

August 5, 1993

Via Overnight Mail

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

Re: National Futures Association: Proposed Amendments to  
Articles VI, VII, VIII and XI of NFA's Articles of  
Incorporation and NFA Bylaws 301, 507 and 1506

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") proposed amendments to Articles VI, VII, VIII and XI of NFA's Articles of Incorporation ("Articles") and to NFA Bylaws 301, 507 and 1506. The Articles amendments were ratified by NFA's Board of Directors ("Board") on February 25, 1993 and May 20, 1993, and have since been adopted by a two-thirds vote of those NFA Members actually voting in the Contract Market category and a majority of those Members actually voting in the FCM, LTM and IB category and the Industry Participant category. The Bylaw amendments were adopted by the Board on February 25, 1993, contingent upon membership approval of the Articles amendments. 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.

THE PROPOSED AMENDMENTS

The proposed amendments to Articles VI, VII, VIII and XI and NFA Bylaws 301, 507 and 1506 are as follows (additions are underscored and deletions are bracketed):

ARTICLES OF INCORPORATION  
OF  
NATIONAL FUTURES ASSOCIATION

\* \* \*

ARTICLE VI: MEMBERS



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**Section 1: Membership Eligibility.**

Persons eligible to become NFA Members shall include:

- (a) any person registered with the Commission;
- (b) any contract market; and
- (c) any person designated by Commission Rule as eligible for NFA membership[; and].
- [(d) any and all other persons engaged in a business related to the commodity futures industry, unless such person is excluded from NFA membership by NFA Bylaw.]

**Section 2: Membership Category.**

Each Member which qualifies for membership status in one or more of the following categories --

- (a) FCMs;
- [(b) commercial firms;]
- (b) [(c)] CPOs;
- (c) [(d)] CTAs;
- [(e) commercial banks;]
- (d) [(f)] IBs;
- (e) [(g)] LTMs

-- shall be deemed to be a Member for the purposes of Articles VII, VIII, and X only in that single category to which its business activities primarily relate. Each Member shall have one vote on all matters on which the Member's category is entitled to vote, except that a CPO, CTA, or IB Member shall not be entitled to vote in such category if:

- (a) it is an employee of an FCM Member;



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- (b) an FCM Member or employee thereof holds a majority equity interest in the Member; or
- (c) the Member is otherwise directly or indirectly controlled by an FCM Member, except that an IB Member which has entered into a guarantee agreement with an FCM Member shall not be deemed for purposes of this Section to be directly or indirectly controlled by such FCM Member solely by reason of such agreement;

Provided, however, that such CPO, CTA, or IB Member shall be entitled to vote in any one of such other categories (e.g., FCM) in which it qualifies for membership status.

**ARTICLE VII: BOARD OF DIRECTORS**

\* \* \*

**Section 2: Composition of Board.**

\* \* \*

**(c) Industry Participant and Public Representatives.**

- (i) Five (5) [Ten (10)] individuals [related to participants in the commodity futures industry other than contract markets, FCMs, LTMs or IBs] (hereinafter "Industry Participants") [,] as follows:

[(A) Three (3) representatives of persons or affiliates thereof primarily engaged in the business of manufacturing, processing, refining, merchandising or consuming a commodity traded for future delivery on a contract market (hereinafter "commercial firms");]

(A) [(B)] Two (2) elected representatives of registered commodity pool operators (hereinafter "CPOs") that are NFA Members; and

(B) [(C)] Three (3) elected representatives of registered commodity trading advisors ("CTAs") that are NFA Members [; and].



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[(D) Two (2) representatives of commercial banking institutions.]

(ii) Nine (9) individuals who are not employed by any Member of NFA (hereinafter "Public Representatives"). At least four (4) of these individuals may not have any direct association with a business enterprise in the commodity futures industry. The remaining Public Representatives may be drawn from commercial banks, commercial firms or other users of the futures markets. Any individual serving as a Public Representative must meet the standards set forth in Commission Regulations.

(iii) Not more than one of the Directors in any of the categories (i) (A) and (B) [, (C) and (D)] above shall reside in the same NFA region. If more than one of the individuals receiving sufficient votes for election to the Board in a particular category resides in the same NFA region, only the individual receiving the greatest number of votes from among those individuals shall be elected. The remaining representatives on the Board for each of those categories shall be those individuals not within that region who receive the greatest number of votes among such individuals. Ties shall be resolved by the Board by random draw.

(iv) [(iii)] No Industry Participant may have more than one representative on the Board at any one time. For purposes of this limitation, a person shall be deemed a representative of an Industry Participant if the person is an officer, director, partner, employee or beneficial owner of more than 10% of the equity stock of the Industry Participant, and the person is not a contract market representative.

[(d) Public Representatives.

Three (3) individuals having no present direct association with a business enterprise in the commodity futures industry (hereinafter "Public Representatives").]



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**Section 3: Nominations; Election.**

The elected Directors shall be chosen as follows:

\* \* \*

**(d) Public Representatives.**

The Public Representatives shall be chosen as follows: Before the Annual Election, the Board shall solicit from the Members the nomination of individuals to serve on the Board in the Public Representative category. At the Board's regular annual meeting, the Board shall, by majority vote, select from among such nominees [the Public Representative or, in the initial election,] the Public Representatives to serve on the Board.

**[(e) Commercial Firm and Commercial Bank Representatives.**

The commercial firm and commercial bank representatives shall be chosen as follows: Before the Annual Election, the Board shall solicit from the commercial bank Members the nomination of individuals to serve on the Board in the commercial bank category and shall solicit from the commercial firm Members the nomination of individuals to serve on the Board in the commercial firm category. The Executive Committee may also nominate individuals to serve on the Board in the commercial bank and commercial firm categories. At the Board's regular annual meeting, the Board shall, by majority vote, select from among such nominees the commercial firm representative and the commercial bank representative to serve on the Board.]

\* \* \*

**ARTICLE VIII: EXECUTIVE COMMITTEE**

\* \* \*

**Section 3: Composition.**

The Executive Committee shall be comprised of the following:



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\* \* \*

- (C) [Two (2)] One (1) Director[s] representing CPOs and one (1) Director representing CTAs. The CPO and CTA representatives must reside in different regions; and [Industry Participants other than commercial banks except that the Participants so represented must be from different categories of eligible Industry Participants (see Section 2(c)(i)(A)-(C) of Article VII); and]
- (D) One (1) Director who is a Public Representative without a present direct association with a business enterprise in the commodity futures industry.

**Section 4: Election of Members; Vacancies.**

The elected members of the Executive Committee shall be chosen by the Board at the regular annual meeting as follows: The Directors representing contract markets with two Directors on the Board shall elect the Committee member in category (b)(ii)(A)(1) above; the Directors representing contract markets having one Director on the Board shall elect the Committee members (or members, if there are no contract markets with two Directors on the Board) in category (b)(ii)(A)(2) above; the Directors representing FCMs, LTMs and IBs shall elect the Committee members in category (b)(ii)(B) above; the Directors representing Industry Participants shall elect the Committee members in category (b)(ii)(C) above; and the Public Representative Director shall be elected by the Board. A vacancy that occurs on the Executive Committee shall be filled in like manner. Tie votes may be resolved by the Board by random draw.

\* \* \*



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**ARTICLE XI: BYLAWS**

**Section 1: Adoption, Amendment and Repeal.**

Bylaws of NFA may be adopted, amended or repealed by a majority of all Directors in office at the time, except that:

**(a) Category Voting.**

The Board shall not take the following actions unless a majority of all Directors in each of the membership categories set forth in Section 2(a)-2(c) of Article VII (contract markets; FCMS, LTMs and IBs; and Industry Participants and Public Representatives) approves:

- (i) Delegating or otherwise granting authority to any NFA Committee, officer, employee or agent, or any other person, to adopt, amend or repeal any Bylaw.
- (ii) Adopting, amending or repealing any Bylaw regarding dues or assessments; and

\* \* \*

**BYLAWS OF NATIONAL FUTURES ASSOCIATION**

\* \* \*

**CHAPTER 3  
MEMBERSHIP AND ASSOCIATION WITH A MEMBER**

**Bylaw 301. Requirements and Restrictions.**

**(a) Eligibility for Membership.**

- (i) No person, unless eligible for Membership in the contract market[, commercial firm or commercial bank] category shall be eligible to become or remain an NFA Member or associated with a Member unless such person is registered, temporarily licensed or exempt from registration under the Commodity Exchange Act (hereinafter "Act") or the rules of the Commodity Futures Trading Commission (hereinafter "Commission").



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- (ii) Except as provided in paragraph (e) below, no person shall be eligible to become or remain a Member or associated with a Member who:
  - (A) Has been and is suspended or expelled from a registered futures association or contract market for violating any rule of the association or contract market that:
    - (1) prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade; or
    - (2) requires any act which, if omitted, constitutes conduct inconsistent with such principles; or
  - (B) Has been and is barred or suspended from being associated with all members of a registered futures association or contract market for violating a rule described in paragraph (A) above;
  - (C) Is subject to an order of the Commission; denying, suspending or revoking the person's registration under Section 6(b) of the Act; expelling or suspending the person from membership in a registered futures association or contract market; or barring or suspending the person from being associated with a Futures Commission Merchant (hereinafter "FCM");
  - (D) Whether before or after becoming a Member or associated with a Member, was, by the person's conduct while associated with a Member, a cause of any suspension, expulsion or order described in paragraphs (a)(ii)(A)-(C) above that is in effect with respect to the person; or
  - (E) Has associated with the person any other person who is known to, or in the exercise of reasonable care should be known to, the person to be ineligible to become or remain a





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Member or associated with a Member under paragraphs (a) (ii) (A) - (D) above.

CHAPTER 5  
BOARD OF DIRECTORS

\* \* \*

Bylaw 507. Special Meetings

\* \* \*

(b) Notice of Emergencies.

\* \* \*

In the event of an emergency (as defined herein), the Chairman or President may call a meeting on one hour notice to all Directors. Such notice may be given by telephone, telegraph or other means. The business of the meeting shall be limited to the emergency. A quorum shall consist of fourteen (14) Directors, provided there is present at least one contract market Director, one FCM Director and one Industry Participant or Public Representative Director [see Article VII, Sections 2(a)-(c)]. For purposes of this Bylaw, an emergency shall exist when the Chairman or President determines that, because of an unusual, unforeseeable and adverse circumstance, it is necessary to hold a meeting on one hour notice.

\* \* \*

CHAPTER 15  
MISCELLANEOUS PROVISIONS

\* \* \*

Bylaw 1506. Amendments to Bylaws.

No Bylaw may be adopted, amended or repealed except as specified in a written notice sent to each Director at least two weeks prior to the meeting at which the Board considers the same: Provided, however, that such prior



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notice is not required in an emergency as defined by Bylaw 507, or where a majority of all Directors in each of the membership categories set forth in Sections 2(a)-2(c) of Article VII (contract markets; FCMS, LTMs and IBs; and Industry Participants and Public Representatives) approves.

\* \* \*

EXPLANATION OF THE PROPOSED AMENDMENTS

Currently, NFA's Articles require that there be eight Public Directors on NFA's Board -- three commercial firm representatives, two commercial bank representatives and three public representatives. These eight members represent approximately 19 percent of the Board. As the Commission is aware, Section 206(b) of the Futures Trading Practices Act of 1992 ("the Act") requires that at least 20 percent of the regular voting members of NFA's Board be public directors, though for the purposes of the Act, commercial bank and commercial firm representatives are included as public representatives.

Obviously, the simplest way to comply with the current requirements of the Act would be to amend NFA's Articles to provide for one additional public representative. However, the Board concluded that it was appropriate to make further changes to the Articles regarding the status of commercial firm and commercial bank representatives. The Board felt that since these representatives are included as public representatives for the purposes of the Act, it made sense to include them as public representatives in the Articles of Incorporation. The Board noted that there have never been more than four commercial firm and commercial bank Members of NFA, that those firms are in no way regulated by NFA and that those representatives are already elected in the same manner as public representatives. For all of these reasons the Board determined to amend the Articles and Bylaw 301 to eliminate the commercial firm and commercial bank categories and expand the public director category.

To ensure maximum flexibility the Board decided to amend Article VII to provide for nine public representatives, at least four of whom meet the current definition of public representatives, i.e., persons with no present direct association with a business enterprise in the commodity futures industry. The



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remaining five directors may be drawn from commercial banks, commercial firms or other users of the futures markets.

The commercial firm and commercial bank representatives are part of the industry participant category for purposes of category voting. Since they are now being merged into the public director category, the Board also amended Article XI and Bylaws 507 and 1506 relating to category voting to retain the current voting alignment and include public directors with industry participants for purposes of category voting.

In addition to requiring that 20% of NFA's Board be comprised of public directors, the Board determined to further amend Article VII to conform with the Commission's proposed Regulation 1.64 which sets qualification standards for non-member directors of self-regulatory organizations. The proposed amendment to Article VII conforms to Regulation 1.64.

As stated above, NFA intends to make the amendments to Articles VI, VII, VIII and XI and Bylaws 301, 507 and 1506 effective ten days after receipt of this submission by the Commission unless NFA receives notification that the Commission has determined to review the amendments for approval.

Respectfully submitted,

Daniel J. Roth  
General Counsel

DJR:ckm(sub\feb93)

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



**COMMODITY FUTURES TRADING COMMISSION**

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DIVISION OF  
TRADING AND MARKETS

August 16, 1993

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

Re: Proposed Amendments to Articles VI, VII, VIII  
and XI of the Articles of Incorporation and  
to Bylaw Sections 301, 507 and 1507

Dear Mr. Roth:

By letter dated August 5, 1993, and received by the Commission on August 6, 1993, the National Futures Association ("NFA") submitted the above-referenced proposal to the Commission. NFA's submission 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 Commission has examined the above-referenced proposal and has decided to not review the proposal, as provided under Section 17(j) of the Act.

Sincerely,

David P. Van Wagner  
Special Counsel

