

July 2, 1987

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:
Financial Requirements, Schedule E; Compliance Rule
2-13; and Bylaw 305; and Proposed Registration Rules of
National Futures Association

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended ("the Act"), National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") for review and approval proposed amendments to NFA Financial Requirements, Schedule E, NFA Compliance Rule 2-13, NFA Bylaw 305, and proposed Registration Rules of NFA. The Board of Directors approved the amendments and adopted the Registration Rules on May 21, 1987.

I. THE AMENDMENTS TO NFA FINANCIAL REQUIREMENTS AND COMPLIANCE RULE AND EXPLANATIONS THEREOF

- A. Amendments to NFA Financial Requirements, Schedule E and NFA Compliance Rule 2-13 to permit NFA to grant relief requests to introducing brokers and commodity pool operators (additions are underscored and deletions are [bracketed]):

NFA FINANCIAL REQUIREMENTS

* * *

**SCHEDULE E
PROCEDURES FOR RELIEF REQUESTS**

Sec. E1. Definition.

"Relief request" means a request --



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El-a. Debt-Equity Ratio.

Under Section 3 and CFTC Regulation 1.17(d) for exemption from the minimum debt-equity ratio;

El-b. Withdrawal of Capital.

Under Schedule B, Section B2-c and CFTC Regulation 1.17(e) to withdraw equity capital;

El-c. Consolidation.

Under Schedule A, Section A[8]7-b(ii) and CFTC Regulation 1.17(f)(2)(ii) for approval of consolidation;

El-d. Secured Demand Notes.

Under Schedule C, Section C1-a(v)(B) and CFTC Regulation 1.17(h)(1)(v)(B) for approval of terms in a secured demand note relating to conditions for the making of a demand;

El-e. Subordinated Borrowings; Prepayment.

Under Schedule C, Section C1-b(vii) and CFTC Regulation 1.17(h)(2)(vii) to prepay subordinated borrowings;

El-f. Emergency Subordination.

Under Schedule C, Section C3 and CFTC Regulation 1.17(h)(4) for approval of an emergency subordination;

El-g. Fiscal-Year Election.

Under Schedule D, Section D4-c and either CFTC Regulation 1.10(e) or 4.22(q) for approval of a change in a fiscal-year election; or

El-h. Filing Extension.

Under Schedule D, Section D4-d and CFTC Regulations 1.10(f), 1.16(f) or 4.22(f) for a filing extension.

El-i. Uncovered Commodities.

Under Schedule A, Section A2-e, for a no-action position regarding the 20% charge on "uncovered" commodities deposited as collateral. (A no-action position may be taken regarding commodi-



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ties which are covered, but do not appear as hedged on the books of the Member FCM.)

Sec. E2. Filing.

A Member FCM or IB that has filed any relief request with its DSRO or any CPO Member that has filed such a request with NFA need not file such request with the CFTC. (For the purposes of this Schedule E the term "DSRO" as used in regard to CPO Members shall mean NFA.) The DSRO will promptly advise the CFTC of the request and use its best efforts to provide the CFTC with all pertinent information available to the DSRO.

Sec. E3. Grant of Relief Request; Effect of.

Except where the relief requested is the withdrawal of equity capital or the prepayment of subordinated borrowings ([E2-c and E2-f] E1-b and E1-e, above), the DSRO may, in its discretion, grant the relief request without receiving the prior concurrence of the CFTC. Any such grant of relief shall be valid and shall remain in full force and effect unless or until reversed by the CFTC or withdrawn by the DSRO on its own initiative. The Member FCM, IB or CPO shall be deemed in compliance with the applicable provision (see E1, above) of these Financial and Related Reporting Requirements and related CFTC Regulations during the effective period of any such grant. No violation of these Requirements or related CFTC Regulations by the Member FCM, IB or CPO shall occur for having acted in accordance with the decision of the DSRO during its period of effectiveness. The DSRO will promptly advise the Member FCM, IB or CPO of any reversal by the CFTC or withdrawal by the DSRO.

Sec. E4. CFTC Concurrence.

The DSRO will not approve any withdrawal of equity capital or prepayment of subordinated borrowings (see E[2]1-b and E[2]1-e, above) without first having received the concurrence of the CFTC. The DSRO will promptly advise the Member FCM or IB of the determination.

Sec. E5. Inquiries.

All inquiries concerning the status of relief requests should be directed to the appropriate official of the Member FCM's, IB's or CPO's DSRO (the appropriate NFA official is the Director of Compliance). Every effort will be made to assure the prompt review and disposition of all relief requests.



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Sec. E6. Furnishing Additional Information.

In reviewing any relief request, additional information may be required from the Member FCM, IB or CPO. This information should be furnished as promptly as possible, unless the Member FCM, IB or CPO decides to withdraw the request. Failure to furnish the required information in a timely manner may be deemed to be a withdrawal of the relief request.

Sec. E7. Compliance with Schedule; Effect of.

Compliance with the procedures set forth in this Schedule is expressly deemed by the CFTC to be satisfactory compliance by a Member FCM, IB or CPO with the provisions of the CFTC Regulations referenced in E1, above.

COMPLIANCE RULES

* * *

Rule 2-13. CPO/CTA REGULATIONS.

Any Member who violates any of CFTC Regulations 4.1 and 4.16 through 4.41 shall be deemed to have violated an NFA requirement. Each Member required to file any document with or give notice to the CFTC under CFTC Regulations 4.13 and 4.16 through 4.32 shall also file one copy of such document with or give such notice to NFA at its Chicago office no later than the date such document or notice is due to be filed with or given to the CFTC. Any CPO Member may file with NFA a request for an extension of time in which to file the annual report required by CFTC Regulation 4.22(c) or a request for approval of a change to its fiscal-year election by following the procedures set forth in NFA Financial Requirements Schedule E.

* * *

- B. Explanation of amendments to NFA Financial Requirements, Schedule E and NFA Compliance Rule 2-13 to permit NFA to grant relief requests to introducing brokers and commodity pool operators.

NFA Financial Requirements, Schedule E provides that each FCM Member may request its designated self-regulatory organization ("DSRO") to grant relief from certain filing and notice requirements. Thus, requests from FCMs for a change in fiscal year selection or extensions of time for filing financial state-



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ments, for example, may be processed initially by the DSRO rather than the Commission. This schedule, however, only applies to FCM Members; the Commission remains responsible for approving such requests for IBs and CPOs. The Division of Trading and Markets has expressed interest in having NFA handle relief requests of this type from IBs and CPOs as well.

The Compliance Department of NFA does not anticipate that expanding NFA's role to include responsibility for handling relief requests from IBs and CPOs would create a significant drain on NFA resources or any operational difficulties. NFA's prior experience with handling such requests from FCMs has provided knowledge of the standards to be applied and the procedure to be followed. In considering FCM requests NFA has employed the same general standards as the Commission. For example, requests for filing extensions are generally viewed with a presumption toward denial unless the petitioner has an exceptional reason for the request. Requests for a change of fiscal year are generally approved if they result in a reporting gap of no more than fifteen months. There is a strong presumption toward denial of requests for exemption from maintenance of the minimum debt-equity ratio.

The proposed amendments to NFA Compliance Rule 2-13 and NFA Financial Requirements, Schedule E would permit NFA to grant such relief requests for IB and CPO Members. NFA would, of course, also apply the Commission's general standards to requests received from CPOs and IBs under this amendment. The proposed amendments also correct certain cross references in Schedule E which have been rendered obsolete. NFA respectfully requests the Commission to declare the proposed amendments effective upon approval by the Commission as authorized by Section 17(j) of the Act.

II. THE AMENDMENTS TO BYLAW 305 AND THE PROPOSED REGISTRATION RULES AND EXPLANATIONS THEREOF

- A. Amendments to NFA Bylaw 305 and proposed Registration Rules of NFA to permit NFA to perform its registration responsibilities pursuant to NFA rules (the current language of Bylaw 305 would be deleted in its entirety and would be replaced by the underscored; the Registration Rules are set forth below as proposed):

**BYLAWS
OF
NATIONAL FUTURES ASSOCIATION**

* * *



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Bylaw 305. Registration Rules.

Subject to Articles III and XI and Bylaw 1506, the Board shall adopt Registration Rules in accordance with which NFA shall perform the portion of the registration functions under the Act which it is required or authorized by the Commission to perform pursuant to Section 8a(10) or Section 17(o) of the Act and in accordance with which NFA shall determine proficiency for purposes of determining fitness to be registered under the Act (except with respect to floor brokers) and for purposes of determining membership qualification under Bylaw 301(d), which rules shall be deemed a part of these Bylaws.

* * *

REGISTRATION RULES

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PART 100. DEFINITIONS.

RULE 101. DEFINITIONS.

As used in these rules --

- (a) "Act" - means the Commodity Exchange Act.
- (b) "Associated Person" - means an associated person as that term is used in the Commodity Exchange Act and the Regulations thereunder and that is required to be registered as such under the Act.
- (c) "Commission" or "CFTC" - means the Commodity Futures Trading Commission.
- (d) "Listed Principal" - means a principal of a registrant with respect to whom the registrant has made all necessary filings under these rules.
- (e) "Principal" - means, with respect to an applicant for registration, a registrant or a person required to be registered under the Act: (1) any person, including but not limited to a sole proprietor, general partner, officer, director, branch officer manager or designated supervisor, or a



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person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over its activities which are subject to regulation by the Commission; (2) any holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock; or (3) any person who has contributed ten percent or more of the capital.

- (f) **"Sponsor"** - means the registered or pending futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator which makes the certification required by Rule 206 of this chapter for the registration of an associated person of such sponsor or with whom a principal is affiliated.

PART 200. REGISTRATION REQUIREMENTS AND PROCEDURES.

RULE 201. REGISTRATION REQUIREMENTS AND PROCEDURES.

Types of persons other than floor brokers subject to regulation under the Act, as defined in the Act or Commission regulations, for which NFA has been granted registration responsibilities pursuant to Section 8a(10) or Section 17(o) of the Act shall be required to register if required to register under the Act and not exempt from registration by Commission rule or order. All such persons shall be subject to and NFA shall perform registration functions with respect to such persons in accordance with all of the rules governing registrations contained in these Registration Rules ("Rules").

NFA shall perform registration functions with respect to persons required to register under the Act as floor brokers in accordance with all of the rules governing the registration of floor brokers contained in Part 3 of the Commission's rules except that, Part 700 of these Rules shall govern access to and certification of floor broker records maintained by NFA.

[NOTE: **EXEMPTIONS FROM REGISTRATION.** Persons seeking exemption from registration should refer to Appendix A of these Rules.]



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RULE 202. REGISTRATION PROCESSING AND NOTIFICATION OF REGISTRATION.

- (a) NFA will notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, if registration has been granted or a temporary license issued under the Act.
- (b) Any registration form, any schedule or supplement thereto, any fingerprint card or other document required by these Rules to be filed with NFA shall be deemed for all purposes to have been filed with, and to be the official record of, the Commission. Part 700 of these Rules shall govern access to and certification of all such registration records maintained by NFA.

RULE 203. REGISTRATION FEES.

- (a) Amount.
 - (1) **Associated Person.** Each Form 8-R submitted in connection with the registration of an associated person must be accompanied by a fee of \$30.
 - (2) **Introducing Broker.** Each application for registration as an introducing broker must be accompanied by a fee of \$75 plus \$6 for each domestic branch office.
 - (3) **Futures Commission Merchant.** Each application for registration as a futures commission merchant must be accompanied by a fee of \$250 plus \$6 for each domestic branch office.
 - (4) **Commodity Pool Operator and Commodity Trading Advisor.** Each application for registration as a commodity pool operator or commodity trading advisor must be accompanied by a fee of \$50 plus \$6 for each domestic branch office.
- (b) **Additional Branch Office.** Each Form 3-R filed to report the addition of a branch office [See Rule 210] must be accompanied by a fee of \$6 for each such domestic branch office reported.
- (c) **Form of Remittance.** Registration fees must be remitted by check, bank draft or money order payable to National Futures Association. All registration fees are non-refundable.



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**RULE 204. REGISTRATION OF FUTURES COMMISSION MERCHANTS,
INTRODUCING BROKERS, COMMODITY POOL OPERATORS AND
COMMODITY TRADING ADVISORS.**

(a) Initial Registration.

(1) Application for initial registration as a futures commission merchant, introducing broker, commodity pool operator and commodity trading advisor must be on a Form 7-R, completed and filed with NFA in accordance with the instructions thereto.

(A) Each application for initial registration as a futures commission merchant and as an introducing broker must also be completed and filed in accordance with CFTC Regulation 1.10.

(B) Each application for initial registration as a commodity pool operator must also be completed and filed in accordance with CFTC Regulation 4.13(c).

(2) Each application for initial registration as a futures commission merchant, introducing broker, commodity pool operator and commodity trading advisor must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by NFA for that purpose. The Form 8-R and fingerprint card need not be filed, however, by a principal who is currently registered with the Commission in any capacity or a listed principal of a current Commission registrant.

(b) Duration of Registration. A person who becomes registered as a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance with paragraph (a) of this Rule will remain so registered until such registration is suspended, revoked, terminated or withdrawn.

(c) Periodic Filings. Any person who becomes registered as a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance with paragraph (a) of this Rule shall be required to file a properly completed Form 7-R with NFA annually on a date specified by NFA. Failure to file the Form 7-R within 30



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days following such date will be deemed a request for withdrawal from registration. On at least 30 days' written notice, and following such action, if any, deemed necessary by the CFTC or NFA to protect the commodity futures markets, customers or other Members or Associates, NFA may grant the request for withdrawal from registration.

RULE 205. REPORTING OF PRINCIPALS.

Within twenty days after any natural person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7-R in accordance with Rule 204 of this chapter [See, however, Rule 208 which may require a new registration], the registrant must file a Form 3-R indicating such change and a Form 8-R for each such person. The Form 8-R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by NFA for that purpose. The Form 8-R and fingerprint card need not be filed, however, by a principal who is currently registered with the Commission in any capacity or a listed principal of a current Commission registrant.

RULE 206. REGISTRATION OF ASSOCIATED PERSONS OF FUTURES MERCHANTS, INTRODUCING BROKERS, COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS.

(a) Initial registration.

- (1) Application for initial registration as an associated person of a sponsor must be on a Form 8-R, completed and filed with NFA in accordance with the instructions thereto.
- (2) No person will be registered as an associated person in accordance with paragraph (a) of this Rule unless an officer of the sponsor corporation, a general partner of the sponsor partnership, or the sole proprietor sponsor, has signed and dated a certification on the Form 8-R by which application for registration is made stating that:
 - (A) It is the intention of the sponsor to hire or otherwise employ the applicant as an associated person and that it will do so within thirty days after the receipt of the notification provided in accordance with paragraph (a)(4) of this Rule and that the applicant will not be permitted to engage in



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any activity requiring registration as an associated person until the applicant is registered or temporarily licensed as such in accordance with this Rule;

- (B) The sponsor has verified the information supplied by the applicant in response to the questions on the Form 8-R which relate to the applicant's education and employment history during the preceding three years; and
 - (C) To the best of the sponsor's knowledge, information and belief, all of the publicly available information supplied by the applicant on the Form 8-R is accurate and complete.
- (3) Each Form 8-R filed in accordance with this Rule must be accompanied by the fingerprints of the applicant on a fingerprint card provided by NFA for that purpose and satisfactory evidence that the applicant has satisfied the applicable proficiency requirement set forth in Part 400 of these Rules.
 - (4) When NFA determines that an applicant for registration as an associated person is not unfit for such registration, it will provide notification in writing to each sponsor that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.
- (b) **Special registration procedures for certain persons.**
- (1) Any person whose registration as an associated person has terminated within the preceding sixty days and who becomes associated with a new sponsor will be temporarily licensed as an associated person of such sponsor (except in those circumstances set forth in paragraph (b)(4) of this Rule) upon mailing by that sponsor to NFA of a Form 8-R, completed in accordance with the instructions thereto, containing written certification stating:
 - (A) That such person has been hired or is otherwise employed by that sponsor;



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- (B) That such person's registration as an associated person in any capacity is not suspended or revoked;
 - (C) That such person is eligible to be registered or temporarily licensed in accordance with this paragraph (b);
 - (D) That the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which has already been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more than 30 days previously in an amendment to such application;
 - (E) Whether there is a proceeding pending under Sections 6(b) or 8a of the Act or Part 500 of these Rules to deny, suspend, revoke, condition or restrict such person's registration in any capacity and whether NFA within the preceding twelve months has permitted the withdrawal of such person's application for registration in any capacity after initiating the procedures provided for in Rule 503 and, if any such proceeding has been initiated, that the sponsor has been given a copy of the complaint, letter, or notice issued in connection with such proceeding; and
 - (F) That the sponsor has received a copy of the complaint, letter or notice issued if the applicant for registration has certified, in accordance with paragraph (b)(1)(E) of this Rule that there is a pending proceeding against him as described in that paragraph or that NFA has permitted the withdrawal of an application for registration as described in that paragraph.
- (2) Except as provided for in Rule 207, any person whose registration is still in effect and who becomes associated with a sponsoring futures commission merchant or introducing broker will be registered as an associated person of such sponsor (except in those circumstances set forth in paragraph (b)(4) of this Rule) upon mailing by that sponsor to NFA of a Form 8-R, completed in accordance with the instructions thereto, containing



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- the written certification required by paragraph (b)(1) of this Rule.
- (3) The certifications required by paragraph (b)(1)(A) and (F) of this Rule must be signed and dated by an officer of the sponsor corporation, a general partner of the sponsor partnership, or the sole proprietor sponsor. The certifications required by paragraphs (b)(1)(B) through (E) of this Rule must be signed and dated by the applicant for registration as an associated person.
 - (4) An applicant will not become registered or temporarily licensed upon mailing of a properly completed Form 8-R pursuant to paragraph (b) of this Rule unless such form is accompanied by the fingerprints of the applicant on a fingerprint card provided by NFA for that purpose and the proficiency certification required by Rule 401(a)(3) if such certification was required with the applicant's prior application for registration as an associated person, or a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions pursuant to Part 500 of these Rules.
 - (5) A temporary license received in accordance with paragraph (b) of this Rule will terminate five days after service upon the applicant of a notice by NFA pursuant to Rule 504 that such person may be found subject to a statutory disqualification from registration.
- (c) **Duration of registration.** A person registered in accordance with paragraphs (a) or (b) of this Rule, and whose registration has not been suspended, revoked or withdrawn or affected by paragraph (b)(5) of this Rule will continue to be so registered until the termination of the association of the registrant with, or the revocation, suspension, or withdrawal of the registration of, each of the associated person's sponsors.
- (d) **Retention of records.** The sponsor must retain in accordance with Commission Regulation 1.31 such records as are necessary to support the certifications required by this Rule.



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RULE 207. MULTIPLE AFFILIATIONS OF ASSOCIATED PERSONS.

- (a) **Certain dual and multiple associations prohibited.** No person may be simultaneously associated as an associated person with:
- (1) More than one futures commission merchant or with more than one introducing broker;
 - (2) A futures commission merchant and an introducing broker;
 - (3) A futures commission merchant and a commodity trading advisor for which that futures commission merchant solicits or intends to solicit clients or prospective clients: **Provided,** That a person registered as an associated person of a futures commission merchant who solicits clients by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such case be deemed to be associated solely with the futures commission merchant.
 - (4) Subject to the provisions of paragraph (a)(3) of this Rule, a futures commission merchant and a commodity trading advisor for which that futures commission merchant carries or introduces, or intends to carry or introduce, clients' or prospective clients' discretionary accounts;
 - (5) A futures commission merchant and a commodity pool operator for which that futures commission merchant solicits or intends to solicit funds, securities, or property: **Provided,** That a person registered as an associated person of a futures commission merchant who solicits funds, securities, or property by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the futures commission merchant;
 - (6) Subject to the provisions of paragraph (a)(5) of this Rule, a futures commission merchant and a commodity pool operator for which that futures commission merchant carries or introduces, or intends to carry or introduce, the account of a commodity pool operated by that commodity pool operator;



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- (7) An introducing broker and a commodity trading advisor for which that introducing broker solicits or intends to solicit clients or prospective clients: **Provided,** That a person registered as an associated person of an introducing broker who solicits clients by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker;
 - (8) Subject to the provisions of paragraph (a)(7) of this Rule, an introducing broker and a commodity trading advisor for which that introducing broker introduces, or intends to introduce, clients' or prospective clients' discretionary accounts;
 - (9) An introducing broker and a commodity pool operator for which that introducing broker solicits or intends to solicit funds, securities, or property: **Provided,** That a person registered as an associated person of an introducing broker who solicits funds, securities, or property by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker; or
 - (10) Subject to the provisions of paragraph (a)(9) of this Rule, an introducing broker and a commodity pool operator for which that introducing broker introduces, or intends to introduce, the account of a commodity pool operated by that commodity pool operator.
- (b) **Permitted dual and multiple associations.**
- (1) A person who is already registered as an associated person in any capacity may become associated with a commodity trading advisor or with a commodity pool operator if that commodity trading advisor or commodity pool operator files a Form 3-R with NFA in accordance with the instructions thereto. Such filing shall constitute a certification that:
 - (A) the commodity trading advisor or commodity pool operator has verified that the associated person is currently registered as an associated person in any capacity;



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- (B) the associated person is not subject to a statutory disqualification as set forth in Section 8a(2) of the Act; and
 - (C) in addition to its responsibility to supervise that associated person, the commodity trading advisor or commodity pool operator acknowledges that it is jointly and severally responsible for the conduct of the associated person with respect to the solicitation of any client's or prospective client's discretionary account or the solicitation of funds, securities, or property for a participation in a commodity pool, with respect to any customers or option customers common to it and any other commodity trading advisors or commodity pool operators with which the associated person is associated.
- (c) A person who files a Form 3-R with NFA pursuant to paragraph (b)(1) of this Rule shall become registered as an associated person of the commodity trading advisor or commodity pool operator upon receipt of the Form 3-R by NFA.
- (d) **Petitions for exemption.** Any person seeking an exemption from the requirements of this Rule must file a petition with the Commission in accordance with Commission Regulations 3.12 and 3.16.

RULE 208. CHANGES REQUIRING A NEW REGISTRATION.

- (a) If the registrant is a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor, and except as provided in paragraphs (b) and (c) of this Rule, registration is deemed to terminate and a new registration is required [See Rule 204] whenever a person not listed as a principal on the registrant's initial registration application or any amendment thereto:
- (1) Acquires the right to vote or becomes the beneficial owner of 10% or more of the registrant's voting securities;
 - (2) Becomes entitled to receive 10% or more of the registrant's net profits;
 - (3) Contributes 10% or more of the registrant's capital;



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- (4) Becomes a director of the registrant;
 - (5) Becomes the chief executive officer of the registrant or occupies a position of similar status or performs a similar function;
 - (6) Acquires ownership of the registrant's business in the case of a sole proprietorship; or
 - (7) Becomes a general partner of the registrant.
- (b) In the event of the filing of an application for registration pursuant to paragraph (a) of this Rule, if each person not listed as a principal on the registrant's initial application or any amendment thereto is currently registered in any capacity or is a listed principal of a current Commission registrant, such registration shall not terminate until the earliest of:
- (1) 90 days from the date that such change occurred; or
 - (2) notification by NFA of the granting of the new registration; or
 - (3) five days after service upon the registrant of a notice by NFA pursuant to Rule 504 that the registrant may be found subject to a statutory disqualification from registration.
- (c) Except in cases where paragraph (b) of this Rule applies and the registrant chooses to file an application for new registration under its terms, a new registration will not be required in the event of an intended change in control as described in paragraphs (a)(4) and (5) of this Rule, if the registrant submits a Form 3-R to NFA prior to such change in control and such change in control does not occur until the registrant receives written approval from NFA. The Form 3-R must be accompanied by a properly completed Form 8-R for each person who will become a principal of the registrant and by the fingerprints of that individual on a fingerprint card provided by NFA for that purpose, except that a fingerprint card need not be provided for any individual who is currently registered with the Commission as an associated person or as a floor broker or is a listed principal of a current Commission registrant.
- (d) Any person who is registered, or has submitted an application for registration as an associated person of the registrant



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on or prior to the effective date of the changes described in paragraph (a) of this Rule, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of the new registrant.

[NOTE: Requests for exemption from the requirements of this Rule must be directed to NFA.]

RULE 209. ALTERNATIVE TO THE FINGERPRINT FILING REQUIREMENT IN CERTAIN CASES.

- (a) Any person who is required by these Rules to submit a fingerprint card may file, or cause to be filed, in lieu of such card:
- (1) a legible, accurate and complete photocopy of a fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with NFA of the photocopy; or
 - (2) a statement that such person's application for initial registration in any capacity has been granted within the preceding ninety days except that the provisions of this paragraph shall not apply to any person who was not required to file a fingerprint card in connection with such application for initial registration.
- (b) Each photocopy and statement filed in accordance with the provisions of paragraph (a)(1) or (a)(2) of this Rule must be signed and dated. Such signature shall constitute a certification by that individual that the photocopy or statement is accurate and complete and must be made by:
- (1) With respect to the fingerprints of an associated person: An officer of the sponsor corporation, a general partner of the sponsor partnership, or the sole proprietor sponsor;
 - (2) With respect to the fingerprints of a principal: An officer, if the futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker, with which the principal will be affiliated is



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a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

RULE 210. DEFICIENCIES, INACCURACIES, AND CHANGES TO APPLICATION INFORMATION MUST BE REPORTED.

- (a) Each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7-R or Schedules A, B, or C to the Form 7-R which no longer renders accurate and current the information contained therein. Each such correction must be made on a Form 3-R and must be prepared and filed in accordance with the instructions thereto. When a Form 3-R is filed by a registrant for purposes of reporting a change in the form of the organization of the registrant, the Form 3-R must be accompanied by a letter, signed by an appropriate signatory, certifying that the newly formed organization will be liable for all obligations of the pre-existing organization which arose out of the Act or the regulations thereunder.
- (b) Each applicant or registrant as an associated person and each principal of a registrant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8-R or any supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8-R or supplemental statement. Each such correction must be made on a Form 3-R and must be prepared and filed in accordance with the instructions thereto.
- (c) (1) After the filing of a Form 8-R by or on behalf of any person for the purpose of permitting that person to be an associated person of a sponsor, that sponsor must, within twenty days after the occurrence of either of the following, file a notice thereof with NFA indicating:
 - (A) the failure of that person to become associated with the sponsor as an associated person or principal and the reasons therefor; or
 - (B) the termination of the association of the associated person or the association as a principal with the sponsor and the reasons therefor.



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- (2) Any notice required by paragraph (c) of this Rule must be filed on Form 8-T or on a Uniform Termination Notice for Securities Industry Registration.

RULE 211. SUPPLEMENTAL FILING REQUIREMENTS.

Notwithstanding any other provision of these Rules, NFA may, at any time, give written notice to any registrant, applicant for registration, or person required to be registered:

- (a) 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 or the regulations thereunder or NFA rules and setting forth such information in the notice, or that NFA has undertaken a routine or periodic review of the registrant's fitness to remain so registered; and
- (b) That the 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 as applicable, 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.
- (c) Failure to provide the requested information is a violation of these Rules which in itself constitutes grounds upon which to base a determination that the registrant is unfit to become or to remain so registered.

RULE 212. REGISTRATION IN ONE CAPACITY DOES NOT INCLUDE REGISTRATION IN ANY OTHER CAPACITY.

- (a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each associated person, futures commission merchant, commodity trading advisor, commodity pool operator and introducing broker must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity.
- (b) Except as may be provided in the Act or in any rule, regulation or order of the Commission, registration as an associated person in one capacity shall not include registration



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as an associated person in any other capacity. An associated person sponsored by a registrant which is registered in more than one capacity need register only once to act as an associated person of the registrant and shall be deemed to be an associated person of such registrant, in each such capacity.

RULE 213. CURRENT ADDRESS FOR PURPOSE OF DELIVERY OF COMMUNICATIONS.

The address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7-R or Form 8-R) or as submitted on the biographical supplement (Form 8-R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or NFA, including any summons, complaint, reparations claim, arbitration demand, order, subpoena, special call, request for information, notice, and other written document or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: Provided, that the Commission or NFA may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the sponsor with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the sponsor with which the associated person or the applicant for registration is or will be associated. Each registrant, while registered, and each principal, while affiliated with a registrant, must keep current the address on the application for registration, biographical supplement, or other address filed with the Commission or with NFA. An order of default or other appropriate relief may be entered in any proceeding, including a reparation proceeding commenced while the registrant is registered or within two years thereafter, for failure to file a required response to any communication sent to the latest such address filed with the Commission or with NFA.

PART 300. TEMPORARY LICENSES.

RULE 301. TEMPORARY LICENSING OF APPLICANTS FOR ASSOCIATED PERSON REGISTRATION.

(a) Qualifications.

Notwithstanding any other provisions of the Registration Rules, and pursuant to the terms and conditions of this Rule, NFA may grant a temporary license to any applicant for regis-



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tration as an associated person upon the contemporaneous filing with NFA of:

- (1) A properly completed Form 8-R, the Disciplinary History portion of which contains no "yes" answers indicating that the applicant may be subject to a statutory disqualification under Sections 8a(2) through 8a(4) of the Act;
- (2) The fingerprints of the applicant on a fingerprint card provided by NFA for that purpose; and
- (3) The sponsor's certification required by Rule 206(a)(2).

(b) Withdrawal of application.

Failure of an applicant's sponsor to respond to a written request by NFA for clarification of application information or resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

(c) Restrictions upon activities.

- (1) An applicant for registration as an associated person who has received written notification that a temporary license has been granted may act in the capacity of an associated person subject to all CFTC rules, regulations and orders and all requirements of an NFA Associate.
- (2) Until registration has been granted, an applicant for registration as an associated person who has received a temporary license may not be sponsored by any registrant other than the registrant which has filed the certification described in paragraph (a)(3) of this Rule.

(d) Termination.

- (1) A temporary license shall terminate:
 - (A) Five days after service upon the applicant of a notice by NFA pursuant to Rule 504 that the applicant for registration may be found subject to a statutory disqualification from registration; or
 - (B) Immediately upon termination of the association of the applicant with the registrant which filed the



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sponsorship certification described in paragraph (a)(3) of this Rule; or

- (C) Upon withdrawal of the registration application pursuant to paragraph (b) of this Rule.
- (2) Upon termination, the applicant may not engage in any activity which requires registration with the Commission as an associated person.
- (e) **Relationship to Registration.**
 - (1) A temporary license shall not be deemed to be a registration or to confer any right to such registration.
 - (2) Termination of a temporary license will affect NFA membership as described in Bylaw 301(h)(i).
 - (3) Unless a temporary license has terminated, a temporary license shall become a registration with the Commission upon the earlier of:
 - (A) A determination by NFA that the applicant is qualified for registration as an associated person; or
 - (B) The expiration of six months from the date of its issuance.

RULE 302. TEMPORARY LICENSING FOR GUARANTEED INTRODUCING BROKERS.

(a) **Qualifications.**

Notwithstanding any other provisions of the Registration Rules, NFA may grant a temporary license to any applicant for registration as an introducing broker upon the contemporaneous filing with NFA of:

- (1) A properly completed Guaranteed Agreement (Form 1-FR Part B) from a futures commission merchant which is eligible to enter into such an agreement pursuant to CFTC Regulation 1.10(j)(2); and
- (2) A properly completed form 7-R, the Disciplinary History portion of which contains no "yes" answers indicating that the applicant may be subject to a



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- statutory disqualification under Sections 8a(2) through 8a(4) of the Act; and
- (3) A properly completed Form 7-R Schedule A; and
 - (4) A properly completed Form 8-R for all persons that are principals and branch managers which contain no "yes" answers indicating that the applicant may be subject to a statutory disqualification under the Commodity Exchange Act; and
 - (5) A signed and dated certification from the futures commission merchant providing the Guarantee Agreement required by paragraph (a)(1), signed by an officer of the sponsor corporation, a general partner of the sponsor partnership, or by the sole proprietor sponsor, stating that:
 - (A) The futures commission merchant has verified the information on the Forms 8-R filed pursuant to paragraph (a)(4) which relate to the applicant's principal's education and employment history during the preceding three years; and
 - (B) To the best of the FCM's knowledge, information, and belief, all of the publicly available information supplied by the applicant and its principals on the Form 7-R and Forms 8-R as appropriate, is accurate and complete; and
 - (6) Legible fingerprints on cards provided by NFA for all persons that are principals and branch managers: Except that, principals currently registered as associated persons and listed principals of current registrants must complete and file only the Disciplinary History portion of the Form 8-R to satisfy the filing requirements of (a)(D) and (a)(E) if they are not required to register as an associated person of the applicant; and
 - (7) Proof of satisfaction of the applicable proficiency requirement set forth in Rule 401 by all branch managers and all principals acting in a capacity which requires registration as an associated person; and



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- (8) All of the other forms and documents, properly completed, that are required to become registered as an Introducing Broker and to become an NFA Member.

A guarantee agreement filed in connection with paragraph (a)(1) shall become effective upon the granting of the temporary license.

(b) Withdrawal of Application.

Failure of an applicant to respond to a written request by NFA for clarification of application information or resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the registration application and shall result in the immediate termination of the temporary license.

(c) Restrictions Upon Activities.

- (1) An applicant for registration as an introducing broker who has received written notification that a temporary license has been granted may act in the capacity of a introducing broker, subject to all CFTC Rules, Regulations and orders and all requirements of an NFA Member.
- (2) An applicant for registration as an introducing broker who has received a temporary license may be guaranteed by futures commission merchant other than the futures commission merchant which provided the initial guarantee agreement described in paragraph (a)(1): Provided, that, written notice is given to NFA 10 days prior to the effective date of such termination or such other period of time as NFA may allow for good cause shown of the termination of the existing guarantee agreement in accordance with NFA Financial Requirements Section 9 and CFTC Regulations 1.10(j)(4)(ii) or (j)(5) and a properly completed guarantee agreement (Form 1-FR Part B) effective the day following the last effective date of the existing guarantee agreement.



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(d) **Termination.**

(1) A temporary license shall terminate:

- (A) Five days after service upon the applicant of a notice by NFA that the applicant for registration may be found subject to a statutory disqualification from registration; or
- (B) Immediately upon termination or suspension of the applicant's or guarantor futures commission merchant's NFA membership or upon termination of the applicant's guarantee agreement in accordance with NFA Financial Requirements Section 9 and CFTC Regulations 1.10(j) (4)(ii) or (j)(5) unless a new guarantee agreement is filed in accordance with paragraph (c)(2); or
- (C) Upon failure of an applicant to respond to NFA's request for clarification of application information or resubmission of fingerprints pursuant to paragraph (b) above.

(2) Upon termination, the applicant may not engage in any activity which requires registration as an Introducing Broker.

(e) **Relationship to Registration and Membership.**

- (1) A temporary license shall not be deemed to be a registration or to confer any right to such registration.
- (2) The granting of a temporary license shall constitute the granting of NFA Membership.
- (3) Termination of a temporary license will affect NFA Membership as described in Bylaw 301(h)(i).
- (4) Unless a temporary license has terminated, a temporary license shall become a registration upon the earlier of:
 - (A) A determination by NFA that the applicant is qualified for registration as an Introducing Broker; or



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- (B) The expiration of six months from the date of its issuance.

PART 400. PROFICIENCY REQUIREMENTS.

RULE 401. QUALIFICATION TESTING REQUIREMENT.

Any individual applying to NFA for registration under the Act as a futures commission merchant, an introducing broker, a commodity pool operator, a commodity trading advisor or as an associated person of any of the foregoing or applying for registration with NFA as an Associate pursuant to NFA Bylaw 301(b) shall not be registered, temporarily licensed or registered with NFA as an Associate unless:

- (a) NFA receives satisfactory evidence that the applicant has taken and passed the National Commodity Futures Examination on a date which is no more than two years prior to the date the application is received by NFA; or
- (b) The applicant has been duly registered under the Act as a futures commission merchant, an introducing broker, a commodity pool operator, a commodity trading advisor or as an associated person of any of the foregoing at any time during the two-year period immediately preceding the date the application is received by NFA; or
- (c) NFA receives a certification, which shall be considered incorporated into the application for registration under the Act, signed by both the applicant and the applicant's sponsor, stating that:
 - (1) the applicant is currently registered with the National Association of Securities Dealers, Inc. as a General Securities Representative, and
 - (2) the applicant's sole activities, subject to regulation by the Commission, are and will continue to be limited to:
 - (A) the solicitation of funds, securities or property for participation in a commodity pool, or



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- (B) referring clients to an associated person who has satisfied the proficiency requirements set forth in this Rule provided that the applicant's referral of clients is solely incidental to his business as a General Securities Representative, or
 - (C) the supervision of persons whose activities are limited as set forth above unless and until the applicant submits to NFA satisfactory evidence of having taken and passed the National Commodity Futures Examination, and
- (3) the applicant's sponsor understands that the sponsor must supervise the applicant's compliance with the limitation on the applicant's activities set forth in paragraph (B) above and that any failure of the applicant to adhere to those limitations may be cause for, among other things, disciplinary action by NFA against the sponsor for violation of NFA Compliance Rule 2-9; and
 - (4) the applicant and the applicant's sponsor understand that willfully making a materially false or misleading statement in any part of the application for registration, including the certification described above, is cause for denial, suspension or revocation of registration and criminal prosecution.

PART 500. PROCEEDINGS TO DENY, CONDITION, SUSPEND, RESTRICT OR REVOKE REGISTRATION.

RULE 501. AUTHORITY TO DENY, CONDITION, SUSPEND, RESTRICT AND REVOKE REGISTRATION.

NFA may refuse to register, 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, commodity pool operator, commodity trading advisor, introducing broker or associated person of any of the foregoing 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 registration, registering conditionally, suspending, restricting or revoking registration shall be made by the President, the Mem-



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bership Committee or its designated Subcommittee in accordance with the procedures set forth in this Part 500; provided, however, that pending final determination, in cases submitted by the President to the Membership Committee or its designated Subcommittee, registration shall not be granted. 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.

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, properly addressed to the applicant or registrant at the address shown on the application or any amendment thereto. Service will be complete upon mailing.
- (2) A copy of any notice served in accordance with paragraph (a)(1) shall also be served upon:
 - (A) Any sponsor of the applicant or registrant pursuant to Rule 206 if the applicant or registrant is an individual registered as or applying for registration as an associated person; 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 shall be considered served or filed only upon actual receipt at the offices 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 Member-



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ship Committee or its designated Subcommittee may grant such reasonable extensions of time as deemed appropriate.

- (c) **Section 8a2(E) Disqualification.** NFA will not initiate a proceeding based on a statutory disqualification set forth in Section 8a(2)(E) of the Act if respondeat superior is the sole basis upon which the registrant may be found subject to such statutory disqualification.

RULE 503. WITHDRAWAL OF APPLICATION FOR REGISTRATION.

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 under Sections 8a(2), 8a(3) or 8a(4) of the Act, the Director of Compliance or the Director'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 application, it may be necessary to institute the denial procedures described in the following Rules; and
- (3) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application will be deemed to have been withdrawn. The applicant must serve the written confirmation upon the Secretary within twenty days after the date the notice is 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, commodity pool operator, commodity trading advisor, introducing broker or associated person of any of the foregoing 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 Sections 8a(2), 8a(3) or 8a(4) of the Act;



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- (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 Section 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 accuracy of these allegations, registration should nevertheless be granted or should not be conditioned, suspended, restricted, or revoked.



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- (c) **Time for Filing of Submission.** A written submission to the President must be served upon the Secretary within twenty 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) Twenty 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 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.



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- (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 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.
- (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) (A) 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



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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).

- (B) 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.
 - (C) 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;
 - (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



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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, the President may, for good cause shown, 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.

(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



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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 shall, upon consideration of the record as a whole, 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. 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 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



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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 set forth in Section 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 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



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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 Section 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.
- (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.

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 a 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 wit-



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nesses, 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.
- (b) **Effective Date.**
 - (1) Any final order of NFA denying registration shall become effective on the date of service on the applicant and shall remain in effect pending any review initiated or granted by the Commission.
 - (2) Any final order of NFA suspending, restricting or revoking registration shall become effective 15 days after service on the registrant unless within that time a petition for review by the Commission is filed in accordance with Commission Regulations, or the Commission initiates review.
 - (3) Any final order of NFA granting or conditioning registration shall become effective 30 days after service on the applicant unless the Commission otherwise directs. Prior to such effective date, registration shall not be granted.

PART 600. WITHDRAWAL FROM REGISTRATION.

RULE 601. WITHDRAWAL FROM REGISTRATION.

- (a) A registrant may request that its registration in one or more capacities be withdrawn in accordance with the requirements of this Rule if:



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- (1) The registrant has ceased, or has not commenced, engaging in activities requiring registration in such capacity;
or
- (2) The registrant is exempt from registration in such capacity:

Provided, that NFA may consider separately each capacity for which withdrawal is requested in acting upon such a request.

- (b) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor must be on a Form 7-W completed and filed with NFA in accordance with the instructions thereto.

[NOTE: A request for withdrawal from registration as a leverage transaction merchant must be directed to the Commission pursuant to Commission Regulation 3.33.]

- (c) A request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by NFA, or earlier upon notice from NFA of the granting of such request, unless; prior to the effective date:
 - (1) The Commission or NFA has instituted a proceeding to suspend or revoke such registration;
 - (2) The Commission or NFA imposes, or gives notice by mail, which notice shall be complete upon mailing, that it intends to impose terms or conditions upon such withdrawal from registration;
 - (3) The registrant is given notice by mail, which notice shall be complete upon mailing, or is otherwise notified that it is currently the subject of an investigation to determine, among other things, whether such registrant has violated, is violating, or is about to violate the Act, rules, regulations or orders adopted thereunder;
 - (4) NFA requests from the registrant further information pertaining to its request for withdrawal from registration; or
 - (5) NFA determines that it would be contrary to the requirements of the Act, or of any rule, regulation or order



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thereunder, or to the public interest to permit such withdrawal from registration.

- (d) Withdrawal from registration in one capacity does not constitute withdrawal from registration in any other capacity.
- (e) Withdrawal from registration does not constitute a release from liability for any violation of the Act or of any rule, regulation, or order thereunder.

PART 700. PROCEDURES GOVERNING ACCESS TO AND CERTIFICATION OF REGISTRATION RECORDS MAINTAINED BY NFA.

RULE 701. DISCLOSURE OF INFORMATION FROM REGISTRATION RECORDS MAINTAINED BY NFA.

(a) **Definitions.**

- (1) **Registration Records.** For purposes of Rules 701 and 702, the term registration records shall be defined to include only the following types of records which are in the custody of or maintained by NFA because such records were transferred from the Commission to NFA or because such records have been received, generated or compiled by NFA in performance of registration functions which NFA is authorized or required by the Commission to perform pursuant to Section 8a(10) or 17(o) of the Act:
 - (A) Any application forms required to be filed to obtain registration, including any biographical supplements with respect to principals of an applicant or registrant, any schedules or supplementary attachments to such forms, any fingerprint cards and any financial reports, statements and agreements required to be filed with initial applications for registration;
 - (B) Any supplemental statement or filings to correct or update any registration information submitted in a previous filing or to give notice of termination of employment of an associated person;
 - (C) Any correspondence relating to registration between the Commission or NFA and an applicant or registrant; and



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- (D) Reports reflecting information developed from sources outside the Commission or NFA compiled or generated in connection with determining fitness for registration or affiliation as a principal.
- (2) Registration Information. For purposes of Rules 701 and 702, the term registration information shall be defined as any information contained in, compiled from or related to registration records.
- (b) Disclosure of Public Information.
 - (1) If any member of the public requests access to registration records, or portions thereof, and the requested record, or portion is "public" or "publicly available" under CFTC Regulation 1.10(g) and 145.6(b), respectively, then NFA will release that record, or portion, to the requester.
 - (2) NFA may charge any member of the public a copying fee, not to exceed the fee charged by the Commission, for any copies of registration records provided by NFA directly to the requester.
- (c) Disclosure of Non-Public Information. Requests for access to registration records, or portions thereof, not subject to disclosure as public or publicly available under paragraph (b)(1) of this Rule shall be referred or transmitted to the Commission for response; except that, NFA will disclose such records, or portions thereof:
 - (1) To any person with whom an applicant or registrant is or plans to be associated as an associated person, or affiliated as a principal; provided that, the person requesting the information makes an appropriate showing to NFA that the requester is the employer or prospective employer of the particular applicant, registrant or principal;
 - (2) To any futures commission merchant with whom an introducing broker, whether an applicant or registrant, has or plans to enter into a guarantee agreement under CFTC Regulation 1.10; provided that, the futures commission merchant makes an appropriate showing as to its identify;



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- (3) To boards of trade designated as contract markets, or to any other futures associations registered with the Commission to assist those organizations in carrying out their responsibilities under the Act, or to national securities exchanges or national securities associations registered with the Securities and Exchange Commission, to assist those organizations in carrying out their responsibilities under the Securities Exchange Act of 1934; provided that, if a request is made in connection with a formal or apparent investigation or proceeding, NFA will notify the Commission of the request;
- (4) To federal, state or local law enforcement or regulatory agencies acting within the scope of their jurisdiction or for their use in meeting responsibilities assigned to them under law, (to the same extent that the Commission may disclose such registration information under Sections 8(e) and 8(g) of the Act); provided that, if a request is made in connection with a formal or apparent investigation or proceeding, NFA will notify the Commission of the request;
- (5) Pursuant to an order of a court of competent jurisdiction; except that, subpoenas and summonses covering non-public portions of registration records and copies of the non-public records shall be promptly forwarded to the Commission to enable the Commission to consult with NFA on how to proceed;
- (6) Otherwise with the authorization of the Director of the Division of Trading and Markets, the Director of the Division of Enforcement, the Director of the Division of Economic Analysis, the General counsel, or the Executive Director of the Commission, or in that person's absence the appropriate designated Commission staff member, in accordance with CFTC Regulations; and
- (7) To any individual or firm, or person acting on behalf of the individual or firm, who seeks access to registration records, excluding any records defined under section (a)(1)(D) above, in connection with that individual's or firm's application for registration; provided that, NFA receives proper



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verification of the identity and authority of the party requesting the records.

RULE 702. CERTIFICATION OF THE AUTHENTICITY OF REGISTRATION RECORDS MAINTAINED BY NFA.

(a) Designation of Custodian and Deputy.

The President shall designate an NFA employee to serve as the NFA Record Custodian ("Custodian"). The President shall also designate an NFA employee to serve as the Deputy NFA Record Custodian ("Deputy"). The Custodian shall be responsible for maintaining all registration records in NFA's possession and shall be the legal custodian of these registration records.

(b) Authority of Custodian and Deputy.

The Custodian, the Deputy, or in their absence, any NFA employee designated by the President, the Custodian or the Deputy, is authorized to certify in writing the authenticity of registration records in NFA's possession for purposes of any judicial or administrative proceeding. The Custodian, the Deputy, or any designated employee is also authorized to certify in writing as to the maintenance and completeness of the registration records in NFA's possession as well as the thoroughness of NFA's search for requested documents, for purposes of any judicial or administrative proceeding.

(c) Effectiveness of Certification.

This written certification shall be effective when executed by the Custodian, the Deputy or any designated employee.

(d) Content of Certification.

The written certification shall include that, pursuant to Commission authorization, the Custodian has and maintains legal custody of the official registration records that are the subject of the certification.



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APPENDIX A

Various sections of the Act and the Regulations promulgated thereunder specify certain exemptions from registration as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor and associated persons thereof. While the full text of these sections of the Act and Regulations should be consulted to determine if a particular exemption applies to a prospective applicant, the following exemptions from registration are generally available.

Pursuant to Commission Regulation 3.10, an individual or organization trading solely for proprietary accounts, as defined in Regulation 1.3(y), is not required to register as a futures commission merchant.

Pursuant to Commission Regulation 1.3(mm), an individual or organization is not required to register as an introducing broker if: (1) it is registered as and acting in the capacity of an associated person, floor broker or futures commission merchant; (2) it is registered as a commodity pool operator and only operates pools; or (3) it is registered as a commodity trading advisor and either solely manages accounts under powers of attorney or does not receive per trade compensation.

Pursuant to Commission Regulation 4.13, an individual or organization is not required to register as a commodity pool operator if: (1) it does not receive any compensation or other payment, directly or indirectly, for operating the pool, except reimbursement for the ordinary administrative expenses of operating the pool; and it operates only one commodity pool at any time; and it is not otherwise required to register with the Commission and is not a business affiliate of any person required to register with the Commission; and neither the person nor any other person involved with the pool does any advertising in connection with the pool; or (2) the total gross capital contributions it receives for units of participation in all of the pools that it operates or that it intends to operate do not in the aggregate exceed \$200,000; and none of the pools operated by it has more than 15 participants at any time.

Pursuant to Section 4m of the Act and Commission Regulation 4.14, an individual or organization is not required to register as a commodity trading advisor if: (1) it is a dealer, processor, broker, or seller in cash market transactions of any commodity (or product thereof) and the person's commodity trading



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advice is solely incidental to the conduct of its cash market business; (2) it is a non-profit voluntary membership, trade association or farm organization and the person's commodity trading advice is solely incidental to the conduct of its business as such association or organization; (3) it is registered under the Act as an associated person and the person's commodity trading advice is issued solely in connection with its employment as an associated person; (4) it is registered under the Act as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so registered; (5) it is exempt from registration as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so exempt; (6) it is registered under the Act as an introducing broker and the person's trading advice is solely in connection with its business as an introducing broker; (7) it is registered under the Act as a leverage transaction merchant and the person's trading advice is solely in connection with its business as a leverage transaction merchant; or (8) it has provided advice to 15 or fewer persons during the past 12 months and has not held itself out to the public as a commodity trading advisor.

Pursuant to Section 4k of the Act and Commission Regulations 3.12 and 3.16, a person is not required to register as an associated person if: (1) he is already registered as a futures commission merchant, floor broker or as an introducing broker; (2) he is already registered as a commodity pool operator if he is to be associated with a commodity pool operator; (3) he is already registered as a commodity trading advisor if he is to be associated with a commodity trading advisor; or (4) he is engaged in the solicitation of funds, securities, or property for participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative or limited principal, and that person does not engage in any other activity subject to regulation by the Commission.

Petitions for exemption from registration must be directed to the Commission pursuant to the above Regulations.



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- B. Explanation of amendments to NFA Bylaw 305 and proposed Registration Rules of NFA to permit NFA to perform its registration responsibilities pursuant to NFA rules.

Background

To date, NFA has assumed registration responsibilities of the Commission for futures commissions merchants ("FCMs"), introducing brokers ("IBs"), commodity trading advisors ("CTAs"), commodity pool operators ("CPOs"), associated persons ("APs"), and floor brokers^{1/} pursuant to Section 8a(10) of the Act. Sections 8a(10) and 17(o)(1) of the Act authorize NFA to perform these registration responsibilities pursuant to rules, notwithstanding any other provision of law, adopted by NFA and approved by the Commission. To date, NFA has adopted, and the Commission has approved, rules which provide that NFA will generally perform the various registration responsibilities pursuant to Part 3 of the Commission's regulations. NFA has also exercised its authority under the Act by adopting Bylaws setting forth certain registration proficiency requirements as well as procedures for denying, conditioning, suspending, restricting, and revoking registrations.

In an effort to streamline the registration process and to identify in one set of rules all requirements necessary to become registered with the Commission, NFA has further exercised its authority under the Act and has adopted its own rules governing registration.

The Executive Committee of NFA reviewed a first draft of the Registration Rules (the "Rules") at its meeting on January 15, 1987. This draft was developed by NFA staff with the participation of the Commission's Division of Trading and Markets (the "Division"). NFA staff worked closely with the Division throughout the Rule development process. After suggesting certain minor revisions to the Rules, the Executive Committee authorized staff to release the Rules for comment. NFA staff sent a Notice to NFA Members (the "Notice") in the week of February 2, 1987, which explained and sought comment on the substantive changes that the Rules made to the Commission's Part 3 regulations.

^{1/} NFA's proposed Registration Rules provide that NFA will carry out its registration responsibilities for floor brokers pursuant to the Commission's Part 3 regulations.



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With respect to associated persons, the Rules eliminate the Form 8-S as a filing form under the Special Registration procedures. The Rules also make the Special Registration procedures unavailable to applicants whose Form 8-R contains a "yes" answer to a Disciplinary History question if the basis for the "yes" response has not been disclosed on a previously filed application for registration in any capacity or on any amendment to such application filed more than 30 days prior to the date of the current registration application. The Rules require a sponsoring firm to verify the educational and employment history of an associated person applicant for the preceding three years rather than the preceding five years. Finally, the Rules provide that an associated person applicant's temporary license will be terminated, and his registration application deemed withdrawn, upon the failure of the applicant's sponsoring firm to respond to NFA's written request for clarification of application information or resubmission of a fingerprint card.

With respect to other categories of registrants, the Rules eliminate the requirement that a registrant obtain a new registration when only the form of the registrant's organization has changed. The Rules also permit entity registrants to remain continuously registered as long as the registrant provides NFA with an annual update of information contained on the Form 7-R and the registration is not suspended, revoked or withdrawn. The Rules also permit a registrant required to obtain a new registration due to the addition of controlling principals to operate in a transitional period not to exceed 90 days if the new principals are registered in any capacity or are principals of current registrants. The Rules also eliminate the requirement that the Form 3-R be filed 45 days prior to the addition of a new director or chief executive officer.

In response to the Notice, NFA received comments from eight Members and from a law firm representing the National Association of Futures Trading Advisors. NFA also received comments from its Advisory Committees, all exchanges, and the Association of Registration Managers. All of the comments strongly supported the changes proposed by the Rules. However, certain suggestions were made and were incorporated into the Rules adopted by NFA's Board of Directors (the "Board").

The first substantive suggestion which was incorporated concerns the procedures governing withdrawal from registration



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set forth in NFA Registration Rule 601.^{2/} In its draft form the rule provided that a request for withdrawal from registration would, except under the conditions listed in the rule, automatically be granted thirty days after the request is made. As adopted by the Board, the rule provides NFA the flexibility to grant such request in less than thirty days when all of the necessary checks have been performed. The second substantive suggestion which was incorporated concerns the Special Registration procedures for APs set forth in NFA Registration Rule 206(b). Specifically, the rule as adopted provides that all persons utilizing the Special Registration procedures to transfer sponsors will receive a temporary license rather than a registration. This will enable NFA to terminate the license of a person who was not eligible to use the Special Registration procedures, and may be potentially statutorily disqualified, as opposed to having to revoke the registration of such person.

One additional change in the proposed Rules concerns, not the registration process, but the procedures governing access to and certification of registration records maintained by NFA. The proposed rules do not make any substantive changes to these procedures but merely clarify one aspect of the current procedures. NFA's current rules provide that NFA will provide non-public registration records to contract markets upon request. The current rules also provide that if NFA knows or has reason to believe that such a request is made in connection with a formal or apparent investigation or proceeding, NFA will notify the Commission of the request. To date, NFA has adhered to this rule by routinely disclosing such requests to the Commission whenever the contract market tells NFA that the request is made as part of an investigation or such information is public knowledge. NFA's proposed Rule 701 codifies this practice.

^{2/} While NFA has assumed various registration responsibilities of the Commission to date, the Commission has retained the authority to permit a registrant to withdraw its registration, prior to the expiration date established by the Act or the regulations thereunder, if the registrant has become exempt from registration or is no longer engaging in activities which require registration. At its May 21, 1987 meeting, the Board of Directors of NFA authorized staff to seek such authority from the Commission. NFA will be submitting its request for authorization to grant withdrawals from registration shortly.



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Proposed Changes to the Commission's Part 3 Regulations

1. Permit FCMS, IBs, CPOs, and CTAs to remain continuously registered without need for renewal as long as such registrations are not suspended, revoked or withdrawn

Under the current registration scheme, entity registrants must renew their registrations within a period that does not exceed two years from the later of the date that an initial registration is granted or last renewed. Renewal of firm registrations is required to help compensate for the failure of registrants to file amendments to their registration applications on a timely basis. Put another way, registration renewals help ensure that NFA's data base on registrants remains accurate.

While NFA believes that it is of the utmost importance from a regulatory perspective to maintain accurate registration files on all registrants, it believes that such an objective can be satisfied without subjecting registrants to the hardships caused by registration renewals. Most significant of the hardships is the possible disciplinary action that a firm may face for failing to renew its registration and conducting business in an unregistered capacity.

In an effort to ensure that NFA's registration records are not cluttered with the files of FCMS, IBs, CPOs or CTAs that have failed to withdraw but are no longer acting in a capacity requiring registration, NFA's proposed Rule 204 requires that an annual update of registration application information be provided by such registrants. NFA will provide a preprinted form to be updated by each registrant. Failure to file the annual update form with NFA within 30 days of the date that the form is due will be deemed to be a request for withdrawal from registration. On at least 30 days' written notice, and following such action, if any, deemed necessary by the CFTC or NFA to protect the commodity futures markets, customers or other Members or Associates, NFA may grant the request for withdrawal from registration.

2. Eliminate the requirement that a registrant obtain a new registration when only the form of the registrant's organization has changed

Commission Regulation 3.32 describes circumstances in which a registrant must obtain a new registration. Generally, an FCM, IB, CPO or CTA must obtain a new registration when a change occurs: in the form of the organization of the registrant; in



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the ownership of the business in the case of a sole proprietorship; in the personnel of a partnership resulting from the addition of a general partner; or in the control of the registrant in the case of a corporation. The regulatory objective sought in requiring a new registration in the above circumstances is to ensure that an appropriate background check and fitness review is undertaken for applicants or principals whenever a new person assumes a position of control over a registrant. These new persons are persons not listed on the registrant's initial registration application (Form 7-R) or any amendment thereto (Form 3-R).

Given this regulatory objective, NFA believes that a registrant should not be required to obtain a new registration when a registrant merely effects a change in the form of its organization and does not add any new principals. Rather, NFA believes that it would be more appropriate to require that this information be submitted by way of a Form 3-R filing pursuant to NFA's proposed Registration Rule 210 which requires registrants to report changes in information on their registration applications.

To satisfy a regulatory concern voiced by the Division that all obligations of the pre-existing firm, which arose from the Act or regulations, be satisfied, NFA's proposed Registration Rule 210 requires that the Form 3-R be accompanied by a letter certifying that the newly formed registrant will satisfy such obligations.

3. Permit a registrant required to obtain a new registration due to the addition of controlling principals to operate in a transitional period not to exceed 90 days if the new principals are registered in any capacity or are principals of current registrants

When a registrant undergoes a change in control requiring a new registration pursuant to Commission Regulation 3.32, there is no transitional period available to the registrant during which it can operate while its new registration application is being processed. Even if a registration application is filed before the change in control occurs, the registrant risks having to cease business operations as the registrant's new registration may not be granted before the change takes effect.^{3/}

^{3/} Most registrants faced with this circumstance are currently able to obtain an exemption from the requirements of the Regulation from the Commission's Division of Trading & Markets.



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NFA believes that because registrants and principals of registrants are presumed to be fit to act in their current registration capacities unless and until NFA or the Commission receives information suggesting otherwise, there should be a transitional operating period available to those registrants that are only adding controlling principals who have already passed a fitness review, as evidenced by their current registration or their current affiliation as a listed principal of a current registrant.

NFA's proposed Registration Rule 208 ("Changes Requiring a New Registration") makes this transitional operating period available to such registrants by providing that the firm's prior registration shall not terminate until the earliest of: 90 days from the date that the change in control occurred; or notification by NFA of the granting of the new registration; or five days after service upon the registrant of a notice by NFA that the registrant may be found subject to a statutory disqualification from registration.

4. Eliminate the requirement that the Form 3-R be filed 45 days prior to the addition of a new director or chief executive officer

Commission Regulation 3.32(e)(1) permits a corporate registrant to avoid having to obtain a new registration when a change in control of such entity occurs by way of the addition of a director or chief executive officer ("CEO") or a person occupying a position of similar status or performing a similar function. To take advantage of this exemption, however, the registrant must file with NFA a Form 3-R at least 45 days prior to the date that such change is to occur and the new CEO or director may not become a principal of the registrant until that registrant receives written confirmation from the Commission or NFA that such affiliation has been approved.

NFA believes that if the new CEO or director is already registered in any capacity or is already a listed principal of a current registrant that the new director or CEO should be allowed to assume that position immediately subject to the 90-day transitional period. NFA also believes that since an individual may not become affiliated as a director or CEO until NFA approval is granted, there is no need for such information to be provided 45 days prior to the expected change. NFA's proposed Registration Rule 208(c) eliminates the mandatory 45-day period.



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5. Permit NFA to grant a request for withdrawal from registration in less than thirty days when all necessary checks have been performed

Commission Regulation 3.33(f) provides that a request for withdrawal from registration will become effective 30 days after receipt by the Registration Unit of the Division of a properly completed withdrawal request. The purpose of the 30-period is to give the Commission time to review the information provided by the registrant to determine if there is any reason why withdrawal should not be permitted. Withdrawal from registration under the Commission's regulation is, therefore, a self-executing procedure.

NFA's proposed Registration Rule 6014/ provides NFA the flexibility to grant requests for withdrawal from registration in less than 30 days when all of the necessary checks have been performed.

6. Eliminate the Form 8-S ("Certificate of Special Registration for Certain APs") as a filing form under the Special Registration procedures

The Form 8-S is currently used to effect the Special Registration procedures of Commission Regulations 3.12(d) and 3.16(d). Special Registration means a person who is currently registered as an AP or a person whose registration as an AP has terminated within the preceding 60 days can become registered as an AP of a new sponsor upon mailing to NFA of a properly completed Form 8-S. The Form 8-S contains the sponsor and applicant certifications required under both Commission Regulations. A person registered as an AP upon mailing of the Form 8-S is required to submit a properly completed Form 8-R and legible fingerprints to NFA within 60 days of the mailing of the Form 8-S.

In an attempt to improve the efficiency of the Special Registration procedures, the Commission adopted revisions to the Form 8-R to permit it to be used as the only filing form in the Special Registration process, without requiring the use of the intervening Form 8-S. To accomplish this, the Form 8-R was

4/ NFA again notes that it has adopted a rule governing withdrawal from registration in anticipation that it will shortly be seeking such authority from the Commission.



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revised to incorporate the information and the certifications in the Form 8-S.

As a result of the revisions to the Form 8-R, there are currently two filing procedures available to persons registering under the Commission's Special Registration procedures. A person could choose to file the Form 8-R in lieu of the Form 8-S or could follow the Form 8-S filing procedure. NFA has determined that its processing of registration applications under the Special Registration provisions could be simplified if the Form 8-R were the only form used to obtain special registration.

NFA believes that since the Form 8-R has been revised, its proper completion by the sponsor and applicant will not result in significant delays in obtaining Special Registration. Therefore, Part (b) of NFA's proposed Registration Rule 206 ("Registration of Associated Persons of Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors"), which sets forth NFA's Special Registration procedures, eliminates the Form 8-S filing.

7. Make the Special Registration procedures unavailable to applicants whose Form 8-R contains a "yes" answer to a Disciplinary History question if the basis for the "yes" response has not been disclosed on a previously filed application for registration in any capacity or on any amendment to such application filed more than 30 days prior to the date of the current registration application

The Special Registration procedures provided for in Commission Regulation 3.12(d) and 3.16(d) are generally in place to permit an AP who has lost his registration within the preceding 60 days to become registered without encountering delays attributable to the full fitness review. These expedited procedures are not available, however, to some previously registered APs. NFA's proposed Registration Rules place further limitations on the use of the Special Registration procedures.

A person will not become registered under the Special Registration provisions unless the applicant can personally certify that: (1) his AP registration is neither suspended nor revoked; (2) he qualifies for expedited registration by virtue of his registration having terminated not more than 60 days prior to the current application; and (3) if there is a proceeding pending to suspend, revoke, or restrict his registration, or if within the preceding twelve months the Commission or NFA has permitted the withdrawal of his application for registration, the sponsor



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has been given a copy of any letter, notice or order issued in that proceeding.

These limitations on the use of the Commission's Special Registration procedures are in place to satisfy important regulatory objectives. A person registered as an AP under the Special Registration procedures has not undergone a full fitness review prior to the granting of registration upon mailing of the Form 8-R. NFA does not have the fingerprints of the applicant at that time and is, therefore, unable to undertake such review. Such person is nevertheless registered with the Commission as an AP and may, therefore, undertake futures related dealings with the public. Additionally, because a person is registered as an AP upon the mailing of the Form 8-R, such person is not subject to denial proceedings under Section 8a of the Act if the later fitness review reveals information that may render him statutorily disqualified. Rather, when such information comes to the attention of NFA, suspension or revocation proceedings must be instituted against such person. Unless such information reveals that an applicant is subject to a disqualification under Section 8a(2) of the Act, such person may continue to transact futures-related business with the public throughout the pendency of the suspension or revocation proceedings.

NFA does not believe that a person should be able to take advantage of the privilege of becoming registered upon mailing of the Form 8-R where such person discloses information on his registration application that may be the basis for a statutory disqualification under the Act, unless such information has already been disclosed in connection with a prior application for registration or an amendment to such application and has already been reviewed by NFA. Thus, the Special Registration provisions of NFA's proposed Registration Rule 206 provide that in order for an applicant to be entitled to the use of such procedures, in addition to the certification that must be provided pursuant to the Commission's Special Registration procedures, the applicant must certify that the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which has already been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than 30-days previously in an amendment to such application.

To help ensure that the Special Registration procedures are utilized by only those persons entitled to use them and to enable NFA to better respond to persons using the Special Registration procedures who are ineligible to do so, NFA's proposed



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Registration Rule 206(b) provides that persons who utilize such procedures will receive a temporary license rather than a registration. NFA may terminate the individual's temporary license and initiate proceedings to deny his registration if disqualifying information is revealed.

8. Require that a firm sponsoring the registration of an associated person verify the educational and employment history supplied by the applicant for the preceding three years rather than the preceding five years

In adopting its final rules governing the sponsorship of APs, the Commission stated that it believed that an applicant's most recent (emphasis added) employment and educational history is of the greatest importance in "screening" an applicant's background and that the sponsor verification should be limited to this indicative time period. As a result, the Commission's final and current rules governing the sponsorship of APs require that a sponsor verify only the preceding five years of employment and educational history.

NFA agrees with the Commission's belief that the most recent employment and educational history is of the greatest importance in screening an applicant's background. However, NFA believes that information concerning the three-year period immediately preceding the date of the registration application is sufficient for this purpose. NFA's proposed Registration Rule 206 reflects NFA's belief and limits the sponsor's verification of employment and educational history to such three-year period.

9. Provide that an AP applicant's temporary license will be terminated, and his registration application deemed withdrawn, upon the failure of the applicant's sponsoring firm to respond to NFA's written request for clarification of application information or resubmission of a fingerprint card

NFA agrees with the Commission that if the temporary license program is to succeed, applicants must comply with the filing requirements exactly. NFA must have all information necessary to make the determination that an applicant is apparently qualified for registration before granting a temporary license. Furthermore, after a temporary license has been granted, NFA must have the ability to clarify fitness questions which arise in the course of processing the application.



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NFA's experience in processing applications for the temporary licensing of APs has proven that the sponsors of applicants that have been granted temporary licenses have, in some instances, been less than diligent in providing NFA with additional clarification when potentially disqualifying information is exposed on an applicant through NFA's own fitness check or through an FBI or SEC check. Some temporarily licensed APs have also been reluctant to resubmit their fingerprints to NFA when the prints are later determined to be illegible. In these instances, NFA does not have the information necessary to make a fitness determination on the applicant. Nevertheless, under existing regulations, the applicant's temporary license remains in effect and will become a full registration in six months.

NFA does not believe that the Commission intended that a registration be granted when a temporary license remains in effect for more than six months because of a lack of cooperation on the part of the applicant or his sponsor. Rather, the Commission was seeking to allow automatic registration in those cases where the Commission, for convenience, chose not to act affirmatively to grant the registration.

Because it is necessary for NFA to have all information required to make a fitness determination before granting a registration, NFA's proposed Registration Rules 301 and 302 provide that the failure of an applicant or his sponsor to respond to NFA's written request for either clarification of application information or resubmission of fingerprints as set forth within such request will be deemed to constitute a withdrawal of the registration application and shall result in the immediate termination of the applicant's temporary license.

NFA has intentionally omitted reference in its rules to a prescribed number of days in which an applicant must respond to a request for clarification of information or resubmission of fingerprints. It did so because of the varied nature of such requests and the resulting inability to arrive at a number of days that would be appropriate to require applicants to respond to in each circumstance. For instance, it may be appropriate to grant an applicant two weeks in which to resubmit fingerprints while such a two week period may not be enough time for an applicant to gather and submit to NFA supplemental documents relating to Disciplinary History questions. Alternatively, NFA's Registration Department should not be in a position of having to wait six weeks for the resubmission of information which may reasonably be produced in a shorter period of time.



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The language in the rules which indicates that the applicant must respond "in accordance with the request" was intended to give NFA the flexibility to provide applicants with an appropriate amount of time to respond to NFA's request. NFA can assure the Commission that the response periods allowed for each type of information request will be consistently applied.

Upon approval by the Commission, NFA intends that the amendments to Bylaw 305 and the Registration Rules of NFA become effective when NFA's registration systems can be adapted to accommodate the Bylaw and the Rules. NFA anticipates that its system alterations will be completed by late 1987.

Respectfully submitted,

Daniel J. Roth
General Counsel

DJR/cad

cc: Susan M. Phillips, Chairman
Kalo A. Hineman, Commissioner
Fowler C. West, Commissioner
William E. Seale, Commissioner
Robert R. Davis, Commissioner
Ms. Andrea M. Corcoran
Mr. Marshall E. Hanbury
Mr. Dennis Klejna
Mr. David Van Wagner
Mr. Kevin M. Foley
Mr. Kenneth M. Rosenzweig

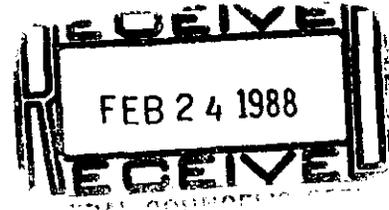
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UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



February 18, 1988



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

Re: Amendments to rules of the National Futures Association

Dear Mr. Roth:

This is in response to the submission dated July 2, 1987 from the National Futures Association ("NFA"). On February 18, 1988, the Commodity Futures Trading Commission approved, pursuant to section 17(j) of the Commodity Exchange Act, the amendments to NFA Financial Requirements, Schedule E; NFA Compliance Rule 2-13; NFA Bylaw 305 and new registration rules Parts 100-700 as set forth in your July 2, 1987 submission. The effective date of these amendments and rules is April 4, 1988.

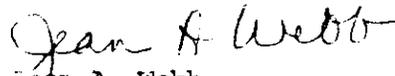
Although a majority of the NFA registration rules essentially tracks the Commission's registration requirements, the NFA rules and Commission regulations remain two separate bodies of rules. Because NFA and Commission rules may not be (and are not required to be) identical, in the event of any differences in respective requirements, the Commission's rules and interpretations thereof shall be unaffected by NFA actions. For example, an NFA rule which may omit the complete language of the Commission rule upon which it is based would not override the Commission rule. Similarly, a purported exemption by NFA of an NFA member from the terms of an NFA registration rule would have no effect upon the parallel Commission requirements in the absence of an express delegation of authority. 1/

Finally, the Commission wishes to remind NFA that the special relief request procedures approved by the Commission in Financial Requirements

1/ Thus, the bracketed note to NFA rule 208 appearing on page 18 of NFA's July 2, 1987 submission (which the Commission does not construe to be part of the rule and does not approve) -- informing members to direct requests for exemption from NFA Rule 208 to NFA -- may confuse members as to the proper exemption procedures. Accordingly, the Commission strongly suggests that such bracketed language not appear in NFA's final rulebook.

Schedule E and Compliance Rule 2-13 merely authorize NFA to grant member petitioners interim relief pending a final determination by the Division of Trading and Markets, pursuant to authority delegated by Commission rule 140.91(a)(4). In this regard, the Commission notes that ultimate relief-request determinations will be made by the Commission or the Division of Trading and Markets pursuant to the criteria contained in applicable Commission rules and advisories. Accordingly, the Commission expects NFA to follow such rules and advisories in making its determinations 2/, as well as the criteria represented by NFA in its July 2, 1987 submission. 3/

Very truly yours,


Jean A. Webb
Secretary of the Commission

2/ See, e.g., Commission rules 1.17 and 1.10 (governing the topics of secs. E1-a to E1-i of NFA Financial Requirements Schedule E); Commission rules 4.22(c) and 4.22(g)(3) (governing changes in CPO fiscal year and distribution date for annual reports, respectively) and CFTC Advisory No. 87-1, Division of Trading and Markets, February 13, 1987, in [1986-1987] Comm. Fut. Rep. (CCH) ¶23,481.

3/ NFA has represented that:

In considering FOM requests NFA has employed the same general standards as the Commission. For example, requests for filing extensions are generally viewed with a presumption toward denial unless the petitioner has an exceptional reason for the request. Requests for a change of fiscal year are generally approved if they result in a reporting gap of no more than fifteen months. There is strong presumption toward denial of requests for exemption from maintenance of the minimum debt-equity ratio.

The proposed amendments to NFA Compliance Rule 2-13 and NFA Financial Requirements, Schedule E would permit NFA to grant such relief requests for IB and CPO Members. NFA would, of course, also apply the Commission's general standards to requests received from CPOs and IBs under [these] amendments.



COMMODITY FUTURES
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DEC 18 11 24 AM '87

December 15, 1987

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: Financial Requirements, Schedule E; Compliance
Rule 2-13; and Bylaw 305; and Proposed Registration
Rules of National Futures Association**

Dear Ms. Webb:

By letter dated July 2, 1987, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("Commission") proposed amendments to NFA Financial Requirements, Schedule E; NFA Compliance Rule 2-13; and NFA Bylaw 305, and proposed Registration Rules of NFA. These amendments and Registration Rules were submitted for the Commission's review and approval pursuant to Section 17(j) of the Commodity Exchange Act, as amended ("the Act").

On November 27, 1987, the Commission published proposed amendments to its Part 3 Regulations to make them consistent with NFA's proposed Registration Rules [52 Fed. Reg. 45350 (1987)]. The comment period on the Commission's proposed amendments ends December 28, 1987.

NFA understands that the Commission anticipates approving NFA's Registration Rules concurrent with the adoption of final Commission rules amending Part 3 (52 Fed. Reg. 45350, 45351, n.4 (1987)). Given the close relationship between these two sets of rules, NFA agrees that concurrent approval and adoption is reasonable.

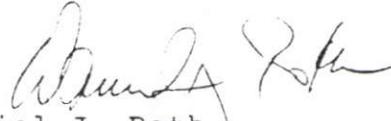
Section 17(j) of the Act provides that rules of a registered futures association may be made effective 180 days after submission to the Commission for approval if the Commission has not acted on them within that time, or unless otherwise agreed by the registered futures association. In order to provide the Commission and its staff with sufficient time to review the comments submitted in response to the November 27, 1987 Federal Register release, NFA hereby agrees to extend the approval period until 60 days after the comment

NFA

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period ends. NFA will not make any of the rule changes in its July 2, 1987 submission letter effective until February 26, 1988 or such earlier time as Commission approval is received.

Very truly yours,



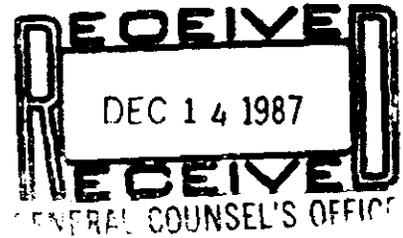
Daniel J. Roth
General Counsel

DJR:tyd(KPC7:F7)

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 A. Klejna, Esq.
Alan L. Seifert, Esq.
Susan C. Ervin, Esq.
Lawrence B. Patent, Esq.

NFA

December 2, 1987



Memo To: Dan Roth
Barb Farrar
Jerry Byrne

From: Karen J. Wentzell

Re: PROPOSED REGISTRATION RULES OF NFA

Robert Rosenfeld telephoned me this morning to discuss NFA's Proposed Registration Rules. The CFTC completed its review of the proposal and published their regulations on November 27, 1987, in the Federal Register. Mr. Rosenfeld made the following comments:

- I. Mr. Rosenfeld pointed out one mandatory change to NFA's proposed Rules. The bracketed Note at the end of proposed Rule 208-Changes Requiring New Registration must be deleted.

[NOTE: Requests for exemption from the requirements of this Rule must be directed to NFA.]

The Commission has not delegated such exemptive authority to NFA at this time.

- II. Mr. Rosenfeld suggested that staff might consider making changes in two proposed Rules, 301(b) and 204(c). Additions are underscored (additions), deletions are bracketed [~~deletions~~]. Mr. Rosenfeld stated that the differences were not considered critical, and the CFTC was not requiring NFA to necessarily amend its proposed Rules. He did suggest, however, that for the sake of clarity and consistency, NFA might want its rules to reflect the corresponding CFTC provisions.

A. NFA Proposed Rule 301(b)

Withdrawal of application.

Failure of an applicant's sponsor or an applicant to respond to a written request by NFA for



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clarification of application information or resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

CFTC Proposed §3.40(d) (in pertinent part):

The failure of an applicant or the applicant's sponsor to respond to a written request by the Commission or the National Futures Association...

The CFTC included "applicant" to reflect current CFTC Regulation 3.46(a)(3) which reads:

§ 3.46 Termination.

- (a) A temporary license shall terminate:
- (3) Upon failure of an applicant to respond timely to a request by the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to §3.44(c) of this subpart.

[Added December 22, 1986, 51 F.R. 45759 (¶23,394), effective January 2, 1987.]

B. NFA Proposed Rule 204(c):

RULE 204. REGISTRATION OF FUTURES COMMISSION MERCHANTS, INTRODUCING BROKERS, COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS.

- (c) **Periodic Filings.** Any person who becomes registered as a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance



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with paragraph (a) of this Rule shall be required to file a properly completed Form 7-R with NFA annually on a date specified by NFA. Failure to file the Form 7-R within 30 days following such date will be deemed a request for withdrawal from registration. On at least 30 days' [sic] written notice, and following such action, if any, deemed to be necessary by [deemed necessary by the CFTC or NFA to protect the commodity futures markets, customers or other Members or Associates,] NFA may grant the request for withdrawal for withdrawal from registration.

CFTC Proposed §§ (in pertinent part):

- 3.10(d) - Futures Commission Merchant (FCM)
Annual Filing
- 3.13(c) - Commodity Trading Advisor (CTA)
Annual Filing
- 3.14(c) - Commodity Pool Operator (CPO)
Annual Filing
- 3.15(c) - Introducing Broker (IB)
Annual Filing
- 3.17(c) - Leverage Transaction Merchant's
Annual Filing

On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association....

The CFTC preferred to use an open-ended standard. Although Mr. Rosenfeld stated that he could not give an example challenging NFA's standard of "deemed to be necessary to protect the commodity futures markets, customers or other Members or Associates," he felt that standard invited litigation.



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III. Mr. Rosenfeld made two additional observations regarding NFA proposed rule 601(a) and Form 7-W.

A. NFA Proposed Rule 601(a)

Mr. Rosenfeld questioned whether the deletion of CFTC §3.33(3) from NFA proposed Rule 601(a) was intentional or accidental since all other NFA proposed Rules reflect CFTC regulations in full.

RULE 601 WITHDRAWAL FROM REGISTRATION.

- (a) A registrant may request that its registration in one or more capacities be withdrawn in accordance with the requirements of this Rule if:
- (1) The registrant has ceased, or has not commenced, engaging in activities requiring registration in such capacity; or
 - (2) The registrant is exempt from registration in such capacity:

Provided, that NFA may consider separately each capacity for which withdrawal is requested in acting upon such a request.

CFTC § 3.33 Withdrawal from registration

- (a) A registrant may request that its registration in one or more capacities be withdrawn prior to expiration in accordance with the requirements of this section if:
- (1) The registrant has ceased, or has not commenced, engaging in activities requiring registration in such capacity;
 - (2) The registrant is exempt from registration in such capacity; or



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(3) The registrant is excluded from the persons or any class of persons required to be registered in such capacity: Provided, That the Commission may consider separately each capacity for which withdrawal is requested in acting upon such a request.

B. Form 7-W

CFTC Proposed §3.33(e) states that when NFA receives a request for withdrawal from an FCM, IB, CTA, or CPO, (Form 7-W), both NFA and the registrant must send a copy of such request to the Commission's Division of Trading and Markets within three business days of receipt of such request by NFA. Mr. Rosenfeld suggested that NFA might want to advise the registrant of that obligation on the face of Form 7-W.

Mr. Rosenfeld emphasized the fact that NFA Rules, since they are a separate body of rules, do not have to exactly reflect CFTC Regulations, as long as there is no inconsistency. Technically, NFA could print its proposed Rules as they were submitted to the CFTC, except for the deletion of the Note following Rule 208 as discussed above. Mr. Rosenfeld believed, however, that clarity and consistency would be achieved if NFA Rules were amended to correspond to CFTC Regulations.

Mr. Rosenfeld also mentioned that Larry Patent would be calling Dan Roth to request NFA to waive the automatic approval period. Mr. Rosenfeld apologized for the length of time taken by the CFTC prior to publication, but stated that every effort will be made to get the approval formalized by the end of January.