

COMMODITY FUTURES
TRADING COMMISSION
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August 28, 1987

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

Re: National Futures Association, Proposed Amendments
to Compliance Rules 3-4, 3-7, 3-8, 3-10, 3-11, and
3-12 and Section 11 of its Code of Arbitration.

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act ("Act"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") proposed amendments to Compliance Rules 3-4, 3-7, 3-8, 3-10, 3-11, and 3-12 and Section 11 of NFA's Code of Arbitration, which were approved by NFA's Board of Directors at its meeting on August 20, 1987. NFA respectfully requests review and approval of these proposed amendments by the Commission.

I. THE PROPOSED AMENDMENTS

- A. Amendments to Compliance Rules 3-4, 3-7, 3-8, 3-10, 3-11, and 3-12, affirming that Regional Business Conduct Committee Panels have authority to accept or reject settlement offers, impose disciplinary sanctions, and conduct hearings. (additions are underscored and deletions are [bracketed]):

COMPLIANCE RULES

* * *

Part 3 - COMPLIANCE PROCEDURES

* * *

Rule 3-4. RIGHT TO COUNSEL

The Respondent may be represented by an attorney-at-law or other person at any stage of the investigation or disciplinary proceeding except as provided in Rule 3-12(b)(iii), but the Regional Committee or its designated Panel may bar from the proceeding any representative for dilatory, disruptive or contumacious conduct.

* * *



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Rule 3-7. DECISION

After the hearing or other consideration of the matter, the Regional Committee or its designated Panel shall render a written decision, based upon the weight of the evidence, containing --

- (a) the charges or a summary of the charges;
- (b) the Answer, if any, or a summary of the Answer;
- (c) a brief summary of the evidence produced at the hearing, or - where appropriate - incorporation by reference of the investigation report;
- (d) a statement of findings and conclusions as to each allegation, including a statement setting forth: each act or practice the Respondent was found to have committed or omitted, is committing or omitting or is about to commit or omit; each NFA requirement that such act or practice violated, is violating, or is about to violate; and whether the act or practice is deemed to constitute conduct inconsistent with just and equitable principles of trade;
- (e) a declaration of any penalty imposed (see Rule 3-11) and the penalty's effective date; and
- (f) a statement that the Respondent may appeal an adverse decision to the Appeals Committee by filing a written notice of appeal with the NFA Secretary within 15 days after the date of the decision.

The decision shall be dated and promptly furnished to the Respondent and the Appeals Committee and shall be final 5 days after the expiration of time for appeal or review of the decision, unless appealed or reviewed. (See Rule 3-10).

* * *

Rule 3-8. SETTLEMENT

(a) Offer.

A subject of an investigation in which the investigation report has been completed, or a Respondent in a disciplinary proceeding, may submit a proposed settlement of the matter to the Regional Committee or its designated Panel (or the Appeals Committee if the matter is before it on appeal or review). The Regional Committee or its designated Panel or the Appeals Committee, as the case may be, may accept or



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reject the settlement offer as it deems appropriate. The Compliance Director shall be afforded an opportunity to express that Office's views with respect to the proposed settlement. The Regional Committee or its designated Panel or the Appeals Committee may in its discretion accept an offer in which the person neither admits nor denies violating NFA requirements.

(b) Decision.

If the Regional Committee or its designated Panel or the Appeals Committee accepts the offer, it shall issue a written decision specifying each NFA requirement it has reason to believe is being, has been or is about to be violated, any penalty imposed and whether the settling party has admitted or denied any violation. A decision on settlement by the Regional Committee or its designated Panel shall be promptly furnished by the Regional Committee or its designated Panel to the President and shall become final and binding within 10 days after the President's receipt thereof, unless the President refers the matter to the Appeals Committee for its review. In such case, the decision shall become final and binding unless disapproved by the Appeals Committee within 30 days after the date of referral by the President.

(c) Withdrawal.

A settlement offer may be withdrawn before final acceptance by the Regional Committee or its designated Panel, or by the Appeals Committee if the matter is before it on review. An offer that is withdrawn or rejected shall not be deemed to have been an admission of any matter nor shall it otherwise prejudice the offeror.

* * *

Rule 3-10. APPEAL; REVIEW.

(a) Appeal.

The Respondent may appeal any adverse [Regional Committee] decision of a Regional Committee or its designated Panel issued under Rule 3-7 to the Appeals Committee by filing a written notice of appeal with the Secretary within 15 days after the date of the decision. The notice must describe those aspects of the disciplinary action to which exception is taken, and must contain any request by the Respondent to present written or oral argument.



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(b) Review.

The Appeals Committee may also review any [Regional Committee] decision of a Regional Committee or its designated Panel issued under Rule 3-7 on its own motion by giving written notice to the Respondent, within 15 days of the date of the decision, that a review will be conducted.

(c) Stay.

The Respondent's filing of a notice of appeal under paragraph (a) above or the institution by the Appeals Committee of its own review under paragraph (b) above shall operate as a stay of the effective date of the disciplinary order, until the Appeals Committee renders its decision.

(d) Conduct of Proceeding.

No member of the Appeals Committee shall participate in the proceeding if the member participated in any prior stage of the disciplinary proceeding (other than the review of a settlement offer submitted under Rule 3-8) or if the member, or any person with which the member is connected, has a financial, personal or other direct interest in the matter under consideration. Except for good cause shown, the appeal or review shall be conducted solely on the record before the Regional Committee or its designated Panel, the written exceptions filed under paragraph (a) above, and such written or oral arguments of the parties as the Appeals Committee may authorize.

(e) Decision.

Promptly after reviewing the matter, the Appeals Committee shall issue a written and dated decision, based on the weight of the evidence. The decision shall include--

(i) the findings and conclusions of the Appeals Committee as to each charge and penalty reviewed, including the specific NFA requirement the Respondent was found by the Regional Committee or its designated Panel to have violated, to be violating, or to be about to violate;

(ii) a declaration of any penalty imposed by the Appeals Committee and its effective date; and



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(iii) a statement that any person aggrieved by the disciplinary action may, within 30 days after the action has been taken, apply to the Commission for review of the action.

(f) Finality.

The decision of the Appeals Committee shall be final on the date it is issued.

Rule 3-11. PENALTIES.

(a) Types of Penalties.

The Regional Committee or its designated Panel, or the Appeals Committee on appeal or review, may at the conclusion of the disciplinary proceeding impose one or more of the following penalties:

(i) Expulsion, or suspension for a specified period, from NFA membership; a two-thirds vote of the members of the Regional Committee or its designated Panel or the Appeals Committee present and voting shall be required for expulsion. A suspended Member shall be liable for dues and assessments but shall have no membership rights during the suspension period nor shall a suspended Member hold itself out as an NFA Member during the suspension period.

(ii) Bar or suspension for a specified period from association with an NFA Member.

(iii) Censure or reprimand.

(iv) A monetary fine, not to exceed \$100,000 for all violations found.

(v) Order to cease and desist, or any other fitting penalty or remedial action not inconsistent with this rule.

(b) Authority of Appeals Committee to Alter Penalty.

The Appeals Committee may increase, decrease or set aside the penalties that were imposed by the Regional Committee or its designated Panel, or may impose other and different penalties, as it sees fit, subject to the requirements and limitations in paragraph (a) above.



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(c) Payment of Fines.

All fines shall be paid to the NFA Treasurer within the time prescribed in the decision, and may be used for general NFA purposes. A person who fails to pay a fine on time may, after 7 days written notice, be summarily suspended from membership or association with a Member, by order of the President, until the fine is paid.

Rule 3-12. MEMBER OR ASSOCIATE RESPONSIBILITY ACTIONS.

(a) Nature of Action.

A Member or Associate may be summarily suspended from membership, or association with a Member, may be required to restrict its operations (e.g., restrictions on accepting new accounts), or may otherwise be directed to take remedial action, where the President, with the concurrence of the NFA Board of Directors or Executive Committee, has reason to believe that the summary action is necessary to protect the commodity futures markets, customers, or other Members or Associates. Notice of such summary action shall be given promptly to the Commission.

(b) Procedure.

The following procedures shall be observed in actions under this Rule:

(i) The subject of the action (the "Respondent") shall, whenever practicable, be served with a notice before the action is taken. If prior notice is not practicable, the Respondent shall be served with a notice at the earliest opportunity. This notice shall (A) state the action taken or to be taken; (B) briefly state the reasons for the action; and (C) state the time and date when the action became or becomes effective and its duration.

(ii) The Respondent shall be given an opportunity for a hearing promptly after the summary action is taken. Any such hearing shall be conducted before the appropriate Regional Committee (see Bylaw 704) or its designated Panel under the procedures of paragraphs (b)-(d) of Rule 3-6.

(iii) The Respondent shall have the right to be represented by an attorney-at-law or other person in all proceedings after the summary action is taken, but the Regional Committee or its designated Panel may bar from the proceeding any



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representative for dilatory, disruptive, or contumacious conduct.

(iv) Promptly after the hearing, the Regional Committee or its designated Panel shall issue a written and dated decision affirming, modifying or reversing the action taken, based upon the evidence contained in the record of the proceeding. A copy of the decision shall be furnished promptly to the Respondent and the Appeals Committee, and the Commission. The decision shall contain:

- (A) A description of the action taken and the reasons for the action;
- (B) A brief summary of the evidence received at the hearing;
- (C) Findings and conclusions;
- (D) A determination as to whether the summary action that was taken should be affirmed, modified or reversed; a declaration of any action to be taken against the Respondent as the result of that determination; and the effective date and duration of that action; and
- (E) A statement that any person aggrieved by the action may have a right to apply, within 30 days after the action has been taken, to the Commission for review of the action.

(c) Appeal.

The Respondent shall have no right to appeal a final action taken under this Rule.

(d) Review.

The Appeals Committee may on its own motion review a [Regional Committee] decision of the Regional Committee or its designated Panel issued under paragraph (b)(iv) above, by giving written notice to the Respondent of its decision to review within 15 days of the date of the decision. The review shall be conducted in accordance with paragraphs (d), (e)(i), (e)(ii), and (f) of Rule 3-10.

* * *

- B. Amendment to Section 11 of NFA's Code of Arbitration setting forth a separate schedule of filing fees for Member-to-Member arbitration claims. (additions are underscored):



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CODE OF ARBITRATION

* * *

Section 11. ARBITRATION FEES.

(a) Claims involving disputes between customers and Members or Associates.

Each party claiming or counterclaiming shall pay a filing fee based on the amount claimed or counterclaimed (exclusive of interest and costs) as follows:

Amount of Claim or Counterclaim	Fee
\$ 0 - \$ 2,499	\$ 50
\$ 2,500 - \$ 5,000	\$100
\$ 5,001 - \$10,000	\$150
\$10,001 - \$15,000	\$175
More than \$15,000	\$200 (plus 1% of excess over \$15,000)

(b) Claims involving disputes between Members or Associates.

Each Member or Associate claiming or counterclaiming shall pay a filing fee based on the amount claimed or counterclaimed (exclusive of interest and costs) as follows:

<u>Amount of Claim or Counterclaim</u>	<u>Fee</u>
<u>\$ 0 - \$ 2,499</u>	<u>\$ 62.50</u>
<u>\$ 2,500 - \$ 5,000</u>	<u>\$125.00</u>
<u>\$ 5,001 - \$10,000</u>	<u>\$187.50</u>
<u>\$10,001 - \$15,000</u>	<u>\$218.75</u>
<u>More than \$15,000</u>	<u>\$250.00 (plus 1% of excess over \$15,000)</u>

II. THE EXPLANATION OF THE PROPOSED AMENDMENTS

A. Explanation of amendments to Compliance Rules 3-4, 3-7, 3-8, 3-10, 3-11 and 3-12.

NFA Compliance Rule 3-6 provides that disciplinary hearings may be held before the appropriate Regional Business Conduct Committee ("Regional Committee") or its designated Panel ("BCC Panel"). The provision concerning BCC Panels was intended to facilitate the prompt disposition of disciplinary matters by delegating the Regional Committee's authority to



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the BCC Panels. Therefore, NFA staff has interpreted the Rule to provide that BCC Panels have the same authority as Regional Committees once a hearing has been requested. The proposed amendments to Compliance Rules 3-4, 3-7, 3-8, 3-10, 3-11, and 3-12 codify this interpretation. In particular, these proposed technical amendments affirm that BCC Panels have the authority to accept or reject settlement offers, to impose disciplinary sanctions for violations of NFA Requirements and to conduct hearings on Member and Associate Responsibility Actions.

B. Explanation of amendments to Section 11 of NFA's Code of Arbitration.

NFA's Code of Arbitration ("Code") provides for mandatory Member-to-Member arbitration under Section 2(a)(1)(iv); however, it has been NFA's policy to interpret this provision narrowly to apply only when the Member Claimant stands as a customer to the Member Respondent. Section 2(b) of the code gives NFA the discretion to accept other Member-to-Member claims when both parties agree to have the dispute resolved at NFA.

On August 20, 1987 NFA's Board of Directors adopted a policy directing NFA's staff to exercise its discretion under Section 2(b) of the Code to accept the following types of Member-to-Member arbitration claims:

1. Compensation disputes between Members;
2. Compensation disputes between Members and their Associates;
3. Disputes concerning interference with customer relations;
4. Disputes involving termination of guarantee agreements; and
5. Disputes involving misappropriation of trade secrets, such as customer lead sources.

To defray at least some of the anticipated costs associated with an increase in Member-to-Member arbitration claims, the proposed amendment to Section 11 of the code was adopted. This proposed amendment sets forth a separate schedule of filing fees for Member-to-Member arbitration claims, calling for slightly higher fees than the fees assessed for customer claims.



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NFA respectfully requests that the amendments to Compliance Rules 3-4, 3-7, 3-8, 3-10, 3-11, and 3-12 and Section 11 of NFA's Code of Arbitration be declared effective upon approval by the Commission.

Very truly yours,

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

Daniel J. Roth
General Counsel

cc: Acting Chairman Kalo A. Hineman
Commissioner Fowler C. West
Commissioner William E. Seale
Commissioner Robert R. Davis
Andrea M. Corcoran, Esq.
Marshall E. Hanbury, Esq.
Dennis Klejna, Esq.
Alan L. Seifert, Esq.
David Van Wagner, Esq.

DJR:tyd (Dl:F12)

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



December 8, 1987

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

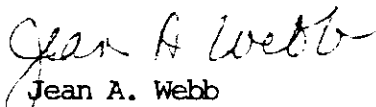
Re: Proposed Amendments to National Futures Association Compliance Rules 3-4, 3-7, 3-8, 3-10, 3-11 and 3-12 and Code of Arbitration Section 11, and a Proposed Interpretation of Code of Arbitration Section 2(a) (1) (iv)

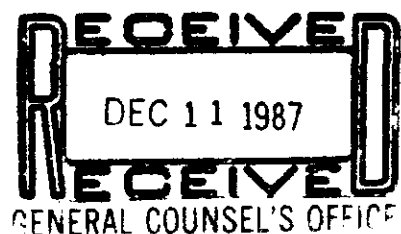
Dear Mr. Roth:

By letters dated August 28, 1987 and October 13, 1987, the National Futures Association ("NFA") submitted pursuant to Section 17(j) of the Commodity Exchange Act ("Act") proposed amendments to its Compliance Rules 3-4, 3-7, 3-8, 3-10, 3-11 and 3-12 and to Section 11 of its Code of Arbitration. NFA also has submitted an interpretation of Section 2(a) (1) (iv) of its Code of Arbitration. The Commission understands that NFA intends to implement its proposals upon receipt of notice of Commission approval.

Please be advised that the Commission has this date approved the above-referenced revisions to NFA's Compliance Rules and Code of Arbitration under Section 17(j) of the Act.

Sincerely,


Jean A. Webb
Secretary of the Commission



October 13, 1987

Mr. David VanWagner
Division of Trading & Markets
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581

**Re: Interpretation of Section 2(a) and Proposed Amendment to
Section 11 of NFA's Code of Arbitration**

Dear Mr. VanWagner:

By letter dated August 28, 1987, National Futures Association ("NFA") submitted a proposed amendment to Section 11 of NFA's Code of Arbitration ("Code") for approval by the Commodity Futures Trading Commission ("Commission"). In a telephone conversation on October 5, 1987, you requested additional information regarding this proposed amendment as well as clarification of NFA's interpretation of mandatory Member to Member arbitration claims under Section 2(a) of the Code.

On July 1, 1985, the Commission approved an amendment to Section 2(a) of the Code which allows for mandatory Member to Member arbitration of all disputes involving commodity futures contracts. At that time, the Commission reminded NFA that "such a procedure may not be implemented in any manner that interferes with or delays the fair, equitable and expeditious resolution of customer claims." Therefore, in implementing the mandatory Member to Member procedure, NFA has historically interpreted Section 2(a)(1)(iv) so that only those disputes in which the Member Claimant stands as a customer to the Member Respondent are deemed to be mandatory. This interpretation is not only consistent with CFTC Regulation 180.5, which is applicable to NFA through CFTC Regulation 170.8, but also makes sense when read in conjunction with Section 2(b) of the Code which allows for arbitration of all other disputes involving commodity futures contracts between or among Members or Associates.

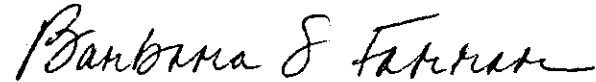
The proposed amendment to Section 11 of the Code sets forth a separate schedule of filing fees for Member to Member claims. It is NFA's intent that all Member to Member claims whether mandatory under Section 2(a)(1)(iv) or discretionary under Section 2(b) will be subject to the higher filing fees set forth in Section 11(b) for claims involving disputes between Members or Associates.

NFA

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If you have any further questions, please don't hesitate to contact me.

Very truly yours,



Barbara S. Farrar
Assistant General Counsel

BSF:rh(D1/F5)