

November 1, 1982

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

Re: National Futures Association Proposed  
Amendments to Bylaws and Code of  
Arbitration

Dear Ms. Stuckey:

Pursuant to Section 17(j) of the Commodity Exchange Act (the "Act"), National Futures Association ("NFA") hereby files with the Commodity Futures Trading Commission ("Commission") and requests Commission approval of the following amendments to its Bylaws and Code of Arbitration which were adopted by the NFA Transitional Board of Directors at its meeting on October 14, 1982. Additions are underscored and deletions are placed within brackets.

1. Bylaws

A. The Amendment

CHAPTER 13

DUES AND ASSESSMENTS

Bylaw 1301. Schedule of Dues and Assessments.

\* \* \*

(a) Contract Markets.

\* \* \*



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(b) FCMs and Agents.

(i) Each FCM Member shall pay to NFA an assessment equal to:

(A) \$0.30 for each commodity futures contract (other than an option contract traded on a contract market and a dealer option contract) on a round-turn basis, and

(B) \$0.20 for each option contract traded on a contract market on a per trade basis,

carried by it for a customer other than [(A)] (1) a person having privileges of membership on a contract market where such contract is entered or [(B)] (2) a person whose contracts are carried in a proprietary account, as defined in Commission Rule §1.3(y), by a person having privileges of membership on such contract market or [(C)] (3) an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM; and

(C) [each FCM Member shall pay to NFA an assessment fee equal to \$4.50] \$0.20 for each dealer option contract on a [round-turn] per trade basis [(see paragraph (d), below]

carried by it for a customer other than a person whose contracts are carried in a proprietary account, as defined in Commission Rule §1.3(y), by such FCM Member:

Provided, however, \* \* \*

(ii) Each FCM Member shall pay to NFA an amount equal to 10% of the sum invoiced to customers under (b)(i)(A) above; and

\* \* \*



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(c) Other Dues

\* \* \*

(d) Dues of Related Members.

Notwithstanding any other provision of this Bylaw, where two or more Members elect to be within a group of "related" Members as described in this paragraph, those related Members shall together pay to NFA annual dues as follows:

(i) The dues required of the related Member which is in the highest dues paying category, except that any of the related Members that are FCMs shall individually pay the dues required of FCMs;

(ii) \$250 for each location at which the records of the related Members are maintained (e.g., \$250 if a single location, \$500 if two locations). Business addresses that are reasonably adjacent to each other shall be deemed a single location for purposes of this paragraph.

Solely for purposes of this paragraph, a Member may elect to be within a group of related Members where, with respect to any other Member within the related group, the Member is (A) employed or majority owned by the same person which employs or majority owns such other Member; (B) the Member is employed by such other Member; (C) a majority equity interest in the Member is held by such other Member or employee thereof; or (D) the Member is otherwise similarly controlled by such other Member.

[(d). Commodity Option Contracts.

For purposes of this Bylaw 1301, a round-turn transaction in a commodity option contract shall consist of  
\* \* \*]



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B. Explanation of Amendment

(i) Bylaw 1301(b). This amendment sets the amount of the NFA Assessment Fee applicable to exchange traded and dealer option transactions in accounts carried by Member FCMs at \$.20 per trade and omits the requirement of Bylaw 1301(b)(ii) with respect to such amounts that an additional 10% be paid to NFA by the Member FCM. The principal purpose of this amendment is to permit the NFA Assessment Fee applicable to options transactions to be accrued on a per trade basis rather than on a round-turn basis as is the case with respect to transactions in futures contracts. The requirement of Bylaw 1301(b)(ii) with respect to options Assessment Fees is eliminated in order to simplify the calculation of such Fees.

The Transitional Board of NFA recognized that there is no historical data upon which to base projections of the revenue to be generated by the NFA Assessment Fee applicable to exchange traded options. Hence, the Board set the amount of this Assessment Fee at \$.20 per trade to achieve approximate parity with the amount of the NFA Assessment Fee applicable to transactions in futures contracts. The Board reduced the Assessment Fee applicable to transactions in dealer options from a total of \$4.95 per round-turn to \$.20 per trade in order to conform that Assessment Fee to the Fee applicable to transactions in exchange traded options.

Subsection (d) of Bylaw 1301 is deleted because the amendment to Bylaw 1301 removes the need to define a round-turn transaction in a commodity option contract.

(ii) New Bylaw 1301(d). New Bylaw 1301(d) provides for an election by NFA Members within a related group to pay reduced dues as a part of such group instead of the amount which would otherwise be required of the separate Members. This amendment is intended to reduce the burden of NFA dues where multiple registrations are held by persons who are operating essentially as a single enterprise.



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2. Code of Arbitration

A. The Amendments

CODE OF ARBITRATION

\* \* \*

Section 4. Arbitration Panel.

(a) Appointment of Panel.

All arbitration proceedings under this Code shall be conducted before an arbitration Panel consisting of three NFA Members or individuals connected therewith (one such Member or individual designated as panel Chairman) appointed by the President, except that where the aggregate amount of the customer's claims (including interest) plus the aggregate amount of any counterclaims (including interest) do not exceed \$5,000, the Panel shall consist of one such person unless the Secretary directs otherwise: Provided, however, if the customer in an arbitration under Section 2(a) of this Code so requests in the Demand for Arbitration (See Section 6(c) of this Code), the Chairman and at least one other member of the Panel, and the Panel member where there is a single-member Panel, shall not be connected with an NFA Member or NFA (except as NFA arbitrators).

\* \* \*

Section 8. Hearing.

\* \* \*

(f) Summary Proceeding.

Where the aggregate amount of the customer's claims (including interest) plus the aggregate amount of counterclaims (including interest) is under



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\$2,500 the proceeding shall be conducted entirely through written submissions unless the Secretary directs otherwise.

B. Explanation of Amendments

The purpose of these amendments was described in NFA's submission to the Commission under Section 17(j) of the Act dated August 27, 1982. The amendments submitted herein are identical to the amendments to the Code of Arbitration submitted in our letter of August 27, 1982 except that the monetary limitation on arbitration cases which may be decided in a summary proceeding has been increased to \$2,500 and the provisions prescribing monetary limitations for arbitration cases determinable by one member panels and in summary proceedings have been altered to require inclusion of the aggregate amount of any counterclaims. These alterations conform to the suggestions made by Commission staff in the letter of Karen Matteson, Staff Attorney-Division of Trading and Markets, dated September 13, 1982.

NFA respectfully requests that the foregoing amendments to NFA's Bylaws and Code of Arbitration be declared effective upon approval by the Commission.

Very truly yours,  
NATIONAL FUTURES ASSOCIATION

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Robert K. Wilmouth  
President and Chief  
Executive Officer

RKW:cv  
cc: Andrea M. Corcoran  
Theodore W. Urban

JAN 13 1983

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

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



January 11, 1983

Mr. Robert K. Wilmouth  
President  
National Futures Association  
200 W. Madison Street  
Chicago, Illinois 60606

Re: Proposed Amendments to Bylaw 1301(b) and (d)  
Governing Dues and Assessments

Dear Mr. Wilmouth:

By letters dated November 1 and December 9, 1982, NFA submitted proposed amendments to its Bylaw 1301 for Commission approval pursuant to section 17(j) of the Act. The amendments revise the assessments on both exchange-traded option transactions and dealer option transactions, and provide for the payment of dues by related members as a group. The Commission approved the proposed amendments on January 10, 1983. In addition, the Commission determined that the amendments may become effective immediately as requested by NFA. The Commission understands, however, that NFA will periodically reexamine its fees structure, as NFA gains regulatory experience and particularly if options trading expands beyond its current level of trading, to assure that its fees structure provides an equitable allocation of dues among NFA members to defray NFA's administrative expenses.

Very truly yours,

*Jane K. Stuckey*

Jane K. Stuckey  
Secretary of the Commission

NOV 29 1982

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

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



November 24, 1982

Mr. Robert K. Wilmoth  
President and Chief Executive Officer  
National Futures Association  
200 West Madison Street  
Chicago, Illinois 60606

Re: Proposed Amendments to Sections 4(a), 8(a),  
and 8(f) of the National Futures Association's  
Code of Arbitration

Dear Mr. Wilmoth:

By letters dated August 27 and November 1, 1982, NFA submitted proposed amendments to its Code of Arbitration for Commission approval pursuant to section 17(j) of the Commodity Exchange Act. NFA also included in its November 1 submission proposed amendments to its Bylaws governing dues and transaction fee assessments, but the Commission has deferred consideration of these proposed amendments pending NFA's submission of additional supporting information.

This is to inform you that the Commission approved the proposed amendments to NFA's Code of Arbitration sections 4(a), 8(a), and 8(f) on November 24, 1982. The Commission has also determined, pursuant to section 17(j), that these amendments may go into effect immediately, rather than thirty days from the date of Commission approval.

Very truly yours,

Jean A. Webb  
Deputy Secretary of the Commission

December 9, 1982

Mr. Theodore W. Urban  
Division of Trading and Markets  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Dear Ted:

Pursuant to your request this letter is to supplement the explanation of the proposed amendment to NFA Bylaw 1301(b) contained in my letter of November 1, 1982 submitting that amendment to the CFTC for approval under Section 17(j) of the Commodity Exchange Act.

As originally drafted and approved by the CFTC in its Registration Order of September 22, 1981, NFA Bylaw 1301(b) would have required payment of the NFA Assessment Fee with respect to exchange traded options in the same manner as such payment with respect to futures contracts. Although trading in exchange traded options was not permitted either at the time the Bylaw was drafted or at the time it was approved by the CFTC, that result was mandated by Article XVIII (1) of NFA's Articles of Incorporation which defines "futures" to include option contracts traded on a contract market. Hence, under Bylaw 1301(b) each FCM Member would have been required to pay to NFA an assessment of \$.33 per round turn for each exchange traded option carried by it on behalf of its customers, with certain exclusions.

The effective date of Bylaw 1301(b) coincidentally fell on the date of initiation of trading in exchange traded options under the option pilot program regulations (Part 33 of the Rules of the CFTC). As that date approached NFA received comments from a great number of its FCM Members to the effect that accruing and invoicing to customers an assessment fee on a round turn basis with respect to exchange traded options presented difficult practical problems. These problems derived from the fact that an option "round turn" could resolve itself by exercise or expiration as well as by an offsetting option sale or purchase. FCMs pointed



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out that exercise or expiration were not appropriate events upon which to invoice an assessment, thus, making it difficult in some cases to invoice the Assessment Fee upon the conclusion of a "round turn." Furthermore, FCMs contended that it was difficult to invoice the Assessment Fee at the opening of an option position because, as a bookkeeping matter, it was burdensome to identify each option sale or purchase as an opening or offsetting transaction.

The prospect of placing cumbersome bookkeeping burdens on FCM Members, especially at a time when many of those Members were grappling with the bookkeeping procedures necessary to participate in the options pilot program, persuaded NFA to defer the effective date of the NFA Assessment Fee on exchange traded and dealer options until after NFA's Board of Directors had an opportunity to determine whether NFA could simplify the options Assessment Fee procedure. (See NFA's letter to FCM Members of September 30, 1982, a copy of which is attached hereto)

This question was considered by the Board at its meeting on October 14, 1982. The Board determined to change the basis upon which the NFA Assessment Fee would be charged with respect to exchange traded and dealer options so that the liability for a Fee and the duty to invoice would arise upon each option trade instead of upon each option round turn. Under that formulation an option Assessment Fee would be payable on each purchase or sale of an option but no Fee would be payable upon exercise or expiration of an option. The Board determined to charge the Assessment Fee on dealer options in the same manner as the Fee on exchange traded options both because it anticipated that FCMs which offer dealer options would have bookkeeping problems similar to those arising with respect to exchange traded options and because the Board saw no sufficient reason to complicate the Assessment Fee rule by treating the two types of options differently.

In setting the level of the option Assessment Fee NFA took into consideration its duty, as expressed in Section 170.9 of the CFTC's Rules, to "promote fair and open competition among its members." Since some undetermined number of option positions will generate liability for a per trade NFA Assessment Fee only upon initiation of the position, NFA recognized that the per trade option Assessment Fee would have to be higher than one half of the futures round turn Assessment Fee in order for the average incidence of the



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option Assessment Fee to be in parity with the futures Fee. Lacking historical data upon which to base projections of the percentage of options to be exercised or permitted to expire, NFA made a judgment that the options Assessment Fee should be set at \$.20. NFA came to this decision with the understanding that the level of the option and futures Assessment Fee would be reviewed in light of experience and that, pursuant to Bylaw 1301(b), the collection of all assessments would be suspended during any year when the budget goals of NFA have been met.

In setting the option Assessment Fee NFA also determined to require the entire amount of that fee to be invoiced to customers thereby eliminating the requirement that the FCM pay to NFA an additional 10% of the invoiced amount. NFA recognized that an FCM was free, though not required, to pass on to customers the expense of the 10% "surcharge." NFA also recognized that an FCM was free to "absorb" the amount required to be invoiced by adjusting other charges. Since an FCM may, as a practical matter, deal with the entire amount of the Assessment Fee, including any surcharge, as it sees fit, provided it pays the amount to NFA, there did not appear to be any reason to complicate the calculation of the NFA Assessment Fee by adding a surcharge.

The proposed Bylaw amendment submitted to the CFTC for approval in my letter of November 1, 1982 also reduced the Assessment Fee applicable to dealer options from \$4.50 per round turn invoiced to the customer, plus a 10% "surcharge" payable by the FCM, to \$.20 per trade.

The \$4.50 dealer options Assessment Fee had been determined at a time when no other types of option trading were permitted. In order to determine the appropriate charge on these unique instruments, representatives of NFA contacted the dealer option grantors and asked what they estimated as the necessary NFA annual expense to conduct a compliance program for the offer and sale of those options. The figure thus estimated was divided by total annual volume to arrive at a total Assessment Fee of \$4.95 per dealer option round turn.

This sum was reduced to \$.20 per trade for several reasons. First, it appeared that the assumptions underlying the original figure may have been faulty. The gross figure



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upon which it was based included all of the compliance expense applicable to a grantor even though NFA would not be regulating the grantors directly but, instead, would be focusing principally upon the FCMs which were permitted to offer the options. Second, the \$4.95 figure failed to take into account the fact that dealer options would not be a unique type of instrument after institution of the option pilot program, so that NFA would not be required to institute extensive audit programs and procedures exclusively applicable to dealer options. Finally, NFA considered that dealer options may be offered in competition with exchange traded options so that it would be inappropriate, in view of the competitive considerations referenced in CFTC Rule 170.9, for NFA to disadvantage dealer options by requiring a higher Assessment than NFA required with respect to exchange traded options.

I hope that the foregoing provides adequate additional background for the CFTC's consideration of the amendments to Bylaw 1301(b) submitted in my letter of November 1, 1982. If anything further is required please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Joseph H. Harrison, Jr.'.

Joseph H. Harrison, Jr.  
General Counsel

JHH:cv

JAN 13 1983

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

2033 K Street, N.W.  
Washington, D.C. 20561



January 11, 1983 *JAN*

Mr. Robert K. Wilmouth  
President  
National Futures Association  
200 W. Madison Street  
Chicago, Illinois 60606

Re: Proposed Amendments to Bylaw 1301(b) and (d)  
Governing Dues and Assessments

Dear Mr. Wilmouth:

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Very truly yours,

*Jane K. Stuckey*

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Secretary of the Commission