

May 27, 1992

**VIA FEDERAL EXPRESS**

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

Re: National Futures Association: Proposed NFA  
Registration Rule 402 and Interpretive Notice to  
Registration Rule 402

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act as amended ("Act"), National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") proposed NFA Registration Rule 402 and a proposed Interpretive Notice to Registration Rule 402 ("Interpretive Notice"). Registration Rule 402 and the Interpretive Notice were approved by NFA's Board of Directors ("Board") at its meeting on May 21, 1992. NFA intends to make Registration Rule 402 and the Interpretive Notice effective on June 15, 1992 unless the Commission notifies NFA, within ten days after receipt of this submission, that the Commission has determined to review Registration Rule 402 and the Interpretive Notice for approval.

- A. New NFA Registration Rule 402 and Interpretive Notice to Registration Rule 402 to provide for a waiver of the testing requirement for certain individuals associated with CPOs of pools trading primarily in securities.

**REGISTRATION RULES**

\* \* \*

**PART 400. PROFICIENCY REQUIREMENTS**

\* \* \*



Ms. Jean A. Webb

May 27, 1992

**Rule 402. Waiver of Testing Requirement.**

The Director of Compliance may waive the requirements of Registration Rule 401 under circumstances approved by the Board of Directors. The decision of the Director of Compliance shall be final.

**INTERPRETIVE NOTICE  
TO REGISTRATION RULE 402**

**CPOs of Pools Trading Primarily in Securities**

The Board of Directors has granted the Director of Compliance the authority to waive the Series 3 examination for certain individuals who are associated with commodity pool operators who are required to register solely because they operate commodity pools which are principally engaged in securities transactions. The individual or firm requesting the waiver must provide a written description of the facts which qualify the individual for a waiver. The Director of Compliance's decision will be final.

The Director of Compliance is authorized to waive the Series 3 examination in either of the following situations:

1. The CPO is subject to substantial regulation by a federal or state regulator (e.g., the Securities and Exchange Commission, federal bank regulators, or state insurance agencies) and the CPO limits its activities for which registration is required to operating commodity pools which:
  - a. engage principally in securities transactions,
  - b. commit only a small percentage of their assets as initial margin deposits and premiums for futures and options on futures, and
  - c. use futures transactions and options on futures only for hedging or risk management purposes.



Ms. Jean A. Webb

May 27, 1992

2. The individual requesting the waiver is a general partner of a CPO which is primarily involved with securities investment vehicles; there is at least one registered general partner who has taken and passed the Series 3 examination; and the individual requesting the waiver is not involved in soliciting or accepting pool participations, trading futures or options on futures, handling customer funds, supervising any of the above activities, or engaging in any other activity that is integral to the operation of the fund as a pool.

Waiver requests should be directed to:

Director of Compliance  
National Futures Association  
200 West Madison Street  
Suite 1500  
Chicago, Illinois 60606-3447

- B. **Explanation of new NFA Registration Rule 402 and Interpretive Notice to Registration Rule 402 to provide for a waiver of the testing requirement for certain individuals associated with CPOs of pools trading primarily in securities.**

Certain firms operating funds trading mostly in securities are exempt from registration under Commission Regulation 4.5. Since they are not registered, the general partners of these funds are not required to take the Series 3 examination. However, not all firms offering funds trading primarily in securities qualify for an exemption under Commission Regulation 4.5 even if they function in a manner similar to funds which do qualify for an exemption. Therefore, Commission staff asked NFA to consider waiving the testing requirement for certain individuals associated with registered commodity pool operators ("CPOs") operating pools trading primarily in securities.<sup>1</sup>

---

<sup>1</sup> March 27, 1992 letter from Susan Ervin, Chief Counsel of the Division of Trading and Markets, to Daniel J. Roth, General Counsel of NFA.



Ms. Jean A. Webb

May 27, 1992

The Board agrees that a waiver of the testing requirement is appropriate under limited circumstances involving individuals associated with CPOs operating pools trading primarily in securities. The Board also believes that extending a testing exemption under the circumstances described in the Interpretive Notice will neither violate the spirit of the testing requirement nor open a floodgate to requests for exemption.

The Board felt that the rule providing relief from the testing requirements should be flexible enough to deal with slight variations in the factual circumstances of a particular case but specific enough to give Members notice about which circumstances qualify for a waiver and which do not. Therefore, proposed Registration Rule 402 gives the Director of Compliance the authority to grant waivers under guidelines established by the Board of Directors. The Interpretive Notice to Registration Rule 402 establishes those guidelines.

Under the Interpretive Notice to Registration Rule 402, the Director of Compliance is authorized to waive the Series 3 examination if:

1. The CPO is subject to substantial regulation by a federal or state regulator and the CPO limits its activities for which registration is required to operating or giving trading advice to commodity pools which engage principally in securities transactions, commit only a small percentage of their assets as initial margin deposits and premiums for futures and options on futures, and use futures transactions only for hedging or risk management purposes; or
2. The CPO is primarily involved with securities investment vehicles, the person requesting the waiver is a general partner of a fund with at least one general partner who has taken and passed the Series 3 examination, and the general partner requesting the waiver is not involved in the futures and options activities of the CPO.

As stated above, NFA intends to make Registration Rule 402 and the Interpretive Notice effective on June 15, 1992 unless



Ms. Jean A. Webb

May 27, 1992

NFA receives notification that the Commission has determined to review proposed Registration Rule 402 and the Interpretive Notice for approval.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Daniel J. Roth'.

Daniel J. Roth  
General Counsel

DJR:jac(Ltrs\Rule402.KPC)

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



**NATIONAL FUTURES ASSOCIATION**

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

July 10, 1992

**VIA FEDERAL EXPRESS**

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

Re: National Futures Association: Proposed NFA  
Registration Rule 402 and Interpretive Notice to  
Registration Rule 402

Dear Ms. Webb:

By letter dated May 27, 1992, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("Commission") proposed NFA Registration Rule 402 and Interpretive Notice to Registration Rule 402. After discussions with Commission staff, NFA has revised the language in the Interpretive Notice to better reflect the intent of the Board. This submission is intended to replace the May 27, 1992 submission.

- A. New NFA Registration Rule 402 and Interpretive Notice to Registration Rule 402 to provide for a waiver of the testing requirement for certain individuals associated with CPOs and pools trading primarily in securities.

**REGISTRATION RULES**

\* \* \*

**PART 400. PROFICIENCY REQUIREMENTS**

\* \* \*

Ms. Jean A. Webb

July 15, 1992

Rule 402. Waiver of Testing Requirement.

The Director of Compliance may waive the requirements of Registration Rule 401 under circumstances approved by the Board of Directors. The decision of the Director of Compliance shall be final.

**INTERPRETIVE NOTICE  
TO REGISTRATION RULE 402**

**CPOs of Pools Trading Primarily in Securities**

The Board of Directors has granted the Director of Compliance the authority to waive the Series 3 examination for certain individuals who are associated with commodity pool operators who are required to register solely because they operate commodity pools which are principally engaged in securities transactions. The individual or firm requesting the waiver must provide a written description of the facts which qualify the individual for a waiver. The Director of Compliance's decision will be final.

The Director of Compliance is authorized to waive the Series 3 examination in either of the following situations:

1. The CPO or the commodity pool is subject to regulation by a federal or state regulator (e.g., the Securities and Exchange Commission, federal bank regulators, or state insurance agencies) or the pool is privately offered pursuant to an exemption from the registration requirements of the Securities Act of 1933 and the CPO limits its activities for which registration is required to operating a commodity pool which:
  - a. engages principally in securities transactions,
  - b. commits only a small percentage of its assets as initial margin deposits and premiums for futures and options on futures, and
  - c. uses futures transactions and options on futures only for hedging or risk management purposes.

Ms. Jean A. Webb

July 15, 1992

2. The individual requesting the waiver is a general partner of a CPO or of a commodity pool which is primarily involved with securities investments; there is at least one registered general partner of the CPO or pool who has taken and passed the Series 3 examination; and the individual requesting the waiver is not involved in soliciting or accepting pool participations, trading futures or options on futures, handling customer funds, supervising any of the above activities, or engaging in any other activity that is integral to the operation of the fund as a pool.

Waiver requests should be directed to:

Director of Compliance  
National Futures Association  
200 West Madison Street  
Suite 1500  
Chicago, Illinois 60606-3447

- B. **Explanation of new NFA Registration Rule 402 and Interpretive Notice to Registration Rule 402 to provide for a waiver of the testing requirement for certain individuals associated with CPOs and pools trading primarily in securities.**

Certain firms operating funds trading mostly in securities are exempt from registration under Commission Regulation 4.5. Since they are not registered, the general partners of these funds are not required to take the Series 3 examination. However, not all firms offering funds trading primarily in securities qualify for an exemption under Commission Regulation 4.5 even if they function in a manner similar to funds which do qualify for an exemption. Therefore, Commission staff asked NFA to consider waiving the testing requirement for certain individuals associated with registered commodity pool operators ("CPOs") operating pools trading primarily in securities.<sup>1</sup>

---

<sup>1</sup> March 27, 1992 letter from Susan Ervin, Chief Counsel of the Division of Trading and Markets, to Daniel J. Roth, General Counsel of NFA.



Ms. Jean A. Webb

July 15, 1992

The Board agrees that a waiver of the testing requirement is appropriate under limited circumstances involving individuals associated with CPOs operating pools trading primarily in securities. The Board also believes that extending a testing exemption under the circumstances described in the Interpretive Notice will neither violate the spirit of the testing requirement nor open a floodgate to requests for exemption.

The Board felt that the rule providing relief from the testing requirements should be flexible enough to deal with slight variations in the factual circumstances of a particular case but specific enough to give Members notice about which circumstances qualify for a waiver and which do not. Therefore, proposed Registration Rule 402 gives the Director of Compliance the authority to grant waivers under guidelines established by the Board of Directors. The Interpretive Notice to Registration Rule 402 establishes those guidelines.

Under the Interpretive Notice to Registration Rule 402, the Director of Compliance is authorized to waive the Series 3 examination if:

1. The CPO is subject to substantial regulation by a federal or state regulator and the CPO limits its activities for which registration is required to operating or giving trading advice to a commodity pool which engages principally in securities transactions, commits only a small percentage of its assets as initial margin deposits and premiums for futures and options on futures, and uses futures transactions only for hedging or risk management purposes; or
2. The CPO is primarily involved with securities investment vehicles, the person requesting the waiver is a general partner of a fund with at least one general partner who has taken and passed the Series 3 examination, and the general partner requesting the waiver is not involved in the futures and options activities of the CPO or pool.

NFA intends to make Registration Rule 402 and the Interpretive Notice effective on August 1, 1992 unless

Ms. Jean A. Webb

July 15, 1992

NFA receives notification that the Commission has determined to review proposed Registration Rule 402 and the Interpretive Notice for approval.

Respectfully submitted,



Daniel J. Roth  
General Counsel

DJR:jac(Ltrs\Rule402.KPC)

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