

December 4, 1992

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

Re: National Futures Association: Proposed Amendment to Section 10(g) and Adoption of Section 17 of NFA's Code of Arbitration; Proposed Amendment to Section 10(g) and Adoption of Section 16 of NFA's Member Arbitration Rules; Proposed Amendments to NFA Registration Rules 203(a)(1) and 209; Proposed Interpretive Notice to NFA Registration Rule 402; and Proposed Amendments to NFA Registration Rules and NFA Bylaw 301(h)(vii)

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") a proposed amendment to Section 10(g) and the adoption of Section 17 of NFA's Code of Arbitration; a proposed amendment to Section 10(g) and the adoption of Section 16 of NFA's Member Arbitration Rules; proposed amendments to NFA Registration Rules 203(a)(1) and 209; a proposed Interpretive Notice to NFA Registration Rule 402; and proposed amendments to NFA Registration Rules and NFA Bylaw 301(h)(vii). These amendments were approved by NFA's Board of Directors ("Board") at its meeting on November 19, 1992. NFA respectfully requests Commission review and approval of the amendments.

PROPOSED AMENDMENTS

- A. Proposed amendment to Section 10(g) and adoption of Section 17 of NFA's Code of Arbitration and proposed amendment to Section 10(g) and adoption of Section 16 of NFA's Member Arbitration Rules (additions are underscored):

CODE OF ARBITRATION

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Section 10. Award, Settlement and Withdrawal.

* * *

(g) Failure to Comply.

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

* * *

Section 17. Agreements Conflicting with the Code.

This Code shall supersede any provision in an agreement entered into between the parties, either before or after a dispute arises, if the provision in the agreement contradicts or limits the Code or imposes additional obligations on NFA or the arbitrators. However, in the Secretary's discretion, the provision may be applied to NFA arbitration if the agreement names NFA as the arbitration forum or the parties consent in writing to apply the provision to NFA arbitration.

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MEMBER ARBITRATION RULES



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Section 10. Award, Settlement and Withdrawal.

* * *

(g) Failure to Comply.

The failure of a Member or Associate to comply with an award or a settlement agreement or to pay any fee assessed under Sections 11 or 12 shall be grounds for disciplinary action under NFA Compliance Rules (see Compliance Rule 2-5). When any Member or Associate fails to comply with an award or pay any fee within 30 days from the date of service of the award by NFA or fails to comply with a settlement agreement within 30 days after NFA terminates the arbitration proceeding pursuant to Section 10(h) or such other period as specified in the award or settlement agreement, and unless there is pending a request to modify the award under Section 10(c) or an application to vacate, modify or correct the award in a court of competent jurisdiction, that Member or Associate may, on 30 days written notice, be summarily suspended by the President until such award or settlement agreement has been satisfied. Any Member or Associate subject to a summary suspension may, within 30 days of the date of service of the Notice of Suspension, appeal the suspension to the Commission and may, within 10 days of the date of service of the Notice of Suspension, petition the Commission for a stay of the suspension.

* * *

Section 16. Agreements Conflicting with the Rules.

These Rules shall supersede any provision in an agreement entered into between the parties, either before or after a dispute arises, if the provision in the agreement contradicts or limits the Rules or imposes additional obligations on NFA or the arbitrators. However, in the Secretary's discretion, the provision may be applied to NFA arbitration if the agreement names NFA as the arbitration forum or the parties consent in writing to apply the provision to NFA arbitration.

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B. Proposed Interpretive Notice Regarding Testing Exemption for Certain Commodity Trading Advisors:

**INTERPRETIVE NOTICE
TO REGISTRATION RULE 402**

CTAs 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 associated with commodity trading advisors who are required to register solely because their securities advisory services include advice on the use of futures and options for risk management purposes. The individual or firm requesting the waiver must provide a written description of the facts which qualify the individual or firm for a waiver. The Director of Compliance's decision will be final.

The Director of Compliance is authorized to waive the Series 3 examination for a CTA and its APs if: 1) the CTA is subject to regulation by a federal or state regulator; 2) for each customer for whom the CTA provides futures trading advice such advice is incidental to securities advisory services provided by the CTA to such customer; and 3) the futures trading advice offered by the CTA is for hedging or risk management purposes.

Waiver requests should be directed to:

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

C. Proposed Amendments to NFA Registration Rules 203(a)(1) and 209 (additions are underscored and deletions are placed within brackets):

REGISTRATION RULES

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Rule 203. Registration Fees.

(a) Amount.

- (1) Associated Person.** Except for Forms 8-R submitted in accordance with Rule 209(d), [E]each Form 8-R submitted in connection with the registration of an associated person must be accompanied by a fee of \$70. Each Form 8-R submitted in connection with the registration of an associated person in accordance with Rule 209(d) must be accompanied by a fee of \$50.

* * *

Rule 209. Alternative to the Fingerprint Filing Requirement in Certain Cases.

- (a)** Any person who is required by these Rules to submit a fingerprint card may file, or cause to be filed, in lieu of such card:
- (1)** a legible, accurate, and complete photocopy of a fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with NFA of the photocopy; or
- (2)** a statement that such person's application for [initial] registration in any capacity has been granted within the preceding ninety days, [except that the provisions of this paragraph shall not apply to any person who] unless the person was not required to file a fingerprint card in connection with such application for initial registration.
- (b)** Each photocopy and statement filed in accordance with the provisions of paragraph (a)(1) or (a)(2) of this Rule must be signed and dated. Such signature shall constitute a certification by that individual that the photocopy or statement is accurate and complete [and must be made by:].



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- (1) [w]With respect to the fingerprints of an associated person[:], the photocopy or statement must be executed by an officer of the sponsoring corporation, a general partner of the sponsoring partnership, or the sponsoring sole proprietor [sponsor]; and
- (2) [w]With respect to the fingerprints of a principal[:], the photocopy or statement must be executed by an officer, if the futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant with which the principal will be affiliated is a corporation; a general partner, if a partnership; or the sole proprietor, if a sole proprietorship.
- (c) In lieu of submitting a fingerprint card in accordance with the provisions of Rules 204(a)(2) and 208, any futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm (an "outside director") may file with NFA a Notice Pursuant to CFTC Regulation 3.21(c). A firm that has filed a Notice Pursuant to CFTC Regulation 3.21(c) with respect to an outside director described therein must file with NFA on behalf of such outside director a Form 8-R completed in accordance with the instructions thereto and executed by the outside director. The exemption provided for by this paragraph is limited solely to the outside director's fingerprint requirement and does not affect any other duties or responsibilities of the firm or the outside directors under these Rules. In appropriate cases, NFA may require additional information from the firm with respect to any outside director referred to in the Notice Pursuant to CFTC Regulation 3.21(c).
- (d) Any sponsoring registrant which is filing Form 8-R on behalf of an associated person applicant pursuant to Rule 801 may, in lieu of submitting a fingerprint card for the applicant, represent in the electronic filing that, within the last 90 days, an application for registration as a General Securities Representative has been filed on behalf of the applicant with the National Association of Securities Dealers, Inc. and that a fingerprint card containing the applicant's finger-



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prints accompanied the application. By directing the computer to process the electronically filed form containing this representation, the sponsoring registrant certifies to the accuracy of this representation.

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D. Proposed Amendments to NFA Registration Rules and NFA Bylaw 301(h) (vii)

The proposed amendments to NFA's Registration Rules and NFA Bylaw 301(h) (vii) are set forth in the attachment to this letter. The attachment also reflects the aforementioned proposed amendments to Registration Rules 203(a) (1) and 209, as well as the amendment to Registration Rule 801 as proposed in a separately submitted letter to the Commission dated November 25, 1992.

EXPLANATION OF PROPOSED AMENDMENTS

A. Explanation of Proposed Amendment to Section 10(g) and Adoption of Section 17 of NFA's Code of Arbitration and Amendment to Section 10(g) and Adoption of Section 16 of NFA's Member Arbitration Rules

There have been a number of instances where NFA's Arbitration Department is informed that a case has settled, but the Member or Associate who agreed to settle the Demand for Arbitration does not pay the customer as agreed. In many cases, NFA staff does not find out that the settlement has not been paid until after staff has canceled the hearing, released the arbitrators and closed the case. Generally, there is no dispute about whether or not the parties have, in fact, agreed to a settlement. Rather, it has been NFA's experience that certain Members or Associates agree to a settlement, but walk away from the agreement after NFA terminates the proceeding. While NFA has the discretion to reopen the case and proceed with the arbitration, NFA's resources could be more efficiently used if NFA's authority to summarily suspend a Member or Associate for failing to comply with an arbitration award was expanded to include settlement agreements which are not honored.

The proposed amendments to Section 10(g) of NFA's Code of Arbitration ("Code") and NFA's Member Arbitration Rules ("Rules") authorize NFA's President to suspend a Member or Associate who fails to comply with the terms of a settlement



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within 30 days after NFA terminates the proceeding or as otherwise provided in the parties' settlement agreement. This change to the arbitration rules affords parties who settle their claims the same protection as parties who receive arbitration awards.

Further, even though suspension is basically a self-executing procedure, steps will be taken to ensure that a Member or Associate is not suspended unfairly. After receiving notification that a Member or Associate is not living up to the terms of the settlement, NFA staff would inquire to see if there is a dispute over whether the case settled and whether the settlement has been paid. If there is no dispute, NFA will initiate suspension proceedings. However, if there is a dispute over the settlement, NFA staff will review the matter and, if appropriate, exercise our discretion not to suspend the Member or Associate. This is the same procedure currently followed before suspending a Member for failure to pay an award.

NFA's arbitration proceedings are governed by NFA's rules. While NFA fully supports Members' rights to include clauses governing arbitration in written agreements with customers or other Members and Associates, it is our experience that written agreements between the parties sometimes interfere with NFA's ability to provide an effective forum because the agreements conflict with certain provisions under NFA's arbitration rules. Other arbitration forums of self-regulatory organizations whose experience has been similar to NFA's also maintain that their arbitration rules supersede the parties' written agreements. However, both the National Association of Securities Dealers, Inc. and the New York Stock Exchange have recently codified this view in a rule prohibiting contractual provisions in pre-dispute arbitration agreements which are inconsistent with their arbitration rules.

The proposed adoption of Section 17 of the Code and Section 16 of the Rules follow the lead of the NASD and the NYSE but take a more flexible approach. Under proposed Sections 17 and 16, contractual provisions which are inconsistent with NFA rules may be honored with the consent of all of the parties and NFA. For example, NFA's arbitration rules make it clear that the place of the hearing shall be determined in the sole discretion of the Secretary. For customer cases, it is NFA's policy to hold a hearing in a city mutually agreed upon between the parties after the dispute occurs (i.e., in the Demand and Answer) or one of the customer's choice, absent extenuating circumstances. However, there is an increasing number of cases where Members



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raise the existence of a site selection clause, asserting that NFA should honor the pre-determined site agreed upon between the parties.

There are cases where NFA does honor the agreed-upon choices listed in the parties' agreement and staff does not want to discourage Members from using site selection clauses. Under most circumstances we have no problem honoring a reasonable clause that was knowingly entered into between the parties. In fact, NFA generally follows the parties' written agreement in selecting the hearing location in Member-to-Member cases. But NFA should not be forced to honor a site selection clause if doing so would create an unnecessary hardship for NFA.

Proposed Section 17 of the Code and Section 16 of the Rules make it clear to the parties that they cannot by contract agree to override NFA's arbitration rules, unless the parties and NFA consent in a particular case. They also state that NFA's arbitration rules supersede any agreement between the parties that governs arbitration.

B. Explanation of Proposed Interpretive Notice to Registration Rule 402

At its meeting on May 21, 1992, the Board approved new NFA Registration Rule 402 and its Interpretive Notice. Essentially, Registration Rule 402 and its Interpretive Notice authorize NFA's Director of Compliance to waive the Series 3 proficiency testing requirement for certain commodity pool operators which trade primarily in securities. On July 15, 1992, NFA submitted Registration Rule 402 to the Commission and the rule became effective on August 1, 1992. NFA proposes expanding Rule 402 and its Interpretive Notice to grant commodity trading advisors and their associated persons ("APs") a testing waiver similar to that given to commodity pool operators.

Under the proposed Interpretive Notice, the Director of Compliance is authorized to waive the Series 3 examination for a CTA and its APs if: 1) the CTA is subject to regulation by a federal or state regulator; 2) for each customer for whom the CTA provides futures trading advice such advice is incidental to securities advisory services provided by the CTA to such customer; and 3) the futures trading advice offered by the CTA is for hedging or risk management purposes.

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C. Proposed Amendments to Registration Rules 203(a)(1) and 209

Over half of the individuals who apply for registration as an AP with NFA are sponsored by NFA Members which are also registered as securities broker-dealers with the National Association of Securities Dealers ("NASD"). In many cases, these AP applicants apply concurrently for registration as a general securities representative ("GSR") with the NASD.

As part of their respective registration processes, both NFA and the NASD require applicants to submit fingerprint cards with their applications which are forwarded to the Federal Bureau of Investigation ("FBI") for a criminal background check. Upon completing the background check, the FBI issues a report to the submitting organization. As a result, there is significant duplication of effort in cases where an individual applies concurrently for registration as an AP and a GSR. The individual is required to obtain two fingerprint cards (one for NFA and one for the NASD), the FBI runs two separate background checks on the same fingerprints and identical reports are issued to NFA and the NASD.

NFA has been working with the NASD in developing a proposal which will eliminate this duplication of effort by permitting individuals applying for registration as both APs and GSRs to submit one fingerprint card with their application to the NASD. Under the proposal, the NASD will be responsible for submitting the fingerprint card to the FBI and for providing NFA with the results of the fingerprint check through the Central Registration Depository ("CRD").

Over the last two months, NFA has been receiving the NASD's fingerprint card results over the CRD and has been checking the results it receives from the FBI with the results provided by the NASD. To date, there has not been one instance where the NASD has indicated that an individual had cleared the fingerprint check while the FBI report received by NFA indicated otherwise. Based on these results, NFA is confident that obtaining this information through the NASD rather than directly from the FBI will not impact the reliability of the results.

From a processing standpoint, individuals who are seeking both AP and GSR registration will be required to indicate at the time of application with NFA that the fingerprint card has been sent to the NASD. Since only NASD registered broker-dealer firms would be eligible for the alternative fingerprint filing,



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staff believes that there must be some control over the firms that will have the ability to represent that the fingerprint card has been sent to the NASD. NFA recommends, therefore, that, at least initially, the alternative fingerprint filing be administered through the direct entry program. By doing so, NFA can tailor the screens to which a firm has access and therefore eliminate the possibility that a non-broker dealer firm would erroneously indicate that the fingerprint card had been sent to the NASD.

Clearly, this proposal will be beneficial to both NFA and the applicant's sponsoring firm. NFA will be relieved of the administrative burden of processing the fingerprint card and the sponsoring firm will realize savings associated with the cost of the second fingerprint card. NFA will also save the \$23 FBI processing charge, reducing NFA's cost of processing the application from approximately \$140 to approximately \$120. This cost savings would be passed on to the applicant's sponsor.

The proposed amendment to NFA Registration Rule 209 permits sponsoring registrants which file AP Forms 8-R through direct entry to meet the fingerprint filing requirement by filing the card with the NASD. The proposed amendment to Registration Rule 203(a)(1) reduces the filing fee for applicants using the alternative fingerprint filing option under Rule 209(c).

D. Proposed Amendments to NFA Registration Rules and NFA Bylaw 301(h)(vii)

As you know, the Commission recently amended its Part 3 Regulations relating to statutory disqualifications from registration. In addition to amending its rules governing statutory disqualification procedures, the Commission has clarified and simplified other areas of its registration rules. Some of these amendments serve to codify or expand the availability of exemptions previously made available on a case-by-case basis by the Commission's Division of Trading and Markets.

As a result of the amendments to the Commission's registration rules, it is necessary that NFA adopt conforming amendments to its Registration Rules ("Rules"). In addition to revising its Rules to conform with those of the Commission, NFA's proposed modifications reorganize somewhat the current format, codify current practices and procedures and provide for situations which were not contemplated when the Rules originally were



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drafted. The proposed revisions to the Rules also include certain technical and stylistic amendments which make the Rules more readable.

The revisions to Part 100 of the Rules entitled "Definitions" clarify the definition of certain terms, define several additional terms to make the Rules more understandable and conform NFA's definitions with those recently adopted by the Commission. The proposed modifications to the Part 200 Rules entitled "Registration Requirements and Procedures" involve certain organizational changes, as well as changes which conform the Rules to the recent Commission amendments. Most notably, the proposed changes eliminate the majority of the prohibitions on dual and multiple associations of associated persons, simplify the rule concerning changes requiring new registration and addition of principals, and provide an exemption to the fingerprint filing requirement for outside directors if such directors comply with certain specified conditions.

The proposed amendments to Part 300 of the Rules entitled "Temporary Licenses," contain all provisions relating to temporary licensing procedures. For instance, information previously set forth in Rule 206 concerning the temporary licensing of an AP who has applied for registration with a new sponsor now is set forth in proposed Rule 301(b). The proposed amendments also codify several policies and procedures relating to temporary licenses.

The proposed amendments to the Part 500 Rules reflect the changes promulgated by the Commission by allowing applicants who are disqualified from registration under Section 8a(2) of the Commodity Exchange Act the right to present evidence of mitigation and rehabilitation; however, the amendments also make clear that such individuals bear a heavier burden of proof. The proposed amendments further mirror the Commission's revised rules by: (1) allowing NFA staff to file motions for summary judgment with a designated Subcommittee of the Membership Committee; (2) providing for settlement offers and telephonic hearings; and (3) setting forth procedures to lift conditions or restrictions imposed upon a registration. They also provide the Subcommittee with guidance concerning the issues it should address in its written decisions. Finally, the proposed amendments to the Part 700 Rules allow NFA's President to designate one or more NFA employees to serve as Deputy Record Custodian.



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NFA Bylaw 301(h) currently provides that the membership or associate membership of any person may be summarily terminated under a number of circumstances. However, NFA Bylaw 301(h)(vii) provides that in order to terminate the membership or associate membership of any person whose registration has been revoked, an adverse proceeding must be instituted pursuant to Bylaw 301(g). The proposed amendment to Bylaw 301(h)(vii) streamlines and simplifies the provisions for terminating the membership or associate membership of a person who no longer meets the qualifications set forth in the Bylaws for continuation as a Member or Associate. Specifically, the amendment allows the membership of any Member or person associated with a Member whose registration has been revoked to terminate without further notice.

NFA respectfully requests that the Commission review and approve the proposed amendments to NFA Code of Arbitration, NFA Member Arbitration Rules, Interpretive Notice to NFA Registration Rule 402, NFA Registration Rules and NFA Bylaw 301. NFA further requests that the amendments be declared effective upon Commission approval.

Respectfully submitted,

Daniel J. Roth
General Counsel

DJR:cm(sub/120492)
Enclosure

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 P. Klejna, Esq.
Joanne T. Medero, Esq.
Alan L. Seifert, Esq.
Susan C. Ervin, Esq.
Lawrence B. Patent, Esq.
David Van Wagner, Esq.

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REGISTRATION RULES

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PART 100. DEFINITIONS

Rule 101. Definitions.

As used in these Rules -

- (a) "Act" - means the Commodity Exchange Act, which is contained in Title 7 of the United States Code.
- (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.
- [(b)] (c) "Associated Person" - means an associated person as that term is used in the Act and the [R]regulations thereunder and that is required to be registered as such under the Act.
- (d) "Beneficial Owner" - any person who, without limitation, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership or of avoiding making a contribution of ten percent or more of the capital, as part of a plan or scheme to evade being deemed a principal (as defined in paragraph (n) of this Rule) of an applicant or registrant shall be deemed for purposes of such paragraph to be the beneficial owner or the contributor of capital.
- [(c)] (e) "Commission" or "CFTC" - means the Commodity Futures Trading Commission.
- (f) "Commodity Interest" - means: (1) any contract for the purchase or sale of a commodity for future delivery regulated under the Act and rules promulgated thereunder; and (2) any contract, agreement or transaction subject to Commission regulation under Sections 4c or 19 of the Act.
- (g) "Current" - a Form 8-R is current if, subsequent to the filing of that form and continuously thereafter, the registrant or principal has been either registered or affiliated with a registrant as a principal.

(h) "Foreign Futures Authority" - means any foreign government or any department, agency, governmental body or regulatory organization empowered by a foreign government to administer or enforce a law, rule or regulation as it relates to a futures or options matter.

[(d)](i) "Listed Principal" - means a principal of a registrant with respect to whom the registrant has made all necessary filings under these Rules.

(j) "Membership Committee" - means an NFA Committee formed pursuant to NFA Bylaw 701.

[(e)](k) "NFA" - means National Futures Association.

(l) "Owner" - means any person who is the holder or the beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of an entity.

(m) "Person" - means an individual, association, partnership, corporation or trust.

[(f)](n) "Principal" - means, with respect to an applicant [for registration], a registrant, or a person required to be registered under the Act: (1) any person, including but not limited to a sole proprietor, general partner, officer, director, branch office manager, designated supervisor, or a person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over its activities which are subject to regulation by the Commission; (2) any holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock; or (3) any person who has contributed ten percent or more of the capital: Provided, however, that if such capital contribution consists of subordinated debt contributed by an unaffiliated bank insured by the Federal Deposit Insurance Corporation, a United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or an insurance company subject to regulation by any state, such bank, branch, agency or insurance company will not be deemed to be a principal for purposes of this definition, provided such debt is not guaranteed by another party not listed as a principal.

- (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.
- (p) "Rules" - means NFA Registration Rules.
- [(g)](q) "Sponsor" - means the [registered or pending] applicant or registrant futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant which makes the certification required by Rule 206 [of this Chapter] for the registration of an associated person [of such sponsor or with whom a principal is affiliated].
- (r) "Supplemental Guarantor Certification Statement" - means a statement executed by an introducing broker's guarantor wherein the guarantor indicates its willingness to supervise the introducing broker subject to certain conditions or restrictions imposed by NFA's President or its Membership Committee under these Rules.
- (s) "Supplemental Sponsor Certification Statement" - means a statement executed by an associated person's sponsor wherein the sponsor indicates its willingness to supervise the associated person subject to certain conditions or restrictions imposed by NFA's President or its Membership Committee under these Rules.

PART 200. REGISTRATION REQUIREMENTS
AND PROCEDURES

Rule 201. Registration Requirements and Procedures.

[Types of persons other than floor brokers subject to regulation under the Act, as defined in the Act or Commission Regulations, for which NFA has been granted registration responsibilities pursuant to Section 8a(10) or Section 17(o) of the Act shall be required to register if required to register under the Act and not exempt from registration by Commission rule or order. All persons shall be subject to and NFA shall perform registration functions with respect to such persons in accordance with all of the Rules governing registrations contained in these Registration Rules ("Rules").]

NFA shall perform registration functions in accordance with the provisions set forth in these Rules for persons other

than floor brokers 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 in accordance with all of the Regulations governing the registration of floor brokers contained in Part 3 of the Commission's Regulations, except that Rule 203 of these Rules shall govern floor broker registration fees and Part 700 of these Rules shall govern access to and certification of floor broker records maintained by NFA.

[[Note: Exemptions from Registration. Persons seeking exemption from registration should refer to Appendix A of these Rules.]]

Rule 202. Registration Processing and Notification of Registration.

- (a) NFA [will] shall notify the [registrant,] applicant, or the sponsor in the case of an applicant for registration as an associated person, if registration has been granted or a temporary license issued under the Act.
- (b) Any registration form, [any] schedule or supplement thereto, [any] fingerprint card, or other document required by these Rules to be filed with NFA shall be deemed for all purposes to have been filed with, and to be the official record of, the Commission. Part 700 of these Rules [shall] governs access to and certification of all such registration records maintained by NFA.

Rule 203. Registration Fees.

- (a) Amount.
 - (1) Associated Person. Except for Forms 8-R submitted in accordance with Rule 209(d), [E]each Form 8-R submitted in connection with the registration of an associated person must be accompanied by a fee of \$70. Each Form 8-R submitted in connection with the registration of an associated person in accordance with Rule 209(d) must be accompanied by a fee of \$50.

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- (8) **Annual Update.** Each Form 7-R submitted on an annual basis by a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant in compliance with [Registration] Rule 204[(c)] (d) shall be accompanied by a fee of \$100 for each registration category.

- (9) **Late Termination Notice.** Each notice required by [Registration] Rule [210(c)] 214(a) which is filed more than [20] twenty days after the occurrence of the event requiring the notice shall be accompanied by a fee of \$100.
- (10) **Disqualification Fee.** A written submission to the President filed under [Registration] 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 designated Subcommittee finds that the applicant or registrant is not subject to a statutory disqualification.

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Rule 204. Registration of Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, Commodity Trading Advisors[,] and Leverage Transaction Merchants.

(a) **[Initial] Application for Registration.**

- (1) Application for [initial] registration as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor[, and] or leverage transaction merchant must be on a Form 7-R, completed and filed with NFA in accordance with the instructions thereto.
- (A) Each application for [initial] registration as a futures commission merchant [and as] or an introducing broker also must [also] be completed and filed in accordance with CFTC Regulation 1.10.
- (B) Each application for [initial] registration as a commodity pool operator also must [also] be completed and filed in accordance with CFTC Regulation 4.13(c).
- (C) Each application for [initial] registration as a leverage transaction merchant also must [also] be completed and filed in accordance with CFTC Regulation 31.13[(a)].
- (2) Each application for [initial] registration as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor[, and] or leverage transaction merchant must be accompanied by: (i) a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and (ii) [must be accompanied by] the fingerprints of [that] such principal on a fingerprint card provided by NFA for that purpose, unless such principal is a director who qualifies for the exemption from the finger-

printing requirement pursuant to Rule 209(c). The provisions of this paragraph do not apply to any principal who currently is registered with the Commission in any capacity or is approved as a principal of a current Commission registrant. [The Form 8-R and fingerprint card need not be filed, however, by a principal who is currently registered with the Commission in any capacity or is listed as a principal of a current Commission registrant.]

- (3) In the case of an applicant with a principal that is not a natural person, the applicant's Form 7-R also must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is the owner of the entity that is a non-natural person principal listed on the applicant's Form 7-R. If all of the principals of an applicant's non-natural person principal are also non-natural persons, the Form 7-R must be accompanied by a Form 8-R and fingerprints for each natural person that is an owner of such non-natural persons. The Form 8-R must be accompanied by the fingerprints of such natural person on a fingerprint card provided by NFA for that purpose: Provided, however, that the provisions of this paragraph shall not apply if the non-natural person principal: (i) files reports under the Securities Exchange Act of 1934; (ii) has filed a registration statement under the Securities Act of 1933; (iii) is subject to regulation by the Securities and Exchange Commission; (iv) is an insurance company subject to regulation by any state; or (v) is a bank or any other financial depository institution subject to regulation by any state or by the United States. The provisions of this paragraph also do not apply to any natural person who has a current Form 8-R on file with the Commission or NFA or who has had filed on his behalf a Form 8-R and a fingerprint card pursuant to Rule 204(a)(2). However, NFA may waive the requirement to file a Form 8-R and a fingerprint card if such natural person: (i) is a foreign national who is regulated by a foreign futures authority that provides information to NFA concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority; (ii) has been granted an exemption under CFTC Regulation 30.10; or (iii) is employed by or a principal of a firm which has been granted an exemption under CFTC Regulation 30.10. In appropriate cases, NFA may require further information from the applicant with respect to any natural person or entity referred to in this paragraph.
- (b) Withdrawal of Application. Failure of an applicant to respond to a written request by NFA for clarification of application information, to resubmit fingerprints in accordance with such request, or to pay the required registration

fee pursuant to Rule 203(a) shall be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of an introducing broker applicant's temporary license.

[(b)](c) Duration of Registration.

(1) A person who becomes registered as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant in accordance with [paragraph (a) of] this Rule [will remain] shall continue to be so registered until [such registration is suspended, revoked, terminated, or withdrawn] the effective date of any revocation or withdrawal of such registration. Such person is prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration.

(2) A person registered as an introducing broker who was a party to a guarantee agreement with a futures commission merchant in accordance with CFTC Regulation 1.10(j) will be deemed to have requested a withdrawal of its registration effective thirty days after the termination of such guarantee agreement unless the procedures set forth in CFTC Regulation 1.10(j)(8) are followed.

[(c)](d) [Periodic] Annual Filings. [Any person who becomes registered as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant in accordance with paragraph (a) of this Rule shall be required to file a properly completed Form 7-R with NFA annually on a date specified by NFA. Failure to file the Form 7-R and pay the required annual update fee pursuant to Registration Rule 203(a)(8) within 30 days following such date will be deemed a request for withdrawal from registration. On at least 30 days written notice, and following such action, if any, deemed necessary by the CFTC or NFA, NFA may grant the request for withdrawal from registration.] On an annual basis, NFA shall provide each futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, and leverage transaction merchant registered in accordance with this Rule with a printout of its Form 7-R currently on file with NFA. The registrant shall review the information contained in such pre-printed Form 7-R, make any necessary corrections or changes to such information and submit the pre-printed Form 7-R to NFA on the date specified thereon accompanied by the required annual update fee pursuant to Rule 203(a)(8). NFA shall deem the failure to file the Form

7-R and pay the required annual update fees within 30 days following such date a request to withdraw from registration, and shall notify the registrant accordingly.

Rule 205. [Reporting of Principals.] [Reserved]

[Within twenty days after any natural person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7-R in accordance with Rule 204 of this Chapter, (see, however, Rule 208 which may require a new registration), the registrant must file a Form 3-R indicating such change and a Form 8-R for each such person. The Form 8-R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by NFA for that purpose. The Form 8-R and fingerprint card need not be filed, however, by a principal who is currently registered with the Commission in any capacity or a listed principal of a current Commission registrant.]

Rule 206. Registration of Associated Persons of Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, Commodity Trading Advisors, and Leverage Transaction Merchants.

(a) [Initial] Application for Registration.

- (1) Application for [initial] registration as an associated person of a sponsor must be on a Form 8-R, completed and filed with NFA in accordance with the instructions thereto.
- (2) No person will be registered as an associated person in accordance with paragraph (a) of this Rule unless an officer of the sponsoring corporation, a general partner of the sponsoring partnership, or the sponsoring sole proprietor [sponsor] has signed and dated [a certification] the Sponsor's Certification Statement on the Form 8-R [by which application for registration is made] thereby stating that:
 - (A) [that] it is the intention of the sponsor to hire or otherwise employ the applicant as an associated person[,]; [and that] it will do so within thirty days after the receipt of the written notification provided in accordance with paragraph (a)(4) of this Rule[,]; and [that] the applicant will not be permitted to engage in any activity requiring registration as an associated person until the applicant is registered [or temporarily licensed] as such in accordance with this Rule or temporarily licensed as such in accordance with Part 300 of these Rules;

- (B) [that] the sponsor has verified the information supplied by the applicant in response to the questions on the Form 8-R which relate to the applicant's education and employment history during the preceding three years; and
 - (C) [that] to the best of the sponsor's knowledge, information[,] and belief, all of the publicly available information supplied by the applicant on the Form 8-R is accurate and complete.
- (3) Each Form 8-R filed in accordance with this Rule must be accompanied by: (i) the fingerprints of the applicant on a fingerprint card provided by NFA for that purpose [and by]; (ii) satisfactory evidence that the applicant has satisfied the applicable proficiency requirement set forth in Part 400 of these Rules[.]; and (iii) the registration fee required by Rule 203(a)(1).
- (4) When NFA determines that an applicant for registration as an associated person [is not unfit] appears fit for such registration, it will provide written notification [in writing] to [each] the applicant's sponsor that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.
- [(b) **Special Registration Procedures for Certain Persons.**]
- [(1) Any person whose registration as an associated person has terminated within the preceding sixty days and who becomes associated with a new sponsor will be temporarily licensed as an associated person of such sponsor (except in those circumstances set forth in paragraph (b)(4) of this Rule) upon mailing by that sponsor to NFA of a Form 8-R, completed in accordance with the instructions thereto, containing written certification stating:
- (A) that such person has been hired or is otherwise employed by that sponsor;
 - (B) that such person's registration as an associated person in any capacity is not suspended or revoked;
 - (C) that such person is eligible to be registered or temporarily licensed in accordance with this paragraph (b);
 - (D) that the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which has already been disclosed in connection with a previous

application for a registration in any capacity, if such registration was granted, or which has already been disclosed more than 30 days previously in an amendment to such application;

- (E) whether there is a proceeding pending under Sections 6(b) or 8a of the Act or Part 500 of these Rules to deny, suspend, revoke, condition, or restrict such person's registration in any capacity and whether NFA within the preceding twelve months has permitted the withdrawal of such person's application for registration in any capacity after initiating the procedures provided for in Rule 503; and
 - (F) that the sponsor has received a copy of the complaint, letter, or notice issued if the applicant for registration has certified, in accordance with paragraph (b)(1)(E) of this Rule, that there is a pending proceeding against him as described in that paragraph or that NFA has permitted the withdrawal of an application for registration as described in that paragraph.
- (2) Except as provided for in Rule 207, any person whose registration is still in effect and who becomes associated with a sponsoring futures commission merchant or introducing broker will be registered as an associated person of such sponsor (except in those circumstances set forth in paragraph (b)(4) of this Rule) upon mailing by that sponsor to NFA of a Form 8-R, completed in accordance with the instructions thereto, containing the written certification required by paragraph (b)(1) of this Rule.
 - (3) The certifications required by paragraph (b)(1)(A) and (F) of this Rule must be signed and dated by an officer of the sponsor corporation, a general partner of the sponsor partnership, or the sole proprietor sponsor. The certifications required by paragraphs (b)(1)(B) through (E) of this Rule must be signed and dated by the applicant for registration as an associated person.
 - (4) An applicant will not become registered or temporarily licensed upon mailing of a properly completed Form 8-R pursuant to paragraph (b) of this Rule unless such form is accompanied by the fingerprints of the applicant on a fingerprint card provided by NFA for that purpose and the proficiency certification required by Rule 401(a)(3), if such certification was required with the applicant's prior application for registration as an associated person, and a Supplemental Sponsor Certification Statement signed by the new sponsor, if the applicant's prior registration as an

associated person was subject to conditions or restrictions pursuant to Part 500 of these Rules.

- (5) A temporary license received in accordance with paragraph (b) of this Rule will terminate five days after service upon the applicant of a notice by NFA pursuant to Rule 504 that such person may be found subject to a statutory disqualification from registration.]

(b) Special Registration Procedures When Previous Sponsor's Registration Ceases.

(1) Any person whose registration as an associated person in any capacity was not subject to conditions or restrictions and was terminated within the preceding sixty days because the previous sponsor's registration was revoked or withdrawn, and who becomes associated with a new sponsor, will be registered as an associated person of such new sponsor upon the mailing by that new sponsor to NFA of written certifications stating:

- (A) that such person has been hired or is otherwise employed by that sponsor;
- (B) that such person's registration as an associated person in any capacity is not suspended or revoked;
- (C) that such person is eligible to be registered in accordance with this paragraph (b);
- (D) whether there is pending against such person an adjudicatory proceeding brought under: (i) Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act; (ii) CFTC Regulations 3.55 or 3.60; or (iii) NFA or exchange rules or, if within the preceding twelve months, the Commission or NFA has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in CFTC Regulation 3.51 or Part 500 of these Rules and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;
- (E) that the new sponsor has received a copy of the notice of the institution of a proceeding if the applicant for registration has certified, in accordance with paragraph (b)(1)(D) of this Rule, that there is a proceeding pending against him as described in that paragraph or that the Commission or NFA has permitted the withdrawal of an applica-

tion for registration as described in that paragraph;

(F) that the Disciplinary History of such person's registration application contains no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(G) that the new sponsor will be responsible for supervising all activities of the person in connection with the sponsor's business as a registrant under the Act.

(2) The certifications required by paragraphs (b)(1)(A), (E), and (G) of this Rule must be signed and dated by an officer of the sponsoring corporation, a general partner of the sponsoring partnership or the sponsoring sole proprietor. The certifications required by paragraphs (b)(1)(B), (C), (D) and (F) of this Rule must be signed and dated by the applicant for registration as an associated person.

(3) Upon receipt of notice from NFA, a person who is registered in accordance with the provisions of paragraph (b)(1) of this Rule shall be required to file with NFA his fingerprints on a fingerprint card provided by NFA for that purpose as well as such other information as NFA may require. NFA may require such a filing every two years or at such greater period of time as it may deem appropriate, after the associated person has become associated with a new sponsor in connection with the requirements of paragraph (b)(1) of this Rule.

(c) Withdrawal of Application. Failure of an applicant or of a sponsor of an applicant to respond to a written request by NFA for clarification of application information, to resubmit fingerprints in accordance with such request, or to pay the required registration fee pursuant to Rule 203(a)(1) shall be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

[(c)](d) Duration of Registration. A person registered in accordance with paragraphs (a) or (b) of this Rule, Rule 207 or Rule 301(b) and whose registration has not been [suspended,] revoked[,] [withdrawn,] or affected by [paragraph (b)(5) of this] Rule 301(d)(1)(A), [will] shall con-

tinue to be so registered until [the termination of the association of the registrant with, or the revocation, suspension, or withdrawal of the registration of, each of the associated persons's sponsors] the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the association of the registrant with each of his sponsors. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of his or his sponsor's registration. In accordance with Rule 214, each of the registrant's sponsors must file a notice with NFA on Form 8-T or on a Uniform Termination Notice for Securities Industry Registration reporting the termination of the association of the associated person within twenty days thereafter.

[(d)](e) Retention of Records. In accordance with Commission Regulation 1.31, [T]the sponsor must retain [in accordance with Commission Regulation 1.31] such records as are necessary to support the certifications required by this Rule.

Rule 207. [Multiple Affiliations of Associated Persons.]
Reporting of Dual and Multiple Associations.

- [(a) Certain Dual and Multiple Associations Prohibited.** No person may be simultaneously associated as an associated person with:
- (1) more than one futures commission merchant, more than one introducing broker or more than one leverage transaction merchant;
 - (2) a futures commission merchant and an introducing broker;
 - (3) a futures commission merchant and a leverage transaction merchant;
 - (4) an introducing broker and a leverage transaction merchant;
 - (5) a futures commission merchant and a commodity trading advisor for which that futures commission merchant solicits or intends to solicit clients or prospective clients: Provided, that a person registered as an associated person of a futures commission merchant who solicits clients by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such case be deemed to be associated solely with the futures commission merchant;

- (6) subject to the provisions of paragraph (a)(5) of this Rule, a futures commission merchant and a commodity trading advisor for which that futures commission merchant carries or introduces, or intends to carry or introduce, clients' or prospective clients' discretionary accounts;
- (7) a futures commission merchant and a commodity pool operator for which that futures commission merchant solicits or intends to solicit funds, securities, or property: Provided, that a person registered as an associated person of a futures commission merchant who solicits funds, securities, or property by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the futures commission merchant;
- (8) subject to the provisions of paragraph (a)(7) of this Rule, a futures commission merchant and a commodity pool operator for which that futures commission merchant carries or introduces, or intends to carry or introduce, the account of a commodity pool operated by that commodity pool operator;
- (9) an introducing broker and a commodity trading advisor for which that introducing broker solicits or intends to solicit clients or prospective clients: Provided, that a person registered as an associated person of an introducing broker who solicits clients by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker;
- (10) subject to the provisions of paragraph (a)(9) of this Rule, an introducing broker and a commodity trading advisor for which that introducing broker introduces, or intends to introduce, clients' or prospective clients' discretionary accounts;
- (11) an introducing broker and a commodity pool operator for which that introducing broker solicits, or intends to solicit, funds, securities, or property: Provided, that a person registered as an associated person of an introducing broker who solicits funds, securities, or property by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker;
- (12) subject to the provisions of paragraph (a)(11) of this Rule, an introducing broker and a commodity pool operator for which that introducing broker introduces, or intends to introduce, the account of a commodity pool operated by that commodity pool operator;

- (13) a leverage transaction merchant and a commodity trading advisor;
 - (14) a leverage transaction merchant and a commodity pool operator; or
 - (15) a leverage transaction merchant and registered as a floor broker.
- (b) Permitted Dual and Multiple Associations.**
- (1) A person who is already registered as an associated person in any capacity may become associated with a commodity trading advisor or with a commodity pool operator if that commodity trading advisor or commodity pool operator files a Form 3-R with NFA in accordance with the instructions thereto. Such filing shall constitute a certification that:
 - (A) the commodity trading advisor or commodity pool operator has verified that the associated person is currently registered as an associated person in any capacity;
 - (B) the associated person is not subject to a statutory disqualification as set forth in Section 8a(2) of the Act; and
 - (C) in addition to its responsibility to supervise that associated person, the commodity trading advisor or commodity pool operator acknowledges that it is jointly and severally responsible for the conduct of the associated person with respect to the solicitation of any client's or prospective client's discretionary account or the solicitation of funds, securities, or property for a participation in a commodity pool, with respect to any customers or option customers common to it and any other commodity trading advisors or commodity pool operators with which the associated person is associated.
 - (2) A person who files a Form 3-R with NFA pursuant to paragraph (b)(1) of this Rule shall become registered as an associated person of the commodity trading advisor or commodity pool operator upon receipt of the Form 3-R by NFA.
- (c) Petitions for Exemption.** Any person seeking an exemption from the requirements of this Rule must file a petition with the Commission in accordance with Commission Regulations 3.12 and 3.16.]
- (a) Except as otherwise provided for in paragraph (d) of this Rule, any person whose registration as an associated person still is in effect and not subject to conditions or restrictions may become registered as an associated person of

another sponsor if the new sponsor (who must meet the requirements set forth in Rule 504(b)(2)(A) and (B)) files with NFA a Form 3-R in accordance with the instructions thereto. The Form 3-R must contain a certification signed by each sponsor that each sponsor has verified that the associated person currently is registered as an associated person in some capacity and that the associated person is not subject to a disqualification from registration under Section 8a(2) of the Act. The Form 3-R also must contain an acknowledgment that in addition to each sponsor's responsibility to supervise such associated person, each sponsor is jointly and severally responsible for the conduct of the associated person with respect to the:

- (1) solicitation or acceptance of customer orders;
 - (2) solicitation of funds, securities or property for a participation in a commodity pool;
 - (3) solicitation of a client's or prospective client's discretionary account;
 - (4) solicitation or acceptance of leverage customer orders for leverage transactions; and
 - (5) associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other sponsor of the associated person.
- (b) An associated person will be registered as an associated person of the new sponsor upon receipt by NFA of a Form 3-R filed in accordance with paragraph (a) of this Rule.
- (c) Upon receipt of notice from NFA, a person who is simultaneously associated with more than one sponsor in accordance with the provisions of paragraphs (a) and (b) of this Rule shall be required to file with NFA his fingerprints on a fingerprint card provided by NFA for that purpose, as well as such other information as may be required. Such a filing may be required every two years or at such greater period of time as NFA deems appropriate after the associated person has become associated with a new sponsor in accordance with the requirements of paragraphs (a) and (b) of this Rule.
- (d) If a person is associated with a futures commission merchant or an introducing broker and he directs customers seeking a managed account to use the services of a commodity trading advisor(s) approved by the futures commission merchant or introducing broker and all such customers' accounts solicited or accepted by that associated person are carried

by the futures commission merchant or introduced by the introducing broker with which the associated person is associated, such person shall be deemed to be associated solely with the futures commission merchant or introducing broker and may not also register as an associated person of the commodity trading advisor(s).

- (e) Any person seeking an exemption from the requirements of this Rule must file a petition with the Commission in accordance with Commission Regulation 3.12.

Rule 208. [Changes Requiring a New Registration] Reporting of Principals

- [(a) If the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant, and except as provided in paragraphs (b) and (c) of this Rule, registration is deemed to terminate and a new registration is required (See Rule 204) whenever a person not listed as a principal on the registrant's initial registration application or any amendment thereto:
- (1) acquires the right to vote or becomes the beneficial owner of 10% or more of the corporate registrant's voting securities;
 - (2) becomes entitled to receive 10% or more of the corporate registrant's net profits;
 - (3) contributes 10% or more of the corporate registrant's capital;
 - (4) becomes a director of the corporate registrant;
 - (5) becomes the chief executive officer of the corporate registrant or occupies a position of similar status or performs a similar function;
 - (6) acquires ownership of the registrant's business in the case of a sole proprietorship; or
 - (7) becomes a general partner of the registrant.
- (b) In the event of the filing of an application for registration pursuant to paragraph (a) of this Rule, if each person not listed as a principal on the registrant's initial application or any amendment thereto is currently registered in any capacity or is a listed principal of a current Commission registrant, such registration shall not terminate until the earliest of:

- (1) ninety days from the date that such change occurred;
 - (2) notification by NFA of the granting of the new registration; or
 - (3) five days after service upon the registrant of a notice by NFA pursuant to Rule 504 that the registrant may be found subject to a statutory disqualification from registration.
- (c) Except in cases where paragraph (b) of this Rule applies and the registrant chooses to file an application for new registration under its terms, a new registration will not be required in the event of an intended change in control as described in paragraphs (a)(4) and (5) of this Rule, if the registrant submits a Form 3-R to NFA prior to such change in control and such change in control does not occur until the registrant receives written approval from NFA. The Form 3-R must be accompanied by a properly completed Form 8-R for each person who will become a principal of the registrant and by the fingerprints of that individual on a fingerprint card provided by NFA for that purpose, except that a fingerprint card need not be provided for any individual who is currently registered with the Commission as an associated person or as a floor broker or is a listed principal of a current Commission registrant.
- (d) Any person who is registered, or who has submitted an application for registration as an associated person of the registrant on or prior to the effective date of the changes described in paragraph (a) of this Rule, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of the new registrant.]
- (a) Unless otherwise provided in this Rule, within twenty days after any person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7-R in accordance with Rule 204 ("new principal"), the applicant or registrant must file a Form 3-R indicating such change and a Form 8-R for each such new principal that is a natural person. The Form 8-R must be completed by such natural person in accordance with the instructions thereto and must be accompanied by the fingerprints of that natural person on a fingerprint card provided by NFA for that purpose. If the new principal is not a natural person, a Form 8-R and fingerprint card shall be filed by any natural person who would have been required to do so in accordance with Rule 204(a), had the new principal been listed on the registrant's initial application for registration.

The Form 8-R and fingerprint card need not be filed, however, by any natural person who has a current Form 8-R on file.

(b) After receiving any Form 3-R filed in accordance with paragraph (a) of this Rule, NFA may notify a registrant that the new principal may be disqualified from registration under Sections 8a(2) through 8a(4) of the Act and that the registrant shall be suspended at such time as NFA issues a notice pursuant to Rule 504 or 505 that the registrant is disqualified from registration pursuant to Section 8a(2)(H) or Section 8a(3)(N) and Section 8a(4) of the Act and that its registration may be revoked thereunder. The registrant shall remain suspended pending: (1) a determination by the Membership Committee or its designated Subcommittee that the new principal appears fit to act as a principal of the registrant; or (2) the issuance by the President of a Withdrawal of Notice of Intent. However, in no event shall the registrant be suspended pursuant to the provisions of this paragraph for a period exceeding six months.

(c) If the registrant submits a Form 3-R listing a new principal prior to the new principal becoming affiliated with the registrant in the capacity which requires the listing of such new principal, then any notice issued by NFA pursuant to the provisions of paragraph (b) of this Rule shall not operate to suspend the registrant's registration. The Form 3-R must be accompanied by a Form 8-R and fingerprint card in accordance with paragraph (a) of this Rule. The new principal may not become so affiliated with the registrant until: (1) NFA provides written notice to the registrant that the new principal appears fit to act as a principal of the registrant; or (2) the Membership Committee or its designated Subcommittee determines that the new principal appears fit to act as a principal of the registrant.

Rule 209. Alternative to the Fingerprint Filing Requirement in Certain Cases.

- (a) Any person who is required by these Rules to submit a fingerprint card may file, or cause to be filed, in lieu of such card:
- (1) a legible, accurate, and complete photocopy of a fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and each report, record, and notation made available by the

Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with NFA of the photocopy; or

- (2) a statement that such person's application for [initial] registration in any capacity has been granted within the preceding ninety days, [except that the provisions of this paragraph shall not apply to any person who] unless the person was not required to file a fingerprint card in connection with such application for initial registration.
- (b) Each photocopy and statement filed in accordance with the provisions of paragraph (a)(1) or (a)(2) of this Rule must be signed and dated. Such signature shall constitute a certification by that individual that the photocopy or statement is accurate and complete [and must be made by:].
- (1) [w] With respect to the fingerprints of an associated person[:], the photocopy or statement must be executed by an officer of the sponsoring corporation, a general partner of the sponsoring partnership, or the sponsoring sole proprietor [sponsor]; and
- (2) [w] With respect to the fingerprints of a principal[:], the photocopy or statement must be executed by an officer, if the futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant with which the principal will be affiliated is a corporation; a general partner, if a partnership; or the sole proprietor, if a sole proprietorship.
- (c) In lieu of submitting a fingerprint card in accordance with the provisions of Rules 204(a)(2) and 208, any futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm (an "outside director") may file with NFA a Notice Pursuant to CFTC Regulation 3.21(c). A firm that has filed a Notice Pursuant to CFTC Regulation 3.21(c) with respect to an outside director described therein must file with NFA on behalf of such outside director a Form 8-R completed in accordance with the instructions thereto and executed by the outside director. The exemption provided for by this paragraph is limited solely to the outside director's fingerprint requirement and does not affect any other duties or responsibilities of the firm or the outside directors under these Rules. In appropriate cases, NFA may require additional information from

the firm with respect to any outside director referred to in the Notice Pursuant to CFTC Regulation 3.21(c).

- (d) Any sponsoring registrant which is filing Form 8-R on behalf of an associated person applicant pursuant to Rule 801 may, in lieu of submitting a fingerprint card for the applicant, represent in the electronic filing that, within the last 90 days, an application for registration as a General Securities Representative has been filed on behalf of the applicant with the National Association of Securities Dealers, Inc. and that a fingerprint card containing the applicant's fingerprints accompanied the application. By directing the computer to process the electronically filed form containing this representation, the sponsoring registrant certifies to the accuracy of this representation.

Rule 210. Deficiencies, Inaccuracies, and Changes to Application Information Must Be Reported.

- (a) Each applicant or registrant as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in a Form 7-R or any Schedules[, A, B, or C to the Form 7-R] thereto which no longer renders accurate and current the information contained therein. Each such correction must be made on a Form 3-R and must be prepared and filed in accordance with the instructions thereto. When a Form 3-R is filed by a registrant for purposes of reporting a change in the form of the organization of the registrant, the Form 3-R must be accompanied by a letter, signed by an appropriate signatory, certifying that the newly formed organization will be liable for all obligations of the pre-existing organization which arose out of the Act or the Regulations thereunder.
- (b) Each applicant or registrant as an associated person and each principal of a registrant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8-R or any supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8-R or supplemental statement. Each such correction must be made on a Form 3-R and must be prepared and filed in accordance with the instructions thereto.
- [(c) After the filing of a Form 8-R by or on behalf of any person for the purpose of permitting that person to be an associated person of a sponsor, that sponsor must notify NFA within twenty days after the occurrence of either:

- (1) the failure of that person to become associated with the sponsor as an associated person or principal and the reasons therefor; or
- (2) the termination of the association of the associated person or the association as a principal with the sponsor and the reasons therefor.
- (d) Any notice required by paragraph (c) of this Rule must be filed on a Form 8-T or on a Uniform Termination Notice for Securities Industry Registration. The sponsor must concurrently provide a copy to the person whose association has been terminated. If the notice is filed electronically pursuant to Rule 801, the sponsor may provide the person whose association has been terminated with a printout of the information which has been filed electronically.]

Rule 211. Supplemental Filing Requirements.

- (a) Notwithstanding any other provision of these Rules, NFA may, at any time, give written notice to any applicant, registrant[, applicant for registration,] or person required to be registered:
 - [(2)] (1) that such person, or any individual who based upon his relationship with that person is required to file a Form 8-R in accordance with the requirements of these Rules, must, within five days of receipt thereof, or such shorter period of time as NFA may specify, complete and file with NFA a current Form 8-R, in accordance with the instructions there-to, which must be accompanied by that individual's fingerprints on a fingerprint card provided by NFA for that purpose[.]; or
 - [(1)] (2) that information has come to the attention of NFA's staff which, if true, could constitute grounds upon which to base a determination that the person is unfit to become or to remain registered in accordance with the Act, the Regulations thereunder, or NFA Rules and which [set forth such information, or that NFA has undertaken a routine or periodic review of the registrant's fitness to remain so registered; and] requests that the person provide evidence mitigating the seriousness of the statutory disqualification set forth in the notice and evidence that the person has undergone rehabilitation.
- (b) Failure to provide the requested information and evidence pursuant to paragraph (a) of this Rule is a violation of these Rules which in itself constitutes grounds upon which to base a determination that the applicant or registrant is unfit to become or to remain so registered.

* * *

Rule 213. Current Address for Purpose of Delivery of Communications.

- (a) The address of each applicant, registrant[, applicant for registration,] and principal, as submitted on the [application for registration (]Form 7-R or Form 8-R[)] or as submitted on the Form 8-R biographical supplement [(Form 8-R),] shall be deemed to be the address for delivery to the applicant, registrant[, applicant,] or principal for any communications from the Commission or NFA, including any summons, complaint, reparations claim, arbitration demand, order, subpoena, special call, request for information, notice[, and other written document or correspondence, unless the applicant, registrant[, applicant,] or principal specifies another address for this purpose: Provided, that the Commission or NFA may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the sponsor with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the sponsor with which the associated person or the applicant [for registration] is or will be associated.
- (b) Each registrant, while registered[, and for two years after the termination of registration, and each principal, while affiliated with a registrant and for two years after the termination of affiliation, must [keep current the address on the application for registration, biographical supplement, or other address filed with the Commission or with NFA. An order of default or other appropriate relief may be entered in any proceeding, including a reparation proceeding commenced while the registrant is registered or within two years thereafter, for failure to file a required response to any communication sent to the latest such address filed with the Commission or with NFA.] notify NFA in writing of any change of the address on the application for registration, biographical supplement or other address filed with NFA for the purpose of receiving communications from the Commission or NFA. Failure to file a required response to any communication sent to the latest such address filed with NFA which is caused by a failure to notify NFA in writing of an address change may result in an order of default and award of claimed monetary damages or other appropriate order in any NFA or Commission proceeding, including a reparation proceeding brought under Part 12 of the Commission's Regulations.

Rule 214. Termination of Associated Person Registration and Principal Affiliation.

- (a) After the filing of a Form 8-R or a Form 3-R by or on behalf of any person for the purpose of permitting that person to be an associated person of a sponsor or a principal affiliated with a sponsor, that sponsor must notify NFA within twenty days after the occurrence of either:
- (1) the failure of that person to become associated with the sponsor as an associated person or affiliated with the sponsor as a principal and the reasons therefor; or
 - (2) the termination of the association of the associated person or the affiliation as a principal with the sponsor and the reasons therefor.
- (b) Any notice required by paragraph (a) of this Rule must be filed on a Form 8-T or on a Uniform Termination Notice for Securities Industry Registration. The sponsor must concurrently provide a copy to the person whose association has been terminated. If the notice is filed electronically pursuant to Rule 801, the sponsor may provide the person whose association has been terminated with a printout of the information which has been filed electronically.
- (c) If the notice required by paragraph (a) of this Rule is filed more than twenty days after the occurrence of the event requiring the notice, such notice shall be accompanied by the fee specified in Rule 203(a)(9).

PART 300. TEMPORARY LICENSES

Rule 301. Temporary Licensing of [Applicants for Associated Person Registration.] Associated Persons.

(a) Qualifications.

Notwithstanding any other provisions of [the] these [Registration] Rules, and pursuant to the terms and conditions of this Rule, NFA may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with NFA of:

- (1) a properly completed Form 8-R, the Disciplinary History portion of which contains no "yes" answers indicating that the applicant may be [subject to a statutory disqualification] disqualified from registration under Sections 8a(2) through 8a(4) of the Act;

- (2) the fingerprints of the applicant on a fingerprint card provided by NFA for that purpose; [and]
- (3) the [sponsor's certification] Sponsor's Certification Statement required by Rule 206(a)(2)[.];
- (4) satisfactory evidence that the applicant has satisfied the applicable proficiency requirement set forth in Part 400 of these Rules; and
- (5) the registration fee required by Rule 203(a)(1).

[(b) Withdrawal of application.

Failure of an applicant's sponsor or an applicant to respond to a written request by NFA for clarification of application information, to pay the required registration fee pursuant to Registration Rule 203(a)(1) or to resubmit fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.]

(b) Temporary Licensing Upon Transfer of Associated Person Registration.

- (1) Except as otherwise provided in paragraph (b)(4) of this Rule and Rule 207, any person whose registration as an associated person has terminated within the preceding sixty days and who becomes associated with a new sponsor may be temporarily licensed as an associated person of such sponsor (except in those circumstances set forth in paragraph (b)(3) of this Rule) upon the mailing to NFA of a Form 8-R, completed in accordance with the instructions thereto, containing written certification from the new sponsor stating:
 - (A) that such person has been hired or is otherwise employed by that sponsor;
 - (B) that such person's registration as an associated person in any capacity is not suspended or revoked;
 - (C) that such person is eligible to be registered or temporarily licensed in accordance with this paragraph (b);
 - (D) that the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more

than thirty days previously in an amendment to such application;

(E) whether there is pending against such person an adjudicatory proceeding brought under: (i) Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act; (ii) CFTC Regulations 3.55 or 3.60; or (iii) NFA or exchange rules or, if within the preceding twelve months, the Commission or NFA has permitted the withdrawal of such person's application for registration in any capacity after instituting the procedures provided in CFTC Regulation 3.51 or Part 500 of these Rules and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith; and

(F) that the new sponsor has received a copy of the notice of the institution of a proceeding if the applicant for registration has certified in accordance with paragraph (b)(1)(E) of this Rule, that there is a proceeding pending against him as described in that paragraph or that the Commission or NFA has permitted the withdrawal of an application for registration as described in that paragraph.

(2) The certifications required by paragraphs (b)(1)(A) and (F) of this Rule must be signed and dated by an officer of the sponsoring corporation, a general partner of the sponsoring partnership or the sponsoring sole proprietor. The certifications required by paragraphs (b)(1)(B) through (E) of this Rule must be signed and dated by the applicant for registration as an associated person.

(3) An applicant will not become temporarily licensed upon mailing of a properly completed Form 8-R pursuant to this paragraph (b) unless such Form is accompanied by: (i) the fingerprints of the applicant on a fingerprint card provided by NFA for that purpose; (ii) the proficiency certification required by Rule 401, if such certification was required with the applicant's prior application for registration as an associated person; (iii) the registration fee required by Rule 203(a)(1); and, if applicable, (iv) a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in CFTC Regulation 3.60(b)(2)(i)(A) and (B)) that contains conditions identical to those agreed to by the previous sponsor.

(4) Subject to the provisions of Rules 301(c), (d) and (e), any person whose prior registration as an associated person was subject to conditions or restrictions, and was terminated within the preceding sixty days because the previous

sponsor's registration was revoked or withdrawn, and who becomes associated with a new sponsor (who must meet the requirements set forth in Rule 504(b)(2)(A) and (B)) will be granted a temporary license upon the mailing by that new sponsor to NFA of: (i) the written certifications required by Rule 206(b); and (ii) a signed Supplemental Sponsor Certification Statement that contains conditions identical to those agreed to by the original sponsor.

(c) Restrictions upon activities.

- (1) An applicant for registration as an associated person who has received written notification that a temporary license has been granted may act in the capacity of an associated person subject to all CFTC [R]rules, [R]regulations, orders, and all NFA requirements. [of an NFA Associate.]
- (2) Until registration has been granted, an applicant for registration as an associated person who has received a temporary license may not be sponsored by any registrant other than the registrant which has filed the [certification] Sponsor's Certification Statement described in paragraph (a)(3) of this Rule.

(d) Termination of a Temporary License.

- (1) A temporary license shall terminate:
 - (A) five days after service upon the applicant of a notice by NFA pursuant to Rule 504 or 505 that the applicant [for registration] may be [found subject to a statutory disqualification] disqualified from registration under Sections 8a(2) through 8[(a)](4) of the Act; or
 - (B) immediately upon termination of the association of the applicant with the registrant which filed the [sponsorship certification] Sponsor's Certification Statement described in paragraph (a)(3) of this Rule; or
 - (C) upon failure of an applicant's sponsor or an applicant to respond to NFA's request for clarification of application information, to pay the required registration fee pursuant to [Registration] Rule 203(a)(1) or to resubmit fingerprints in accordance with such request [pursuant to paragraph (b) of this Rule.]; or
 - (D) upon the revocation or withdrawal of the registration of the applicant's sponsor; or
 - (E) upon notice to the applicant's sponsor that: (i) the applicant failed to comply with an award in an arbi-

tration proceeding conducted pursuant to CFTC Regulation 180 within the time permitted for such compliance as specified in Section 10(g) of NFA's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum; (ii) the applicant failed to pay the full amount of a reparation order within the time permitted under Section 14(f) of the Act; (iii) the applicant failed to comply with an order to pay a civil monetary penalty within the time permitted under Sections 6(e) or 6b of the Act; (iv) the applicant failed to disclose relevant disciplinary history information in response to items 14 through 18 on the Form 8-R; or (v) an event has occurred leading to an affirmative response to item(s) 14 through 18 on the applicant's Form 8-R.

(2) Upon termination of a temporary license, the applicant may not engage in any activity which requires registration with the Commission as an associated person.

(e) Relationship to Registration and Membership.

(1) A temporary license shall not be deemed to be a registration or to confer any right to such registration.

(2) The granting of a temporary license shall constitute the granting of NFA associate membership.

[(2)](3) Termination of a temporary license will affect NFA membership as described in Bylaw 301(h) (i).

[(3)](4) Unless a temporary license has been terminated, a temporary license shall become a registration with the Commission upon the earlier of:

(A) a determination by NFA that the applicant is qualified for registration as an associated person; or

(B) the expiration of six months from the date of its issuance unless NFA has issued a notice pursuant to Rule 504 or 505 that the applicant may be disqualified from registration under Sections 8a(2) through 8a(4) of the Act.

(f) Retention of Records.

In accordance with Commission Regulation 1.31, the sponsor must retain such records as are necessary to support the certifications required by this Rule.

Rule 302. Temporary Licensing for Guaranteed Introducing Brokers.

(a) Qualifications.

Notwithstanding any other provisions of [the] these [Regis-
tration] Rules, and pursuant to the terms and conditions of
this Rule, NFA may grant a temporary license to any appli-
cant for registration as an introducing broker upon the
contemporaneous filing with NFA of:

- (1) [a] A properly completed guarantee agreement (Form 1-FR Part B) from a futures commission merchant which is eligible to enter into such an agreement pursuant to CFTC Regulation 1.10(j)(2); [and]
- (2) [a] A properly completed Form 7-R, the Disciplinary History portion of which contains no "yes" answers indicating that the applicant may be [subject to a statutory disqualifi-
cation] disqualified from registration under Sections 8a(2) through 8a(4) of the Act; [and]
- (3) [a] A properly completed Form 7-R Schedule A; [and]
- (4) [a] A properly completed Form 8-R for all persons that are principals and branch office managers which contain no "yes" answers indicating that the applicant may be [subject to a statutory disqualification] disqualified from registration under Sections 8a(2) through 8a(4) of the Act, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.; [and]
- (5) [a] A signed and dated certification from the futures commission merchant providing the guarantee agreement required by paragraph (a)(1) of this Rule, signed by [an officer] either the chief executive officer or the chief financial officer of the [sponsor] quarantor corporation, a general partner of the [sponsor] quarantor partnership, or [by] the quarantor sole proprietor [sponsor], stating that:
 - (A) the futures commission merchant has verified the information on every Form 8-R filed pursuant to paragraph (a)(4) of this Rule which relates to the education and employment history during the preceding three years; and
 - (B) to the best of the futures commission merchant's knowledge, information, and belief, all of the publicly available information supplied by the applicant and its

principals on the Forms 7-R and 8-R[,] is accurate and complete; [and]

- (6) [legible fingerprints on cards provided by NFA for all persons that are principals and branch office managers; and] Legible fingerprints of the applicant, if a sole proprietor, and of each principal of the applicant (including each branch office manager) on a fingerprint card provided by NFA for that purpose, unless a principal has a current Form 8-R on file with the Commission or NFA, if the principal is not otherwise required to be registered as an associated person of the applicant;
- (7) [p]Proof of satisfaction of the applicable proficiency requirement set forth in Rule 401 by all branch office managers and all principals acting in a capacity [which requires] requiring registration as an associated person; [and]
- (8) The registration fee required by Rule 203(a)(3); and
- [(8)](9) [a]All other properly completed forms and documents[, properly completed,] that are required to become registered as an introducing broker and to become an NFA Member.

A guarantee agreement filed in connection with paragraph (a)(1) of this Rule shall become effective upon the granting of the temporary license.

[(b) Withdrawal of Application.]

[Failure of an applicant to respond to a written request by NFA for clarification of application information, to pay the required registration fee pursuant to Registration Rule 203(a)(3) or to resubmit fingerprints in accordance with such request will be deemed to constitute a withdrawal of the registration application and shall result in the immediate termination of the applicant's temporary license.]

(b) Procedures for Granting a Conditional Temporary License.

If the applicant's registration as a guaranteed introducing broker was subject to conditions or restrictions and has terminated within the preceding sixty days, the applicant may receive a conditional temporary license as an introducing broker of a new guarantor futures commission merchant upon the mailing to NFA of the documents required by Rule 302(a)(1) through (9) and a Supplemental Guarantor Certification Statement signed by the new guarantor futures commission merchant (who must meet the requirements set forth in Rule 504(b)(2)(A) and (B)), that contains conditions identi-

cal to those agreed to by the previous guarantor futures commission merchant.

(c) Restrictions Upon Activities.

- (1) An applicant for registration as an introducing broker who has received written notification that a temporary license has been granted may act in the capacity of a introducing broker, subject to all CFTC [R]rules, [R]regulations, orders, and all NFA requirements [of an NFA Member].
- (2) An applicant for registration as an introducing broker who has received a temporary license may be guaranteed by a futures commission merchant other than the futures commission merchant which provided the initial guarantee agreement described in paragraph (a)(1)[; Provided, that written notice is given to NFA ten days prior to date of such termination of the existing guarantee agreement, or such other period of time as NFA may allow for good cause shown, in accordance with NFA Financial Requirements Section 9 and CFTC Regulations 1.10(j)(4)(ii) or (j)(5) and a properly completed guarantee agreement (Form 1-FR Part B) effective the day following the last effective date of the existing guarantee agreement.] of this Rule if the introducing broker submits to NFA: (i) written notice of the termination of the initial guarantee agreement; and (ii) a properly completed new guarantee agreement (Form 1-FR Part B) which will become effective the day following the last effective date of the initial guarantee agreement. Such written notice and new guarantee agreement must be submitted to NFA ten days prior to the termination of the initial guarantee agreement or within such other period of time as NFA may allow for good cause shown, in accordance with NFA Financial Requirements Section 9 and CFTC Regulations 1.10(j)(4)(ii) or (j)(5).

(d) Termination of a Temporary License.

- (1) A temporary license shall terminate:
 - (A) five days after service upon the applicant of a notice by NFA pursuant to Rule 504 or 505 that the applicant [for registration] may be [found subject to a statutory disqualification] disqualified from registration under Sections 8[(a)](2) through 8[(a)](4) of the Act; or
 - (B) [immediately upon termination or suspension of the applicant's or guarantor futures commission merchant's NFA membership or upon termination of the applicant's guarantee agreement in accordance with NFA Financial Requirements Section 9 and CFTC Regulations 1.10(j)(4)(ii) or (j)(5) unless a new guarantee agree-

ment is filed in accordance with paragraph (c)(2) of this Rule; or] upon the revocation or withdrawal of the guarantor futures commission merchant's registration;
or

(C) immediately upon termination of the applicant's guarantee agreement in accordance with NFA Financial Requirements Section 9 and CFTC Regulations 1.10(j)(4)(ii) or (j)(5) unless a new guarantee agreement is filed in accordance with paragraph (c)(2) of this Rule; or

[(C)](D) upon failure of an applicant to respond to NFA's request for clarification of application information, to pay the required registration fee pursuant to [Registration] Rule 203(a)(3) or to resubmit fingerprints in accordance with such request [pursuant to paragraph (b) of this Rule.]; or

(E) whenever a person not listed as a principal on the applicant's registration application becomes a principal of the applicant if the temporary license would not have been granted to the applicant had the person been listed as a principal in the applicant's registration application; or

(F) upon notice to the applicant and its guarantor futures commission merchant that: (i) the applicant failed to comply with an award in an arbitration proceeding conducted pursuant to CFTC Regulation 180 within the time permitted for such compliance as specified in Section 10(g) of NFA's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum; (ii) the applicant failed to pay the full amount of a reparation order within the time permitted under Section 14(f) of the Act; (iii) the applicant failed to comply with an order to pay a civil monetary penalty within the time permitted under Sections 6(d) or 6b of the Act; (iv) the applicant failed to disclose relevant disciplinary history information in response to items 11 through 15 on the Form 7-R; or (v) an event has occurred leading to an affirmative response to item(s) 11 through 15 on the applicant's Form 7-R.

(2) Upon termination of a temporary license, the applicant may not engage in any activity which requires registration with the Commission as an introducing broker.

(e) Relationship to Registration and Membership.

- (1) A temporary license shall not be deemed to be a registration or to confer any right to such registration.
- (2) The granting of a temporary license shall constitute the granting of NFA membership.
- (3) Termination of a temporary license will affect NFA membership as described in Bylaw 301(h)(i).
- (4) Unless a temporary license has been terminated, a temporary license shall become a registration with the Commission upon the earlier of:
 - (A) a determination by NFA that the applicant is qualified for registration as an introducing broker; or
 - (B) the expiration of six months from the date of its issuance unless NFA has issued a notice pursuant to Rule 504 or 505 that the applicant may be disqualified from registration under Sections 8a(2) through 8a(4) of the Act.

(f) Retention of Records.

In accordance with Commission Regulation 1.31, the guarantor futures commission merchant must retain such records as are necessary to support the certifications required by this Rule.

PART 400. PROFICIENCY REQUIREMENTS

Rule 401. Qualification Testing Requirement.

Any individual applying to NFA for registration under the Act as a futures commission merchant, an introducing broker, a commodity pool operator, a commodity trading advisor, a leverage transaction merchant, 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 an Associate Member of NFA unless:

- (a) NFA receives satisfactory evidence that the applicant has taken and passed the National Commodity Futures Examination on a date which is no more than two years prior to the date the application is received by NFA; or

- (b) the applicant has been duly registered under the Act as a futures commission merchant, an introducing broker, a commodity pool operator, a commodity trading advisor, a leverage transaction merchant, or an associated person of any of the foregoing, at any time during the two-year period immediately preceding the date the application is received by NFA; or
- (c) NFA receives a certification, which shall be considered incorporated into the application for registration under the Act, signed by both the applicant and the applicant's sponsor, stating that:
 - (1) [t]The applicant [is] currently is registered with the National Association of Securities Dealers, Inc., as a General Securities Representative; and
 - (2) [t]The applicant's sole activities, subject to regulation by the Commission, are and will continue to be limited to:
 - (A) the solicitation of funds, securities, or property for participation in a commodity pool; or
 - (B) referring clients to an associated person who has satisfied the proficiency requirements set forth in this Rule, provided that the applicant's referral of clients is solely incidental to his business as a General Securities Representative; or
 - (C) the supervision of persons whose activities are limited as set forth [above] in paragraph (c)(2) of this Rule [unless and until the applicant submits to NFA satisfactory evidence of having taken and passed the National Commodity Futures Examination]; and
 - (3) [t]The applicant's sponsor understands that the sponsor must supervise the applicant's compliance with the limitations on the applicant's activities set forth in paragraph (c)(2)[(B)] of this Rule and that any failure of the applicant to adhere to such limitations may be cause for, among other things, disciplinary action by NFA against the sponsor for violation of NFA Compliance Rule 2-9; and
 - (4) [t]The applicant and the applicant's sponsor understand that willfully making a materially false or misleading statement in any part of the application for registration, including the certification required in paragraph (c) of this Rule, is cause for denial, suspension, or revocation of registration and criminal prosecution.

(5) The limitations set forth in paragraph (c)(2) of this Rule shall remain in effect until the applicant or the applicant's sponsor submits to NFA satisfactory evidence of having taken and passed the National Commodity Futures Examination.

Rule 402. Waiver of Testing Requirement.

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

PART 500. PROCEEDINGS TO DENY, CONDITION, SUSPEND, RESTRICT[, OR] AND REVOKE REGISTRATION

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

NFA may refuse to register[,] or register conditionally, [suspend or place restrictions on the registration, or revoke the registration of] any person [registered or] 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, based upon [the grounds for such action and] the standards of fitness set forth in the Act [applicable to registrations granted by the Commission]. Final written orders denying or revoking registration, registering conditionally, suspending[,] or restricting[, or revoking] registration shall be made by the President, the Membership Committee[,] or its designated Subcommittee in accordance with the procedures set forth in [this] Part 500 of these Rules. Such designated Subcommittee shall consist of three members of the Membership Committee.[: provided, however, that pending final determination,] [i]In cases submitted by the President to the Membership Committee or its designated Subcommittee, registration shall not be granted pending a final determination by the Membership Committee or its designated Subcommittee. [Such designated Subcommittee shall consist of at least three members of the Membership Committee, all of whom shall be appointed by a majority of the Membership Committee]. No member of the Membership Committee or its 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 [registered mail or] certified mail return receipt requested, delivered to a generally recognized overnight courier service or delivered to a messenger service, properly addressed to the applicant or registrant at the address shown on [the] his most recent registration application or any amendment thereto. Service will be complete upon mailing[.], delivery to 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) any sponsor of the applicant or registrant [pursuant to Rule 206] 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) 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.
- (3) Documents served by an applicant or registrant upon NFA under this Part 500 shall be considered served or filed only upon actual receipt [at] by the [office] Legal Docketing Department of National Futures Association, 200 West Madison Street, Chicago, Illinois 60606.

- (b) Extensions of Time for Filing.** [Any request for an extension of time for filing a written submission, reply, or response must be made to the President, the Membership Committee, or its designated Subcommittee, as the case may be, prior to the expiration of the time for filing. The President, the Membership Committee, or its designated Subcommittee may grant such reasonable extensions of time as deemed appropriate.]

- (1) Except as otherwise provided by law or by these Rules, for good cause shown, the President, the Membership Committee or its 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 President, the Membership Committee or its 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 [the] 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 [initial] registration in any capacity may be [found subject to a statutory disqualification] disqualified from registration under Section[s] 8a(2), 8a(3), or 8a(4) of the Act, the [Director of Compliance or the Director's] 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 [the] his application, it may be necessary to institute the denial procedures described in Part 500 of these [following] Rules; and
 - (3) if the applicant does not confirm in writing that [the applicant] he wishes to have [the] his application given further consideration, [the] his application will be deemed to have been withdrawn. [The applicant must serve such written confirmation upon the Secretary

within twenty days after the date the written notice from NFA was served.]

- (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. Notice of Intent to Deny, Condition, Suspend, Restrict, or Revoke Registration.]

- (a) **Notice of Intent.** On the basis of information obtained, NFA may at any time serve a Notice of Intent upon any person registered or 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 stating that:
- (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 Sections 8a(2), 8a(3), or 8a(4) of the Act;
 - (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 conditions or restrictions); and
 - (3) the applicant or registrant is entitled to have the President consider written evidence of the type set forth in Rule 505. 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 Rule 504.
- (b) **Termination of Temporary License.** If an applicant for registration is acting in a capacity which requires registration pursuant to a temporary license, such temporary license shall terminate five days after service on the applicant of the Notice of Intent.

Rule 505. Written Submission to the President.

- (a) **Denial or Revocation Based on Section 8a(2) Disqualification.** If a Notice of Intent to Deny or Revoke is issued alleging a statutory disqualification set forth in Section 8a(2) of the Act, the applicant or registrant may submit written evidence limited in scope to evidence challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to (1) the appli-

cant's or registrant's identity, (2) the existence of a clerical error in any record documenting the statutory disqualification, (3) the nature or date of the statutory disqualification, (4) the post-conviction modification of any record of conviction, or (5) the favorable disposition of any appeal.

- (b) **Section 8a(3) or 8a(4) Disqualification.** If the statutory disqualification alleged is set forth in Sections 8a(3) or 8a(4) of the Act, the applicant or registrant may submit written evidence of the type set forth in paragraph (a) of this Rule challenging the accuracy of the allegations establishing the statutory disqualification or may submit other written evidence showing cause why, notwithstanding the accuracy of these allegations, registration should nevertheless be granted or should not be conditioned, suspended, restricted, or revoked.
- (c) **Time for Filing of Submission.** A written submission to the President must be served upon the Secretary within 20 days after the date of service of the Notice of Intent upon the applicant or registrant.

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

(a) **Default of Applicant.**

- (1) If an applicant for registration who has received a Notice of Intent to deny registration based on a statutory disqualification set forth in Section 8a(2) of the Act fails to file a timely written submission in accordance with Rule 505:
 - (A) the applicant will be deemed to have waived the right to submit evidence in writing on all issues, and the facts stated in the Notice of Intent shall be deemed true for the purpose of finding that the applicant is subject to a statutory disqualification under Section 8a(2) of the Act; and
 - (B) 20 days after the date the Notice of Intent to deny is served upon the applicant, such Notice shall become a final order of NFA denying registration. NFA shall serve written confirmation upon the applicant that registration has been denied.
- (2) An applicant for registration against whom the confirmation referred to in Rule 506(a)(1)(B) was issued may file a petition and supporting affidavit with the

Secretary if the Notice of Intent was not timely received by the applicant. Upon receipt of the petition, the order shall be vacated, and NFA shall serve upon the applicant a copy of the Notice of Intent. The procedures set forth in this paragraph shall be available only once to an applicant.

- (b) **Reply to Written Submission.** If an applicant who has received a Notice of Intent to deny registration based on a statutory disqualification set forth in Section 8a(2) of the Act makes a written submission pursuant to Rule 505, the Director of Compliance may within ten days of the receipt of such submission submit to the President and serve upon the applicant a written reply.
- (c) **Determination and Final Order.** After the receipt of the applicant's written submission and any reply thereto, the President shall determine whether the applicant is subject to a statutory disqualification under Section 8a(2) of the Act. Such determination shall indicate the statutory disqualification at issue; the findings made concerning the statutory disqualification; and an explanation of the result reached in light of the statutory disqualification shown and the findings made. Such determination shall be based upon the application, the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submission filed by the applicant, any written reply submitted by the Director of Compliance, and such other papers as the President may require or permit. Within 30 days after receipt of the applicant's written submission and any reply thereto, the President shall issue an order granting or denying registration.

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

- (a) **Reply to Written Submission.** If a registrant who has received a Notice of Intent to suspend or revoke registration based on a statutory disqualification set forth in Section 8a(2) of the Act makes a written submission pursuant to Rule 505, the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the registrant a reply.
- (b) **Initial Determination.** After the receipt of the registrant's written submission and any reply thereto, or after the time for filing the written submission has elapsed if no written submission has then been filed, the President shall determine whether the registrant is subject to a statutory disqualification. Such determination shall be based upon the evidence of the statutory disqualification,

the Notice of Intent with proof of service, the written submission, if any, filed by the registrant in response thereto, any written reply submitted by the Director of Compliance, and such other papers as the President may require or permit.

(c) President's Order.

- (1) If the President determines that the registrant is not subject to a statutory disqualification, the President shall issue an order accordingly.
- (2) If the President determines that the registrant is subject to a statutory disqualification, the President shall issue an interim order suspending registration and requiring the registrant to show cause to the Membership Committee or its designated Subcommittee in accordance with Rule 507(d) why, notwithstanding the existence of the statutory disqualification, the 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 Rule 507(d).
 - (A) The registration 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 with respect to the order to show cause has been issued.
 - (B) If the sole basis upon which the registrant is subject to a statutory disqualification 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.

(d) Registrant's Response. Within twenty days of the date of the order to show cause, the registrant may file with the Membership Committee or its designated Subcommittee a written response which may include briefs, affidavits, and supporting memoranda, but in any event shall be limited in content to:

- (1) evidence, not previously set forth in any written submission filed under Rule 505, challenging the ac-

curacy of the allegations establishing the statutory disqualification;

- (2) the existence of any facts which constitute a clear and compelling showing that, notwithstanding the existence of the statutory disqualification, the continued registration would be in the public interest; or
- (3) in the case of an associated person, written confirmation by the registrant's sponsor that, notwithstanding the existence of the statutory disqualification, the sponsor is willing to supervise the activities of the registrant subject to such restrictions as the Membership Committee or its designated Subcommittee shall impose: Provided, that with respect to such sponsor (1) an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of Sections 6(b), 6(c), 6(d), or 8a of the Act is not pending; and (2) in the case of a sponsor which is a futures commission merchant, the sponsor is not subject to the reporting requirements of CFTC Regulation 1.12(b).

(e) Default of Registrant.

- (1) If the registrant fails to file a timely response to the order to show cause, the registrant shall be deemed in default. The President shall thereafter, upon a finding that service was effected, 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 in accordance with Rule 505, and any written reply thereto submitted by the Director of Compliance.
- (2) If the President issues an order under Rule 507(e)(1) revoking, restricting, or further suspending registration, the registrant may file a petition and supporting affidavit with the Secretary setting forth the reasons why the registrant failed to file a response to the order to show cause. Such petition must be accompanied by the registrant's response. Upon receipt of the petition, if good cause is shown, the President may vacate the order.

- (f) Reply.** Within ten days after receipt of the registrant's response, the Director of Compliance may submit to the Membership Committee or its designated Subcommittee and serve upon the registrant a reply.

- (g) **Oral Hearings.** Oral hearings shall not be granted except under extraordinary circumstances and upon written request to the Membership Committee or its designated Subcommittee. Such request shall include the issues to be addressed, the evidence to be adduced, and a showing of compelling need. If the Membership Committee or its designated Subcommittee determines to grant a request for an oral hearing, the hearing shall be conducted pursuant to Rule 509 as the Membership Committee or its designated Subcommittee deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.
- (h) **Final Order.** Within 30 days of the receipt of a registrant's response to the order to show cause and any reply thereto, the Membership Committee or its designated Subcommittee, upon consideration of the record as a whole, shall make a finding as to whether the registrant has shown cause why the registration should not be suspended or revoked and shall issue an order accordingly. Such order shall indicate the statutory disqualification at issue; the findings made concerning the statutory disqualification; and an explanation of the result reached in light of the statutory disqualification shown and the findings made. If the Membership Committee or its designated Subcommittee, on the basis of the showing described in Rule 507(d)(2), finds that notwithstanding the existence of the statutory disqualification the registration should not be revoked, the Committee may issue an order further suspending the registrant for a period not to exceed six months. In the case of an associated person the order may further restrict the registration of the registrant.
- (i) **Revocation or Suspension of Certain Associated Persons.** Notwithstanding the sponsor's written confirmation under Rule 507(d)(3), the Membership Committee or its designated Subcommittee may issue an order revoking or further suspending for a period not to exceed six months the registration of an associated person and, in any event, may not issue an order restricting such registration if:
- (1) the associated person is subject to a statutory disqualification under Section 8a(2) of the Act as a result of conviction of a felony or misdemeanor under Section 9 of the Act; or
 - (2) the associated person has been the subject of more than one proceeding in which findings of fact constituting a statutory disqualification under Section 8a(2) of the Act have been entered against the associated person; or

- (3) the associated person is subject to an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of Section 6(b), 6(c), 6(d), or 8a of the Act; or
- (4) the associated person was previously granted a conditional or restricted registration and was found to have failed to conform to such condition or restriction; or
- (5) the associated person willfully made any materially false or misleading statement or willfully omitted to state any material facts in any written submission filed under this Part 500 as to any facts which would constitute statutory disqualifications under Section 8a(2) of the Act; or
- (6) the registrant with whom the associated person is associated willfully made false or misleading statements of material fact in the confirmation referred to in Rule 507(d)(3) or willfully failed to state any material facts which were required to be stated therein.

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

- (a) **Reply to Written Submission.** If an applicant or registrant who has received a Notice of Intent to deny, condition, suspend, restrict, or revoke registration based on a statutory disqualification sets forth in Sections 8a(3) or 8a(4) of the Act makes a written submission pursuant to Rule 505, the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the applicant or registrant a reply.
- (b) **Initial Determination.** After receipt of the applicant's or registrant's written submission and any reply thereto, or after the time for filing the written submission has elapsed if no written submission has then been filed, the President shall determine whether the applicant or registrant has shown why the registration should not be denied, conditioned, suspended, restricted, or revoked. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submissions, if any, filed by the applicant or registrant in response thereto, any written reply submitted by the Director of Compliance, and such other papers as the President may require or permit.

(c) Notice of Initial Determination.

- (1) If the President determines that registration should not be denied, conditioned, suspended, restricted, or revoked, the President shall issue an order accordingly.
 - (2) If the President determines that registration should be denied, conditioned, suspended, restricted, or revoked, the President shall notify the applicant or registrant and shall inform the applicant or registrant of the right to request a hearing before the Membership Committee or its designated Subcommittee. The Notice of Initial Determination shall inform the applicant or registrant of the procedures which will be followed if no hearing is requested in accordance with Rule 508(d).
- (d) Right to a Hearing.** A hearing before the Membership Committee or its designated Subcommittee may be obtained by filing a written request with the Secretary within ten days of the date of service of Notice of Initial Determination.
- (e) Waiver of Hearing: Final Order.** If no timely request for a hearing is received by NFA, the right to a hearing shall be deemed to have been waived and the President shall, upon consideration of the record as a whole, make a finding as to whether the registration should be denied, conditioned, suspended, restricted, or revoked and shall issue an order accordingly.
- (f) Request for a Hearing.** If an applicant or registrant makes a timely request for a hearing on the question of whether the applicant or registrant is subject to a statutory disqualification under Sections 8a(3) or 8a(4) of the Act, or whether, notwithstanding the existence of the statutory disqualification, registration should nevertheless be granted or should not be conditioned, suspended, restricted, or revoked, a hearing shall thereafter be conducted in accordance with the procedures set forth in Rule 510 as the Membership Committee or its designated Subcommittee deems appropriate.
- (g) Order.** Within 30 days of the date of the conclusion of the hearing, the Membership Committee or its designated Subcommittee shall make a finding as to whether the applicant has shown that registration should not be denied or conditioned or whether the registrant has shown that the registration should not be suspended, restricted, or revoked and shall issue an order accordingly. Such final order shall indicate the statutory disqualification at issue; the findings made concerning the statutory disqualification; and an explana-

tion of the result reached in light of the statutory disqualification shown and the findings made.

Rule 509. Hearing Procedures.

If a hearing is held before the Membership Committee or its designated Subcommittee, a record of the hearing shall be kept. At such hearing and subject to such limitations as may be imposed by the Membership Committee or its designated Subcommittee pursuant to Rule 507(g), the applicant or registrant may be represented by counsel, submit evidence, call and examine witnesses, examine the evidence upon which the President made a determination, and, at the discretion of the Membership Committee or its designated Subcommittee, present oral or written argument.

Rule 510. Orders.

- (a) **Final Orders.** Any order issued by the President, the Membership Committee, or its designated Subcommittee under this Part 500 (except an interim order suspending registration pursuant to Rule 507(c)(2)(A)) shall become a final order of NFA on the date of service upon the applicant or registrant. A copy of each final order issued by NFA shall be served upon the Commission at the same time it is served upon the applicant or registrant. Any final order of NFA which denies, conditions, suspends, restricts, or revokes registration shall inform the applicant or registrant of the right to petition the Commission for review under Section 17(o) of the Act and applicable Commission Regulations and of the right to petition the Commission for a stay of the effective date of the final order in accordance with Commission Regulation 171.22.
- (b) **Effective Date.** Any final order of NFA issued under this section shall become effective 30 days after the date of service of the order on the applicant or registrant, except as otherwise indicated by the Commission pursuant to CFTC Regulations, Part 171.]

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

(a) Notice of Intent.

- (1) On the basis of information which 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, stating that:**

- (i) 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;
 - (ii) 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);
 - (iii) the applicant or registrant is entitled to have the President consider written evidence of the type set forth in paragraph (b) of this Rule; and
 - (iv) 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) 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.
- (b) Written Response to the Notice of Intent.**
- (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.
 - (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 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 President, the Membership Committee or its designated Subcommittee: provided, that with respect to such sponsor or guarantor:

(A) an adjudicatory proceeding brought by or before: (i) the Commission, pursuant to the provisions of Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act, or (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

(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.

(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)(10).

- (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 President 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.
- (e) Further Submission in Accordance With Rule 504(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 (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 (b)(2) of this Rule, the applicant or registrant may present:
- (1) mitigation evidence relating to the facts and circumstances surrounding the disqualifying conduct;
 - (2) evidence of rehabilitation since the disqualifying conduct; and
 - (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.
- (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 (e) of this Rule) or the date the applicant or registrant serves a copy

of the further submission made in accordance with paragraph (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:

- (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
- (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.

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

- (1) if the Membership Committee or its 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
- (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.

(h) Order. After the conclusion of the hearing, the Membership Committee or its 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).

- (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 of a Final Order, the President 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.

Rule 505. Procedures Governing Registrants Disqualified From Registration Under Section 8a(2) of the Act.

(a) Notice of Intent.

- (1) On the basis of information it has obtained, the President of NFA may at any time serve a Notice of Intent upon any person registered in any capacity stating that:
- (i) 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;
 - (ii) the allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be suspended or revoked;
 - (iii) the registrant is entitled to have the President consider written evidence of the type set forth in paragraph (b) of this Rule;
 - (iv) the President shall determine, based upon such written evidence, whether the registrant is subject to a statutory disqualification; and
 - (v) 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) 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.

(b) Written Response to the Notice of Intent.

(1) 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:

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

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

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

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

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

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

(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)(10).

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

(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 President 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 (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.

(f) Initial Determination. After the receipt of the registrant's written response and any reply thereto from the Vice-President of Compliance, the President 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 President may require or permit.

(g) Interim Order.

(1) If the President determines that the registrant is not disqualified from registration under Section 8a(2) of the Act, the President 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 President shall make a finding that the registrant is not disqualified from registration under Section 8a(2) of the Act.

(2) If the President determines that the registrant is disqualified under Section 8a(2) of the Act, the President, 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.

(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.

(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.

- (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 President 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.
- (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, the President 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.
- (j) Further Proceedings. If an order to show cause is issued pursuant to paragraph (g)(2) of this Rule, further proceedings with regard to such order shall be conducted in accordance with the provisions of Rules 504(b)(2) through 504(i), 506, 507, 508 and 509.

Rule 506. Hearing Procedures.

- (a) When a hearing is held before the Membership Committee or its 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 President 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 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 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 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.

(a) Standards of Proof. The written decision of the Membership Committee or its 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 pose no 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 pose no substantial risk to the public.

(b) Findings. In making its written decision, the Membership Committee or its 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

(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.

Rule 508. Orders.

- (a) Final Orders and Withdrawals of Notice of Intent.** All orders granting, denying, conditioning, restricting, suspending or revoking registration issued by the President, the Membership Committee or its designated Subcommittee under this Part 500 (except an interim order suspending registration pursuant to Rule 505 (g)(2)) shall become a final order of NFA on the date of service upon the applicant or registrant. All Withdrawals of Notice of Intent issued by the President 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) judicial review, and
 - (D) any objection to NFA staff's participation in the consideration of the offer by the Membership Committee or its designated Subcommittee;
 - (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 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 designated Subcommittee unless the respondent so requests. Any offer of settlement not presented to the Membership Committee or its designated Subcommittee shall be null and void with respect to any acknowledgement, 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 only will be deemed accepted upon issuance by the Membership Committee or its 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 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 consent 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 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 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 designated Subcommittee. Such recommendation only will be deemed accepted upon issuance by the Membership Committee or its 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 regis-

tration other than in accordance with the terms of the petition, the Membership Committee or its designated 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 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 CFTC Regulations 10.61 through 10.81. Following the hearing, the Membership Committee or its designated Subcommittee shall issue a written decision or an order.
- (2) If the Membership Committee or its designated Subcommittee concludes that an oral hearing is unnecessary, it shall notify the parties and issue a written decision or an order.

PART 600. WITHDRAWAL FROM REGISTRATION

Rule 601. Withdrawal from Registration.

- (a) A [registrant] futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant may request that its registration [in one or more capacities] be withdrawn in accordance with the requirements of this Rule if:
 - (1) the registrant has ceased, or has not commenced, engaging in activities requiring registration in such capacity; or
 - (2) the registrant is exempt from registration in such capacity; or
 - (3) the registrant is excluded from the persons or any class of persons required to be registered in such capacity;

Provided, that NFA may consider separately each capacity for which withdrawal is requested in acting upon such a request.

- (b) A request for withdrawal from registration [as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transactions merchant] under this Rule must be on a Form 7-W

completed and filed with NFA in accordance with the instructions thereto.

- (c) A request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by NFA, or earlier upon notice from NFA of the granting of such request, unless prior to the effective date:
- (1) the Commission or NFA has instituted a proceeding to suspend or revoke such registration;
 - (2) the Commission or NFA imposes, or gives notice by mail, which notice shall be complete upon mailing, that it intends to impose terms or conditions upon such withdrawal from registration;
 - (3) the registrant is given notice by mail, which notice shall be complete upon mailing, or is otherwise notified that it is currently the subject of an investigation to determine, among other things, whether such registrant has violated, is violating, or is about to violate the Act, [R]rules, [R]regulations, or orders adopted thereunder;
 - (4) NFA requests from the registrant further information pertaining to its request for withdrawal from registration; or
 - (5) NFA determines that it would be contrary to the requirements of the Act or of any [R]rule, [R]regulation, or order thereunder, or to the public interest to permit such withdrawal from registration.
- (d) Withdrawal from registration in one capacity does not constitute withdrawal from registration in any other capacity.
- (e) Withdrawal from registration does not constitute a release from liability for any violation of the Act or of any [R]rule, [R]regulation, or order thereunder which occurred while a person was registered.

**PART 700. PROCEDURES GOVERNING ACCESS TO AND
CERTIFICATION OF REGISTRATION RECORDS
MAINTAINED BY NFA**

**Rule 701. Disclosure of Information from Registration Records
Maintained by NFA.**

* * *

- (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 paragraph (b)(1) of this Rule shall be referred or transmitted to the Commission for response; except that, NFA will disclose such records or portions thereof:

* * *

- (2) 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;] status as the introducing broker's guarantor or proposed guarantor;

* * *

Rule 702. Certification of the Authenticity of Registration Records Maintained by NFA.

- (a) **Designation of Custodian and [Deputy] Deputies.**

The President shall designate an NFA employee to serve as the NFA Record Custodian ("Custodian"). The President [shall] also may designate [an] one or more NFA employees to serve as [the] Deputy Record Custodians [("Deputy")] ("Deputies"). The Custodian and the Deputies shall be responsible for maintaining all registration records in NFA's possession and shall be the legal custodians of these registration records.

- (b) **Authority of Custodian and [Deputy] Deputies.**

The Custodian, each of the [Deputy] Deputies, or in their absence, any NFA employee designated by the President, the Custodian, or one of the [Deputy] Deputies, 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, each of the [Deputy] Deputies, or any designated employee [is] also is 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, one of the [Deputy] Deputies, or any designated employee.

* * *

**PART 800. ALTERNATIVE METHODS OF FILING
REGISTRATION FORMS**

Rule 801. Electronic Filing of Forms 8-R, 3-R and 8-T

Registrants which are futures commission merchants, introducing brokers, commodity pool operators, or commodity trading advisors can file Forms 8-R, 3-R, and 8-T electronically by direct dial-up transmission to NFA's registration and membership database under the following conditions.

(a)[.] The following requirements apply to the electronic filing of Forms 8-R by a sponsoring registrant for its principals and associated persons and for the principals and associated persons of its guaranteed introducing brokers.

(1)[.] On the day that the sponsoring registrant authorizes the computer to process the electronic filing, the sponsoring registrant must send the applicant's disciplinary history on a form provided by NFA and signed by the applicant, to NFA's Director of Registration, with all attachments required by [Registration] Rule 206(a)(3) or [(b)(4)] 301(b)(3), by placing it in the United States mail (first class postage prepaid), by hand-delivery, or by any other standard means of conveyance including a generally recognized overnight delivery service.

(2)[.] Temporary licenses granted on the basis of an electronic filing shall terminate immediately upon notice to the sponsoring registrant that the applicant's disciplinary history, with all required attachments, was not received by NFA within five business days after the electronic filing was processed or that the applicant's disciplinary history[,] or the required attachments indicate that the applicant does not qualify for a temporary license. The notice may be given by electronic transmission to a terminal on the sponsoring registrant's premises, by United States mail, by hand delivery, or by any other standard means of conveyance including a generally recognized overnight delivery

service. This Rule does not affect NFA's right to terminate temporary licenses under the conditions authorized by [Registration] Rule 301.

(b)[.] By authorizing the computer to process an electronically filed form, the registrant filing the form electronically certifies that it has complied with the requirements of this Rule and has made all reasonable efforts to ensure that the electronic filing is accurate. The registrant also makes the following specific certifications for each electronically filed Form 8-R:

- (1) that the information supplied by the applicant in response to questions contained in the electronically filed Form 8-R which relate to the applicant's employment and education history for the past three years has been verified;
- (2) that the applicant has been hired or is employed by the sponsoring firm; or it is the intention of the sponsor to hire or otherwise employ the applicant as an associated person within thirty days after receipt of notification that the applicant has received a temporary license or has been so registered (contingent upon the sponsor hiring or otherwise employing the applicant as an associated person within thirty days);
- (3) that the applicant will not be permitted to act as an associated person until the applicant has received a temporary license or has been registered pursuant to the electronically filed application;
- (4) that the registrant understands it is the duty and obligation of the firm not to employ a person with a statutory disqualification under Section 8a(2) of the Act, to notify the Commission when any person with the firm is subject to a statutory disqualification under Section 8a(2) of the Act and to supervise the sponsored person named in the electronically filed Form 8-R, once he or she is employed, with a view toward preventing him or her from committing violations of the Act and the rules, regulations, and orders thereunder;
- (5) that if the applicant answered "Yes" to item 14 or 16 on the Form 8-R, the registrant firm has received a copy of the complaint or letter issued by the Commission or NFA; and
- (6) that the information contained in the electronically filed Form 8-R has been supplied to the firm for the sole purpose of allowing it to verify the information

contained in Form 8-R in connection with the registration of the person named in the electronically filed Form 8-R as an associated person and the firm has taken, and will take, such measures as are necessary to prevent the unwarranted dissemination of any of the information contained in the electronically filed Form 8-R and the records and documents retained in support of Form 8-R.

These certifications shall have the same force and effect as a certification on the form itself signed by an authorized officer of the registrant.

- (c)[.] No registrant may electronically file registration forms until NFA has assigned it an identifying code and password. The registrant may not file forms electronically using any other identifying code.
- (d)[.] Each registrant is responsible for maintaining the security and confidentiality of its identifying code and password and for controlling access to all terminals which are signed on to NFA's registration and membership database.
- (e)[.] Each registrant which files electronically shall make available its data entry personnel, authorized to or actually performing duties related to electronic filings, for testimony in court or before the [CFTC] Commission, NFA[,] or any contract market regarding the authentication, integrity or accuracy of any electronic filing.
- (f)[.] The availability of electronic filing is a privilege and not a right. NFA may disable a registrant's identifying code and password and terminate the registrant's ability to electronically file forms at any time, without notice or a hearing, and in NFA's sole discretion.

[APPENDIX A]

[Various sections of the Act and the Regulations promulgated thereunder specify certain exemptions from registration as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, and associated persons thereof. While the full text of these sections of the Act and Regulations should be consulted to determine if a particular exemption applies to a prospective applicant, the following exemptions from registration are generally available.

Pursuant to Commission Regulation 3.10, an individual or organization trading solely for proprietary accounts, as defined in Regulation 1.3(y), is not required to register as a futures commission merchant.

Pursuant to Commission Regulation 1.3(mm), an individual or organization is not required to register as an introducing broker if: (1) it is registered as and acting in the capacity of an associated person, floor broker, or futures commission merchant; (2) it is registered as a commodity pool operator and only operates pools; or (3) it is registered as a commodity trading advisor and either solely manages accounts under powers of attorney or does not receive per trade compensation.

Pursuant to Commission Regulation 4.13, an individual or organization is not required to register as a commodity pool operator if: (1) it does not receive any compensation or other payment, directly or indirectly, for operating the pool, except reimbursement for the ordinary administrative expenses of operating the pool; and it operates only one commodity pool at any time; and it is not otherwise required to register with the Commission and is not a business affiliate of any person required to register with the Commission; and neither the person nor any other person involved with the pool does any advertising in connection with the pool; or (2) the total gross capital contributions it receives for units of participation in all of the pools that it operates or that it intends to operate do not in the aggregate exceed \$200,000; and none of the pools operated by it has more than 15 participants at any time.

Pursuant to Section 4m of the Act and Commission Regulation 4.14, an individual or organization is not required to register as a commodity trading advisor if: (1) it is a dealer, processor, broker, or seller in cash market transactions of any commodity (or product thereof), and the person's commodity trading advice is solely incidental to the conduct of its cash market business; (2) it is a non-profit voluntary membership, trade association, or farm organization and the person's commodity trading advice is solely incidental to the conduct of its business as such association or organization; (3) it is registered under the Act as an associated person, and the person's commodity trading advice is issued solely in connection with its employment as an associated person; (4) it is registered under the Act as a commodity pool operator, and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so registered; (5) it is exempt from registration as a commodity pool operator, and the person's commodity trading advice is

directed solely to, and for the sole use of, the pool or pools for which it is so exempt; (6) it is registered under the Act as an introducing broker, and the person's trading advice is solely in connection with its business as an introducing broker; (7) it is registered under the Act as a leverage transaction merchant and the person's trading advice is solely in connection with its business as a leverage transaction merchant; or (8) it has provided advice to 15 or fewer persons during the past 12 months and has not held itself out to the public as a commodity trading advisor.

Pursuant to Section 4k of the Act and Commission Regulations 3.12 and 3.16, a person is not required to register as an associated person if: (1) he is already registered as a futures commission merchant, floor broker, or as an introducing broker; (2) he is already registered as a commodity pool operator if he is to be associated with a commodity pool operator; (3) he is already registered as a commodity trading advisor if he is to be associated with a commodity trading advisor; or (4) he is engaged in the solicitation of funds, securities, or property for participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative, or limited principal, and that person does not engage in any other activity subject to regulation by the Commission.

Petitions for exemption from registration must be directed to the Commission pursuant to the above Regulations.]

* * *

BYLAWS

OF

NATIONAL FUTURES ASSOCIATION

* * *

CHAPTER 3

MEMBERSHIP AND ASSOCIATION WITH A MEMBER

Bylaw 301. Requirements and Restrictions.

* * *

(h) Termination of Membership and Associate Membership.

The membership or associate membership of any person may be terminated as set forth below. Termination of a person's membership or associate membership pursuant to paragraphs (i) through (vii) shall not relieve the Member or Associate of any responsibility under the NFA Code of Arbitration or Compliance Rules for activities prior to termination, or of the obligation to pay any dues, assessments, fines, penalties or other charges theretofore accrued and unpaid.

(i) Termination of Temporary License.

The termination of the temporary license of any Member or Associate shall also terminate such person's membership or associate membership unless such person remains otherwise eligible for membership under Bylaw 301(a).

(ii) Withdrawal of Registration.

The membership of any Member that withdraws all registrations under the Act may be summarily terminated by order of the President on seven days' written notice.

(iii) Termination of Employment as Associate.

Each Member shall promptly inform the Secretary of the termination of employment of any registered Associate with the Member. If such person is no longer listed as an Associate [or] of any Member following such termination, the individual's registration with NFA as an Associate shall also terminate unless the Secretary is notified in writing by another Member, within 60 days thereafter, that such person has become associated with it.

(iv) Resignation.

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

(v) Failure to Notify of Address Change (see Bylaw 301(i)).

(vi) Default in Payment of Dues (see Bylaw 1303).

(vii) Revocation [(see Bylaw 301(g))].

The membership of any Member or any person associated with a Member whose registration under the Act is revoked shall terminate without further notice.

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



September 21, 1993

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

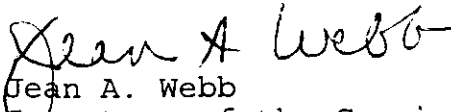
Re: The National Futures Association's Proposed
Registration Rule Amendments, Appendix
Deletion and Interpretive Notice

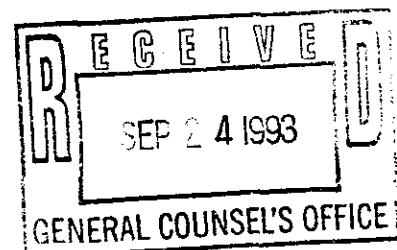
Dear Mr. Roth:

By letters dated December 4, 1992 and June 10, 1993, the National Futures Association ("NFA") submitted to the Commission, pursuant to Section 17(j) of the Commodity Exchange Act ("Act"), a proposed amendments to Bylaw 301(h) (vii) and Registration Rules 101, 201-10, 213-14, 301-02, 401-02, 601, 701-02 and 801; a proposed deletion of Appendix A to the Registration Rules and a proposed Interpretive Notice to NFA's Registration Rule 402.

Please be advised that on this date the Commission has approved the above-listed NFA proposed Registration Rule amendments, appendix deletion and interpretive notice under Section 17(j) of the Act.

Sincerely,


Jean A. Webb
Secretary of the Commission





NATIONAL FUTURES ASSOCIATION

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

June 10, 1993

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

Re: Proposed NFA Registration Rule 211

Dear Mr. Van Wagner:

Daniel Roth has asked me to respond to your inquiry concerning NFA's proposed Registration Rule 211. NFA Registration Rule 211, as proposed, intentionally does not track the language of the analogous Part 3 Rule, Regulation 3.22. NFA proposed its Rule 211 with the language of the comments accompanying the Commission's proposed Part 3 rules in mind. The Commission stated that NFA's registration rules need not be identical to the Commission's Part 3 rules provided that applicants and registrants subject to statutory disqualifications are provided with rights similar to those under the Commission's rules. 56 Federal Register 37029 (August 2, 1991). NFA Registration Rule 211, as proposed, is an example of such a rule.

As the Commission noted in its comments related to its proposed (and adopted) Regulation 3.22, Appendix A to Part 3 provides that good cause exists to affect a person's registration if that person fails to answer inquiries or requests for further information in connection with an application for registration. Id. at 37035, n.34. This policy not only reflects sound regulatory judgment but also recognition that the cooperation of applicants and registrants is essential to the task of determining their fitness for registration. As the Commission pointed out, absent information concerning mitigation and rehabilitation, NFA might be compelled to initiate unnecessary, costly and time consuming adverse actions. Id. at 37035.

It is not inconceivable that an applicant or registrant might not voluntarily provide information which evidences aggravation or lack of mitigation or rehabilitation. NFA's proposed Registration Rule 211 would require rather than permit the applicant or registrant to provide such information. Such a result, in NFA's view, is consistent with the Commission's regulations. Regulation 3.22 should not be read as providing



David Van Wagner

June 10, 1993

applicants or registrants with the right to withhold damaging information. Such an interpretation would be completely at odds with the notion of self-disclosed disciplinary information embodied in the Act and the CFTC Regulations. Just as with information concerning the existence of statutory disqualifications, NFA believes that the refusal or failure to provide derogatory information concerning mitigation and rehabilitation reflects upon the fitness of an applicant or registrant and constitutes good cause to affect a registration.

It is frankly difficult to conceive of a circumstance in which an applicant or registrant would decide to withhold favorable mitigation or rehabilitation evidence in light of the alternative of an adverse proceeding being instituted. However, NFA believes that, on balance, it should not be required to waste valuable resources instituting an adverse action because someone refuses or fails to provide evidence which would make such a proceeding unnecessary.

If you have any questions or if I can be of any further assistance, please telephone me at your convenience.

Sincerely,


Michael J. Crowley
Associate General Counsel

MJC:pjf(Ltrs/VanW)

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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

May 17, 1993



Daniel J. Roth, Esq.
General Counsel
National Futures Association
200 West Madison Street -- Suite 1600
Chicago, IL 60606

Re: Proposed amendments to NFA Code of
Arbitration (§§2(a), 6(k), 10(g) and 17)
and Member Arbitration Rules (§§10(g)
and 16)

Dear Mr. Roth:

By letters dated August 27 and December 4, 1992, and April 16, 1993, the National Futures Association ("NFA") submitted the captioned rule proposals pursuant to section 17(j) of the Commodity Exchange Act ("Act") for Commission approval. The rule proposals relate to jurisdictional requirements for arbitration, dismissal authority, noncompliance with settlement agreements, and the treatment of conflicts between NFA's arbitration rules and parties' arbitration agreements. Please be advised that the Commission has approved the proposal effective immediately.

Yours truly,

Jean A. Webb
Secretary of the Commission

