical error in any record documenting the statutory disqualification;
- (iii) the nature or date of the statutory disqualification;
- (iv) the post-conviction modification of any record of conviction; or
- (v) the favorable disposition of any appeal.

(B) [(2)] The applicant or registrant shall state the nature of each challenge in the response and submit an affidavit to support facts material to each challenge. In the response, if the person is not an associated person or an introducing broker or an applicant for registration in either capacity, the applicant or registrant also shall state whether it intends to show that, notwithstanding the accuracy of the allegations set forth in the Notice of Intent, its registration would pose no substan-



Ms. Jean A. Webb

March 8, 1994

tial risk to the public. If the person is an associated person, an introducing broker or an applicant for registration in either capacity, the applicant or registrant also shall state whether he intends to show that, notwithstanding the accuracy of the allegations set forth in the Notice of Intent, his full, conditioned or restricted registration would pose no substantial risk to the public. If the associated person or introducing broker or applicant for registration in either capacity intends to make such a showing, such person also must submit a letter signed by an officer or general partner authorized to bind the sponsor or the guarantor. Such letter must state that the sponsor agrees to sign a Supplemental Sponsor Certification Statement or the guarantor agrees to sign a Supplemental Guarantor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant by the Membership Committee or [its] a designated Subcommittee: provided, that with respect to such sponsor or guarantor:

(i) [(A)] an adjudicatory proceeding brought by or before: (a) [(i)] the Commission, pursuant to the provisions of Sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act, or (b) [(ii)] NFA, pursuant to NFA Compliance Rules or these Rules, is not pending and the sponsor or guarantor is not subject to any special supervisory obligations imposed by NFA or agreed to by such sponsor or guarantor; and

(ii) [(B)] in the case of a sponsor which is a futures commission



Ms. Jean A. Webb

March 8, 1994

merchant or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of NFA Financial Requirements Section 6 or CFTC Regulation 31.7(b), respectively.

- (3) [(c)] Time for Filing of Response.** A written response to the Notice of Intent must be served upon NFA's Legal Docketing Department within thirty days of the date of service of the Notice of Intent upon the applicant or registrant. Such response must be accompanied by the disqualification fee required by Rule 203(a)(11).
- (4) [(d)] Default of Applicant or Registrant to Notice of Intent.** If the applicant or registrant fails to file a timely written response to the Notice of Intent, the applicant or registrant shall be deemed to have waived his right to submit such written response, and the facts stated in the Notice of Intent shall be deemed to be true for the purpose of finding that the applicant or registrant is disqualified from registration under Section 8a(2), 8a(3) or 8a(4) of the Act. The Membership Committee or [its] a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order denying, conditioning, suspending, restricting or revoking the registration. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or [its] a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.
- (5) [(e)] Further Submission in Accordance With Rule 504(a)(2)(B) [(b)(2)].** If, in the response to the Notice of Intent, the applicant or registrant states that he intends to make the showing



Ms. Jean A. Webb

March 8, 1994

referred to in paragraph (a)(2)(B) [(b)(2)] of this Rule, he shall, within fifteen days after filing such response, file with NFA's Legal Docketing Department a submission which includes a statement of the applicant or registrant or his attorney identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing. Such submission also must include copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. In making a showing pursuant to paragraph (a)(2)(B) [(b)(2)] of this Rule, the applicant or registrant may present:

- (A) [(1)] mitigation evidence relating to the facts and circumstances surrounding the disqualifying conduct;
- (B) [(2)] evidence of rehabilitation since the disqualifying conduct; and
- (C) [(3)] if the person is an associated person, [or] an introducing broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration would be subject to supervisory controls, including proposed conditions or restrictions likely to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from such future wrongdoing.

(6) [(f)] **NFA's Response.** Within sixty days after the later of the date the applicant or registrant serves a copy of the response to the Notice of Intent on NFA (if no further submission is to be made in accordance with paragraph (a)(5) [(e)] of this Rule) or the date the applicant or registrant serves a copy of the further submission made in accordance with paragraph (a)(5) [(e)] of this Rule on NFA, the Vice-President of Compliance shall prepare a response thereto and serve a copy



Ms. Jean A. Webb

March 8, 1994

of the response on the applicant or registrant. Such response shall include either:

(A) [(1)] a motion for summary judgment stating that, based upon the applicant's or registrant's response and further submission, if any, and any other materials which are attached to the response, there are no genuine issues of material fact to be determined and that registration should be denied or revoked; or

(B) [(2)] a description of the factual issues raised in the applicant's or registrant's response and further submission, if any, that NFA regards as material and disputed. Such reply also shall include the identity and a summary of the expected testimony of each witness whom NFA intends to have testify at its case-in-chief and copies of all documents which NFA intends to introduce at such hearing.

(7) [(g)] **Oral Hearing.** Within thirty days of the date NFA files its response in accordance with paragraph (a)(6) [(f)] of this Rule to the applicant's or registrant's response and further submission, if any, the Membership Committee or [its] a designated Subcommittee shall:

(A) [(1)] if the Membership Committee or [its] a designated Subcommittee finds, based on the motion for summary judgment, that a party is entitled to judgment as a matter of law, issue an order granting, denying, suspending or revoking the registration of the applicant or registrant or withdrawing the Notice of Intent (such order shall be made in accordance with the standards set forth in Rules 507(a) and (b)); or

(B) [(2)] if a motion for summary judgment is not filed or if such a motion is denied, notify the parties of the time and place



Ms. Jean A. Webb

March 8, 1994

of a hearing. At such hearing, the parties shall be limited in their case-in-chief to presentation of witnesses and documents listed in previous filings except for good cause shown.

(8) [(h)] **Order.** After the conclusion of the hearing, the Membership Committee or [its] a designated Subcommittee shall make a finding as to whether the applicant has shown that his registration should not be denied or conditioned or whether the registrant has shown that his registration should not be suspended, restricted or revoked and shall issue an order accordingly, pursuant the standards set forth in Rules 507(a) and (b).

(9) [(i)] **Termination.** In the event the sponsor of an applicant or registrant files a Form 8-T reflecting the termination of employment of such applicant or registrant after the issuance of a Notice of Intent but prior to the [issuance] effective date of a Final Order, the Membership Committee or [its] a designated Subcommittee may issue a Withdrawal of Notice of Intent indicating that because the applicant or registrant no longer has a sponsor, further proceedings are not warranted.

(b) [Rule 505. Procedures Governing] Registrants [Disqualified From Registration Under] Subject to a Section 8a(2) Disqualification [of the Act].

(1) [(a)] **Notice of Intent.** On the basis of information [it] which NFA has obtained, the President of NFA may at any time serve a Notice of Intent upon any person registered in any capacity except that of floor broker or floor trader stating that:

(A) [(1)] NFA alleges and is prepared to prove that the registrant is subject to one or more of the statutory disqualifications set forth in Section 8a(2) of the Act;

(B) [(2)] the allegations set forth in the Notice of Intent, if true, constitute a basis



Ms. Jean A. Webb

March 8, 1994

upon which registration can be suspended or revoked;

(C) [(3)] the registrant is entitled to have the Membership Committee or [its] a designated Subcommittee consider written evidence of the type set forth in paragraph (b)(2) [(b)] of this Rule. The Notice of Intent shall inform the registrant of the procedures which will be followed if no written submission is made in accordance with this Rule;

(D) [(4)] the Membership Committee or [its] a designated Subcommittee shall determine, based upon such written evidence, whether the registrant is subject to a statutory disqualification; and

(E) [(5)] if the registrant is found to be subject to a statutory disqualification, the registrant may be suspended and ordered to show cause why such registration should not be revoked.

(2) [(b)] Written Response to the Notice of Intent. In response to a Notice of Intent alleging a disqualification from registration set forth in Section 8a(2) of the Act, the registrant may submit a written response limited in scope to evidence challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to:

(A) [(1)] the registrant's identity;

(B) [(2)] the existence of a clerical error in any record documenting the statutory disqualification;

(C) [(3)] the nature or date of the statutory disqualification;

(D) [(4)] the post-conviction modification of any record of conviction; or



Ms. Jean A. Webb

March 8, 1994

(E) [(5)] the favorable disposition of any appeal.

[(6)] The registrant shall state the nature of each challenge in the response and submit an affidavit to support facts material to each challenge.

(3) [(c)] **Time for Filing of Response.** A written response to the Notice of Intent must be served upon NFA's Legal Docketing Department within twenty days of the date of service of the Notice of Intent upon the registrant. Such response must be accompanied by the disqualification fee required by Rule 203(a)(11).

(4) [(d)] **Reply to Registrant's Written Response.** If a registrant files a written response pursuant to paragraph (b)(2) [(b)] of this Rule, the Vice-President of Compliance may submit a written reply to the Membership Committee or a designated Subcommittee and serve such reply upon the registrant within thirty days of the date of such written response.

(5) [(e)] **Default of Registrant to Notice of Intent.** If the registrant fails to file a timely written response to the Notice of Intent, the registrant shall be deemed to have waived his right to submit such written response, and the facts stated in the Notice of Intent shall be deemed true for the purpose of finding that the registrant is disqualified from registration under Section 8a(2) of the Act. The Membership Committee or [its] a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, issue an interim order suspending registration as described in paragraph (b)(7)(B) [(g)(2)] of this Rule. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or [its] a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the



Ms. Jean A. Webb

March 8, 1994

failure to file and shall specify the nature of the proposed defense.

(6) [(f)] **Initial Determination.** After the receipt of the registrant's written response and any reply thereto from the Vice-President of Compliance, the Membership Committee or [its] a designated Subcommittee shall determine whether the registrant is disqualified from registration under Section 8a(2) of the Act. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written response, if any, filed by the registrant, any written reply submitted by the Vice-President of Compliance and such other papers as the Membership Committee or [its] a designated Subcommittee may require or permit.

(7) [(g)] **Interim Order.**

(A) [(1)] If the Membership Committee or [its] a designated Subcommittee determines that the registrant is not disqualified from registration under Section 8a(2) of the Act, the Membership Committee or [its] a designated Subcommittee shall issue a Withdrawal of Notice of Intent within thirty days after receipt of the registrant's written response and any reply thereto. In such Withdrawal of Notice of Intent, the Membership Committee or [its] a designated Subcommittee shall make a finding that the registrant is not disqualified from registration under Section 8a(2) of the Act.

(B) [(2)] If the Membership Committee or [its] a designated Subcommittee determines that the registrant is disqualified under Section 8a(2) of the Act, the Membership Committee or [its] a designated Subcommittee, within thirty days after receipt of the registrant's written response, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring



Ms. Jean A. Webb

March 8, 1994

him to show cause within twenty days of the date of such order why, notwithstanding the existence of the statutory disqualification, his registration should not be revoked. The interim order shall inform the registrant of the procedures which will be followed if no response is made in accordance with this Rule[.]:

(i) [(A)] The registration of the registrant shall be suspended, effective five days after the interim order is served upon the registrant, and such suspension shall remain in effect until a final order has been issued.

(ii) [(B)] If the sole basis upon which the registrant is disqualified from registration is the existence of a temporary order, judgment[,] or decree of the type described in Section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment[,] or decree shall have expired, except that in no event shall the registrant be suspended for a period to exceed six months.

(8) [(h)] **Default of Registrant.** If the registrant fails to file a timely written response to the order to show cause, the registrant shall be deemed to have waived his right to submit evidence in writing on all issues. The Membership Committee or [its] a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order revoking, restricting or further suspending the registration. Such finding shall be based upon



Ms. Jean A. Webb

March 8, 1994

the evidence of the statutory disqualification, any written submission filed by the registrant in response to the Notice of Intent and any written reply thereto submitted by the Vice-President of Compliance. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.

(9) [(i)] Termination. In the event the sponsor of a registrant files a Form 8-T reflecting the termination of employment of such registrant after the issuance of the Notice of Intent [or Interim Order] but prior to the effective date of a Final Order, the Membership Committee or [its] a designated Subcommittee may issue a Withdrawal of Notice of Intent or a Withdrawal of Notice of Intent and Interim Order indicating that because the registrant no longer has a sponsor, further proceedings are not warranted.

(10) [(j)] Further Proceedings. If an order to show cause is issued pursuant to paragraph (b)(7)(B) [(g)(2)] of this Rule, further proceedings with regard to such order shall be conducted before the Membership Committee or a designated Subcommittee in accordance with the provisions of Rules 504(a)(2)(B) [(b)(2)] through 504(a)(8) [(i)], 506, 507, 508 and 509.

Rule 505. Procedures Governing Floor Broker and Floor Trader Applicants and Registrants Disqualified From Registration Under Section 8a(2), 8a(3) or 8a(4) of the Act.

(a) Applicants Subject to a Section 8a(2), 8a(3) and 8a(4) Disqualification and Registrants Subject to a Section 8a(3) or 8a(4) Disqualification.

(1) Notice of Intent. On the basis of information which NFA has obtained, the President of NFA may at any time serve a Notice of Intent upon any person registered or



Ms. Jean A. Webb

March 8, 1994

applying for registration as a floor broker or floor trader stating that:

- (A) NFA alleges and is prepared to prove that the applicant or registrant is subject to one or more of the statutory disqualifications set forth in Section 8a(2), 8a(3) or 8a(4) of the Act;
- (B) the allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be denied, conditioned, suspended, restricted or revoked (if the Notice of Intent proposes conditioning or restricting registration, the Notice shall specify the proposed conditions or restrictions);
- (C) the applicant or registrant is entitled to have the Membership Committee or a designated Subcommittee consider written evidence of the type set forth in paragraph (a)(2) of this Rule. The Notice of Intent shall inform the applicant or registrant of the procedures which will be followed if no written submission is made in accordance with this Rule; and
- (D) if an applicant for registration has been granted a temporary license, such temporary license shall terminate five days after service on the applicant of the Notice of Intent.

(2) Written Response to the Notice of Intent.

- (A) In response to a Notice of Intent alleging a disqualification from registration set forth in Section 8a(2), 8a(3) or 8a(4) of the Act, the applicant or registrant may submit a written response challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to:
 - (i) the applicant's or registrant's identity;
 - (ii) the existence of a clerical error in any record documenting the statutory disqualification;



Ms. Jean A. Webb

March 8, 1994

- (iii) the nature or date of the statutory disqualification;
 - (iv) the post-conviction modification of any record of conviction; or
 - (v) the favorable disposition of any appeal.
- (B) The applicant or registrant shall state the nature of each challenge in the response and submit an affidavit to support facts material to each challenge. The applicant or registrant also shall state in the response whether he intends to show that, notwithstanding the accuracy of the allegations set forth in the Notice of Intent, his full, conditioned or restricted registration would pose no substantial risk to the public. If so, such person also may submit letters and other documents concerning what conditions or restrictions could be imposed and how the floor broker or floor trader or applicant will satisfy any conditions or restrictions imposed by the Membership Committee or a designated Subcommittee.
- (C) If in the response to the Notice of Intent, the applicant or registrant states that he intends to make the showing referred to in paragraph (a)(2)(B) of this Rule, he or his attorney also shall submit a statement identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing. Such submission also must include copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. In making a showing pursuant to paragraph (a)(2)(B) of this Rule, the applicant or registrant may present:
 - (i) mitigation evidence relating to the facts and circumstances surrounding the disqualifying conduct;
 - (ii) evidence of rehabilitation since the disqualifying conduct; and



Ms. Jean A. Webb

March 8, 1994

- (iii) evidence that the applicant's or registrant's registration would be subject to controls, including proposed conditions or restrictions likely to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from such future wrongdoing.
- (3) Time for Filing of Response. A written response to the Notice of Intent and any submissions thereto must be served upon NFA's Legal Docketing Department within forty-five days of the date of service of the Notice of Intent upon the applicant or registrant.
- (4) Default of Applicant or Registrant to Notice of Intent. If the applicant or registrant fails to file a timely written response to the Notice of Intent, the applicant or registrant shall be deemed to have waived his right to submit a written response, and the facts stated in the Notice of Intent shall be deemed to be true for the purpose of finding that the applicant or registrant is disqualified from registration under Section 8a(2), 8a(3) or 8a(4) of the Act. The Membership Committee or a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order denying, conditioning, suspending, restricting or revoking the registration. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.
- (5) NFA's Response. Within thirty days after the date the applicant or registrant serves a copy of the response to the Notice of Intent on NFA, NFA shall prepare a response thereto and serve a copy of the response on the applicant or registrant. Such response shall include either:



Ms. Jean A. Webb

March 8, 1994

- (A) a motion for summary judgment stating that, based upon the applicant's or registrant's response and further submission, if any, and any other materials which are attached to the response, there are no genuine issues of material fact to be determined and that registration should be denied or revoked; or
- (B) a description of the factual issues raised in the applicant's or registrant's response that NFA regards as material and disputed. The reply also shall include the identity and a summary of the expected testimony of each witness whom NFA intends to have testify at its case-in-chief and copies of all documents which NFA intends to introduce at the hearing.
- (6) Oral Hearing. Within thirty days of the date NFA files its response in accordance with paragraph (5) of this Rule to the applicant's or registrant's response, the Membership Committee or a designated Subcommittee shall:

 - (A) if the Membership Committee or a designated Subcommittee finds, based on the motion for summary judgment, that a party is entitled to judgment as a matter of law, issue an order granting, denying, suspending or revoking the registration of the applicant or registrant or withdrawing the Notice of Intent (such order shall be made in accordance with the standards set forth in Rules 507(a) and (b)); or
 - (B) if a motion for summary judgment is not filed or is denied, notify the parties of the time and place of a hearing. At the hearing, the parties shall be limited in their case-in-chief to presentation of witnesses and documents listed in previous filings, except for good cause shown.
- (7) Order. After the conclusion of the hearing, the Membership Committee or a designated Subcommittee shall make a finding as to whether the applicant has shown that his registration should not be denied or conditioned or whether the registrant has shown that his registration should not be suspended, restricted or



Ms. Jean A. Webb

March 8, 1994

revoked and shall issue an order accordingly, pursuant to the standards set forth in Rules 507(a) and (b).

- (8) Termination. In the event all exchanges currently sponsoring the applicant or registrant terminate the applicant's or registrant's trading privileges or reject his application after the issuance of the Notice of Intent but prior to the effective date of a Final Order, the Membership Committee or a designated Subcommittee may issue a Withdrawal of Notice of Intent indicating that further proceedings are not warranted.

(b) Registrants Subject to a Section 8a(2) Disqualification.

- (1) Notice of Intent. On the basis of information which NFA has obtained, NFA may at any time serve a Notice of Intent upon any person registered as a floor broker or floor trader stating that:
- (A) NFA alleges and is prepared to prove that the registrant is subject to one or more of the statutory disqualifications set forth in Section 8a(2) of the Act;
 - (B) the allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be suspended or revoked;
 - (C) the registrant is entitled to have the Membership Committee or a designated Subcommittee consider written evidence of the type set forth in paragraph (b)(2) of this Rule. The Notice of Intent shall inform the registrant of the procedures which will be followed if no written submission is made in accordance with this Rule;
 - (D) the Membership Committee or a designated Subcommittee shall determine, based upon the written evidence, whether the registrant is subject to a statutory disqualification; and
 - (E) if the registrant is found to be subject to a statutory disqualification, the registrant may be suspended and ordered to show cause why his registration should not be revoked.



Ms. Jean A. Webb

March 8, 1994

(2) **Written Response to the Notice of Intent.** In response to a Notice of Intent alleging a disqualification from registration set forth in Section 8a(2) of the Act, the registrant may submit a written response limited in scope to evidence challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to:

- (A) the registrant's identity;
- (B) the existence of a clerical error in any record documenting the statutory disqualification;
- (C) the nature or date of the statutory disqualification;
- (D) the post-conviction modification of any record of conviction; or
- (E) the favorable disposition of any appeal.

The registrant shall state the nature of each challenge in the response and submit an affidavit to support facts material to each challenge.

(3) **Time for Filing of Response.** A written response to the Notice of Intent must be served upon NFA's Legal Docketing Department within twenty days of the date of service of the Notice of Intent upon the registrant.

(4) **Reply to Registrant's Written Response.** If a registrant files a written response pursuant to paragraph (b)(2) of this Rule, NFA may submit a written reply to the Membership Committee or a designated Subcommittee and serve the reply upon the registrant within thirty days of the date of such written response.

(5) **Default of Registrant to Notice of Intent.** If the registrant fails to file a timely written response to the Notice of Intent, the registrant shall be deemed to have waived his right to submit a written response, and the facts stated in the Notice of Intent shall be deemed true for the purpose of finding that the registrant is disqualified from registration under Section 8a(2) of the Act. The Membership Committee or a designated Subcommittee shall thereafter, upon a finding



Ms. Jean A. Webb

March 8, 1994

that service was properly effected in accordance with Rule 502, issue an interim order suspending registration as described in paragraph (b)(7)(B) of this Rule. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.

(6) Initial Determination. After the receipt of the registrant's written response and any reply thereto from NFA, the Membership Committee or a designated Subcommittee shall determine based on the written record whether the registrant is disqualified from registration under Section 8a(2) of the Act. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written response, if any, filed by the registrant, any written reply submitted by NFA and such other papers as the Membership Committee or a designated Subcommittee may require or permit.

(7) Interim Order.

(A) If the Membership Committee or a designated Subcommittee determines that the registrant is not disqualified from registration under Section 8a(2) of the Act, the Membership Committee or a designated Subcommittee shall within thirty days after receipt of the registrant's written response and any reply thereto either issue a Withdrawal of Notice of Intent or, if the Membership Committee or a designated Subcommittee determines that the disqualification constitutes a Section 8a(3) disqualification, issue an Amended Notice of Intent. In either event, the Membership Committee or a designated Subcommittee shall make a finding that the registrant is not disqualified from registration under Section 8a(2) of the Act.

(B) If the Membership Committee or a designated Subcommittee determines that the registrant is dis-



Ms. Jean A. Webb

March 8, 1994

qualified under Section 8a(2) of the Act, the Membership Committee or a designated Subcommittee, within thirty days after receipt of the registrant's written response, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring him to show cause within twenty days of the date of such order why, notwithstanding the existence of the statutory disqualification, his registration should not be revoked. The interim order shall inform the registrant of the procedures which will be followed if no response is made in accordance with this Rule.

(i) The registration of the registrant shall be suspended, effective five days after the interim order is served upon the registrant, and such suspension shall remain in effect until a final order has been issued.

(ii) If the sole basis upon which the registrant is disqualified from registration is the existence of a temporary order, judgment or decree of the type described in Section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired, except that in no event shall the registrant be suspended for a period to exceed six months.

(8) Default of Registrant. If the registrant fails to file a timely written response to the order to show cause, the registrant shall be deemed to have waived his right to submit evidence in writing on all issues. The Membership Committee or a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order revoking, restricting or further suspending the registration. Such finding shall be based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the Notice of Intent and any written reply thereto submitted by NFA. In order to prevent injustice and on such conditions as may be appropriate, the Membership



Ms. Jean A. Webb

March 8, 1994

Committee or a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.

(9) Termination. In the event all exchanges currently sponsoring the registrant terminate the registrant's trading privileges after the issuance of the Notice of Intent but prior to the effective date of a Final Order, the Membership Committee or a designated Subcommittee may issue a Withdrawal of Notice of Intent or a Withdrawal of Notice of Intent and Interim Order indicating that further proceedings are not warranted.

(10) Further Proceedings. If an order to show cause is issued pursuant to paragraph (b)(7)(B) of this Rule, further proceedings with regard to such order shall be conducted before the Membership Committee or a designated Subcommittee in accordance with the provisions of Rules 505(a)(2)(B) through 505(a)(8), 506, 507, 508 and 509.

Rule 506. Hearing Procedures.

- (a) When a hearing is held before the Membership Committee or [its] a designated Subcommittee, a record of the hearing shall be kept. At such hearing, the applicant or registrant may be represented by counsel, submit evidence, call and examine witnesses, examine the evidence upon which the Membership Committee or [its] a designated Subcommittee made a determination as well as any documentary evidence which NFA intends to present at the hearing and, at the discretion of the Membership Committee or [its] a designated Subcommittee, present oral or written argument.
- (b) Upon notice of the time and place of an oral hearing, the parties may elect to participate by telephone. To effect such an election, a party shall file a notice with NFA's Legal Docketing Department and serve a copy on all opposing parties within fifteen days of the date such notice is served. The filing of an election to participate by telephone will be deemed a waiver of the party's right to a full oral hearing on the parties' material disputes of fact. The Membership Committee or [its] a designated Subcommittee



Ms. Jean A. Webb

March 8, 1994

shall order a telephonic hearing only if all parties to the proceeding elect such a procedure. Such telephonic hearing shall be held in accordance with the procedures set forth in the order. Following the telephonic hearing, the Membership Committee or [its] a designated Subcommittee shall issue a written decision in accordance with the standards set forth in paragraphs (a) and (b) of Rule 507.

Rule 507. Decision of Membership Committee or a Designated Subcommittee.

- (a) **Standards of Proof.** The written decision of the Membership Committee or [its] a designated Subcommittee shall specifically consider whether NFA has shown by a preponderance of the evidence that the applicant or registrant is subject to the statutory disqualification from registration set forth in the Notice of Intent and, where appropriate:
- (1) in actions involving statutory disqualifications set forth in Section 8a(2) of the Act, whether the applicant or registrant has made a clear and convincing showing that, notwithstanding the existence of the statutory disqualification, full, conditioned or restricted registration would not pose a substantial risk to the public; or
 - (2) in actions involving statutory disqualifications set forth in Sections 8a(3) or 8a(4) of the Act, whether the applicant or registrant has shown by a preponderance of the evidence that, notwithstanding the existence of the statutory disqualification, full, conditioned or restricted registration would not pose a substantial risk to the public.
- (b) **Findings.** In making its written decision, the Membership Committee or [its] a designated Subcommittee shall set forth facts material to its conclusion and provide an explanation of its decision in light of the statutory disqualification set forth in the Notice of Intent and, where appropriate, its findings regarding:
- (1) evidence mitigating the seriousness of the wrongdoing underlying the applicant's or registrant's statutory disqualification;



Ms. Jean A. Webb

March 8, 1994

- (2) evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongful conduct underlying the statutory disqualification; and
- (3) if the person is an associated person or introducing broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditional or restricted basis would be subject to supervisory controls likely both to detect future wrongful conduct by the applicant or registrant and protect the public from any harm arising from such conduct. Any decision providing for a conditioned or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification. Such decision shall fix a time period after which the associated person and his sponsor or the introducing broker and its guarantor may petition to lift or modify the conditions or restrictions in accordance with Rule 510.
- (4) if the person is a floor broker or floor trader or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditional or restricted basis would be subject to controls likely both to detect future wrongful conduct by the applicant or registrant and protect the public from any harm arising from such conduct. Any decision providing for a conditional or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on the statutory disqualification. The decision shall fix a time period after which the floor broker or floor trader may petition to lift or modify the conditions or restrictions in accordance with Rule 510.

Rule 508. Orders.

- (a) **Final Orders and Withdrawals of Notice of Intent.** All orders granting, denying, conditioning, restricting, suspending or revoking registration under this Part 500 (except an interim order suspending registration pursuant to Rule 504(b)(7)(B) or Rule 505(b)(7)(B) [505(g)(2)]) and all orders denying motions to vacate default orders pursuant to



Ms. Jean A. Webb

March 8, 1994

Rule 504(d) shall become a final order of NFA on the date of service upon the applicant or registrant. All Withdrawals of Notice of Intent [issued] shall become final on the date of service upon the applicant or registrant. A copy of each final order and Withdrawal of Notice of Intent issued by NFA shall be served upon the Commission at the same time it is served upon the applicant or registrant. All final orders shall inform the applicant or registrant of his 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 or Withdrawal of Notice of Intent issued under this Part 500 shall become effective thirty days after the date of service of the order on the applicant or registrant, except as otherwise directed by the Commission pursuant to CFTC Regulations, Part 171.

Rule 509. Settlements.

- (a) **When Offers May be Made.** Parties may propose offers of settlement at any time during the course of the proceeding. All offers of settlement shall be in writing.
- (b) **Content of Offer.** Each offer of settlement made by a respondent shall:
- (1) acknowledge service of the Notice of Intent;
 - (2) admit the jurisdiction of NFA with respect to the matters set forth in the Notice of Intent;
 - (3) include a waiver of:
 - (A) a hearing,
 - (B) all post-hearing procedures,
 - (C) Commission and judicial review, and
 - (D) any objection to NFA staff's participation in the consideration of the offer by the Membership Committee or [its] a designated Subcommittee;



Ms. Jean A. Webb

March 8, 1994

- (4) stipulate the basis in the record on which a final order may be entered, which basis may consist solely of the Notice of Intent and any findings contained in the offer of settlement; and
- (5) consent to the entry of a final order reflecting the terms of settlement agreed upon, including where appropriate:
 - (A) findings that the respondent is disqualified from registration under Section 8a(2), 8a(3) or 8a(4) of the Act, and
 - (B) the revocation, suspension, denial or granting of full registration or imposition of conditioned or restricted registration.
- (c) **Submission of Offer.** Offers of settlement made by a respondent shall be submitted in writing to NFA staff, which shall present them to the Membership Committee or [its] a designated Subcommittee with staff's recommendation. NFA staff shall inform the respondent if the recommendation will be unfavorable, in which case the offer shall not be presented to the Membership Committee or [its] a designated Subcommittee unless the respondent so requests. Any offer of settlement not presented to the Membership Committee or [its] a designated Subcommittee shall be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained therein and shall not be used in any manner in the proceeding by any party thereto.
- (d) **Acceptance of Offer.** The offer of settlement will only be deemed accepted upon issuance by the Membership Committee or [its] a designated Subcommittee of a final order based on the offer. Upon issuance of the final order, the proceeding shall be terminated as to the respondent involved.
- (e) **Rejection of Offer.** When an offer of settlement is rejected by the Membership Committee or [its] a designated Subcommittee, the party making the offer shall be notified by NFA staff and the offer of settlement shall be deemed withdrawn. A rejected offer of settlement and any documents relating thereto shall not constitute a part of the record in the proceeding. The offer will be null and void with respect to any acknowledgment, admission, waiver, stipulation or con-

Ms. Jean A. Webb

March 8, 1994

sent contained therein and shall not be used in any manner in the proceeding by any party thereto.

Rule 510. Procedures to Lift or Modify Conditions or Restrictions.

- (a) **Petition.** The registrant and, when applicable, his sponsor or guarantor may file a petition to lift or modify the conditions or restrictions on the registrant's registration.
- (1) The petition may be filed after the period specified in the final order imposing the conditioned or restricted registration.
 - (2) In the petition, the registrant and, when applicable, his sponsor or guarantor shall be limited to a showing by affidavit that the conditions or restrictions set forth in the final order have been satisfied. The affidavit of a sponsor or guarantor must be sworn to on behalf of the sponsor or guarantor by a person with actual knowledge of the registrant's activities.
- (b) **Response.**
- (1) Within thirty days of receipt of the petition pursuant to paragraph (a) of this Rule, NFA staff shall file a response. The response shall include a recommendation by staff as to whether to continue the conditions or restrictions, modify the conditions or restrictions or allow for a full registration.
 - (2) If NFA staff agrees with the petitioner's request to lift or modify conditions or restrictions on the petitioner's registration, it shall so recommend to the Membership Committee or [its] a designated Subcommittee. Such recommendation will only be deemed accepted upon issuance by the Membership Committee or [its] a designated Subcommittee of an order lifting or modifying the conditions or restrictions on the petitioner's registration.
- (c) **Oral Hearing.** If NFA staff requests a continuation or a modification of the conditions or restrictions on the registration other than in accordance with the terms of the petition, the Membership Committee or [its] a designated



Ms. Jean A. Webb

March 8, 1994

Subcommittee shall, within thirty days of the date that the response is filed pursuant to paragraph (b) of this Rule, determine whether an oral hearing is appropriate to the resolution of the registrant's petition.

- (1) If the Membership Committee or [its] a designated Subcommittee determines that an oral hearing is appropriate, it shall notify the parties of its determination and shall schedule and conduct an oral hearing in accordance with [Rule 506] CFTC Regulations 10.61 through 10.81. Following the hearing, the Membership Committee or [its] a designated Subcommittee shall issue a written decision or an order.
- (2) If the Membership Committee or [its] a designated Subcommittee concludes that an oral hearing is unnecessary, it shall notify the parties and issue a written decision or an order.

EXPLANATION OF PROPOSED AMENDMENTS

At its May 20, 1993 meeting, NFA's Board resolved to accept the authority to conduct adverse proceedings regarding floor broker and floor trader registrations if so requested by the Commission. The proposed amendments establish procedures for conducting such proceedings, if, in fact, the Commission delegates such authority to NFA. The amended rules closely track the Commission's Part 3 Rules governing its handling of adverse floor broker and floor trader actions and NFA's rules for conducting other adverse proceedings. The revised rules further provide that the Membership Committee conduct adverse proceedings regarding floor broker and floor trader registrations and that a Subcommittee conducting such a proceeding consist of at least three persons, the majority of whom are members of the Membership Committee and the remainder of whom are floor brokers or floor traders drawn from a list approved by the Board. Finally, the amended rules contain technical and stylistic changes intended to make the rules more readable and understandable.

NFA respectfully requests that the Commission review and approve the proposed amendments to NFA Bylaws 305 and 708 and NFA Registration Rules 101, 201, 203, 501, 502, 504, 505, 506, 507, 508, 509 and 510. NFA requests that these amendments be



Ms. Jean A. Webb

March 8, 1994

declared effective upon receipt by NFA of the authority to conduct adverse proceedings regarding floor broker and floor trader registrations.

Respectfully submitted,

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

Daniel J. Roth
General Counsel

DJR:ckm(sub\fbft)

cc: Acting Chairman Barbara Pedersen Holum
Commissioner Sheila C. Bair
Commissioner Joseph P. Dial
Commissioner John E. Tull, Jr.
Andrea M. Corcoran, Esq.
Dennis P. Klejna, Esq.
Alan L. Seifert, Esq.
Susan E. Ervin, Esq.
Lawrence B. Patent, Esq.
David Van Wagner, Esq.



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile

DIVISION OF
TRADING AND MARKETS

March 14, 1994

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

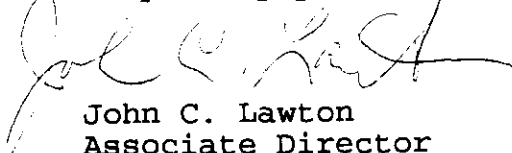
Re: Proposed Amendments to Bylaw 708 --
Qualifications and Obligations of Members of
NFA Committees

Dear Mr. Roth:

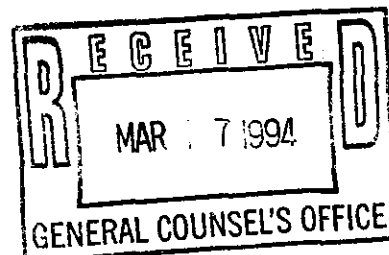
By letter dated March 8, 1994, and received by the Commission on March 11, 1994, the National Futures Association ("NFA") submitted the above-referenced proposal to the Commission as part of a larger submission. NFA's submission did not invoke the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("Act"). However, NFA later agreed that the Division of Trading and Markets ("Division") could handle the proposed amendments to NFA Bylaw 708 under the "ten-day" provision, which permits a proposal to become effective ten days after Commission receipt unless the Commission determines to review the proposal for approval and so notifies NFA.

Please be advised that the Division has examined the proposed amendments to Bylaw 708 and has decided not to review the proposed amendments, as provided under Section 17(j) of the Act.

Very truly yours,


John C. Lawton
Associate Director

JH 3-21-94



May 4, 1994

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 Bylaws 305 and 708 and NFA Registration Rules 101,
201, 203, 501, 502, 504, 505, 506, 507, 508, 509 and
510

Dear Ms. Webb:

By letter dated March 8, 1994, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("Commission") for its review and approval proposed amendments to the above-referenced NFA Bylaws and Registration Rules which were approved by NFA's Board of Directors on February 24, 1994. Since that time, certain inaccuracies in the submission letter have been brought to NFA's attention. The inaccuracies affected the following rules:

NFA Bylaw 305;
NFA Registration Rule 203(a)(11);
NFA Registration Rule 501(a) and (b);
NFA Registration Rule 504(b)(7)(A);
NFA Registration Rule 505(a)(5);
NFA Registration Rule 505(b)(1), (4) and (6);
NFA Registration Rule 508(a); and
NFA Registration Rule 510(c)(1)

NFA has corrected those inaccuracies and hereby substitutes the following text for the text contained in the March 8, 1994 submission letter. Additionally, NFA has not included the text of the proposed amendment to Bylaw 708 because by letter dated March 14, 1994 the Commission informed NFA that it decided not to review the proposed amendment.

THE PROPOSED AMENDMENTS

The proposed amendments to NFA Bylaw 305 and NFA Registration Rules 101, 201, 203, 501, 502, 504, 505, 506, 507, 508, 509 and 510 are as follows (additions are underscored and deletions are bracketed):



Ms. Jean A. Webb

May 4, 1994

BYLAWS
OF
NATIONAL FUTURES ASSOCIATION

* * *

CHAPTER 3
MEMBERSHIP AND ASSOCIATION WITH A MEMBER

* * *

Bylaw 305. Registration Rules.

Subject to Articles III and XI and Bylaw 1506, the Board shall adopt Registration Rules in accordance with which NFA shall perform the portion of the registration functions under the Act which it is required or authorized by the Commission to perform pursuant to Section 8a(10) or Section 17(o) of the Act and in accordance with which NFA shall determine proficiency for purposes of determining fitness to be registered under the Act (except with respect to floor brokers and floor traders) and for purposes of determining membership qualification under Bylaw 301(d), which rules shall be deemed a part of these Bylaws.

* * *

REGISTRATION RULES

* * *

PART 100. DEFINITIONS

Rule 101. Definitions.

As used in these Rules --

* * *

- (b) **"Applicant"** - means a person seeking registration under the Act as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, [or as] an associated person of any of the foregoing, floor broker or floor trader.

* * *



Ms. Jean A. Webb

May 4, 1994

- (o) **"Registrant"** - means a person registered under the Act as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, [or as] an associated person of any of the foregoing, floor broker or floor trader.

* * *

PART 200. REGISTRATION REQUIREMENTS AND PROCEDURES

Rule 201. Registration Requirements and Procedures.

NFA shall perform registration functions in accordance with the provisions set forth in these Rules for persons other than floor brokers and floor traders for whom it has been granted registration responsibilities pursuant to Section 8a(10) or Section 17(o) of the Act. NFA shall perform registration functions with respect to persons required to register under the Act as floor brokers or floor traders in accordance with all of the Regulations governing the registration of floor brokers and floor traders contained in Part 3 of the Commission's Regulations, except that Rule 203 of these Rules shall govern floor broker and floor trader registration fees, Part 500 of the Rules shall govern adverse registration proceedings involving floor brokers or floor traders and Part 700 of these Rules shall govern access to and certification of floor broker and floor trader records maintained by NFA.

* * *

Rule 203. Registration Fees.

- (a) **Amount.**

* * *

- (11) **Disqualification Fee.** A written submission to the [President] Membership Committee or a designated Subcommittee filed under Rule 504 [or 505] shall be accompanied by a fee of \$1,000 for the first submission only. The fee shall be refunded if [the President or] the Membership Committee or [its] a designated Subcommittee finds that the applicant or registrant is not subject to a statutory disqualification.



Ms. Jean A. Webb

May 4, 1994

* * *

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

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

**(a) Registration of Futures Commission Merchants, Introducing
Brokers, Commodity Pool Operators, Commodity Trading Advi-
sors, Leverage Transaction Merchants and Associated Persons.**

NFA may refuse to register or register conditionally, any person applying for registration as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant or associated person of any of the foregoing, or suspend, restrict or revoke the registration of any registrant in those categories, based upon the standards of fitness set forth in the Act. Interim Orders and Final [written] [o]Orders denying, [or] revoking [registration], [registering] condition[ally]ing, suspending or restricting registration shall be made by the Membership Committee or [its] a designated Subcommittee in accordance with the procedures set forth in Part 500 of these Rules. Such designated Subcommittee shall consist of three members of the Membership Committee. In cases submitted by the President to the Membership Committee or [its] a designated Subcommittee, registration shall not be granted pending a final determination by the Membership Committee or [its] a designated Subcommittee. No member of the Membership committee or [its] a designated Subcommittee shall either review a registration matter or participate in a registration action if the member, or any person with whom the member is connected, has a financial, personal or other direct interest in the matter under consideration.

(b) Registration of Floor Brokers and Floor Traders. NFA may refuse to register or register conditionally, any person applying for registration as a floor broker or floor trader, or suspend, restrict or revoke the registration of any person registered as a floor broker or floor trader, based upon the standards of fitness set forth in the Act. Interim Orders and Final Orders denying, revoking, conditioning, suspending or restricting registration as a floor broker or floor trader shall be made by the Membership Committee or a



Ms. Jean A. Webb

May 4, 1994

designated Subcommittee in accordance with the procedures set forth in Part 500 of these Rules. Such designated Subcommittee shall consist of at least three persons, the majority of whom are members of the Membership Committee and the remainder of whom are registered floor brokers or floor traders approved by NFA's Board of Directors to be a member of such Subcommittee. In cases submitted by the President to the Membership Committee or a designated Subcommittee, registration shall not be granted pending a final determination by the Membership Committee or a designated Subcommittee. No member of the Membership Committee or a designated Subcommittee shall either review a registration matter or participate in a registration action if the member, or any person with whom the member is connected, has a financial, personal or other direct interest in the matter under consideration.

Rule 502. General Provisions.

(a) Service.

- (1) For purposes of any proceeding to deny, condition, suspend, restrict or revoke registration, service upon an applicant or registrant will be sufficient if mailed by certified mail return receipt requested, delivered to [an] a generally recognized overnight courier service or delivered to a messenger service, properly addressed to the applicant or registrant at the address shown on his most recent registration application or any amendment thereto. Service will be complete upon mailing, delivery to [an] a generally recognized overnight courier service or delivery to a messenger service. Where a party effects service by mail, the time within which the person served may respond thereto shall be increased by three days.
- (2) A copy of any notice served in accordance with paragraph (a)(1) of this Rule also shall be served upon:
 - (A) [A]ny sponsor of the applicant or registrant, if the applicant or registrant is an individual registered as or applying for registration as an associated person and such sponsor's guarantor, if any; or



Ms. Jean A. Webb

May 4, 1994

- (B) [A]ny futures commission merchant which has entered into a guarantee agreement pursuant to CFTC Regulation 1.10(j) with an applicant or registrant applying for registration as or registered as an introducing broker[.]; or
 - (C) any contract market that has granted or is reviewing an application for trading privileges if the applicant or registrant is an individual registered as or applying for registration as a floor broker or floor trader.
- (3) Documents served by an applicant or registrant upon NFA under this Part 500 shall be considered served or filed only upon actual receipt by the Legal Docketing Department of National Futures Association, 200 West Madison Street, Chicago, Illinois 60606.
- (b) Extensions of Time for Filing.**
- (1) Except as otherwise provided by law or by these Rules, for good cause shown, the Membership Committee or [its] a designated Subcommittee before whom a proceeding brought under these Part 500 Rules is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by such Rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Membership Committee or [its] a designated Subcommittee may set a time limit for that action.
 - (2) Absent extraordinary circumstances, in any instance in which a time limit that has been prescribed for an action to be taken exceeds seven days from the date of the order or Rule establishing the time limit, requests for extension of time shall be filed at least five days prior to the expiration of the time limit and shall explain why an extension of time is necessary.
- (c) Section 8a(2)(E) Disqualification.** NFA will not initiate a proceeding based on a statutory disqualification set forth in Section 8a(2)(E) of the Act if respondeat superior is the sole basis upon which an applicant or registrant may be found subject to such statutory disqualification.



Ms. Jean A. Webb

May 4, 1994

Rule 503. Withdrawal of Application for Registration.

- (a) Whenever information comes to the attention of NFA that an applicant for registration in any capacity may be disqualified from registration under Section 8a(2), 8a(3), or 8a(4) of the Act, the Vice-President of Compliance or the Vice-President's designee may serve written notice upon the applicant which shall specify the statutory disqualifications to which the applicant may be subject and notify the applicant that:
- (1) the information, if true, is a basis upon which the applicant's registration may be denied;
 - (2) unless the applicant voluntarily withdraws his application, it may be necessary to institute the denial procedures described in Part 500 of these Rules; and
 - (3) if the applicant does not confirm in writing that he wishes to have his application given further consideration, his application will be deemed to have been withdrawn.
- (b) The applicant must serve the written confirmation referred to in paragraph (a)(3) of this Rule upon NFA's Legal Docketing Department within twenty days of the date the written notice from NFA was served.

Rule 504. Procedures Governing Applicants and Registrants, Except Floor Brokers and Floor Traders, Disqualified From Registration Under Section 8a(3) or 8a(4) of the Act and Applicants, except Floor Brokers and Floor Traders, Disqualified From Registration Under Section 8a(2) of the Act.

- (a) Applicants Subject to a Section 8a(2), 8a(3) or 8a(4) Disqualification and Registrants Subject to a Section 8a(3) or 8a(4) Disqualification.
- (1) [(a)] **Notice of Intent.** On the basis of information which NFA [it] has obtained, the President of NFA may at any time serve a Notice of Intent upon any person registered or applying for registration in



Ms. Jean A. Webb

May 4, 1994

any capacity except that of floor broker or floor trader, stating that:

- (A) [(1)] NFA alleges and is prepared to prove that the applicant or registrant is subject to one or more of the statutory disqualifications set forth in Section 8a(2), 8a(3) or 8a(4) of the Act;
- (B) [(2)] the allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be denied, conditioned, suspended, restricted or revoked (if the Notice of Intent proposes conditioning or restricting registration, the Notice shall specify the proposed conditions or restrictions);
- (C) [(3)] the applicant or registrant is entitled to have the Membership Committee or [its] a designated Subcommittee consider written evidence of the type set forth in paragraph (a)(2) [(b)] of this Rule. The Notice of Intent shall inform the applicant or registrant of the procedures which will be followed if no written submission is made in accordance with this Rule; and
- (D) [(4)] if an applicant for registration has been granted a temporary license, such temporary license shall terminate five days after service on the applicant of the Notice of Intent.

(2) [(b)] **Written Response to the Notice of Intent.**

- (A) [(1)] In response to a Notice of Intent alleging a disqualification from registration set forth in Section 8a(2), 8a(3) or 8a(4) of the Act, the applicant or registrant may submit a written response challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to:



Ms. Jean A. Webb

May 4, 1994

- (i) the applicant's or registrant's identity;
- (ii) the existence of a clerical error in any record documenting the statutory disqualification;
- (iii) the nature or date of the statutory disqualification;
- (iv) the post-conviction modification of any record of conviction; or
- (v) the favorable disposition of any appeal.

(B) [(2)] The applicant or registrant shall state the nature of each challenge in the response and submit an affidavit to support facts material to each challenge. In the response, if the person is not an associated person or an introducing broker or an applicant for registration in either capacity, the applicant or registrant also shall state whether it intends to show that, notwithstanding the accuracy of the allegations set forth in the Notice of Intent, its registration would pose no substantial risk to the public. If the person is an associated person, an introducing broker or an applicant for registration in either capacity, the applicant or registrant also shall state whether he intends to show that, notwithstanding the accuracy of the allegations set forth in the Notice of Intent, his full, conditioned or restricted registration would pose no substantial risk to the public. If the associated person or introducing broker or applicant for registration in either capacity intends to make such a showing, such person also must submit a letter signed by an officer or general partner authorized to bind the sponsor or the guarantor. Such



Ms. Jean A. Webb

May 4, 1994

letter must state that the sponsor agrees to sign a Supplemental Sponsor Certification Statement or the guarantor agrees to sign a Supplemental Guarantor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant by the Membership Committee or [its] a designated Subcommittee: provided, that with respect to such sponsor or guarantor:

(i) [(A)] an adjudicatory proceeding brought by or before: (a) [(i)] the Commission, pursuant to the provisions of Sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act, or (b) [(ii)] NFA, pursuant to NFA Compliance Rules or these Rules, is not pending and the sponsor or guarantor is not subject to any special supervisory obligations imposed by NFA or agreed to by such sponsor or guarantor; and

(ii) [(B)] in the case of a sponsor which is a futures commission merchant or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of NFA Financial Requirements Section 6 or CFTC Regulation 31.7(b), respectively.

(3) [(c)] **Time for Filing of Response.** A written response to the Notice of Intent must be served upon NFA's Legal Docketing Department within thirty days of the date of service of the Notice of Intent upon the applicant or registrant. Such response must be accompanied by the disqualification fee required by Rule 203(a)(11).



Ms. Jean A. Webb

May 4, 1994

- (4) [(d)] Default of Applicant or Registrant to Notice of Intent.** If the applicant or registrant fails to file a timely written response to the Notice of Intent, the applicant or registrant shall be deemed to have waived his right to submit such written response, and the facts stated in the Notice of Intent shall be deemed to be true for the purpose of finding that the applicant or registrant is disqualified from registration under Section 8a(2), 8a(3) or 8a(4) of the Act. The Membership Committee or [its] a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order denying, conditioning, suspending, restricting or revoking the registration. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or [its] a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.
- (5) [(e)] Further Submission in Accordance With Rule 504(a)(2)(B) [(b)(2)].** If, in the response to the Notice of Intent, the applicant or registrant states that he intends to make the showing referred to in paragraph (a)(2)(B) [(b)(2)] of this Rule, he shall, within fifteen days after filing such response, file with NFA's Legal Docketing Department a submission which includes a statement of the applicant or registrant or his attorney identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing. Such submission also must include copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. In making a showing pursuant to paragraph (a)(2)(B) [(b)(2)] of this Rule, the applicant or registrant may present:



Ms. Jean A. Webb

May 4, 1994

- (A) [(1)] mitigation evidence relating to the facts and circumstances surrounding the disqualifying conduct;
- (B) [(2)] evidence of rehabilitation since the disqualifying conduct; and
- (C) [(3)] if the person is an associated person, [or] an introducing broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration would be subject to supervisory controls, including proposed conditions or restrictions likely to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from such future wrongdoing.

(6) [(f)] **NFA's Response.** Within sixty days after the later of the date the applicant or registrant serves a copy of the response to the Notice of Intent on NFA (if no further submission is to be made in accordance with paragraph (a)(5) [(e)] of this Rule) or the date the applicant or registrant serves a copy of the further submission made in accordance with paragraph (a)(5) [(e)] of this Rule on NFA, the Vice-President of Compliance shall prepare a response thereto and serve a copy of the response on the applicant or registrant. Such response shall include either:

- (A) [(1)] a motion for summary judgment stating that, based upon the applicant's or registrant's response and further submission, if any, and any other materials which are attached to the response, there are no genuine issues of material fact to be determined and that registration should be denied or revoked; or
- (B) [(2)] a description of the factual issues raised in the applicant's or registrant's response and further submission, if any, that NFA regards as material and disputed. Such reply also shall include



Ms. Jean A. Webb

May 4, 1994

the identity and a summary of the expected testimony of each witness whom NFA intends to have testify at its case-in-chief and copies of all documents which NFA intends to introduce at such hearing.

- (7) [(g)] **Oral Hearing.** Within thirty days of the date NFA files its response in accordance with paragraph (a)(6) [(f)] of this Rule to the applicant's or registrant's response and further submission, if any, the Membership Committee or [its] a designated Subcommittee shall:
- (A) [(1)] if the Membership Committee or [its] a designated Subcommittee finds, based on the motion for summary judgment, that a party is entitled to judgment as a matter of law, issue an order granting, denying, suspending or revoking the registration of the applicant or registrant or withdrawing the Notice of Intent (such order shall be made in accordance with the standards set forth in Rules 507(a) and (b)); or
- (B) [(2)] if a motion for summary judgment is not filed or if such a motion is denied, notify the parties of the time and place of a hearing. At such hearing, the parties shall be limited in their case-in-chief to presentation of witnesses and documents listed in previous filings except for good cause shown.
- (8) [(h)] **Order.** After the conclusion of the hearing, the Membership Committee or [its] a designated Subcommittee shall make a finding as to whether the applicant has shown that his registration should not be denied or conditioned or whether the registrant has shown that his registration should not be suspended, restricted or revoked and shall issue an order accordingly, pursuant the standards set forth in Rules 507(a) and (b).



Ms. Jean A. Webb

May 4, 1994

(9) [(i)] **Termination.** In the event the sponsor of an applicant or registrant files a Form 8-T reflecting the termination of employment of such applicant or registrant after the issuance of a Notice of Intent but prior to the [issuance] effective date of a Final Order, the Membership Committee or [its] a designated Subcommittee may issue a Withdrawal of Notice of Intent indicating that because the applicant or registrant no longer has a sponsor, further proceedings are not warranted.

(b) [Rule 505. Procedures Governing] Registrants [Disqualified From Registration Under] Subject to a Section 8a(2) Disqualification[of the Act].

(1) [(a)] **Notice of Intent.** On the basis of information [it] which NFA has obtained, the President of NFA may at any time serve a Notice of Intent upon any person registered in any capacity except that of floor broker or floor trader stating that:

(A) [(1)] NFA alleges and is prepared to prove that the registrant is subject to one or more of the statutory disqualifications set forth in Section 8a(2) of the Act;

(B) [(2)] the allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be suspended or revoked;

(C) [(3)] the registrant is entitled to have the Membership Committee or [its] a designated Subcommittee consider written evidence of the type set forth in paragraph (b)(2) [(b)] of this Rule. The Notice of Intent shall inform the registrant of the procedures which will be followed if no written submission is made in accordance with this Rule;

(D) [(4)] the Membership Committee or [its] a designated Subcommittee shall determine, based upon such written evidence,



Ms. Jean A. Webb

May 4, 1994

whether the registrant is subject to a statutory disqualification; and

(E) [(5)] if the registrant is found to be subject to a statutory disqualification, the registrant may be suspended and ordered to show cause why such registration should not be revoked.

(2) [(b)] **Written Response to the Notice of Intent.** In response to a Notice of Intent alleging a disqualification from registration set forth in Section 8a(2) of the Act, the registrant may submit a written response limited in scope to evidence challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to:

(A) [(1)] the registrant's identity;

(B) [(2)] the existence of a clerical error in any record documenting the statutory disqualification;

(C) [(3)] the nature or date of the statutory disqualification;

(D) [(4)] the post-conviction modification of any record of conviction; or

(E) [(5)] the favorable disposition of any appeal.

[(6)] The registrant shall state the nature of each challenge in the response and submit an affidavit to support facts material to each challenge.

(3) [(c)] **Time for Filing of Response.** A written response to the Notice of Intent must be served upon NFA's Legal Docketing Department within twenty days of the date of service of the Notice of Intent upon the registrant. Such response must be accompanied by the disqualification fee required by Rule 203(a)(11).

(4) [(d)] **Reply to Registrant's Written Response.** If a registrant files a written response pursuant to



Ms. Jean A. Webb

May 4, 1994

paragraph (b)(2) [(b)] of this Rule, the Vice-President of Compliance may submit a written reply to the Membership Committee or a designated Subcommittee and serve such reply upon the registrant within thirty days of the date of such written response.

(5) [(e)] Default of Registrant to Notice of Intent. If the registrant fails to file a timely written response to the Notice of Intent, the registrant shall be deemed to have waived his right to submit such written response, and the facts stated in the Notice of Intent shall be deemed true for the purpose of finding that the registrant is disqualified from registration under Section 8a(2) of the Act. The Membership Committee or [its] a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, issue an interim order suspending registration as described in paragraph (b)(7)(B) [(g)(2)] of this Rule. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or [its] a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.

(6) [(f)] Initial Determination. After the receipt of the registrant's written response and any reply thereto from the Vice-President of Compliance, the Membership Committee or [its] a designated Subcommittee shall determine whether the registrant is disqualified from registration under Section 8a(2) of the Act. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written response, if any, filed by the registrant, any written reply submitted by the Vice-President of Compliance and such other papers as the Membership Committee or [its] a designated Subcommittee may require or permit.



Ms. Jean A. Webb

May 4, 1994

(7) [(g)] Interim Order.

(A) [(1)] If the Membership Committee or [its] a designated Subcommittee determines that the registrant is not disqualified from registration under Section 8a(2) of the Act, the Membership Committee or [its] a designated Subcommittee shall [issue a Withdrawal of Notice of Intent] within thirty days after receipt of the registrant's written response and any reply thereto either issue a Withdrawal of Notice of Intent or, if the Membership Committee or a designated Subcommittee determines that the disqualification constitutes a Section 8a(3) disqualification, issue an Amended Notice of Intent. In either event [. In such Withdrawal of Notice of Intent], the Membership Committee or [its] a designated Subcommittee shall make a finding that the registrant is not disqualified from registration under Section 8a(2) of the Act.

(B) [(2)] If the Membership Committee or [its] a designated Subcommittee determines that the registrant is disqualified under Section 8a(2) of the Act, the Membership Committee or [its] a designated Subcommittee, within thirty days after receipt of the registrant's written response, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring him to show cause within twenty days of the date of such order why, notwithstanding the existence of the statutory disqualification, his registration should not be revoked. The interim order shall inform the registrant of the procedures which will be followed if no response is made in accordance with this Rule[.];



Ms. Jean A. Webb

May 4, 1994

(i) [(A)] The registration of the registrant shall be suspended, effective five days after the interim order is served upon the registrant, and such suspension shall remain in effect until a final order has been issued.

(ii) [(B)] If the sole basis upon which the registrant is disqualified from registration is the existence of a temporary order, judgment[,] or decree of the type described in Section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment[,] or decree shall have expired, except that in no event shall the registrant be suspended for a period to exceed six months.

(8) [(h)] **Default of Registrant.** If the registrant fails to file a timely written response to the order to show cause, the registrant shall be deemed to have waived his right to submit evidence in writing on all issues. The Membership Committee or [its] a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order revoking, restricting or further suspending the registration. Such finding shall be based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the Notice of Intent and any written reply thereto submitted by the Vice-President of Compliance. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to



Ms. Jean A. Webb

May 4, 1994

file and shall specify the nature of the proposed defense.

- (9) [(i)] Termination. In the event the sponsor of a registrant files a Form 8-T reflecting the termination of employment of such registrant after the issuance of the Notice of Intent [or Interim Order] but prior to the effective date of a Final Order, the Membership Committee or [its] a designated Subcommittee may issue a Withdrawal of Notice of Intent or a Withdrawal of Notice of Intent and Interim Order indicating that because the registrant no longer has a sponsor, further proceedings are not warranted.
- (10) [(j)] Further Proceedings. If an order to show cause is issued pursuant to paragraph (b)(7)(B) [(g)(2)] of this Rule, further proceedings with regard to such order shall be conducted before the Membership Committee or a designated Subcommittee in accordance with the provisions of Rules 504(a)(2)(B) [(b)(2)] through 504(a)(8) [(i)], 506, 507, 508 and 509.

Rule 505. Procedures Governing Floor Broker and Floor Trader Applicants and Registrants Disqualified From Registration Under Section 8a(2), 8a(3) or 8a(4) of the Act.

(a) Applicants Subject to a Section 8a(2), 8a(3) and 8a(4) Disqualification and Registrants Subject to a Section 8a(3) or 8a(4) Disqualification.

- (1) Notice of Intent. On the basis of information which NFA has obtained, the President of NFA may at any time serve a Notice of Intent upon any person registered or applying for registration as a floor broker or floor trader stating that:
- (A) NFA alleges and is prepared to prove that the applicant or registrant is subject to one or more of the statutory disqualifications set forth in Section 8a(2), 8a(3) or 8a(4) of the Act;
- (B) the allegations set forth in the Notice of Intent, if true, constitute a basis upon which registra-

Ms. Jean A. Webb

May 4, 1994

tion can be denied, conditioned, suspended, restricted or revoked (if the Notice of Intent proposes conditioning or restricting registration, the Notice shall specify the proposed conditions or restrictions);

- (C) the applicant or registrant is entitled to have the Membership Committee or a designated Subcommittee consider written evidence of the type set forth in paragraph (a)(2) of this Rule. The Notice of Intent shall inform the applicant or registrant of the procedures which will be followed if no written submission is made in accordance with this Rule; and
- (D) if an applicant for registration has been granted a temporary license, such temporary license shall terminate five days after service on the applicant of the Notice of Intent.

(2) Written Response to the Notice of Intent.

- (A) In response to a Notice of Intent alleging a disqualification from registration set forth in Section 8a(2), 8a(3) or 8a(4) of the Act, the applicant or registrant may submit a written response challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to:
- (i) the applicant's or registrant's identity;
 - (ii) the existence of a clerical error in any record documenting the statutory disqualification;
 - (iii) the nature or date of the statutory disqualification;
 - (iv) the post-conviction modification of any record of conviction; or
 - (v) the favorable disposition of any appeal.



Ms. Jean A. Webb

May 4, 1994

- (B) The applicant or registrant shall state the nature of each challenge in the response and submit an affidavit to support facts material to each challenge. The applicant or registrant also shall state in the response whether he intends to show that, notwithstanding the accuracy of the allegations set forth in the Notice of Intent, his full, conditioned or restricted registration would pose no substantial risk to the public. If so, such person also may submit letters and other documents concerning what conditions or restrictions could be imposed and how the floor broker or floor trader or applicant will satisfy any conditions or restrictions imposed by the Membership Committee or a designated Subcommittee.
- (C) If in the response to the Notice of Intent, the applicant or registrant states that he intends to make the showing referred to in paragraph (a) (2) (B) of this Rule, he or his attorney also shall submit a statement identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing. Such submission also must include copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. In making a showing pursuant to paragraph (a) (2) (B) of this Rule, the applicant or registrant may present:
- (i) mitigation evidence relating to the facts and circumstances surrounding the disqualifying conduct;
 - (ii) evidence of rehabilitation since the disqualifying conduct; and
 - (iii) evidence that the applicant's or registrant's registration would be subject to controls, including proposed conditions or restrictions likely to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from such future wrongdoing.



Ms. Jean A. Webb

May 4, 1994

- (3) Time for Filing of Response. A written response to the Notice of Intent and any submissions thereto must be served upon NFA's Legal Docketing Department within forty-five days of the date of service of the Notice of Intent upon the applicant or registrant.
- (4) Default of Applicant or Registrant to Notice of Intent. If the applicant or registrant fails to file a timely written response to the Notice of Intent, the applicant or registrant shall be deemed to have waived his right to submit a written response, and the facts stated in the Notice of Intent shall be deemed to be true for the purpose of finding that the applicant or registrant is disqualified from registration under Section 8a(2), 8a(3) or 8a(4) of the Act. The Membership Committee or a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order denying, conditioning, suspending, restricting or revoking the registration. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.
- (5) NFA's Response. Within thirty days after the date the applicant or registrant serves a copy of the response to the Notice of Intent on NFA, the Vice-President of Compliance shall prepare a response thereto and serve a copy of the response on the applicant or registrant. Such response shall include either:
- (A) a motion for summary judgment stating that, based upon the applicant's or registrant's response and further submission, if any, and any other materials which are attached to the response, there are no genuine issues of material fact to be determined and that registration should be denied or revoked; or



Ms. Jean A. Webb

May 4, 1994

- (B) a description of the factual issues raised in the applicant's or registrant's response that NFA regards as material and disputed. The reply also shall include the identity and a summary of the expected testimony of each witness whom NFA intends to have testify at its case-in-chief and copies of all documents which NFA intends to introduce at the hearing.
- (6) Oral Hearing. Within thirty days of the date NFA files its response in accordance with paragraph (5) of this Rule to the applicant's or registrant's response, the Membership Committee or a designated Subcommittee shall:
- (A) if the Membership Committee or a designated Subcommittee finds, based on the motion for summary judgment, that a party is entitled to judgment as a matter of law, issue an order granting, denying, suspending or revoking the registration of the applicant or registrant or withdrawing the Notice of Intent (such order shall be made in accordance with the standards set forth in Rules 507(a) and (b)); or
- (B) if a motion for summary judgment is not filed or is denied, notify the parties of the time and place of a hearing. At the hearing, the parties shall be limited in their case-in-chief to presentation of witnesses and documents listed in previous filings, except for good cause shown.
- (7) Order. After the conclusion of the hearing, the Membership Committee or a designated Subcommittee shall make a finding as to whether the applicant has shown that his registration should not be denied or conditioned or whether the registrant has shown that his registration should not be suspended, restricted or revoked and shall issue an order accordingly, pursuant the standards set forth in Rules 507(a) and (b).
- (8) Termination. In the event all exchanges currently sponsoring the applicant or registrant terminate the applicant's or registrant's trading privileges or reject his application after the issuance of the Notice of Intent but prior to the effective date of a Final



Ms. Jean A. Webb

May 4, 1994

Order, the Membership Committee or a designated Subcommittee may issue a Withdrawal of Notice of Intent indicating that further proceedings are not warranted.

(b) Registrants Subject to a Section 8a(2) Disqualification.

- (1) Notice of Intent. On the basis of information which NFA has obtained, the President of NFA may at any time serve a Notice of Intent upon any person registered as a floor broker or floor trader stating that:
 - (A) NFA alleges and is prepared to prove that the registrant is subject to one or more of the statutory disqualifications set forth in Section 8a(2) of the Act;
 - (B) the allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be suspended or revoked;
 - (C) the registrant is entitled to have the Membership Committee or a designated Subcommittee consider written evidence of the type set forth in paragraph (b)(2) of this Rule. The Notice of Intent shall inform the registrant of the procedures which will be followed if no written submission is made in accordance with this Rule;
 - (D) the Membership Committee or a designated Subcommittee shall determine, based upon the written evidence, whether the registrant is subject to a statutory disqualification; and
 - (E) if the registrant is found to be subject to a statutory disqualification, the registrant may be suspended and ordered to show cause why his registration should not be revoked.
- (2) Written Response to the Notice of Intent. In response to a Notice of Intent alleging a disqualification from registration set forth in Section 8a(2) of the Act, the registrant may submit a written response limited in scope to evidence challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to:



Ms. Jean A. Webb

May 4, 1994

- (A) the registrant's identity;
- (B) the existence of a clerical error in any record documenting the statutory disqualification;
- (C) the nature or date of the statutory disqualification;
- (D) the post-conviction modification of any record of conviction; or
- (E) the favorable disposition of any appeal.

The registrant shall state the nature of each challenge in the response and submit an affidavit to support facts material to each challenge.

- (3) Time for Filing of Response. A written response to the Notice of Intent must be served upon NFA's Legal Docketing Department within twenty days of the date of service of the Notice of Intent upon the registrant.
- (4) Reply to Registrant's Written Response. If a registrant files a written response pursuant to paragraph (b)(2) of this Rule, the Vice-President of Compliance may submit a written reply to the Membership Committee or a designated Subcommittee and serve the reply upon the registrant within thirty days of the date of such written response.
- (5) Default of Registrant to Notice of Intent. If the registrant fails to file a timely written response to the Notice of Intent, the registrant shall be deemed to have waived his right to submit a written response, and the facts stated in the Notice of Intent shall be deemed true for the purpose of finding that the registrant is disqualified from registration under Section 8a(2) of the Act. The Membership Committee or a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, issue an interim order suspending registration as described in paragraph (b)(7)(B) of this Rule. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the



Ms. Jean A. Webb

May 4, 1994

Membership Committee or a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.

(6) Initial Determination. After the receipt of the registrant's written response and any reply thereto from NFA, the Membership Committee or a designated Subcommittee shall determine whether the registrant is disqualified from registration under Section 8a(2) of the Act. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written response, if any, filed by the registrant, any written reply submitted by NFA and such other papers as the Membership Committee or a designated Subcommittee may require or permit.

(7) Interim Order.

(A) If the Membership Committee or a designated Subcommittee determines that the registrant is not disqualified from registration under Section 8a(2) of the Act, the Membership Committee or a designated Subcommittee shall within thirty days after receipt of the registrant's written response and any reply thereto either issue a Withdrawal of Notice of Intent or, if the Membership Committee or a designated Subcommittee determines that the disqualification constitutes a Section 8a(3) disqualification, issue an Amended Notice of Intent. In either event, the Membership Committee or a designated Subcommittee shall make a finding that the registrant is not disqualified from registration under Section 8a(2) of the Act.

(B) If the Membership Committee or a designated Subcommittee determines that the registrant is disqualified under Section 8a(2) of the Act, the Membership Committee or a designated Subcommittee, within thirty days after receipt of the registrant's written response, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring him to show cause within twenty days of the date



Ms. Jean A. Webb

May 4, 1994

of such order why, notwithstanding the existence of the statutory disqualification, his registration should not be revoked. The interim order shall inform the registrant of the procedures which will be followed if no response is made in accordance with this Rule.

- (i) The registration of the registrant shall be suspended, effective five days after the interim order is served upon the registrant, and such suspension shall remain in effect until a final order has been issued.
- (ii) If the sole basis upon which the registrant is disqualified from registration is the existence of a temporary order, judgment or decree of the type described in Section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired, except that in no event shall the registrant be suspended for a period to exceed six months.

- (8) **Default of Registrant.** If the registrant fails to file a timely written response to the order to show cause, the registrant shall be deemed to have waived his right to submit evidence in writing on all issues. The Membership Committee or a designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order revoking, restricting or further suspending the registration. Such finding shall be based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the Notice of Intent and any written reply thereto submitted by NFA. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or a designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.



Ms. Jean A. Webb

May 4, 1994

(9) Termination. In the event all exchanges currently sponsoring the registrant terminate the registrant's trading privileges after the issuance of the Notice of Intent but prior to the effective date of a Final Order, the Membership Committee or a designated Subcommittee may issue a Withdrawal of Notice of Intent or a Withdrawal of Notice of Intent and Interim Order indicating that further proceedings are not warranted.

(10) Further Proceedings. If an order to show cause is issued pursuant to paragraph (b) (7) (B) of this Rule, further proceedings with regard to such order shall be conducted before the Membership Committee or a designated Subcommittee in accordance with the provisions of Rules 505(a) (2) (B) through 505(a) (8), 506, 507, 508 and 509.

Rule 506. Hearing Procedures.

- (a) When a hearing is held before the Membership Committee or [its] a designated Subcommittee, a record of the hearing shall be kept. At such hearing, the applicant or registrant may be represented by counsel, submit evidence, call and examine witnesses, examine the evidence upon which the Membership Committee or [its] a designated Subcommittee made a determination as well as any documentary evidence which NFA intends to present at the hearing and, at the discretion of the Membership Committee or [its] a designated Subcommittee, present oral or written argument.
- (b) Upon notice of the time and place of an oral hearing, the parties may elect to participate by telephone. To effect such an election, a party shall file a notice with NFA's Legal Docketing Department and serve a copy on all opposing parties within fifteen days of the date such notice is served. The filing of an election to participate by telephone will be deemed a waiver of the party's right to a full oral hearing on the parties' material disputes of fact. The Membership Committee or [its] a designated Subcommittee shall order a telephonic hearing only if all parties to the proceeding elect such a procedure. Such telephonic hearing shall be held in accordance with the procedures set forth in the order. Following the telephonic hearing, the Membership Committee or [its] a designated Subcommittee shall issue a



Ms. Jean A. Webb

May 4, 1994

written decision in accordance with the standards set forth in paragraphs (a) and (b) of Rule 507.

Rule 507. Decision of Membership Committee or a Designated Subcommittee.

- (a) **Standards of Proof.** The written decision of the Membership Committee or [its] a designated Subcommittee shall specifically consider whether NFA has shown by a preponderance of the evidence that the applicant or registrant is subject to the statutory disqualification from registration set forth in the Notice of Intent and, where appropriate:
- (1) in actions involving statutory disqualifications set forth in Section 8a(2) of the Act, whether the applicant or registrant has made a clear and convincing showing that, notwithstanding the existence of the statutory disqualification, full, conditioned or restricted registration would not pose a substantial risk to the public; or
 - (2) in actions involving statutory disqualifications set forth in Sections 8a(3) or 8a(4) of the Act, whether the applicant or registrant has shown by a preponderance of the evidence that, notwithstanding the existence of the statutory disqualification, full, conditioned or restricted registration would not pose a substantial risk to the public.
- (b) **Findings.** In making its written decision, the Membership Committee or [its] a designated Subcommittee shall set forth facts material to its conclusion and provide an explanation of its decision in light of the statutory disqualification set forth in the Notice of Intent and, where appropriate, its findings regarding:
- (1) evidence mitigating the seriousness of the wrongdoing underlying the applicant's or registrant's statutory disqualification;
 - (2) evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongful conduct underlying the statutory disqualification; and



Ms. Jean A. Webb

May 4, 1994

(3) if the person is an associated person or introducing broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditional or restricted basis would be subject to supervisory controls likely both to detect future wrongful conduct by the applicant or registrant and protect the public from any harm arising from such conduct. Any decision providing for a conditional or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification. Such decision shall fix a time period after which the associated person and his sponsor or the introducing broker and its guarantor may petition to lift or modify the conditions or restrictions in accordance with Rule 510.

(4) if the person is a floor broker or floor trader or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditional or restricted basis would be subject to controls likely both to detect future wrongful conduct by the applicant or registrant and protect the public from any harm arising from such conduct. Any decision providing for a conditional or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on the statutory disqualification. The decision shall fix a time period after which the floor broker or floor trader may petition to lift or modify the conditions or restrictions in accordance with Rule 510.

Rule 508. Orders.

(a) **Final Orders and Withdrawals of Notice of Intent.** All orders granting, denying, conditioning, restricting, suspending or revoking registration under this Part 500 (except an interim order suspending registration pursuant to Rule 504(b)(7)(B) or Rule 505(b)(7)(B) [505(g)(2)]) and all orders denying motions to vacate default orders [pursuant to Rule 504(d)] under this Part 500 (except orders denying motions to vacate default orders pursuant to Rule 504(b)(5) or Rule 505(b)(5)) shall become a final order of NFA on the date of service upon the applicant or registrant. All



Ms. Jean A. Webb

May 4, 1994

Withdrawals of Notice of Intent [issued] shall become final on the date of service upon the applicant or registrant. A copy of each final order and Withdrawal of Notice of Intent issued by NFA shall be served upon the Commission at the same time it is served upon the applicant or registrant. All final orders shall inform the applicant or registrant of his 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 or Withdrawal of Notice of Intent issued under this Part 500 shall become effective thirty days after the date of service of the order on the applicant or registrant, except as otherwise directed by the Commission pursuant to CFTC Regulations, Part 171.

Rule 509. Settlements.

- (a) **When Offers May be Made.** Parties may propose offers of settlement at any time during the course of the proceeding. All offers of settlement shall be in writing.
- (b) **Content of Offer.** Each offer of settlement made by a respondent shall:
- (1) acknowledge service of the Notice of Intent;
 - (2) admit the jurisdiction of NFA with respect to the matters set forth in the Notice of Intent;
 - (3) include a waiver of:
 - (A) a hearing,
 - (B) all post-hearing procedures,
 - (C) Commission and judicial review, and
 - (D) any objection to NFA staff's participation in the consideration of the offer by the Membership Committee or [its] a designated Subcommittee;



Ms. Jean A. Webb

May 4, 1994

- (4) stipulate the basis in the record on which a final order may be entered, which basis may consist solely of the Notice of Intent and any findings contained in the offer of settlement; and
- (5) consent to the entry of a final order reflecting the terms of settlement agreed upon, including where appropriate:
 - (A) findings that the respondent is disqualified from registration under Section 8a(2), 8a(3) or 8a(4) of the Act, and
 - (B) the revocation, suspension, denial or granting of full registration or imposition of conditioned or restricted registration.
- (c) **Submission of Offer.** Offers of settlement made by a respondent shall be submitted in writing to NFA staff, which shall present them to the Membership Committee or [its] a designated Subcommittee with staff's recommendation. NFA staff shall inform the respondent if the recommendation will be unfavorable, in which case the offer shall not be presented to the Membership Committee or [its] a designated Subcommittee unless the respondent so requests. Any offer of settlement not presented to the Membership Committee or [its] a designated Subcommittee shall be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained therein and shall not be used in any manner in the proceeding by any party thereto.
- (d) **Acceptance of Offer.** The offer of settlement will only be deemed accepted upon issuance by the Membership Committee or [its] a designated Subcommittee of a final order based on the offer. Upon issuance of the final order, the proceeding shall be terminated as to the respondent involved.
- (e) **Rejection of Offer.** When an offer of settlement is rejected by the Membership Committee or [its] a designated Subcommittee, the party making the offer shall be notified by NFA staff and the offer of settlement shall be deemed withdrawn. A rejected offer of settlement and any documents relating thereto shall not constitute a part of the record in the proceeding. The offer will be null and void with respect to any acknowledgment, admission, waiver, stipulation or con-



Ms. Jean A. Webb

May 4, 1994

sent contained therein and shall not be used in any manner in the proceeding by any party thereto.

Rule 510. Procedures to Lift or Modify Conditions or Restrictions.

- (a) **Petition.** The registrant and, when applicable, his sponsor or guarantor may file a petition to lift or modify the conditions or restrictions on the registrant's registration.
- (1) The petition may be filed after the period specified in the final order imposing the conditioned or restricted registration.
 - (2) In the petition, the registrant and, when applicable, his sponsor or guarantor shall be limited to a showing by affidavit that the conditions or restrictions set forth in the final order have been satisfied. The affidavit of a sponsor or guarantor must be sworn to on behalf of the sponsor or guarantor by a person with actual knowledge of the registrant's activities.
- (b) **Response.**
- (1) Within thirty days of receipt of the petition pursuant to paragraph (a) of this Rule, NFA staff shall file a response. The response shall include a recommendation by staff as to whether to continue the conditions or restrictions, modify the conditions or restrictions or allow for a full registration.
 - (2) If NFA staff agrees with the petitioner's request to lift or modify conditions or restrictions on the petitioner's registration, it shall so recommend to the Membership Committee or [its] a designated Subcommittee. Such recommendation will only be deemed accepted upon issuance by the Membership Committee or [its] a designated Subcommittee of an order lifting or modifying the conditions or restrictions on the petitioner's registration.
- (c) **Oral Hearing.** If NFA staff requests a continuation or a modification of the conditions or restrictions on the registration other than in accordance with the terms of the petition, the Membership Committee or [its] a designated

Ms. Jean A. Webb

May 4, 1994

Subcommittee shall, within thirty days of the date that the response is filed pursuant to paragraph (b) of this Rule, determine whether an oral hearing is appropriate to the resolution of the registrant's petition.

- (1) If the Membership Committee or [its] a designated Subcommittee determines that an oral hearing is appropriate, it shall notify the parties of its determination and shall schedule and conduct an oral hearing in accordance with Rule 506. Following the hearing, the Membership Committee or [its] a designated Subcommittee shall issue a written decision or an order.
- (2) If the Membership Committee or [its] a designated Subcommittee concludes that an oral hearing is unnecessary, it shall notify the parties and issue a written decision or an order.

Thank you for your attention to this matter.

Sincerely,



Daniel J. Roth
General Counsel

DJR:ckm(sub\fbft-2.mjc)

cc: Acting Chairman Barbara Pedersen Holum
Commissioner Sheila C. Bair
Commissioner Joseph P. Dial
Commissioner John E. Tull, Jr.
Andrea M. Corcoran, Esq.
Dennis P. Klejna, Esq.
Alan L. Seifert, Esq.
Susan E. Ervin, Esq.
Lawrence B. Patent, Esq.
David Van Wagner, Esq.

June 17, 1994

Via Overnight Delivery

Lawrence B. Patent, Esq.
Associate Chief Counsel
Division of Trading & Markets
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581

Re: Proposed NFA Registration Rules 501(b) and 505(a)(2)(B)

Dear Mr. Patent:

I am writing to confirm representations which the staff of National Futures Association ("NFA") has made to the staff of the Commodity Futures Trading Commission ("Commission") concerning the manner in which NFA would implement the referenced proposed rules.

Proposed NFA Registration Rule 501(b) provides that a designated Subcommittee may conduct adverse registration proceedings involving floor brokers or floor traders. Such a designated Subcommittee would consist of at least three persons, the majority of whom are members of NFA's Membership Committee and the remainder of whom are registered floor brokers or floor traders approved by NFA's Board of Directors to be a member of such a designated Subcommittee. In composing such designated Subcommittees, NFA will utilize its best efforts to avoid having as Subcommittee members floor brokers and floor traders who have trading privileges at the same exchange as the subject of the proceeding.

Proposed NFA Registration Rule 505(a)(2)(B) requires floor brokers and floor traders or applicants in either category to submit to NFA as part of a response to a Notice of Intent a statement that the respondent intends to establish that a full, conditioned or restricted registration would pose no substantial risk to the public despite the existence of a statutory disqualification. If the respondent states an intention to make that showing, then the respondent may also submit documentation concerning what conditions or restrictions could be imposed and how the respondent would satisfy any conditions or restrictions imposed as a result of the proceeding. NFA understands that pursuant to the Commission's delegation order any supervisory arrangements ordered by NFA as part of a conditioned or

NFA

- 2 -

Lawrence B. Patent, Esq.

June 17, 1994

restricted registration will meet the standards set forth in
Commission Regulation 3.60(b)(2)(i).

If you have any questions, please do not hesitate to
call me at (312) 781-1388.

Sincerely,



Michael J. Crowley
Associate General Counsel

MJC:ckm(1tr\patent)

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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

July 26, 1994



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 NFA Bylaw 305 and NFA Registra-
tion Rules 101, 201, 203, 501, 502, 504, 505,
506, 507, 508, 509 and 510

Dear Mr. Roth:

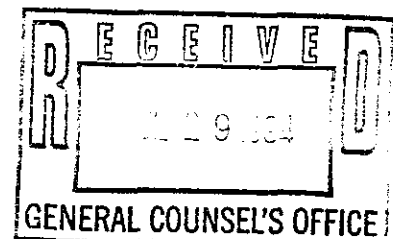
By letters dated March 8, 1994 and May 4, 1994, the National Futures Association ("NFA") submitted to the Commission, pursuant to Section 17(j) of the Commodity Exchange Act ("Act"), proposed amendments to NFA Bylaw 305 and NFA Registration Rules 101, 201, 203, 501, 502, 504, 505, 506, 507, 508, 509 and 510.

Please be advised that on this date the Commission has approved the above-listed NFA proposed amendments to the NFA Bylaws and Registration Rules.

Sincerely,

Jean A. Webb
Secretary of the Commission

Note: These amendments will become effective upon the delegation by the Commission to NFA of the authority to conduct adverse registration actions against floor brokers and floor traders. cm



Yugoslavia

Tapered Roller Bearings
52 FR 30417
August 14, 1987
A-479-601
Contact: Dennis Askey at (202) 482-2657

Armenia

Titanium Sponge
33 FR 12138
August 28, 1968
A-831-803
Contact: David Genovese at (202) 482-4697

Azerbaijan

Titanium Sponge
33 FR 12138
August 28, 1968
A-832-803
Contact: David Genovese at (202) 482-4697

Belarus

Titanium Sponge
33 FR 12138
August 28, 1968
A-822-803
Contact: David Genovese at (202) 482-4697

Estonia

Titanium Sponge
33 FR 12138
August 28, 1968
A-447-803
Contact: David Genovese at (202) 482-4697

Georgia

Titanium Sponge
33 FR 12138
August 28, 1968
A-833-803
Contact: David Genovese at (202) 482-4697

Japan

Acrylic Sheet
41 FR 36497
August 30, 1976
A-588-055
Contact: Kim Moore at (202) 482-0090

Japan

Cadmium
37 FR 15700
August 4, 1972
A-588-035
Contact: Roy F. Unger Jr. at (202) 482-0651

Kyrgyzstan

Titanium Sponge
33 FR 12138
August 28, 1968
A-835-803
Contact: David Genovese at (202) 482-4697

Latvia

Titanium Sponge
33 FR 12138
August 28, 1968
A-449-803
Contact: David Genovese at (202) 482-4697

Lithuania

Titanium Sponge
33 FR 12138
August 28, 1968
A-451-803
Contact: David Genovese at (202) 482-4697

Moldova

Titanium Sponge
33 FR 12138
August 28, 1968
A-841-803
Contact: David Genovese at (202) 482-4697

Tajikistan

Titanium Sponge
33 FR 12138
August 28, 1968
A-842-803
Contact: David Genovese at (202) 482-4697

Turkmenistan

Titanium Sponge
33 FR 12138
August 28, 1968
A-843-803
Contact: David Genovese at (202) 482-4697

Uzbekistan

Titanium Sponge
33 FR 12138
August 28, 1968
A-844-803
Contact: David Genovese at (202) 482-4697

The following case was inadvertently omitted from the July "Notice of Intent to Revoke." However, written notice was served, on a timely basis via registered mail, upon the domestic interested parties.

Romania

Solid Urea
53 FR 26366
July 14, 1987
A-485-601
Contact: Dennis Askey at (202) 482-0367

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, and domestic interested parties do not object to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping duty orders and findings are no longer of interest to interested parties and shall proceed with the revocation. However, if interested parties do request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or domestic interested parties do object to the Department's intent to revoke pursuant to this notice, the Department will continue the duty order or finding without further notice to the public.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings by the last day of August 1994, with the exception of Solid Urea from Romania. In that case, the

opportunity to object will remain the last day of July. Any submission to a revocation must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with sections 353.31(g) and 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 27, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94-18682 Filed 7-29-94; 8:45 am]

BILLING CODE 3510-DS-P

COMMODITY FUTURES TRADING COMMISSION

Adverse Registration Actions by National Futures Association With Respect to Floor Brokers, Floor Traders, and Applicants for Registration in Either Category

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is authorizing National Futures Association (NFA) to deny, condition, suspend, modify, restrict or revoke the registration of any floor broker (FB), floor trader (FT), or an applicant for registration in either category. The Commission has previously authorized NFA to perform various functions with respect to processing registration records of FBs, FTs and applicants therefor, including, among other things, granting such registrations where appropriate and serving as the official custodian of those Commission records. This Order does not authorize NFA to accept or act upon requests for exemption or to render "no-action" opinions with respect to applicable registration requirements. This Order generally will conform NFA's authority regarding the FB and FT registration categories to the authority delegated by

the Commission to NFA concerning the other categories of registration under the Commodity Exchange Act (Act).¹

EFFECTIVE DATE: August 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Associate Chief Counsel, or Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955 or 254-3688, respectively.

SUPPLEMENTARY INFORMATION:

Introduction

The Commission has previously issued Orders authorizing NFA to perform registration processing functions with respect to FBs and FTs. These functions have included: (1) processing and, where appropriate, granting applications for registration under the Act; (2) issuing and terminating, where appropriate, temporary licenses; (3) processing the triennial review of registration information, periodic updates, terminations of trading privileges and requests for withdrawal from registration; and (4) establishing and maintaining systems of records regarding FBs and FTs and serving as the official custodian of those Commission records.² However, the Commission has not previously authorized NFA to take adverse actions against FBs, FTs or persons applying for registration in either category, or to accept or act upon requests for exemption or to render "no-action" opinions with respect to applicable registration requirements.³ By the Order below issued on this date, the Commission is authorizing NFA to assume the performance of additional registration functions on behalf of the Commission, specifically, to deny, condition, suspend, modify, restrict or revoke the registration of any FB, FT or applicant for registration in either category.⁴ However, the Commission

will continue to handle any matter that has already been referred to it by NFA.

The Commission's order also provides that, until the Commission orders otherwise, with respect to an application for registration as an FB or an FT that NFA previously would have forwarded to the Commission for review of disciplinary history, if NFA determines that registration should be granted in such a case, either with or without conditions, NFA shall transmit the file to the Commission and stay the granting of registration until the Commission has had an opportunity to object to such granting of registration.⁵

Further, this Order does not authorize NFA to accept or act upon requests for exemption or to render "no-action" opinions with respect to applicable registration requirements. This Order will conform NFA's authority concerning the FB and FT registration categories to the authority delegated by the Commission to NFA concerning the other categories of registration under the Act, except with respect to the temporary requirement for forwarding certain matters to the Commission referred to above.⁶

The Commission further notes that in enacting Section 227 of the Futures Trading Practices Act of 1992, Congress added Section 8a(11) to the Act, 7 U.S.C. 12a(11) (Supp. IV 1992), which

¹ See 58 FR 19657, 19659. The same treatment will apply in the case of a registered FB or FT with new disciplinary history where NFA determines to maintain registration, either with or without restrictions. NFA need not, however, forward to the Commission any matter related to an FB, FT or applicant for registration in either category where the only "yes" answer to a disciplinary history question relates to a single arrest where there was no subsequent conviction, guilty plea or plea of nolo contendere, or a single misdemeanor conviction based on conduct unrelated to financial market activity that predates the application for registration by at least five years, provided such matter is disclosed on the registration application or any update thereto. If a person willfully makes any materially false or misleading statement or omits to state any material fact in his registration application or any update thereto, that is a separate ground for statutory disqualification from registration. Sections 8a(2)(G) and 8a(3)(G) of the Act, 7 U.S.C. 12a(2)(G) and 12a(3)(G) (1988 & Supp. IV 1992).

² The Commission has previously authorized NFA to perform registration processing functions, and to take adverse registration actions, with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transactions merchants and associated persons of such entities, as well as applicants for registration in any of the aforementioned categories. See 48 FR 15940 (April 13, 1983); 48 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 49 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 54 FR 19594 (May 8, 1989); and 54 FR 41133 (October 5, 1989). In performing Commission registration functions, NFA is required to monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

provided rulemaking authority for the Commission to suspend the registration of any person charged with a felony if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission. The Commission adopted Rule 3.56 to implement this authority at the same time that it adopted rules to govern registration of FTs. 58 FR 19575, 19587-19588, 19595-19596 (April 15, 1993). The Commission expects that NFA will promptly notify the Commission when NFA becomes aware that any registrant has been charged with a felony.

United States of America Before the Commodity Futures Trading Commission Order Authorizing the Performance of Registration Processing Functions

I. Authority and Background

Section 8a(10) of the Act (7 U.S.C. 12a(10) (1988 and Supp. IV 1992)) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act and subject to the provisions of the Act applicable to registrations granted by the Commission. Section 17(o)(2) of the Act provides that the Commission may authorize NFA, in performing Commission registration functions, to deny, condition, suspend, restrict or revoke any registration, subject to Commission review.⁷

NFA submitted under cover of a letter dated March 8, 1994 amendments to its bylaws and rules to govern adverse actions against FTs, FBs and applicants for registration in either category. These amendments reflect actions taken by NFA's Board at meetings on May 20, 1993 and February 24, 1994. NFA's rule amendments establish procedures for conducting adverse registration proceedings with respect to the FB and FT registration categories that closely track the Commission's Part 3 rules in this regard. NFA's amended rules further provide that NFA's Membership Committee will conduct adverse proceedings regarding FB and FT registrations and applicants for registration in either category and that a Subcommittee conducting such a proceeding will consist of at least three

⁷ 7 U.S.C. 21(o)(2) (1988).

¹ 7 U.S.C. 1 *et seq.* (1988 & Supp. IV 1992).

² 51 FR 25929 (July 7, 1986); 51 FR 34490 (September 29, 1986); 58 FR 19657 (April 15, 1993).

³ When the Commission issued its most recent delegation Order, it noted that:

Certain commenters on the Commission's proposed rules concerning FT registration suggested that authority to take adverse action against FTs and FBs should be delegated to NFA. The Commission will take the matter under advisement and may consider authorizing NFA to perform such functions at a subsequent date when it has more experience with the FT registration process. 58 FR 19657, 19658 (footnote omitted).

⁴ See Sections 8a(2), 8a(3), 8a(4) and 8a(11) of the Act, 7 U.S.C. 12a(2), 12a(3), 12a(4) and 12a(11) (1988 & Supp. IV 1992).

persons, the majority of whom are members of the Membership Committee and the remainder of whom are FBs or FTs drawn from a list approved by NFA's Board. By letter dated June 17, 1994, NFA has indicated that, in composing such designated Subcommittees, it will utilize its best efforts to avoid having as Subcommittee members FBs and FTs who have trading privileges at the same exchange as the subject of the proceeding.⁸

NFA has indicated that in carrying out the function of taking adverse registration action involving the FB and FT registration categories, it will be bound by restrictions in Commission rules regarding who may act as a supervisor. Therefore, if NFA determines to condition or restrict the registration of an FB or an FT, someone eligible to do so under Commission rules must sign a Supplemental Sponsor Certification Statement (SSCS) for the FB or FT and supervise compliance with any conditions or restrictions that may be imposed. In the case of an FB, the SSCS must be signed by his employer or, if he has no employer, by another floor broker;⁹ if an FT is involved, the SSCS must be signed by an officer of the floor trader's clearing member, if such officer is a registrant or a principal of a registrant, or the chief operating officer on behalf of each contract market that has granted trading privileges.¹⁰

Upon consideration, the Commission has determined to authorize NFA, effective August 1, 1994, to deny, condition, suspend, modify, restrict or revoke the registration of any FB, FT or an applicant for registration in either category in accordance with the standards established by the Act and rules promulgated thereunder.¹¹

⁸ Letter from Michael J. Crowley, Associate General Counsel, NFA, to Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets.

⁹ If the FB has no employer and another FB signs the SSCS, the Commission has required that the FB subject to conditions or restrictions receive customer orders only from the person who signed the SSCS or agents of that person. See *In the Matter of John V. Piccolo*, CFTC Docket No. SD-93-8 (July 20, 1993).

¹⁰ Such a supervising employer or FB, supervising registrant or principal may not be subject to a pending adjudicatory proceeding under the Act or barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with Commission Rule 1.63, 17 CFR 1.63 (1993). See Commission Rule 3.60(b)(2)(i), 17 CFR § 3.60(b)(2)(i) (1993); NFA letter dated June 17, 1994.

¹¹ In conjunction with this authorization to take adverse action, the Commission is also directing that, until the Commission orders otherwise, with respect to the file of an FB, an FT or an applicant for registration in either category that NFA

However, the Commission will continue to handle any matter that has already been referred to it by NFA. The Commission is also authorizing NFA to perform records custodianship functions with respect to such adverse registration actions.¹² The Commission has separately approved on this date amendments to NFA Bylaws 305 and 708 and NFA Registration Rules 101, 201, 203, 501, 502, and 504-510 to authorize implementation of these grants of authority.

By prior orders, the Commission has authorized NFA to maintain various other Commission registration records and certified NFA as the official custodian of such records for this agency.¹³ The Commission has now determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain and serve as official custodian of the Commission's registration records with respect to adverse actions against FBs, FTs, and applicants for registration in either category from this time forward. This determination is based upon NFA's representations regarding the implementation of rules and procedures for maintaining and safeguarding all such records, as well as the need to facilitate NFA's assumption of responsibility for taking adverse registration action against FBs, FTs, and applicants for registration in either category.

In maintaining the Commission's registration records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing

previously would have forwarded to the Commission for review of disciplinary history, if NFA determines that registration should be maintained or granted in such a case, either with or without restrictions or conditions, NFA shall transmit the file to the Commission and stay the maintenance or granting of registration until the Commission has had an opportunity to object to such maintenance or granting of registration. NFA need not, however, forward to the Commission any matter related to an FB, FT or applicant for registration in either category where the only "yes" answer to a disciplinary history question relates to a single arrest where there was no subsequent conviction, guilty plea or plea of nolo contendere, or a single misdemeanor conviction based on conduct unrelated to financial market activity that predates the application for registration by at least five years, provided such matter is disclosed on the registration application or any update thereto. See note 5, *supra*.

¹² In this connection, in a separate notice published elsewhere today in the *Federal Register*, the Commission is publishing a Notice under the Privacy Act of 1974 of modified descriptions of systems of records to incorporate records applicable to adverse registration actions against FBs, FTs or applicants for registration in either category.

¹³ 49 FR 39593; 50 FR 34885; 51 FR 25929; 54 FR 19594; 54 FR 41133; 58 FR 19657.

or future Orders or regulations.¹⁴ In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are necessary and acceptable to the Commission to ensure the security and integrity of the FB, FT or applicant records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission Orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission Orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of Section 8a(10) of the Act, to authorize NFA, effective August 1, 1994, to perform the following registration functions:

- (1) To deny, condition, suspend, modify, restrict or revoke registration under the Commodity Exchange Act as a floor broker, floor trader or applicant for registration in either category;
- (2) To establish and maintain a system of records regarding such adverse actions involving floor brokers, floor traders and applicants for registration in either category, and to serve as the official custodian of those Commission records.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations promulgated thereunder.

These determinations are based upon the Congressional intent expressed in Sections 8a(10) and 17(o) of the Act that the Commission be allowed to authorize NFA to perform any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner, and NFA's representations concerning standards and procedures to be followed in administering these functions.

This Order does not, however, authorize NFA to accept or act upon requests for exemption from registration or to render "no-action" opinions or interpretations with respect to applicable registration requirements.

Nothing in this Order or in Sections 8a(10) or 17 of the Act shall affect the Commission's authority to review the granting of a registration application by

¹⁴ See, e.g., 49 FR 39593, 39595-97; 50 FR 34885, 34887.

NFA in the performance of Commission registration functions, or to review any adverse registration action taken by NFA. See also Sections 17(o)(3) and (4) of the Act, 7 U.S.C. 21(o)(3) and (4) (1988 and Supp. IV 1992), and 17 CFR Part 171.

Issued in Washington, D.C. on July 26, 1994 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94-15630 Filed 7-29-94; 8:45 am]

BILLING CODE 6351-01-P

Privacy Act of 1974; Modified Descriptions of Systems of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of modified descriptions of systems of records.

SUMMARY: The Commodity Futures Trading Commission (Commission) is modifying the descriptions of one of its existing systems of records to reflect its Order, set forth in a separate notice published elsewhere today in the *Federal Register*, authorizing National Futures Association (NFA) to take adverse registration actions with respect to floor brokers (FBs), floor traders (FTs) and applicants for registration in either category and to maintain Commission records related to such actions.

EFFECTIVE DATE: August 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, Telephone: (202) 254-3688.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to the Privacy Act of 1974, the Commission currently maintains two systems of records related to the registration of persons engaging in certain types of commodity-related activities: CFTC-12 (Fitness Investigations) and CFTC-20 (Registration of Floor Brokers, Floor Traders, Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators, Leverage Transaction Merchants and Associated Persons). As currently set forth, these two systems contain registration forms, related supplements and schedules, fingerprint cards, correspondence, and reports reflecting information developed from various sources relating to the registration or fitness of applicants, registrants and persons affiliated with

futures commission merchants (FCMs), introducing brokers (IBs), commodity pool operators (CPOs), commodity trading advisors (CTAs), leverage transaction merchants (LTMs), FBs and FTs.¹ NFA, in performing certain registration functions on behalf of the Commission, currently maintains the Commission's registration records with respect to FCMs, IBs, CPOs, CTAs, LTMs and their respective associated persons (APs), as well as certain registration records of FBs and FTs.²

NFA's Board of Directors voted at its meetings on May 20, 1993 and February 24, 1994 to authorize NFA to perform for the Commission the function of taking adverse registration actions against FBs, FTs and applicants for registration in either category. Upon consideration, the Commission has determined to authorize NFA, effective August 1, 1994, to perform such registration functions in accordance with the standards established by the Act and rules promulgated thereunder. Because the maintenance of Commission records associated with those activities is an essential aspect of any such authority granted to NFA by the Commission, the Commission is also authorizing NFA to perform records custodianship functions with respect to adverse registration actions.

In light of the Commission's Order authorizing NFA to perform certain registration functions concerning FBs, FTs and applicants and to become custodian of the relevant records, the Commission has modified its description of the CFTC-12 records system to provide for NFA's expanded role with respect to these registration categories. Because the Commission believes that authorizing NFA to perform records custodianship functions for adverse actions involving the FB and FT registration categories will assist NFA in carrying out responsibilities under the Commodity Exchange Act, the concomitant disclosure to NFA of personal information on individuals that may be contained in those records is permissible under the Commission's current routine use of such information under the Privacy Act.³ This Notice is being published to inform the public—and, in particular, individuals about whom information is maintained in

either system—as to the location of these Commission records.

Description of Systems of Records

CFTC-12

SYSTEM NAME:

Fitness Investigations.

SYSTEM LOCATION:

Records for floor brokers and floor traders with respect to matters commenced prior to August 1, 1994; associated persons and principals of leverage transaction merchants whose registration status as such was inactive prior to January 1, 1986; and also for all other categories where registration status in every applicable capacity was inactive prior to October 1, 1983: Division of Trading and Markets, 2033 K Street NW, Washington, DC 20581.

Records for futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, their respective associated persons and principals, with active registration status in any capacity on or after October 1, 1983; leverage transaction merchants and their associated persons and principals with active registration status as such on or after April 13, 1984, except as noted above; records for floor brokers and floor traders with respect to matters commenced on or after August 1, 1994: National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606.

(See also "Retention and Disposal," *infra*.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied to the Commission or NFA, as applicable, or who may apply to NFA for registration as floor brokers, floor traders or as associated persons, and principals (as defined in 17 CFR 3.1) of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and leverage transaction merchants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system contains information in computerized and hardcopy format including registration forms, schedules and supplements; fingerprint cards; correspondence relating to registration; and reports and memoranda reflecting information developed from various sources outside the CFTC or NFA. In addition, the system contains records of each CFTC or NFA fitness investigation.

¹ See 49 FR 45472 (November 16, 1984); 58 FR 19659 (April 15, 1993).

² *Id.* See also 49 FR 39593 (October 9, 1984); 49 FR 45418 (November 16, 1984); 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 17, 1986); and 54 FR 19594 (May 8, 1989).

³ See Routine Use No. 3 at 47 FR 44830, 44831 (October 12, 1982).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4f(1), 4k(4), 4k(5), 4n(1), 8a(1)-(5), 8a(10), 8a(11), 17(o) and 19 of the Commodity Exchange Act, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6n(1), 12a(1)-(5), 12a(10), 12a(11), 21(o) and 23 (1988 and Supp. IV 1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to all of the Commission's systems of records, including this system, were set forth under the caption, "General Statement of Routine Uses," in 47 FR 43759, 43760-61 (October 4, 1982), and subsequently modified in 47 FR 44830, 44831 (October 12, 1982). In addition, information contained in this system of records may be disclosed by the Commission as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchants with whom an applicant or registered introducing broker has or plans to enter into a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records maintained by NFA, but any such disclosure must be made in accordance with Commission-approved NFA rules and under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. The currently authorized circumstances are set forth in the Commission's September 28, 1984 Order authorizing NFA to perform certain Commission registration functions including the maintenance of Commission records and are published at 49 FR 39593, 39596 (October 9, 1984), except that Item 2b therein was modified to eliminate the requirement of specific consent by the applicant or registered introducing broker to the disclosure of information to the futures commission merchant with whom it has or plans to enter a guarantee agreement. 51 FR 25930, 25931 (July 17, 1986).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, computer memory, computer printouts, index cards, microfiche.

RETRIEVABILITY:

By the name of the individual of firm, or by assigned identification number. Where applicable, the NFA's computer cross-indexes the individual's file to the name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant with which the individual is associated or affiliated.

SAFEGUARDS:

General office security measures including secured rooms or premises and, in appropriate cases, lockable file cabinets with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Applications, biographical supplements, other forms, related documents and correspondence are maintained on the CFTC's or NFA's premises, as applicable, for three years after the individual's registration(s) or affiliation(s) as a principal becomes inactive. Records are then stored at an appropriate site for an additional seven years before being destroyed; CFTC-held records are stored in the Federal Records Center, and NFA-held records are to be stored either on NFA's premises or in appropriate fireproof off-site facilities.

Computer records are maintained permanently on NFA's premises and are updated periodically as long as the individual remains pending for registration, registered in any capacity, or affiliated with any registrant as a principal. Computer records on persons who may apply may be maintained indefinitely. Microfiche records, when produced, are maintained permanently on the CFTC's or NFA's premises.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Registration Unit, Division of Trading and Markets, at the Commission's principal office, or his designee.

For records held by NFA: Vice President for Registration or the Records Custodian, National Futures Association, 200 West Madison Street, Suite 1400, Chicago, Illinois 60606, or a designee.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains

information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records, should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581; telephone (202) 254-3382.

RECORD SOURCE CATEGORIES:

The individual or firm on whom the record is maintained; the individual's employer; federal, state or local regulatory and law enforcement agencies; commodities and securities exchanges, National Futures Association and National Association of Securities Dealers; foreign futures and securities authorities and INTERPOL; and other miscellaneous sources. Computer records are prepared from the forms, supplements, attachments and related documents submitted to the Commission or NFA and from information developed during the fitness inquiry.

Issued in Washington, DC, on July 26, 1994 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94-18631 Filed 7-29-94; 8:45 am]

BILLING CODE 6351-01-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**Information Collection Request Submitted to OMB for Review**

AGENCY: The Corporation for National and Community Service (CNCS).

ACTION: Information Collection Request Submitted to the Federal Office of Management and Budget (FOMB) for Review.

SUMMARY: This notice provides information about an information proposal by CNCS, currently under review by the Office of Management and Budget (OMB).

DATES: OMB and CNCS will consider comments on the proposed collection of information and record keeping requirements received within 7 days from the date of publication. Copies of the proposed form and supporting documents may be obtained by contacting CNCS.

ADDRESSES: Send comments to both: David Rymph, Study Coordinator, 1100 Vermont Ave., N.W., Washington, DC 20525
Steve Semenuk, Desk Officer for CNCS, Office of Management and Budget.