

November 29, 1993

Via Overnight Delivery

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

Re: National Futures Association: Amendments to Rule 211
and Part 500 of NFA Registration Rules

Dear Ms. Webb:

By letter dated December 4, 1992, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("Commission") for its review and approval proposed amendments to Rule 211 and Part 500 of NFA Registration Rules. After discussions with Commission staff, NFA has further revised the Registration Rules so that Rule 211 mirrors Commission Regulation 3.22 and Part 500 does not involve NFA's President in the decision-making process subsequent to the issuance of the Notice of Intent. The amendments were approved by NFA's Board of Directors on November 18, 1993.

The proposed new language to Registration Rule 211 and Part 500 of NFA Registration Rules is set forth below (additions are underscored and deletions are bracketed). This is intended to supersede the amendments to Rule 211 and Part 500 of NFA Registration Rules proposed in NFA's submission to the Commission dated December 4, 1992. NFA intends to make the amendments effective ten days after receipt of this submission by the Commission unless the Commission notifies NFA within the ten-day period that the Commission has determined to review the amendments for approval.

REGISTRATION RULES

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**PART 200. REGISTRATION REQUIREMENTS AND
PROCEDURES**

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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:



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- (a) (1) 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 setg forth such information[, or] and requests the person to provide evidence mitigating the seriousness of the statutory disqualification set forth in the notice and evidence that the person has undergone rehabilitation; or
- (2) that NFA has undertaken a routine or periodic review of the registrant's fitness to remain so registered; and
- [(2)] (b) 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 thereto, which must be accompanied by that individual's fingerprints on a fingerprint card provided by NFA for that purpose.
- [(b)] (c) Failure to provide the requested information pursuant to paragraph [(a)] (b) of this Rule is a violation of these Rules which in itself constitutes grounds upon which to base a determination that the [registrant] person is unfit to become or to remain so registered.

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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



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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,] 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 an 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 an 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



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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 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 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

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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:

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- (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 applicant'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



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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

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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.



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(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 accuracy of the allegations establishing the statutory disqualification;



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- (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.



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- (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

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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

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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.

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- (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 explanation 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



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



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- (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 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(b), 6(c), 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 super-



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visory 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 Membership Committee or its designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order denying, conditioning, suspending, restricting or revoking the registration. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or its designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.
- (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



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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

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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 Membership Committee or its designated Subcommittee may issue a Withdrawal of Notice of Intent indicating that because the applicant or registrant no longer has a sponsor, further proceedings are not warranted.



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

- (a) Notice of Intent.** 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:
- (1) NFA alleges and is prepared to prove that the registrant is subject to one or more of the statutory disqualifications set forth in Section 8a(2) of the Act;
 - (2) the allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be suspended or revoked;
 - (3) the registrant is entitled to have the Membership Committee or its designated Subcommittee consider written evidence of the type set forth in paragraph (b) of this Rule. The Notice of Intent shall inform the registrant of the procedures which will be followed if no written submission is made in accordance with this Rule;
 - (4) the Membership Committee or its designated Subcommittee shall determine, based upon such written evidence, whether the registrant is subject to a statutory disqualification; and
 - (5) if the registrant is found to be subject to a statutory disqualification, the registrant may be suspended and ordered to show cause why such registration should not be revoked.
- (b) Written Response to the Notice of Intent.** In response to a Notice of Intent alleging a disqualification from registration set forth in Section 8a(2) of the Act, the registrant may submit a written response limited in scope to evidence challenging the accuracy of the allegations establishing the statutory disqualification, including evidence as to:
- (1) the 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;



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- (4) the post-conviction modification of any record of conviction; or
- (5) the favorable disposition of any appeal.
- (6) The registrant shall state the nature of each challenge in the response and submit an affidavit to support facts material to each challenge.
- (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 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 Membership Committee or its designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, issue an interim order suspending registration as described in paragraph (g)(2) of this Rule. Such finding shall be based upon the evidence of the statutory disqualification and the Notice of Intent with proof of service. In order to prevent injustice and on such conditions as may be appropriate, the Membership Committee or its designated Subcommittee may set aside a default order. Any motion to set aside a default shall be made within a reasonable time, shall state the reasons for the failure to file and shall specify the nature of the proposed defense.
- (f) Initial Determination. After the receipt of the registrant's written response and any reply thereto from the Vice-President of Compliance, the Membership Committee or its designated Subcommittee shall determine whether the

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

(g) Interim Order.

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

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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 Membership Committee or its designated Subcommittee shall thereafter, upon a finding that service was properly effected in accordance with Rule 502, enter a final order revoking, restricting or further suspending the registration. Such finding shall be based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the Notice of Intent and any written reply thereto submitted by the Vice-President of Compliance.
- (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 Membership Committee or its designated Subcommittee may issue a Withdrawal of Notice of Intent or a Withdrawal of Notice of Intent and Interim Order indicating that because the registrant no longer has a sponsor, further proceedings are not warranted.
- (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 Membership Committee or its designated Subcommittee made a determination as well as any documentary evidence which NFA intends to present at the hearing and, at the discretion of the Membership Committee or its designated Subcommittee, present oral or written argument.

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- (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 not pose a substantial risk to the public; or
 - (2) in actions involving statutory disqualifications set forth in Sections 8a(3) or 8a(4) of the Act, whether the applicant or registrant has shown by a preponderance of the evidence that, notwithstanding the existence of the statutory disqualification, full, conditioned or restricted registration would not pose a substantial risk to the public.
- (b) Findings. In making its written decision, the Membership Committee or its designated Subcommittee shall set forth facts material to its conclusion and provide an explanation of its decision in light of the statutory disqualification

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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 under this Part 500 (except an interim order suspending registration pursuant to Rule 505 (g) (2)) and all orders denying motions to vacate default orders pursuant to Rule 504(d) shall become a final order of NFA on the date of service upon the applicant or registrant. All Withdrawals of Notice of Intent issued shall become final on the date of service upon the applicant or registrant. A copy of each final order and Withdrawal of Notice of Intent issued by NFA shall be served upon the Commission at the same time it is served upon the applicant or registrant. All final orders shall inform the applicant or registrant of his right to petition the Commission for review under Section 17(o) of the Act and applicable Commission Regulations and of the right to petition the Commission

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for a stay of the effective date of the final order in accordance with Commission Regulation 171.22.

- (b) Effective Date. Any final order of NFA or Withdrawal of Notice of Intent issued under this Part 500 shall become effective thirty days after the date of service of the order on the applicant or registrant, except as otherwise directed by the Commission pursuant to CFTC Regulations, Part 171.

Rule 509. Settlements.

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

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- (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 will only 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.

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(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 will only 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 registration 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 Rule 506. 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,



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it shall notify the parties and issue a written decision or an order.

Respectfully submitted,

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

Daniel J. Roth
General Counsel

DJR:ckm(sub\112993.reg)

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



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile

DIVISION OF
TRADING AND MARKETS

December 13, 1993

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

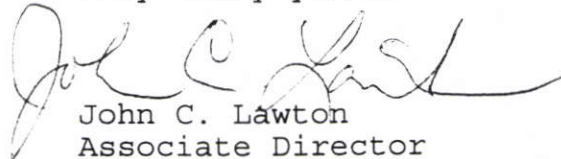
Re: Proposed Amendments to Rule 211 and Part 500
of Registration Rules--Procedures for
Registration Disqualifications

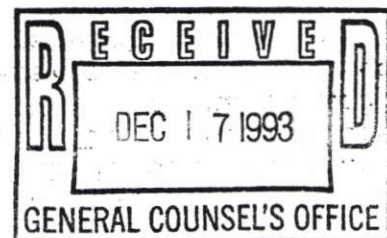
Dear Mr. Roth:

By letter dated November 29, 1993 and received on December 1, 1993, the National Futures Association ("NFA") submitted the above-referenced proposal to the Commission. NFA's submissions invoked the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("Act") to permit the above-referenced proposal to become effective ten days after Commission receipt unless the Commission determined to review the proposal for approval and so notified NFA.

Please be advised that the Division of Trading and Markets has examined the above-referenced proposal and has decided to not review the proposal, as provided under Section 17(j) of the Act.

Very truly yours,


John C. Lawton
Associate Director





December 9, 1993

Amendments to
NFA Bylaws 515 and 708 and
Rule 211 and Part 500 of NFA Registration Rules
Become Effective

By letters dated November 29, 1993, NFA submitted proposed amendments to NFA Bylaws 515 and 708 (formerly Bylaw 707) and Rule 211 and Part 500 of NFA Registration Rules. Please be advised that the Commission dismissed review of the proposed amendments. The amendments, therefore, become effective on December 10, 1993.

Chris Makino



NATIONAL FUTURES ASSOCIATION

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

22

October 26, 1993

VIA OVERNIGHT MAIL

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

Re: NFA Registration Rules 211 and Part 500

Dear David:

Enclosed please find copies of the revised Registration Rules 211 and Part 500 approved by NFA's Executive Committee. These revisions incorporate the changes you and I discussed based on the concerns raised by the Commission staff. Essentially, NFA Rule 211 was revised to mirror Commission Regulation 3.22, and the revised Part 500 rules do not involve NFA's President in the decision-making process subsequent to the issuance of the Notice of Intent.

The Board of Directors will consider these proposed rules at its November 18, 1993 meeting, requiring distribution of the draft rules to the Board Members on November 4, 1993. Assuming that the Commission staff has no objections to the rules as revised, NFA intends to submit them to the Commission after Board approval for a ten-day review. Please telephone me if you have any questions or with any comments.

Sincerely,

Michael J. Crowley
Associate General Counsel

MJC:jac(Ltrs\RegRules.MJC)
Enclosures