

November 20, 1984

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

Re: National Futures Association, Proposed Amendments to NFA Bylaw 305, Compliance Rules 2-8, 2-24, Financial Requirements A6-h(ii), (iii), (iv), B1-a(ii), C2-g, Section II(a) of Schedule A to NFA Bylaw 305, and Proposed Sections II(b) and (c) of Schedule A to NFA Bylaw 305, Proposed Schedule B to NFA Bylaw 305 and Proposed Compliance Rules 2-26 and 2-27.

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act ("Act") as amended, National Futures Association ("NFA") hereby submits the following amendments to NFA Bylaw 305, Compliance Rules 2-8, 2-24, Financial Requirements A6-h(ii), (iii), (iv), B1-a(ii), C2-g, Section II(a) of Schedule A to NFA Bylaw 305, and submits the following proposed Sections II(b) and (c) of Schedule A to NFA Bylaw 305, proposed Schedule B to NFA Bylaw 305 and proposed Compliance Rules 2-26 and 2-27 to the Commodity Futures Trading Commission ("Commission" or "CFTC") for review and approval. The amendments and proposed rules were approved by NFA's Board of Director's at its meeting on November 15, 1984. In the text below, where appropriate, additions are underlined and deletions are bracketed.

I. The Amendments

BYLAWS OF NATIONAL FUTURES ASSOCIATION

* * *

CHAPTER 3

MEMBERSHIP AND ASSOCIATION WITH A MEMBER

* * *

Bylaw 305. Registration, [and] Proficiency, Disclosure and Certification Requirements.



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Schedule A attached to and made a part of these Bylaws shall set forth rules governing registration under the Act, including registration requirements and procedures, and standards of proficiency, including training, experience and proficiency testing requirements, applicable to Members, persons associated with Members, Associates and all persons for which NFA has registration responsibilities. In accordance with such registration rules, NFA shall perform the portions 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 NFA shall determine proficiency, for purposes of determining fitness to be registered under the Act and for purposes of determining membership qualification under Bylaw 301(d), in accordance with such proficiency requirements.

Schedule B attached to and made a part of these Bylaws shall set forth rules governing access to and certification of registration records, or portions thereof, maintained by NFA.

Schedule A

* * *

II. PROFICIENCY REQUIREMENTS

(a) Associated Person Qualification Testing Requirement.

[Any individual applying to NFA for registration as an introducing broker or as an associated person of an introducing broker under the Act pursuant to Section I(a) of this Schedule A (except for persons who were registered as an associated person or who had applied for such registration as of August 1, 1983 and whose registration is not lapsed when application to NFA is made) shall not be registered or temporarily licensed unless NFA receives satisfactory evidence that such individual has taken and passed the National Commodity Futures Examination. If such an individual applies for registration as an associated person of an introducing broker on Form 8-S pursuant to the special registration provision of CFTC Rule 3.12(d), such individual's registration will lapse if NFA does not receive satisfactory evidence that such individual has taken and passed the National Commodity Futures Examination within sixty days of mailing the Form 8-S.] Except as provided below in paragraph (b), any individual applying to NFA



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for registration under the Act as a futures commission merchant, an introducing broker, a commodity pool operator, a commodity trading advisor or as an associated person of any of the foregoing or applying for registration with NFA as an Associate pursuant to NFA Bylaw 301(b) shall not be registered, temporarily licensed or registered with NFA as an Associate unless:

- (1) NFA receives satisfactory evidence that the applicant has taken and passed the National Commodity Futures Examination, or
- (2) NFA receives a certification, which shall be considered incorporated into the application for registration under the Act, signed by both the applicant and his sponsor, stating that:
 - (i) the applicant is currently registered with the National Association of Securities Dealers, Inc. as a General Securities Representative, and
 - (ii) the applicant's sole activities, subject to regulation by the Commission, are and will continue to be limited to the solicitation of funds, securities or property for participation in a commodity pool or to the supervision of persons whose activities are so limited unless and until the applicant submits to NFA satisfactory evidence of having taken and passed the National Commodity Futures Examination, and
 - (iii) the applicant's sponsor understands that the sponsor must supervise the applicant's compliance with the limitation on the applicant's activities set forth in paragraph (ii) above and that any failure of the applicant to adhere to those limitations may be cause for, among other things, disciplinary action by NFA against the sponsor for violation of NFA Compliance Rule 2-9, and
 - (iv) the applicant and his sponsor understand that willfully making a materially false or misleading statement in any part of the application for registration, including the certification described above, is cause for denial, suspension or revocation of registration and criminal prosecution.



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(b) The requirements set forth above in paragraph (a) shall not apply to individuals who were registered as an associated person or who had applied for such registration as of the applicable date listed below and whose registration as such is not lapsed when application to NFA is made:

(1) August 1, 1983 for individuals applying for registration as an introducing broker or as an associated person of an introducing broker;

(2) March 1, 1984 for individuals applying for registration as a futures commission merchant, commodity pool operator or commodity trading advisor or as an associated person of a futures commission merchant, commodity pool operator or commodity trading advisor;

(c) Any individual who is subject to the requirement of paragraph (a) and who becomes registered under the Act as an associated person of a futures commission merchant, an introducing broker, a commodity pool operator or a commodity trading advisor by filing a form 8-S pursuant to the special registration provision of CFTC Rules 3.12(d) or 3.16(d) must provide NFA with satisfactory evidence that the applicant has satisfied one of the requirements set forth above in paragraph (a) within 60 days of the mailing of the form 8-S. Failure to do so shall cause such individual's registration to lapse.

* * *

Schedule B

This schedule contains the procedures governing access to and certification of registration records, or portions thereof, maintained by NFA in connection with the registration responsibilities which it is authorized or required by the Commission to perform pursuant to Section 8a(10) or Section 17(o) of the Act.

I. Disclosure of Information From Registration Records Maintained by NFA

(a) Definitions

(i) Registration Records



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For purposes of Schedule B, the term registration records shall be defined to include only the following types of records which are in the custody of or maintained by NFA because such records were transferred from the Commission to NFA or because such records have been received, generated or compiled by NFA in performance of registration functions which NFA is authorized or required by the Commission to perform pursuant to Section 8a(10) or 17(o) of the Act:

- (a) Any application forms required to be filed to obtain registration, including any biographical supplements with respect to principals of an applicant or registrant, any schedules or supplementary attachments to such forms, any fingerprint cards and any financial reports, statements and agreements required to be filed with initial applications for registration.
- (b) Any supplemental statement or filings to correct or update any registration information submitted in a previous filing or to give notice of termination of employment of an associated person.
- (c) Any correspondence relating to registration between the Commission or NFA and an applicant or registrant.
- (d) Reports reflecting information developed from sources outside the Commission or NFA compiled or generated in connection with determining fitness for registration or affiliation as a principal.

(ii) Registration Information

For purposes of Schedule B, the term registration information shall be defined as any information contained in, compiled from or related to registration records.

(b) Disclosure of Public Information

- (i) If any member of the public requests access to registration records, or portions thereof, and the requested record, or portion, is "public" or "publicly



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available" under CFTC Regulations 1.10(g) and 145.6(b), respectively, then NFA will release that record, or portion, to the requester.

(ii) NFA may charge any member of the public a copying fee, not to exceed the fee charged by the Commission, for any copies of registration records provided by NFA directly to the requester.

(c) Disclosure of Non-Public Information

Requests for access to registration records, or portions thereof, not subject to disclosure as public or publicly available under section (b)(i) above shall be referred or transmitted to the Commission for response; except that, NFA will disclose such records, or portions thereof:

- (i) To any person with whom an applicant or registrant is or plans to be associated as an associated person, or affiliated as a principal; provided that, the person requesting the information makes an appropriate showing to NFA that the requester is the employer or prospective employer of the particular applicant, registrant or principal;
- (ii) To any futures commission merchant with whom an introducing broker, whether an applicant or registrant, has or plans to enter into a guarantee agreement under CFTC Regulation 1.10; provided that, the futures commission merchant makes an appropriate showing as to its identity;
- (iii) To boards of trade designated as contract markets, or to any other futures associations registered with the Commission to assist those organizations in carrying out their responsibilities under the Act, or to national securities exchanges or national securities associations registered with the Securities and Exchange Commission, to assist those organizations in carrying out their responsibilities under the Securities Exchange Act of 1934; provided that, if NFA knows or has reason to believe that a request is made in connection with a formal or apparent investigation or proceeding, NFA will notify the Commission of the request;
- (iv) To federal, state or local law enforcement or regulatory agencies acting within the scope of their jurisdiction or for their use in meeting responsibilities assigned to them under law, (to



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the same extent that the Commission may disclose such registration information under Sections 8(e) and 8(g) of the Act); provided that, if NFA knows or has reason to believe that a request is made in connection with a formal or apparent investigation or proceeding, NFA will notify the Commission of the request;

- (v) Pursuant to an order of a court of competent jurisdiction; except that, subpoenas and summonses covering non-public portions of registration records and copies of the non-public records shall be promptly forwarded to the Commission to enable the Commission to consult with NFA on how to proceed;
- (vi) Otherwise with the authorization of the Director of the Division of Trading and Markets, the Director of the Division of Enforcement, the Director of the Division of Economic Analysis, the General Counsel, or the Executive Director of the Commission, or in that person's absence the appropriate designated Commission staff member, in accordance with CFTC Regulations; and
- (vii) To any individual or firm, or person acting on behalf of the individual or firm, who seeks access to registration records, excluding any records defined under section (a)(i)(d) above, in connection with that individual's or firm's application for registration; provided that, NFA receives proper verification of the identity and authority of the party requesting the records.

II. Certification of the Authenticity of Registration Records Maintained By NFA

(a) Designation of Custodian and Deputy

The President shall designate an NFA employee to serve as the NFA Record Custodian ("Custodian"). The President shall also designate an NFA employee to serve as the Deputy NFA Record Custodian ("Deputy"). The Custodian shall be responsible for maintaining all registration records in NFA's possession and shall be the legal custodian of these registration records.

(b) Authority of Custodian and Deputy

The Custodian, the Deputy, or in their absence, any NFA employee designated by the President, the Custodian or



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the Deputy, is authorized to certify in writing the authenticity of registration records in NFA's possession for purposes of any judicial or administrative proceeding. The Custodian, the Deputy, or any designated employee is also authorized to certify in writing as to the maintenance and completeness of the registration records in NFA's possession as well as the thoroughness of NFA's search for requested documents, for purposes of any judicial or administrative proceeding.

(c) Effectiveness of Certification

This written certification shall be effective when executed by the Custodian, the Deputy or any designated employee.

(d) Content of Certification

The written certification shall include that, pursuant to Commission authorization, the Custodian has and maintains legal custody of the official registration records that are the subject of the certification.

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COMPLIANCE RULES

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

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Rule 2-8. DISCRETIONARY ACCOUNTS.

(a) Grant of Discretion Must Be in Writing.

No Member [FCM, Introducing Broker] or Associate thereof shall exercise discretion over a customer's commodity futures account unless the customer or account controller has authorized the Member [FCM, Introducing Broker] or Associate thereof in writing ([e.g.,] by power of attorney or other instrument) to exercise such discretion. For purposes of this Rule, a person does not exercise discretion where the customer or account controller specifies the commodity, year and delivery month of the contract, the number of contracts, and that the transaction is



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either to buy or to sell. Each Member must maintain a record or system of records which clearly identifies which of the Member's accounts are accounts over which the Member or any Associate thereof has discretionary authority.

(b) Review of Discretionary Trades.

Each commodity futures trade [effected] initiated by a Member [FCM, Introducing Broker] or Associate thereof pursuant to the exercise of discretion must be identified as discretionary. [and specifically reviewed not later than the end of the business day following the trade by a partner, officer, director, branch office manager or supervisory employee of the Member FCM or Introducing Broker.] Each Member initiating such trades (other than a Member who employs only one individual having discretionary authority if that individual is also the only principal who supervises futures activity) must adopt and enforce written procedures:

- (1) Which ensure that a partner, officer, director, branch office manager or supervisory employee of the Member (other than any individual who exercises discretion in trading the account) regularly reviews discretionary trading activity; and
- (2) Which require such partner, officer, director, branch office manager or supervisory employee to make a written record that such review procedures were performed.

(c) Supervision.

[All discretionary] Each Member shall supervise all commodity futures accounts [must be continuously supervised by the Member FCM or Introducing Broker] for which the Member (or the Member's Associate) has been authorized to exercise discretion for compliance with applicable provisions of these Rules.

(d) Minimum Experience Requirement.

No Member FCM or Introducing Broker shall allow an Associate to exercise discretion over a customer's commodity futures account unless that Associate has been continuously registered under the Act for a minimum of two years and has worked in such registered



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capacity for that period of time. This requirement shall not apply to any individual registered as a Commodity Trading Advisor. This requirement may, in NFA's discretion, be waived upon a showing that the Associate has equivalent experience. Any Member seeking such a waiver may submit a written request to the Compliance Director and all such requests shall be ruled upon by a three-member panel consisting of one member from each Regional Business Conduct Committee, said members to be appointed by the Board from time to time. The decision of the panel shall be final and shall be based upon the written submissions and the views of the Compliance Director. The panel shall communicate its decision to the Compliance Director or a person designated by the Compliance Director, who shall then inform the Member seeking the waiver. An Associate who has been determined to have equivalent experience pursuant to the rules of any contract market member of NFA having a similar minimum experience requirement shall be deemed to have satisfied the requirement of this Rule.

(e) Third Party Account Controllers.

No Member FCM shall accept a customer account and no Member FCM or Introducing Broker shall introduce a customer account over which a third party, not an Associate of such FCM or Introducing Broker, is to exercise discretion without first obtaining:

- (1) A copy of such account controller's written trading authorization, or a written acknowledgment from the customer that such authorization has been given; and
- (2) An acknowledgment from the customer that the customer has received a disclosure document from the account controller or a written statement from the account controller explaining why the account controller is not required to provide a disclosure document to the customer.

* * *

Rule 2-24. QUALIFICATION TESTING OF ASSOCIATED PERSONS

(a) Testing Requirement

Subject to the provisions of paragraphs (d) and (e) of Bylaw 301, no [person (except any person who was registered as an associated person of an FCM or IB or who had applied for such registration as of March 1, 1984 and



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whose registration as an associated person of an FCM or IB has not lapsed since the date) may be associated with an FCM Member of NFA (See Bylaw 301(b)) unless such person has taken and passed the National Commodity Futures Examination.] FCM, IB, CPO or CTA Member of NFA shall have as an Associate (see Bylaw 301(b)) any person who has not satisfied the applicable proficiency requirements set forth in Section II of Schedule A to Bylaw 305.

(b) Limitations on Activities

- (i) No person registered with NFA as an Associate of an FCM, IB, CPO or CTA Member of NFA (see Bylaw 301(b)) whose application for registration as an associated person under the Act or for registration with NFA as an Associate incorporated a certification concerning the limited scope of such Associate's activities described in Section II of Schedule A to Bylaw 305, shall exceed the limitations set forth in such Associate's certification.
- (ii) No FCM, IB, CPO or CTA Member of NFA shall have associated with it (see Bylaw 301(b)) any person whose application for registration as an associated person under the Act or for registration with NFA as an Associate incorporated any of the certifications concerning the limited scope of such person's activities described in Section II of Schedule A to Bylaw 305 and who exceeds those limitations.

* * *

Rule 2-26. FCM AND IB REGULATIONS.

Any Member who violates any of CFTC Regulations 1.33, 1.55 or 1.56 shall be deemed to have violated an NFA requirement.

* * *

Rule 2-27. TRANSFER OF CUSTOMER ACCOUNTS.

- (a) Upon receipt of a signed instruction from a customer to transfer an account from one Member to another, and provided that such instruction contains the customer's name, address and account number (and, if the transfer is not of the entire account, a description of which portions are to be transferred) and the name and address of the receiving Member, the carrying Member shall



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confirm to the receiving Member all balances in the account, whether money, securities or other property, and all open positions, within two business days or within such further time as may be necessary in the exercise of due diligence. Within three business days of the day such confirmation is due, or within such further time as may be necessary in the exercise of due diligence, and provided that the receiving Member agrees to accept the account, the carrying Member shall effect the transfer of the balances and positions to the receiving Member.

- (b) This rule shall apply only to transfers made at the request of a customer.
- (c) This rule shall not prohibit transfers based upon oral requests.

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FINANCIAL REQUIREMENTS

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SCHEDULE A

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COMPUTATIONAL FORMULA - SPECIAL DEFINITIONS AND RULES OF CONSTRUCTION:

* * *

Section A6 - ADJUSTED NET CAPITAL

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A6-h. Open Futures Positions and Grantor Commodity Options in Proprietary Accounts.

In the case of open futures contracts and grantor commodity options held in Proprietary Accounts (see A1-g, above) carried by the Member FCM which are not Covered by a position held by the Member FCM or which are not the result of a changer trade made in accordance with the rule of a contract market --

- (i) For a Member FCM which is a clearing member of a contract market, for the positions on such contract market cleared by such member, the amount of the applicable margin requirement of the applicable clearing organization;



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- (ii) For [Member FCM which is a member of a contract market] all other Member FCMs an amount equal to 150 percent of the applicable maintenance margin requirement of the applicable board of trade, commodity options exchange, or clearing organization, whichever is greater; or
- [(iii) For all other Member FCMs, 200 percent of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater; or]
- [(iv)](iii) For open contracts or granted (sold) commodity options for which there are no applicable maintenance margin requirements, 200 percent of the applicable initial margin requirement.

The equity in any such Proprietary Account shall reduce the deduction required by this Section if such equity is not otherwise includable in Adjusted Net Capital.

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SCHEDULE B

* * *

EQUITY CAPITAL

* * *

B1-a. A satisfactory subordination agreement entered into by a partner or stockholder which has an initial term of at least 3 years and has a remaining term of not less than 12 months if:

- (i) It does not have any of the provisions for accelerated maturity provided for by Schedule C, C1-b(ix)(A), C1-b(x)(A) or C1-b(x)(B), or the provisions for Revolving Subordination-Special Prepayments provided for by Schedule C, C2-f.
- (ii) The partnership agreement provides that capital contributed pursuant to a satisfactory subordination agreement as defined in Schedule C shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof required by B2 below; . . .

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SCHEDULE C



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SUBORDINATED LOAN AGREEMENTS

C2-g. Filing.

[Three copies] A signed copy of any proposed subordination agreement[s] (including nonconforming subordination agreements) must be filed with the DSRO at least 10 days prior to the proposed effective date of the agreement, or at such other time as the DSRO for good cause shall find acceptable. The Member FCM shall also file with the DSRO a statement setting forth the name and address of the lender, the business relationship of the lender to the Member FCM, and whether the Member FCM carried funds or securities for the lender at or about the time the proposed agreement was so filed. All agreements shall be examined by the DSRO prior to their becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purpose of these capital requirements unless and until the DSRO finds the agreement acceptable and such agreement has become effective in the form found acceptable.

II. Explanation of Amendments.

Section II of Schedule A to Bylaw 305 and Compliance Rule 2-24

Section II of Schedule A to Bylaw 305 ("Section II") and Compliance Rule 2-24, as amended, work together to establish comprehensive testing requirements for all new associated persons ("APs") in the futures industry both as a condition of registration or temporary licensing and as a compliance requirement applicable to the sponsor. Under these rules all APs are required to take and pass an appropriate proficiency examination (in most cases the National Commodity Futures Examination ("NCFE") and in some cases the NASD Series 7 General Securities Examination). Like APs of FCMs under the prior version of Section II, APs of CPOs and CTAs are not required to take and pass an examination if they were registered or had applied for registration as an AP as of March 1, 1984. With respect to APs of CPOs and CTAs who were not previously tested and who are not required to be tested under the proposed amendment, NFA will determine whether they have minimum entry level knowledge in the manner described in NFA's letter to the CFTC dated October 25, 1984.

NFA requests that the amendments to Section II and to Compliance Rule 2-24 be made effective on March 1, 1985



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and January 1, 1985 respectively. The postponed effectiveness of Section II will defer the additional registration processing work which that requirement will generate until after NFA has completed the initial phase of its assumption of more complete registration processing responsibilities. Following a January 1, 1985 effective date for Compliance Rule 2-24 NFA will extend a two month grace period to allow Commodity Pool Operators and Commodity Trading Advisors, whose APs have not previously been subject to testing requirements, time to enroll their APs for and to take the examination (NFA took a similar position following the effective date of existing Compliance Rule 2-24 in order to allow time for FCMS to have their APs tested.) Therefore if these amendments are made effective as requested NFA anticipates that they will both be fully enforceable by March 1, 1985.

As the CFTC is aware under Section II prior to amendment NFA had taken a no action position with respect to APs who were registered with the National Association of Securities Dealers, Inc. ("NASD") as General Securities Representatives, who had taken and passed the Series 20 examination offered by the New York Futures Exchange ("NYFE") and whose activities were limited to soliciting or accepting orders for stock index products or supervising persons whose activities were so limited. Under that no action position such persons who met the above described requirements by December 31, 1984 would not later be required to take and pass another examination under Section II as amended provided that their activities remained appropriately limited. NFA wishes to advise the CFTC that it has modified the no action position to include persons who have applied to take the Series 20 examination and who otherwise meet the above stated requirements by December 31, 1984. NFA has extended the no action position in order not to prejudice individuals who may have been unable to schedule a time to take the Series 20 examination prior to December 31, 1984.

Schedule B to NFA Bylaw 305

Pursuant to Sections 8(a)(10) and 17(o) of the Commodity Exchange Act, the CFTC has authorized NFA to perform registration functions with respect to IBs, FCMS, CPOs, CTAs and APs thereof in accord with rules adopted by NFA. In connection with the performance of these functions, NFA is and will be maintaining registration files and records and will act as the official custodian of those records. Because NFA will be receiving requests for access to those records, comprehensive rules and internal procedures governing access to and certification of NFA maintained registration records were developed.



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The proposed amendment to Bylaw 305 adds Schedule B which sets forth the rules governing access to and certification of registration records maintained by NFA. These rules represent the parameters within which NFA intends to act with respect to disclosure of registration records and supersede the terms of the July 18, 1983 letter of undertaking from Robert K. Wilmoth to the Commission. Proposed Schedule B, as adopted by the Board of Directors following extensive discussions between NFA and CFTC staff, also represents the resolution of the policy issues raised and discussed in the memorandum dated October 1, 1984 and is intended to supersede that memorandum. The detailed written procedures which NFA will adopt in order to achieve compliance with proposed Schedule B will be forwarded to the Commission shortly for its information.

Pursuant to Section I(b)(ii) of these rules, NFA may, upon reasonable request from members of the public, provide copies of public or publicly available portions of registration records. To defray the cost of copying such records, NFA plans to charge a copying fee in an amount not to exceed the fee charged by the Commission from time to time. The initial copying fee and any subsequent changes in the amount of that fee will be submitted to the Commission under Section 17(j) of the Act to be made effective ten days after receipt of such submission by the Commission.

Section I(c)(v) of the rules specifically addresses how NFA must proceed upon receipt of any subpoena or summons for non-public registration records maintained by NFA. In that regard, NFA will notify the Commission of receipt of a subpoena or summons without delay and will provide the Commission with any responsive documents or information within 24 hours of receipt of the subpoena or summons (or within such longer period as practicable under the circumstances for the Commission to take appropriate action). NFA also intends to provide the Commission with responsive documents or information in the same expeditious manner when the Commission is served with a subpoena or summons. It is NFA's understanding that it is not subject to any requirement set forth in Section 8(f) of the Act.

NFA intends to act as the official custodian of all registration records maintained by NFA. NFA will undertake to provide, in a timely manner, such certifications, affidavits and testimony as may be necessary to authenticate documents and information contained in the registration records upon the request of the Commission or its staff, and



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in conjunction with requests of other federal, state or local officials and with subpoenas or other appropriate document requests by private parties. NFA's Record Custodian, Deputy Record Custodian, or other designee when appropriate, shall be responsible for providing such certifications, affidavits or testimony. Designation of the Record Custodian, Deputy Record Custodian or other designee shall be in writing by the President of NFA.

Rule 2-8: Discretionary Accounts

Sections (a), (b) and (c) formerly applied only to FCMs and IBs. To provide the same protection to customers whose discretionary accounts are managed by CTAs, these sections have been amended to apply to all Members. The review requirement of section (b) applies to the Member initiating the trades; that is, where a CTA or IB (or an associate of a CTA or IB) holds discretionary authority over an account carried by an FCM, the CTA or IB must adopt and follow the written procedures for review of that discretionary trading.

Rule 2-8(b) formerly required that each discretionary trade be specifically reviewed by the end of the business day following the trade. NFA found that in practice, this rule led to the establishment of procedures, such as the initialing of order tickets, which did not necessarily provide substantive and effective review of discretionary trading activity. The changes to Rule 2-8(b) are therefore calculated to strengthen the review requirement, and the adequacy of Members' written review procedures and their enforcement of those procedures will be evaluated by the Compliance Department accordingly.

To be adequate, the written procedures must provide that the review be conducted by someone other than the individual exercising authority over the account. If, in a very small organization, there is only one individual who exercises discretionary trading authority and that person is also the only individual who has supervisory authority over futures related activity, the rule does not require written review procedures because there is effectively no one to review the trades but the person who made them. However, this exception is quite narrow -- for example, a sole proprietor CTA who employs no Associates would not be required to have written procedures to review his own discretionary trading. However, a sole proprietor CTA who employs an Associate who exercises discretionary authority given by the CTA's customers is responsible under CFTC Regulations and NFA Rules



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for supervising that Associate, and thus must adopt and enforce written review procedures under Rule 2-8(b). A Member who is not entitled to use the "one-man shop" exception but who seeks to circumvent the purposes of Rule 2-8(b) will be subject to appropriate disciplinary action.

The word "continuously" has been deleted from the supervision requirement of Rule 2-8(c). There is no intention to relax the standard required by the Rule; to the contrary, this revision is intended to remove any hindrance to enforcement of the Rule that such a standard might present.

Sections (d) and (e) are new. Section (d) requires that Associates of FCMs be continuously registered and working in that capacity for two years before they may exercise discretion over customer accounts. A procedure is provided for obtaining waivers based on a showing that the Associate has equivalent experience. In time it is expected that standards will be developed for determining what constitutes equivalent experience, and such information will be given to Members in an appropriate manner.

Section (e) imposes certain requirements on FCMs who carry discretionary accounts controlled by third parties such as IBs or CTAs. If the account is introduced to an FCM by an IB or another FCM, the obligation to comply with Rule 2-8(e) applies to the introducing Member rather than the carrying FCM, although all Members, including the carrying FCM, remain responsible for compliance with NFA Bylaw 1101. In this regard, it should be noted that receipt of a written explanation why the account controller is not required to be registered (and, therefore, not required to be a Member of NFA) would not excuse a violation of NFA Bylaw 1101 if the written explanation does not disclose an apparent exemption from registration or if the Member or any of the Member's employees knew or should have known of facts inconsistent with the written explanation.

Rule 2-26: FCM and IB Regulations

This rule incorporates by reference the following CFTC Regulations:

- Regulation 1.33 requiring FCMs to send monthly and confirmation statements.
- Regulation 1.55 requiring FCMs and IBs to furnish a Risk Disclosure Statement to their customers.



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-- Regulation 1.56 prohibiting FCMs and IBs from guaranteeing a customer against loss.

Rule 2-27: Transfer of Customer Accounts

The purpose of Rule 2-27 is to ensure that customers who wish to transfer their accounts from one Member to another are not subjected to undue delays. The time requirements for confirmation of balances and transfer of the account and the alternate requirement of due diligence were enacted to achieve this purpose.

Proposed NFA Financial Requirements Rules A6-h, B1-a, C2-g

Section 17(p)(2) of the Commodity Exchange Act requires NFA to establish financial requirements applicable to its members which are as stringent as those established by the CFTC. In accord with this provision, NFA Financial Requirements Section 1 sets a minimum adjusted net capital requirement for FCMs which is equivalent to the requirement imposed by CFTC Regulation 1.17. Schedules A, B and C of NFA's Financial Requirements set forth certain definitions and computational formulae to be used in determining compliance with NFA's financial requirements. Certain provisions of Schedules A, B and C are technically inconsistent with the corresponding provisions of CFTC Regulation 1.17. The proposed amendments would conform Schedules A, B and C to those CFTC Requirements.

NFA respectfully requests that the amendments to NFA Bylaw 305, Compliance Rule 2-8, Financial Requirements A6-h(ii), (iii), (iv), B1-a(ii), C2-g, and that Proposed Schedule B to NFA Bylaw 305 and Proposed Compliance Rules 2-26 and 2-27 be declared effective upon approval by the Commission. NFA further respectfully requests that the amendment to Section II(a) of Schedule A to NFA Bylaw 305 and the addition of Proposed Sections II(b) and (c) of Schedule A to NFA Bylaw 305 as well as Compliance Rule 2-24 be approved by the CFTC and declared effective as set forth above. NFA is aware that certain of these proposed amendments and Bylaws are integral to the transfer of additional registration functions to NFA. Therefore NFA would be pleased

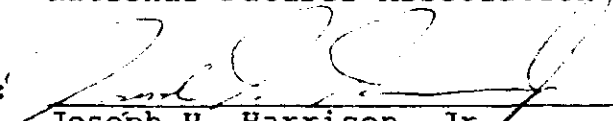


Ms. Jean Webb
November 20, 1984
Page Twenty

to have the CFTC sever any of the proposals submitted herein
for separate consideration as the CFTC deems appropriate.

Very truly yours,
National Futures Association

By:


Joseph H. Harrison, Jr.
General Counsel and Secretary

JHH:dc

cc: Chairman Susan M. Phillips
Commissioner Kalo A. Hineman
Commissioner Fowler C. West
Commissioner William E. Seale
Commissioner Robert R. Davis
Andrea M. Corcoran, Esq.
Kenneth M. Rosenzweig, Esq.
Linda Kurjan, Esq.

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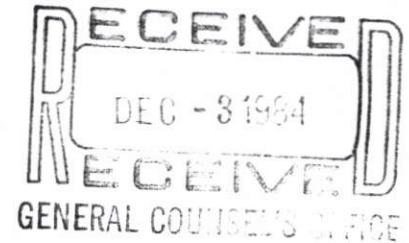
COMMODITY FUTURES TRADING COMMISSION

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



November 30, 1984

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



Re: NFA Rule Proposals

Dear Mr. Harrison:

This is to notify the National Futures Association that on November 29, 1984, the Commission approved the amendments to NFA Bylaw 305 and new Schedule B to Bylaw 305 as submitted in your letter dated November 20, 1984, pursuant to Section 17(j) of the Commodity Exchange Act. These rules govern disclosure and certification of registration records and information maintained by NFA in its capacity as the Commission's official custodian of the records in conjunction with NFA's performance of registration functions for futures commission merchants, commodity pool operators, commodity trading advisors, introducing brokers, and their respective associated persons. The rules are to be implemented on December 3, 1984, when NFA assumes custody for Commission records in the other categories in addition to IBs and their APs, for which NFA has already been responsible.

Despite the approval of these rules, the Commission must still review NFA's written procedures implementing the Schedule B rules and other integral aspects of custodianship, including those governing the retention, safekeeping and disposal of the registration records. The Commission understands that NFA has been consulting with Commission staff on the development of specific procedures and intends to submit them to the Commission shortly in accordance with the requirement in the Commission's Order of September 28, 1984, that the procedures be acceptable to the Commission. In that regard, the Commission expects NFA to be clear in its procedures implementing Section I(c) (v) of Schedule B that, among other things, NFA will defer to the advice or directions for NFA's response to a subpoena or summons for nonpublic registration records as given by appropriate Commission staff reviewing the responsive documents (i.e., Office of the General Counsel).

Furthermore, in approving Section I(c) (vii), the Commission is permitting NFA to disclose nonpublic information, in addition to those circumstances enumerated in the September 28 Order, where an individual or firm (or its representative) seeks access to copies of registration documents originally

Mr. Joseph H. Harrison, Jr.

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submitted by the requestor or to copies of correspondence regarding registration between the Commission or NFA and the requestor. The Commission expects NFA's procedures to set forth criteria for the verification of the requestor's identity consistent with the criteria applied by the Commission's staff in responding to such requests under Parts 145 and 146 of the Commission's regulations.

Finally, in connection with the establishment of any fee to be charged to members of the public for copying records under Section I(b)(ii), NFA's rule submission for the specific fee should describe how the fee level is initially calculated or subsequently revised so as not to exceed NFA's costs.

Very truly yours,



Jean A. Webb

Secretary of the Commission

December 3, 1984

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

Re: National Futures Association ("NFA") Submission
Pursuant to Section 17(j) of the Commodity Exchange
Act, as Amended, Dated November 20, 1984 of Amend-
ments to Compliance Rule 2-8

Dear Ms. Webb:

In the letter to you dated November 20, 1984 sub-
mitting for approval certain amendments to NFA Compliance
Rule 2-8 an amendment adding subsection 2-8(f) was inadver-
tently omitted. Pursuant to Section 17(j) of the Commodity
Exchange Act as amended, NFA hereby submits the following
amendment to Compliance Rule 2-8 to the Commodity Futures
Trading Commission for review and approval and as a supple-
ment to NFA's letter dated November 20, 1984. This amend-
ment was approved by NFA's Board of Directors at its meeting
on November 15, 1984. (Additions are underlined.)

COMPLIANCE RULES

* * *

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

* * *

Rule 2-8. DISCRETIONARY ACCOUNTS.

* * *

(f) The provisions of sections (b), (c), (d) and (e) of
this Rule shall not apply when the individual who owns
the account and the individual exercising discretion
are members of the same family (a spouse, parent, child,
grandparent, grandchild, brother, sister, aunt, uncle,
nephew, niece or in-law.)

* * *

NFA

Ms. Jean A. Webb
December 3, 1984
Page Two

NFA respectfully requests that this amendment to Compliance Rule 2-8 be considered along with the other amendments to Compliance Rule 2-8 and declared effective upon approval by the Commission.

Very truly yours,
National Futures Association

By: 

Joseph H. Harrison, Jr.
General Counsel and Secretary

JHH:cm

cc: Chairman Susan M. Phillips
Commissioner Kalo A. Hineman
Commissioner Fowler C. West
Commissioner William E. Seale
Commissioner Robert R. Davis
Andrea M. Corcoran, Esq.
Kenneth M. Rosenzweig, Esq.
Linda Kurjan, Esq.

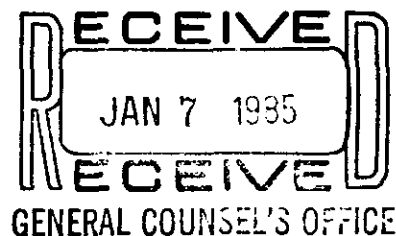
UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



December 21, 1984

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



Re: Schedule A, Section II to Bylaw 305, and
Compliance Rule 2-24

Dear Mr. Harrison:

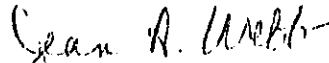
This is to inform the National Futures Association that on December 21, 1984, the Commission approved the amendments to the captioned NFA rules, which were submitted for Commission review and approval pursuant to Section 17(j) of the Commodity Exchange Act by your letter dated November 20, 1984. These rule changes revise and expand NFA's registration and membership testing requirements to cover associated persons of commodity pool operators, commodity trading advisors, introducing brokers and futures commission merchants, as well as individuals who themselves register under the Act as CPOs, CIAs, IBs and FCMs. Compliance Rule 2-24, which makes passage of a proficiency test a condition of an AP's employment with an NFA member, will become effective as amended on January 1, 1985, although NFA is providing a two-month grace period (i.e., until March 1, 1985) for member CPOs and CIAs to ensure that all of their APs (other than those who applied for registration or became registered before March 1, 1984) have enrolled for, taken and passed the required examination in order to continue acting in the capacity of APs. Revised Section II of Schedule A to Bylaw 305, making testing an additional prerequisite for temporary licensing as well as for registration under the Act, is scheduled to take effect on March 1, 1985.

The Commission is pleased that NFA has taken these steps to extend proficiency testing requirements to significant additional classes of individuals in furtherance of NFA's statutory mandate. Nevertheless, the Commission again urges NFA to continue to enhance and refine the proficiency testing and training standards program required by Sections 17(p)(1) and 17(q) of the Act and as described in your letter to the Commission dated October 25, 1984. In this regard, NFA should routinely review the body of test questions that make up the National Commodity Futures Examination, which is NFA's primary tool for screening proficiency qualifications, and take steps to modify the questions in order to improve and ensure the validity and reliability of that test as the effective measure it is intended to be. NFA should also remain vigilant to assure that not only those persons who will automatically be subject to testing under the rules but also those who are not subject to such a requirement (because of the length of continuous registration and supervision) do, in fact, have the minimum knowledge needed

Mr. Joseph H. Harrison, Jr.
Page 2

to function in a manner that protects the interests of customers. Finally, the Commission again encourages NFA to begin considering the creation of supplemental proficiency testing requirements for persons who perform particular management or supervisory functions with a firm, such as principals or branch managers, or other specialized activities.

Very truly yours,



Jean A. Webb
Secretary of the Commission

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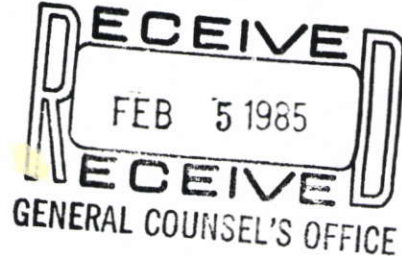
R. WILMOUTH
J. PINS
SCOLL
G. BYRNE
T. GIALANEZZA
N. CONNOLLY
D. KRAMER
L. WERTN
ATTORNEYS
E. GONZALES
D. CHEVAL ✓

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



February 1, 1985



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

Re: Compliance Rules 2-8, 2-26 and 2-27, and
Financial Requirements A6-h, B1-a and C2-g

Dear Mr. Harrison:

This is to inform the National Futures Association that on January 24, 1985, the Commission approved amendments to NFA rules as captioned above. The rule proposals were submitted for Commission review and approval pursuant to Section 17(j) of the Commodity Exchange Act by two letters from you dated November 20 and December 3, 1984. These rule changes relate to the handling of discretionary accounts, the transfer of customer accounts, miscellaneous items concerning customer relations and technical corrections to the financial requirements for futures commission merchants (FCMs). Although NFA intends to make these rule changes effective upon Commission approval, the Commission understands that, with respect to new paragraph (d) of Compliance Rule 2-8 -- which establishes a minimum experience requirement for associated persons (APs) of FCMs and introducing brokers (IBs) in order to be allowed to exercise discretion over customers' accounts -- NFA intends to take a "no-action" position with respect to those APs registered for less than two years (the minimum period) who are identified to NFA by the sponsoring FCM and IB members as currently engaging in discretionary activities (along with information as to the extent of those activities).

Among the rules approved by the Commission is an exemption from the requirements of some of the discretionary account provisions when there is a family relationship between the individual exercising the discretion and the individual owning the account (Compliance Rule 2-8(f)). The Commission believes that, despite the availability of this exception in NFA's discretionary account rule, it is a sounder business practice for NFA's members to follow the procedures whenever feasible. While such practice should apply with respect to all of the procedures which may be waived (Paragraphs (b) through (e)), the Commission believes that it is particularly apposite in connection with the member's duties under Paragraph (e) of Compliance Rule 2-8, regarding the need for FCMs and IBs to obtain copies of trading authorizations and disclosure acknowledgments when third-party account controllers are involved. When the exception is relied upon, the Commission notes that under its regulation 1.37, each FCM and IB must keep a written record of the name of any person exercising trading control over an account as well as the

true owner thereof. As a consequence, the member must keep written records that adequately describe the familial relationship upon which the exemption rests.

The Commission notes that Compliance Rule 2-8(b) will no longer require the supervisory review of discretionary transactions by the end of the following business day and will instead require the "regular" review of all discretionary accounts. In approving this change to Rule 2-8, the Commission understands that NFA will act to ensure that the written review procedures contemplated by NFA's submission and adopted by NFA Members in accordance with the requirements of that Rule will provide for the frequent and diligent substantive review of discretionary trading such that the quality of discretionary account review will be improved as a result. Separately, the Commission notes that, as amended, Compliance Rule 2-8 would change the supervisory and account review standards that currently apply to both futures and option transactions. (This is so because Compliance Rule 1-1(g) defines "futures" to include exchange-traded options transactions.) The Commission has previously approved particularized requirements, contained in Compliance Rule 2-20, for discretionary option customer accounts. The Commission therefore expects that the written procedures adopted by NFA Members under Compliance Rule 2-8(b) will incorporate not only the standards of that Rule but, in the case of discretionary options transactions, of Compliance Rule 2-20 as well.

The Commission also reminds NFA's members and their APs that when an AP exercises discretion over any account other than in accordance with the trading program or otherwise under the direct supervision of the sponsor, the AP will be deemed to be issuing commodity trading advice not solely in connection with employment by the sponsor and thus must himself register as a commodity trading advisor. NFA's members should be further aware that, although such trading advice may not be issued under the sponsor's direction, the sponsor is not relieved of any responsibilities for accounts carried by the sponsor under law -- in particular, Sections 2(a)(1) and 4b of the Act and Part 166 of the Commission's regulations.

Although the rule changes adopted by NFA make needed improvements in NFA's regulatory scheme, the Commission notes that NFA must continue to take steps to enhance its sales practice program in order to meet its ongoing obligations under the Act. In this regard, NFA should explore a panoply of issues that concern the sales practices of those working in the commodity futures industry with a view toward designing and implementing specific uniform standards of professional conduct. In this connection, NFA, at a minimum, should fully explore the informal standards and procedures currently employed by responsible industry participants.

As guidance, but without limiting the particular issues to which NFA should direct its attention and consider new rules or rule amendments, the Commission highlights the following items relating to disclosure to customers: (1) the written disclosure of all charges and fees to each potential customer of an FCM or IB, and (2) the disclosure of past performance of discretionary or managed accounts directed by an FCM or IB (or its APs). Two related issues are the accurate reflection of management fees

Mr. Joseph H. Harrison, Jr.

Page 3

and charges as a component of the performance record, and the publication of performance claims. The Commission also refers NFA to correspondence and reports from the Commission's Division of Trading and Markets which cite other areas of particular concern identified by the Division in oversight reviews. The Commission understands that NFA's advisory committees are addressing some of these issues already. In connection with these concerns, the Commission is also interested in knowing any efforts NFA may be pursuing with respect to professional conduct standards, including but not limited to practices commonly referred to as "suitability" or "know-your-customer" rules. In this latter regard, the Commission requests NFA to provide such information within 45 days.

Very truly yours,



Jean A. Webb

Secretary of the Commission