



National Futures Association

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

January 29, 1982

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

RE: National Futures Association; Proposed
Amendments to Bylaws, Compliance Rules
and Code of Arbitration

Dear Ms. Stuckey:

The National Futures Association, pursuant to Section 17(j) of the Commodity Exchange Act, hereby files with the Commission and requests Commission approval of the changes in its Bylaws, Compliance Rules, and Code of Arbitration that are set forth and described below. The major purpose of the changes is to provide for regulation by NFA of the sale of dealer options by futures commission merchants that are members of NFA. NFA believes that dealer options represent a significant segment of the commodity industry and that the sale of these commodity instruments should be supervised as part of NFA's industry-wide self-regulatory program. If the proposed changes are approved, NFA will phase in its regulatory program for dealer options as appropriate in light of NFA resources and the prudent initiation of the program.*/

*/ Article XII of NFA's Articles of Incorporation states that "[t]he 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."

The proposed Bylaw, Compliance Rule and Arbitration Code changes are as follows. Additions are underscored and deletions are bracketed.

1. BYLAW 1303 [DUES AND ASSESSMENTS]

A. The Amendment.

Bylaw 1301. Schedule of Dues and Assessments.

(a) Contract Markets.

* * *

(b) FCMs and Agents.

- (i) Each FCM Member shall pay to NFA an assessment equal to \$0. */ for each commodity futures contract other than a dealer option contract on a round-turn basis carried by it for a customer other than (A) a person having privileges of membership on the contract market where such contract is entered or (B) a person whose contracts are carried in a proprietary account, as defined in Commission Rule §1.3(y), by a person having privileges of membership on such contract market or (C) an omnibus account carried for another FCM for which assessments are payable to NFA by the other FCM; and each FCM Member shall pay to NFA an assessment equal to \$0. */ for each dealer option contract on a round-turn basis (see paragraph (d), below) carried by it for a customer other than a person whose contracts are in a proprietary account, as defined in Commission Rule §1.3(y), by such FCM Member: Provided, however, such assessments shall be suspended by the Board during any fiscal year when in the

*/ This amount is to be determined by the provisional directors upon an analysis of [1980] 1981 trading volume and an updated review of anticipated NFA expenses. The Commission will be advised of the figures by supplemental letter to this application. [NOTE: This is a footnote to Bylaw 1301.]

judgment of the Board the budget goals of NFA for the fiscal year, as prescribed by the Board under Section 6 of Article VII, have been met. The FCM Member shall invoice [this] these assessments to its customer and shall remit the amount due to NFA; and

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

(iii) Each FCM Member shall pay to NFA annual dues of \$1,000 if such FCM Member does not carry dealer option contracts for customers, or \$1,500 if such FCM Member does carry dealer option contracts for customers; and

(iv) * * *

(c) Other Dues.

(d) Commodity Option Contracts.

For purposes of this Bylaw 1301, a round-turn transaction in a commodity option contract shall consist of an opening purchase or sale followed either by exercise or expiration of the option or by a closing sale or purchase.

B. Explanation of the Amendment.

(i) Paragraph (b)(i).

Paragraph (b)(i) of Bylaw 1301 would be amended to require those FCM members of NFA that sell dealer options to pay to NFA an assessment for each dealer option contract carried by the FCM on a round-turn basis for a customer. The assessment would be invoiced to customers, and FCMS would be required to pay to NFA an amount equal to 10% of that invoiced amount (see Bylaw 1301(b)(ii)).

As in the case of the assessment for futures contracts, the amount of the assessment is to be determined by the provisional Directors of NFA upon an analysis of trading volume and NFA's anticipated expenses. NFA plans to set the assessment at a figure

that would, together with the additional FCM dues discussed in B (iii) below, produce revenues approximately equal to the cost of the dealer option regulatory program. Such regulatory costs are preliminarily estimated at \$85,000-\$115,000.

Also as in the case of the futures contract assessment, trades for proprietary accounts will not be subject to the assessment. Such transactions, not involving sales to public customers, would not generate regulatory costs.

NFA believes that the proposed transaction assessment will provide for an equitable allocation of assessments among NFA members (see Section 17(b)(6) of the Commodity Exchange Act and CFTC Rule 170.4).

(ii) Paragraph (b)(iii).

This paragraph of Bylaw 1301 would be amended to increase, from \$1,000 to \$1,500, the annual dues for those FCM members of NFA that sell dealer option contracts to customers. This combination of annual dues and transaction assessments will help to ensure an equitable allocation of dues and assessments among members.

(iii) Paragraph (d).

Bylaw 1301 would be amended by adding new paragraph (d), which clarifies the meaning of "round-turn" transactions (as used in Paragraph (a)(i) of Bylaw 1301) in the dealer option and exchange-traded option context. (The meaning is sufficiently clear in the futures context that clarification is unnecessary.) The amendment would make clear that an opening purchase or sale of an option and the subsequent expiration of the option is a round-turn transaction, just as an opening purchase or sale followed by exercise or a closing sale or purchase would be.

2. BYLAW 1507 [DEFINITIONS]

A. The Amendment

Bylaw 1507. Definitions.

The terms used in these Bylaws shall have the same meaning as in the Articles: Provided, however, that the term "futures" as used in these Bylaws shall include option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts. Such option contracts are hereby declared to be a proper subject of NFA regulation and oversight (see Article XVIII, paragraph (1)).

B. Explanation of the Amendment.

This amendment would expand the definition of the term "futures" in the Bylaws to include dealer options. This change is necessary because NFA's Articles of Incorporation generally authorize NFA to regulate "futures," which are currently defined in Article XVIII to include commodity futures contracts, exchange-traded options and "such other commodity-related instruments as the Board may from time to time declare by Bylaw to be properly a subject of NFA regulation and oversight." (Emphasis added.) The proposed last sentence of Bylaw 1507 would constitute the Bylaw declaration referred to in Article XVIII.

Dealer options are defined in Bylaw 1507 as option contracts granted by a person that has either: (A) registered with the CFTC under section 4c(d) of the Act as a grantor of option contracts; or (B) has notified the CFTC under the Commission's regulations that it is qualified to grant option contracts. The description is drawn broadly to include all dealer option selling activities. Registration with the CFTC is included in the definition because of the possibility that the dealer option rules proposed by the CFTC may contain a registration requirement when adopted.

The definition has been drafted so as not to include trade options, which NFA does not consider to be appropriate for regulation by NFA. The requirement of the definition that

the option grantor's registration or notification relate to "such option contracts" will effecutate this.

The dealer option definition is phrased in terms of options granted by a person that registered with or notified the CFTC -- rather than simply in terms of options granted by a person "pursuant to" Section 4c(d) -- to make clear that NFA would not be deprived of jurisdiction if the options in question had been granted in violation of (i.e., not "pursuant to") the section.

3. COMPLIANCE RULE 1-1 [DEFINITIONS]

A. The Amendment.

Rule 1-1. DEFINITIONS.

As used in these rules --

* * *

(g) "Futures" -- includes option contracts traded on a contract market and option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts.

B. Explanation of the Amendment.

The amendment of the "futures" definition in the Compliance Rules to include dealer options would extend both the substantive and procedural provisions of those rules to dealer options -- thus making dealer options part of NFA's regulatory program. For example, the anti-fraud, supervision and discretionary account rules would apply to dealer options. As currently worded, the Compliance Rules are sufficiently general that they need not be changed to make them suitable for application to dealer options. As the rules evolve, it may be necessary to amend them to make certain distinctions between futures and options.

4. CODE OF ARBITRATION SECTION 1 [DEFINITIONS]

A. The Amendment.

Section 1. DEFINITIONS. As used in this Code --

* * *

(j) "Futures" -- includes options contracts traded on a CFTC-licensed exchange and option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts.

B. Explanation of the Amendment.

The amendment of the term "futures" in the Code of Arbitration to include dealer options will permit NFA arbitration of disputes between customers and NFA members that relate to dealer options. There would be no change in NFA's arbitration system itself, which the Commission found to be fair and equitable in its order of September 22, 1981 granting registration to NFA. NFA does not believe that the inclusion of dealer option disputes in its arbitration system would overburden the system to the detriment of resolution of other disputes.

* * *

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

Questions about the proposed 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: Frederick L. White
Frederick L. White
Counsel to the Board

cc: Chairman Philip McB. Johnson
Commissioner David G. Gartner
Commissioner James M. Stone
Commissioner Susan M. Phillips
Commissioner Kalo Hineman
Dennis A. Duetterer, Esq.
Mr. John L. Manley
Theodore W. Urban, Esq.
Andrea Corcoran, Esq.
Linda Kurjan, Esq.

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



August 6, 1982

Mr. Frederick L. White
Counsel to the Provisional Board
of Directors of the National
Futures Association
Kirkland & Ellis
200 East Randolph Drive, Suite 5800
Chicago, Illinois 60601

Dear Mr. White:

It has come to my attention that the Commission inadvertently failed to mail you its April 7 letter regarding the approval of the rule changes you submitted on behalf of the National Futures Association in January 1982. That letter is now enclosed along with a copy of the April 7 approval letter sent to John Stassen on the NFA proposals he filed last December. We regret any inconvenience that oversight may have caused you or the NFA.

Very truly yours,

Jane K. Stuckey
Secretary of the Commission

Enclosures

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



April 7, 1982

Mr. Frederick L. White
Counsel to the Provisional Board
of Directors of the National
Futures Association
Kirkland & Ellis
200 E. Randolph Drive, Suite 5800
Chicago, Illinois 60601

Dear Mr. White:

This is to advise you that on April 7, 1982, the Commission approved the proposed rule changes of the National Futures Association which you submitted by letter dated January 29, 1982, under section 17(j) of the Commodity Exchange Act. These changes to Bylaws 1301 and 1507, Compliance Rule 1-1 and Code of Arbitration Section 1 expand the scope of NFA regulation to the sale of dealer options by futures commission merchants that are NFA members. The Commission has determined that these amendments may be made effective immediately.

Very truly yours,

A handwritten signature in cursive script that reads 'Jane K. Stuckey'.

Jane K. Stuckey
Secretary of the Commission