

National Futures Association

NFA

Temporary Address
Suite 5800
200 E. Randolph Drive
Chicago, Illinois 60601

December 29, 1981

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

Re: National Futures Association; Proposed Bylaw Amendments

Dear Ms. Stuckey:

National Futures Association, pursuant to Section 17(j) of the Commodity Exchange Act^{1/}, hereby files with the Commission and requests Commission approval of the four changes in its Bylaws that are set forth and described below. The changes relate mainly to the deferral of NFA electoral provisions, and have been formally adopted by NFA's provisional Board of Directors. These deferrals are needed in order to provide NFA with a sufficient amount of time to complete the important process of reviewing applications for membership in NFA. NFA emphasizes, however, that these Bylaw changes will not delay the initiation of NFA's regulatory operations. In fact, some of the changes -- for example, the proposal to defer for one year until January 1983 the first election of NFA Directors by members -- may, by postponing the expenditure of resources on essentially organizational activities, facilitate the initiation of regulatory activities.

The proposed Bylaw changes are as follows. Additions are underscored and deletions are bracketed.

1/ Section 17(j) states:

"Every registered futures association shall file with the Commission in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, copies of any changes in or additions to the rules of the association, and such other information and documents as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (a) of this section. Any change in or addition to the rules of a

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I. BYLAW 402 [ANNUAL MEETINGS]

A. The Amendment.

"Bylaw 402. Annual Meetings.

Beginning with the calendar year of [1982] 1983, the annual meeting of the Members shall be in February of each year, for the transaction of such business as may come before the meeting. The meeting date shall be fixed and announced by the Board not less than 45 days before such date."

B. Authority for the Amendment.

(i) Article XI of NFA's Articles of Incorporation: "Bylaws of NFA may be adopted, amended or repealed by a majority of all Directors in office at the time..." (subject to certain exceptions not relevant here).

(ii) Article XII: "The NFA Board may establish such effective date for any of its requirements as it deems appropriate in light of NFA resources and the prudent initiation of particular NFA operations and programs."

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registered futures association shall be submitted to the Commission for approval and shall take effect upon the thirtieth day after such approval by the Commission, or upon such earlier date as the Commission may determine, unless the Commission shall enter an order disapproving such change or addition; and the Commission shall enter such an order unless such change or addition appears to the Commission to be consistent with the requirements of this section and the provisions of this Act."

Under Section 17(a)(2) of the Act, the term "rules of the Association" as used in Section 17(j) includes the "By-laws" of a registered futures association.

The Commission has not prescribed regulations for the filing of proposed changes in the rules of a registered

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(iii) Article XVI, Section 5: "All corporate powers of NFA shall be exercised by the provisional Board of Directors elected by the Incorporators of NFA, until such time as the Board of Directors under Article VII, Section 2 is constituted and assumes office in the manner prescribed in these Articles and the Bylaws."

C. Explanation of the Amendment

As currently worded, Bylaw 402 requires the first annual meeting of NFA members to be held in January 1982. As discussed herein, however, because NFA has been a registered futures association for a brief period, it will not be feasible for the important process of screening membership applications to be completed by that date. Thus, NFA will not have "members" as of January 1982, and for some time thereafter. In view of the amount of time that NFA estimates to be needed for completion of the screening process and other membership admission activities, NFA believes it is appropriate to defer the first annual meeting of members for one year -- i.e., until January 1983. In addition, it should be noted that the annual meeting is to be held after the election of directors (as is customarily the case in membership organizations) and, as discussed more fully below in item II, it will be necessary to defer the first election of directors by NFA members for one year.

II. BYLAW 406 [ANNUAL ELECTION]

A. The Amendment.

"Bylaw 406. Elections.

Beginning with the calendar year of 1983, [T]he Annual Election shall be held on the second Tuesday in January,

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futures association. NFA is submitting these proposed rule changes in a format that it deems appropriate to the rule review process; the format is basically comparable to the prescribed format for contract market rule changes. See Section 5a(12) of the Act and Commission Regulation 1.41. At the current time, NFA does not believe it necessary for the Commission to adopt regulations for the submission of proposed rule changes by registered futures associations. We hope that

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at which the vacancies on the Board and Nominating Committee shall be filled. Before the October 15 preceding the election, the Secretary shall (i) notify all Members in the FCM and Industry Participant categories of the elected Directors and the members of the Nominating Committee whose terms will expire at the Annual Election and (ii) request the submission to the Nominating Committee of the names of eligible persons to fill those positions. Before the November 20 preceding the election, the Nominating Committee shall submit its list of nominees for the positions to the Secretary, who shall promptly notify the Members of the nominations. Other nominations may be made by petition, as prescribed in the Articles. Each petition must identify the position to which the nomination pertains. Petitions must be received by the Secretary within 20 days of the issuance of the Secretary's notification of the candidates proposed by the Nominating Committee. Promptly after the expiration of the period within which petitions may be submitted, the Secretary shall cause written ballots to be sent to all FCM and Industry Participant Members."

B. Authority for the Amendment.

See item I.B, above.

C. Explanation of the Amendment.

It will not be possible for NFA to complete the important process of screening applicants for NFA membership in time to conduct a January 1982 election of directors by NFA members. NFA has been a registered futures association for only a brief period of time; it expects to receive thousands of applications for membership and for registration as Associates of members; and the process of screening applications will require significant staff time. For example, NFA's Bylaws (as required by Section 17) establish detailed eligibility requirements for NFA membership. See Bylaw 301(b).

Thus, NFA believes it necessary to defer the effective date of the annual election from January 1982 to January 1983. In its application for approval as a registered futures association, NFA noted that the Articles authorize the "phasing in" of NFA activities, explaining that this "affords more time for the important screening of applicants for membership...." (Registration Statement, p. 15).

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the format of this submission is helpful to the Commission, and we welcome any suggestions regarding the format for future submissions.

This necessary deferral of the annual election will not interfere with the policy of "fair and equitable representation" of members in the governance of NFA. (See Section 17(b)(5) of the Act and Commission Regulation 170.3.) As explained in item III below, NFA proposes to adopt a new Bylaw providing for the election by NFA's provisional Board of Directors of a full "transitional" Board of Directors, the members of which would hold office until the Directors elected by NFA members take office. Under the proposed Bylaw, this transitional Board would be comprised in the same manner as that set forth in the Articles for the Board of Directors elected by the NFA members (e.g., 14 representatives of FCM members, 3 public directors). In its order of September 22, 1981 approving NFA's application as a registered futures association, the Commission found that the Board of Directors prescribed in the Articles met the "fair and equitable representation" requirement.

Deferral for one year of the date of the first membership election of directors will afford NFA additional time to process membership applications and thus help to further the goal of providing a "fair and orderly procedure for the processing of membership applications." See Section 17(b)(9) of the Act and Commission Regulation 170.7. NFA does not believe that the deferral of the annual election, or the establishment of the transitional Board, will delay or otherwise adversely affect the initiation of NFA's regulatory program. As noted above, deferral of the annual election may "free up" NFA resources that could be devoted to the initiation of NFA's regulatory program.

III. BYLAW 407 [TRANSITIONAL BOARD OF DIRECTORS]

A. The Amendment.

A new Bylaw 407 has been adopted, as follows:

"Bylaw 407. Transitional Board.

The provisional Board of Directors may elect a transitional Board of Directors. Such transitional Board shall be comprised in the manner set forth in Article VII and may hold office until the Directors elected by Members (see Bylaw 406) assume office. The transitional Board shall have all the powers of the provisional Board of Directors (See Article VI and XVII), except the power to adopt, amend or repeal Articles."

B. Authority for the Amendment.

See item I.B, above.

C. Explanation of the Amendment.

As noted above, it will not be possible for NFA to conduct an election of Directors by members for the 1982 term. This circumstance need not defer, however, the establishment of a Board of Directors that is comprised in the manner set forth in NFA's Articles of Incorporation for the member-elected Board. See Article VII. Accordingly, NFA has changed its Bylaws to provide for the election of such a Board by the provisional Board of Directors, which has been NFA's governing body for over five years. The provisional Board intends to solicit nominations for this transitional Board from all segments of the commodity industry. Following this open nomination process, the provisional Board will then elect the transitional Directors, pursuant to the category requirements set forth in NFA Article VII. The transitional Board would be a temporary body; it would hold office only until the assumption of office by the member-elected directors. That election would occur in January 1983.

Proposed Bylaw 407 will be consistent with the goal of fair and equitable representation of members in the governance of NFA. The Bylaw will, in effect, enable NFA to establish a full, "Article VII" board of directors sooner than would otherwise be the case (in view of the need to defer for one year the first election of directors by members).

Reserving to the provisional Board the authority to alter NFA's Articles of Incorporation is appropriate for several reasons. The Articles set forth NFA's basic structure and principles -- e.g., the composition of the Board of Directors and the Executive Committee; NFA's purposes; and the procedures for amending the Bylaws. The Articles were created by the provisional Board, the members of which have comprised NFA's governing body for its entire existence and are thoroughly familiar with the background and rationale for the provisions of the Articles. Accordingly, it seems preferable to retain the authority to amend the Articles in the provisional Board rather than to transfer that authority to the transitional Board, a newly-established body which will be a short-term governing group.^{2/}

IV. BYLAW 1504 [FISCAL YEAR]

A. The Amendment.

^{2/} This is not to suggest that NFA will propose changes in the Articles. NFA has no plans to do so and thinks it highly unlikely that any substantive changes in the Articles will be proposed.

"Bylaw 1504. Fiscal Year.

The fiscal year of NFA shall begin on the first day of [January] July and end on the last day of [December] June in each year."

B. Authority for the Amendment.

See item I.B, above.

C. Explanation of the Amendment.

This is a technical amendment to conform NFA's fiscal year to NFA's tax year and to facilitate the annual audits of NFA's financial condition by NFA's independent auditors.

* * *

NFA respectfully requests the Commission to declare the proposed amendments effective upon approval by the Commission, as the Commission is specifically authorized to do under Section 17(j).

Questions about the Bylaw changes may be addressed to NFA's legal counsel, John H. Stassen or Frederick L. White, at Kirkland & Ellis, Suite 5800, 200 East Randolph Drive, Chicago, Illinois 60601 (312-861-2000).

Very truly yours,

PROVISIONAL BOARD OF DIRECTORS

By: 

John H. Stassen

Secretary and Counsel to
the Board

cc: Chairman Philip McB. Johnson
Commissioner David G. Gartner
Commissioner James M. Stone
Commissioner Susan M. Phillips
Dennis A. Dutterer, Esq.
Mr. John L. Manley
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