

July 9, 1992

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

Re: National Futures Association Request for an Order  
Granting NFA Permission to Offer the Direct Entry  
Registration Program on a Permanent Basis Pursuant to  
Proposed New Registration Rule 801

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") proposed new Registration Rule 801. The proposed rule was approved by NFA's Board of Directors (the "Board") at its meeting on May 21, 1992. NFA respectfully requests the Commission's review and approval of the proposed new rule which will allow NFA to offer the direct entry program on a permanent basis.

**PROPOSED NEW REGISTRATION RULE 801.**

- A. Proposed New Registration Rule 801 to provide the Direct Entry Program as a permanent method of filing registration applications:

**REGISTRATION RULES**

\* \* \*

**PART 800. ALTERNATIVE METHODS OF FILING REGISTRATION FORMS**

**RULE 801. Electronic Filing of Forms 8-R, 3-R and 8-T**

Registrants which are futures commission merchants, introducing brokers, commodity pool operators, or commodity trading advisors can file Forms 8-R, 3-R, and 8-T electronically by direct dial-up transmission to NFA's registration and membership database under the following conditions.



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a. The following requirements apply to the electronic filing of Forms 8-R by a sponsoring registrant for its principals and associated persons and for the principals and associated persons of its guaranteed introducing brokers.

1. On the day that the sponsoring registrant directs the computer to process the electronic filing, the sponsoring registrant must send the original Form 8-R to NFA's Director of Registration, with all attachments and certifications required by Registration Rule 206, by placing it in the United States mail (first class postage prepaid), by hand-delivery, or by any other standard means of conveyance including a generally recognized overnight delivery service.

2. Temporary licenses granted on the basis of an electronic filing shall terminate immediately upon notice to the sponsoring registrant that the Form 8-R, with all required attachments and certifications, was not received by NFA within five business days after the electronic filing was processed or that the Form 8-R or the required attachments or certifications indicate that the applicant does not qualify for a temporary license. The notice may be given by electronic transmission to a terminal on the sponsoring registrant's premises, by United States mail, by hand delivery, or by any other standard means of conveyance including a generally recognized overnight delivery service. This Rule does not affect NFA's right to terminate temporary licenses under the conditions authorized by Registration Rule 301.

b. By directing the computer to process an electronically filed form, the registrant filing the form electronically certifies that it has complied with the requirements of this Rule and has made all reasonable efforts to ensure that the electronic filing is accurate. This certification shall have the same force and effect as a certification on the Form itself signed by an authorized officer of the registrant.

c. No registrant may electronically file registration forms until NFA has assigned it an identifying code and password. The registrant may not file forms electronically using any other identifying code.

d. Each registrant is responsible for maintaining the security and confidentiality of its identifying code and password and for controlling access to all terminals which are signed on to NFA's registration and membership database.



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e. Each registrant which files electronically shall make available its data entry personnel, authorized to or actually performing duties related to electronic filings, for testimony in court or before the CFTC, NFA, or any contract market regarding the authentication, integrity or accuracy of any electronic filing.

f. The availability of electronic filing is a privilege and not a right. NFA may disable a registrant's identifying code and password and terminate the registrant's ability to electronically file forms at any time, without notice or a hearing, and in NFA's sole discretion.

- B. Explanation of Proposed New Registration Rule 801 to provide the Direct Entry Program as a permanent method of filing registration applications.

See the attached Explanation for Proposed New Registration Rule 801 for a complete discussion of the Direct Entry Program and the reasoning behind NFA's request that the program become a permanent method of filing registration applications.

NFA respectfully requests that, pursuant to Section 17(j) of the Act, the Commission remove the pilot status of the direct entry program and approve proposed new Registration Rule 801 which will implement the direct entry program.

Sincerely,

Daniel J. Roth  
General Counsel

DJR:pjf (Ltrs/Webb5)  
Attachment

## EXPLANATION OF PROPOSED RULE 801

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## I. INTRODUCTION

As the Commission is well aware, NFA is currently operating a pilot program which provides certain Member firms ("participating firms") with the ability to enter individual registration data concerning their associated person ("AP") applicants directly into NFA's computerized Membership and Registration Receivables System ("MRRS") from the participating firms' offices. The participating firms are also able to initiate the processing of this data by MRRS for the purpose of granting temporary licenses. The purpose of this program is to improve the overall efficiency of the registration function, particularly by reducing the time required to grant temporary licenses and to correct deficient applications. In working towards this goal, however, NFA has ensured that neither the integrity of the registration records nor the thoroughness and accuracy of the fitness determination has been adversely affected.

At the outset of the pilot program, it was anticipated that if the experience gained during the program demonstrated the effectiveness and the integrity of the direct entry procedure, NFA would petition the Commission to make the program generally available to registrant sponsors of APs on a permanent basis. NFA believes that the pilot program has clearly demonstrated that the registration process can be expedited without sacrificing any of the purposes behind the registration process. As a result, NFA hereby requests the Commission to approve NFA's proposal to

offer the direct entry program to all Member firms on a permanent basis.

This explanation for proposed new Registration Rule 801 will outline the history of the implementation of the direct entry program and discuss changes to the program which will enhance its utility to both NFA and Member firms. Many of these changes are the result of suggestions from NFA Members who are either participants or potential participants in the program.

## **II. HISTORY OF THE PROGRAM AND DESCRIPTION OF ITS CURRENT STRUCTURE**

The initial steps in implementing the direct entry program began in 1987 when NFA requested Commission approval to give certain participating firms the capability to access and query MRRS. This capability, which later became known as Phase I, did nothing more than give these firms access to the same registration information to which they were already entitled. Under this phase of the program, participating firms are provided with access to all registration information on their own employees and public information regarding other registrants without having to go through NFA's Registration Department or Information Center. Since Phase I became operational in November 1987, NFA has been able to reduce the resources expended in responding to Member firm inquiries and thereby provide improved service to members of the public requesting information from the NFA Information Center.

Soon after Phase I became operational, NFA staff met with Commission staff to discuss the heart of the direct entry program -- allowing the participating firms to enter registration data directly into MRRS and initiate the processing of Forms 8-R. After meeting with Commission staff in November 1987, NFA began preparing a petition to the Commission which would address all of the areas of concern raised by Commission staff. In June 1988, NFA submitted a draft petition to the Division of Trading & Markets ("T&M") and requested its staff's comments. These comments were provided to NFA in November 1988. On January 5, 1989, after amending the draft petition to address the concerns of T&M staff, NFA submitted to the Commission a petition requesting an Order granting NFA permission to conduct a pilot program for the direct entry of registration data by a sponsoring registrant. The petition included information on NFA's experience to date with Phase I and described in detail Phase II and Phase III of the program.

By Order dated August 28, 1990, the Commission approved Phase II and Phase III of the direct entry pilot program. Implementation of Phase III for particular firms, however, was subject to Commission disapproval on a firm by firm basis based upon review of the firm's performance in Phase II.

Phase II was designed to familiarize participating firms with the procedures for direct entry of registration information into the MRRS system and to provide NFA with an

opportunity to monitor the data entry performance of a participating firm in order to verify the firm's accuracy. During this phase, each participating firm continues to file Forms 8-R relating to APs according to established procedures and NFA's processing of these forms remains virtually unchanged. Each participating firm also enters the data contained on those forms directly into MRRS through terminals in its own office. Before MRRS actually processes the electronic transmission, however, NFA personnel compare all of the information contained on the form with the data entered directly into MRRS by the participating firm. Any necessary data corrections are performed by NFA personnel. Notice that a temporary license has been granted or that a particular application is deficient is transmitted to the firm electronically through MRRS.

As proposed by NFA, each participating firm would have been required to participate in Phase II for thirty days. At the request of Commission staff, however, NFA expanded Phase II to ninety days. During this time period, NFA gathers statistics regarding the accuracy of data entry by a participating firm and the timeliness and completeness of follow-up filings. This information is provided to Commission staff monthly for their review in determining whether a participating firm will be permitted to move to Phase III.

In August 1991, NFA notified Commission staff of its intention to move one of the participating firms from Phase II to



Phase III of the pilot program. Based on the firm's performance during Phase II, NFA believed that the firm had demonstrated its proficiency and reliability in entering registration data into MRRS and was an excellent candidate to proceed to Phase III. In November 1991, Commission staff notified NFA that it did not object to the requested move, and the participating firm was immediately moved into Phase III. Since that time, two other firms (acting as one Participant) have also been moved into Phase III.

During Phase III, participating firms continue to enter data directly into MRRS and to file the forms with NFA. Phase III differs from Phase II in that participating firms are permitted to enter a command via computer terminal instructing NFA's computer system to process registration data and issue a temporary license prior to NFA's receipt of the required Form 8-R. The temporary license is issued immediately when the data entered into MRRS by the participating firm indicates that the AP applicant is eligible for a temporary license. NFA terminates the temporary license if the applicant's fingerprint card or proof of passage of the Series 3 examination or Form 8-R are not received by NFA within five business days of the date the information was filed electronically. Furthermore, once the Form 8-R is received by NFA, all information on the form, including crucial items directly relevant to temporary license eligibility, are matched against the electronic filing. If the form discloses that the

applicant is not eligible for a temporary license, the temporary license is terminated immediately upon notice. Finally, if the results of the FBI fingerprint check or the SEC check indicate a potential disqualification not disclosed on the original filing, the temporary license is terminated upon five days notice. During Phase III, NFA has continued to gather statistics on the accuracy of data entered by participating firms. This information has been provided monthly to the Commission in detailed statistical reports.

### III. NFA'S EXPERIENCE WITH THE PILOT PROGRAM

Throughout the development and approval process of the pilot program, a number of issues concerning the potential impact of the proposed pilot program upon fitness screening and the registration process were raised. As discussed more fully below, NFA's experience with the pilot program has demonstrated that neither fitness screening nor any aspect of the registration process is jeopardized by substituting electronic filing for paper filing.

#### A. Thoroughness of Fitness Screening

As noted in NFA's original petition, the processing of electronically filed Forms 8-R is done using almost identical procedures as those used to process paper filings. Precisely the same information is entered into precisely the same computer system and reviewed in precisely the same manner. The only change involves the purely clerical manner in which the data is

sent to NFA and entered into the MRRS system. Those forms transmitted by mail to NFA are entered into the MRRS system by an NFA employee performing data entry operations. NFA communications to the sponsoring firm, such as deficiency letters or notices granting temporary licenses, are also sent by mail. Essentially, the direct entry program merely substitutes instantaneous electronic transmissions of information for mailed transmission by transferring the clerical data entry function from NFA to the sponsoring firm. The heart of the registration function -- the judgmental evaluation of an individual's fitness where a potential disqualification exists -- remains unchanged.

The pilot program met every expectation regarding the fitness screening process. If the applicant disclosed a potential disqualification, a temporary license was not issued and the applicant was subject to the same fitness review as those applicants disclosing a potential disqualification in a paper filing. As of April 11, 1992, fourteen Phase III filings were deemed not qualified for a temporary license due to a disciplinary disclosure and were referred for a full fitness review. Furthermore, all FBI fingerprint cards were received within one day of the electronic filing and thus there were no delays in beginning FBI background checks. Most importantly, during the entire pilot program there was not one instance of an ineligible individual receiving a temporary license.

B. Reliability of the Registration Data in the MRRS System

Ensuring the reliability of the information in MRRS was a foremost consideration during the development and approval of the direct entry program. NFA was confident that the direct entry program would not lessen the reliability of the registration information. In fact, NFA believed that the reliability of the registration data in MRRS might actually improve because participating firms would be highly motivated to enter the information accurately and NFA had implemented rigorous quality control standards to ensure this accuracy.

The performance by participating firms has been outstanding. Since the implementation of Phase II, NFA has received 1,037 direct entry filings. Only one of those filings had a material discrepancy between the electronic filing and the paper filing.<sup>1</sup> Furthermore, even the existence of minor discrepancies was minimal. Of the 1,037 direct filings received, less than six percent contained a non-material discrepancy between the electronic filing and paper filing. Clearly, this small percentage of non-material discrepancies, most of which were nothing more than typographical errors, demonstrates that the reliability of registration data was unaffected by the use of direct entry.

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<sup>1</sup> In that filing, one of the Form 8-R questions relating to the applicant's disciplinary history was not answered on the Form although the electronic filing indicated a "no" answer. As soon as NFA noted the discrepancy the temporary license was terminated. That same day, NFA learned that the "no" response was the appropriate answer and the temporary license was re-issued.

Moreover, the overall completeness of the information has been improved through direct entry. The number of deficiency letters issued as a result of direct entry filings are significantly fewer than those issued as a result of paper filings. Approximately thirty-eight percent of paper filings result in a deficiency letter being sent to the firm. In contrast, less than one percent of direct entry filings resulted in a deficiency letter.

C. Computer Security

Another area of particular concern at the outset of this project was the possibility that the direct entry program would make it easier for an unauthorized person to gain access to MRRS and impeach the integrity of the registration information. As noted in the petition, however, NFA's state of the art security system makes a breach of security almost impossible. The security practices currently in use at NFA make unauthorized access extremely difficult, limit exposure if unauthorized access is gained, and give NFA the ability to reconstruct data prior to the point of corruption.

Remote access to NFA's computer system is through the IBM Information Network (IIN). Access through these lines is available between 7:00 a.m. and 7:00 p.m. central time on normal business days. In order to obtain after-hours or weekend access, an NFA computer operator must override the computer program which

shuts down the line. NFA will grant access to participating firms only in extraordinary circumstances.

Once a caller has reached IIN the caller must enter its account number, its sign-on ID number, and its INN password to establish connection with the NFA computer. If the caller does not give the correct password within three attempts, the system invalidates the sign-on ID number.

Once connection has been established with the NFA computer the user must enter its NFA user ID and the associated password. Once again the caller has three chances before the system hangs up on the caller and takes the user ID out of service.

In other words, in order to gain off-site access to NFA's computer system a caller would have to know five different pieces of information; the IIN account number, the associated sign-on ID, the associated password, a valid user ID, and the associated password to that ID. Therefore, the chances of obtaining unauthorized access from an outside location are extremely remote.

Every authorized user has his or her own unique security profile. This profile determines which systems, screens, and fields the user is allowed inquiry access to and which systems, screens and fields the user is allowed entry access to. For example, based on this profile, a Phase I user cannot view non-public information to which it is not otherwise entitled, and a

Phase II/Phase III user will not be allowed to update information in the files of an independent unaffiliated firm. All attempts to breach security are recorded by the computer.

To further enhance security, any terminal which remains inactive for fifteen minutes is automatically signed off by the computer. Thus, if the terminal operator leaves his or her station and forgets to sign off, the computer system will automatically sign the terminal off, thereby reducing the chance of unauthorized access through an unattended terminal.

It should be noted that Member firms will not have programming access to NFA's computer system. Therefore, the chances of a computer virus entering the system through a participant's terminal are practically non-existent.

In the highly unlikely event that data in the computer system is corrupted or destroyed, NFA can easily reconstruct the data at the point immediately prior to corruption or destruction. First of all, NFA's computer keeps a journal of all changes to the data in the system. This journal shows the data as it existed before the change, the data as changed, and the cause of the change. By looking at the journal, NFA personnel can determine when any corruption occurred. NFA also keeps a record of the data on the system as of the end of each day. This information is copied on computer tape. In addition to being kept at NFA, the information is stored off-site where it is protected in the unlikely event of a computer virus in the system.

While no security is completely fail-proof, the chances of unauthorized access to the MRRS system are extremely small and will be virtually unchanged by the limited access to be gained through off-site terminals in the offices of participating firms. It is virtually impossible to do permanent damage to the MRRS system or the data stored on MRRS.

During the pilot program, not one instance of unauthorized access (or even an attempt at access) or a breach of security occurred. NFA is confident that the direct entry program in no way jeopardizes MRRS nor the integrity of the data in MRRS.

D. Conclusion

Obviously, NFA's experience with the pilot program has been very positive. All representations made in the original petition have been met. Fitness screening remained as thorough as it is with paper filings, the registration data input by participating firms proved to be very reliable, all follow up filings were received in a timely manner, and there were no breaches of security.

In addition to maintaining the same high standards regarding registration information, the direct entry program also resulted in greater efficiencies in the processing of the information. Firms participating in Phase III of the program receive temporary licenses for their applicants approximately four business days sooner than paper filing firms (including mailing



time). Furthermore, direct entry virtually eliminated the need for deficiency letters. As noted earlier, less than one percent of electronic filings resulted in the issuance of a deficiency letter.

In addition to the significant time savings to the participating firms, NFA itself has realized substantial benefits from the direct entry program. Soon after the start of Phase I, NFA's registration processing staff was reduced more than fifty percent. These reductions are attributable to the efficiencies of the MRRS system and the decrease in processing functions due to the direct entry program. Furthermore, the number of calls to NFA's Information Center each year since direct entry became operational has remained steady and in some years has actually decreased. Prior to the direct entry program, the number of calls in the Information Center had increased substantially each year. By keeping the number of calls at approximately the same level, NFA has been able to provide the Clearinghouse for Disciplinary Information to the public without hiring any additional Information Center Representatives.

#### **IV. PROPOSED PROCEDURAL CHANGES TO THE PILOT PROGRAM**

As evidenced by the foregoing information, the pilot program has clearly demonstrated that the registration process can be expedited without sacrificing the integrity or the thoroughness of fitness screening or the reliability of the registration data. NFA believes that it is time to move from the pilot

program to a fully operational permanent program. In doing so, NFA believes that there are certain changes which should be made to the program in order to enhance its utility.

The period between the time a firm becomes a participant and the time a firm is able to obtain temporary licenses through electronic filing is unreasonably long. Participating firms have proven that they quickly become proficient at entering registration data. Once a firm has demonstrated its ability to enter the data accurately and completely, there is no need to require that the firm continue to be subject to a full review by NFA prior to the issuance of a temporary license. NFA proposes that the entire process be expedited by eliminating many of the formal procedural steps that are currently required to become a participant in the direct entry program.

For example, NFA is currently required to notify the Commission before it provides inquiry access (currently Phase I) and to obtain Commission approval before it provides direct entry access (Phase II) to a particular firm. NFA believes that prior notification to and approval from the Commission is unnecessary, especially in light of the fact that the Commission has never objected to providing any firm with access. NFA would, however, provide the Commission with quarterly updates of firms with inquiry access and direct entry access.

In addition, there are procedures currently in place which unnecessarily delay the point in time in which a par-

ticipating firm is able to initiate the processing of temporary licenses. As mentioned earlier, participating firms are currently required to remain in Phase II for ninety days. NFA's experience with Phase II indicates that this period is significantly longer than necessary. Rather than imposing this rigid ninety day requirement on firms, NFA proposes that a Member firm be required to participate in a training period involving the same activities currently comprising Phase II. However, once NFA staff becomes satisfied that the firm is capable of performing the data entry function, the firm would receive NFA's approval and would be able to obtain temporary licenses for its applicant APs through electronic filing.

In the pilot program petition, NFA recommended that firms be required to participate in Phase II for thirty days. NFA's experience with the pilot program indicates that, in most cases, even thirty days is unnecessarily long. The high level of proficiency demonstrated by the participating firms occurs early in Phase II. As a result, NFA proposes that this training period be reduced significantly. NFA estimates that it takes approximately two weeks for a firm to demonstrate its proficiency at the data entry function. A longer period of training could be required for firms which process only a few applications during this two week period.

Another unnecessary procedure currently in place is the requirement that NFA personnel check every item on the Form 8-R

for accuracy. Over the last year, NFA staff has done a line-by-line comparison of 1,037 registration forms. This procedure revealed a total of sixty-two forms containing an average of one error each. Rather than continue this unnecessary and labor intensive exercise, NFA proposes that, upon completion of a firm's training period, NFA continue to do a line-by-line comparison of information critical to the granting of a temporary license. Other information would be spot checked for accuracy.

This change will not in any way reduce the thoroughness of the fitness screening nor the reliability of the registration data. As noted by the statistics presented earlier, participating firm personnel are at least as proficient as NFA staff in inputting registration data. There is no reason to believe that firm personnel will become any less proficient when NFA begins spot checking the information. Furthermore, since all information critical to temporary license eligibility will continue to be reviewed, the fitness screening process will remain the same.

It is also unnecessary to require participating firms to electronically enter every Form 8-R, Form 3-R updating Form 8-R, and Form 8-T filed by the firm. This requirement was important when the program began in order to ensure that enough forms were filed electronically to give NFA a basis to evaluate the program. However, it is no longer necessary to require that every Form 8-R, 3-R and 8-T be filed electronically, and Members have indicated that they would rather have the option of filing

either way. Therefore, NFA proposes eliminating the requirement and providing direct entry as an optional alternative method of filing.

V. MEMBER FIRM RECOMMENDED CHANGES

In April 1992, NFA staff met with representatives of eight Member firms regarding possible enhancements to the direct entry program.<sup>2</sup> These Member firms, which currently sponsor approximately 42% of all registered APs, made several suggestions which they believed would significantly increase the benefits of the program. NFA believes that many of the suggested changes have merit and therefore has endeavored, where possible, to incorporate these changes into the permanent program.

A. Expand the Program to Permit Electronic Filings of Forms 3-R Updating Form 7-R

One logical enhancement to the direct entry program suggested by Member firms is the expansion of the program to permit electronic filings of Forms 3-R changing information originally submitted in the Member's Form 7-R. Since the participating firms have demonstrated their ability to enter AP registration data, the firms felt that they should be given the opportunity to realize the same efficiencies regarding their own

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<sup>2</sup> The following firms were present at this meeting: B.T. Futures Corp.; Goldman Sachs & Co.; The First Boston Corp.; Gruntal & Co., Inc.; Shearson Lehman Brothers, Inc.; Paine Webber, Inc.; and Merrill Lynch Pierce, Fenner & Smith, Inc. and Prudential Securities, Inc.

information. The firms were particularly interested in expediting the changes in branch office locations.

NFA believes that this suggestion is a good one. In the last ten months, NFA has received an average of 773 Forms 3-R updating Forms 7-R each month. Permitting firms to enter this information would substantially decrease the resources expended by NFA in processing this information without any adverse affect.

B. Eliminate Paper Filing Requirement

The single most important element to Members, and the ultimate goal of the program, is a reduction in the amount of paper which must be filed with NFA. Members repeatedly emphasized that having to file hard copy forms with NFA after completing the electronic filing significantly reduces the benefit of the program.

NFA recognizes the difficulty of eliminating some paper filings due to the legal significance of the certification signed by individuals. However, registration forms which do not require this individual certification, or require the certification on a limited basis, can be eliminated from this paper filing requirement.

Forms 8-T and 3-R (except 3-Rs to 8-Rs) are certified by the firm and not the individual. There is no reason why a firm should not be able to meet its filing requirements involving these forms through electronic filing. A firm makes the required certifications when it directs the computer to process these

forms, and this electronic certification is as valid as a signature. Furthermore, even though a Form 3-R updating Form 8-R is certified by the individual, the information which is being certified is much less likely to be sensitive to an individual's eligibility than the information on the original Form 8-R. The only circumstance which would involve information sensitive to eligibility would be if the individual changed a "no" answer to a disciplinary history question to a "yes" answer. Obviously, in this situation, the accuracy or truthfulness of this change is not likely to be in question. Therefore, NFA believes that the direct entry program should be changed to allow Form 3-R and 8-T filings to be done exclusively through electronic filing.

The elimination of the paper filing requirement for these forms will significantly reduce the amount of paper received by NFA. In the last year, NFA received almost 14,000 Forms 3-R and more than 9,000 Forms 8-T. Obviously, any relief from the processing of this paper will benefit both the industry and NFA.

Moreover, the elimination of the paper filing requirement for these forms will not impair NFA's ability to perform its delegated duties as official custodian of the Commission's registration records or to provide accurate certifications regarding the authenticity and completeness of the records maintained. By permitting firms to satisfy their filing requirements through the direct entry program, NFA will merely sub-

stitute computer records maintained in MRRS for the hard copy form as the registration record maintained on behalf of the Commission. Furthermore, NFA will continue to certify as to the authenticity of the record and the accuracy of any computer printout.

The reduction of paper filing is consistent with the Federal Paper Reduction Act and the President's request that the burden of government regulation be reduced. The elimination of these paper filings is a perfect example of a regulation which can be eliminated without having any negative impact on the regulatory structure.

Furthermore, the Commission itself has recognized that in some situations electronic filings are an acceptable substitute to paper filings. The Commission's own large trader reporting requirements require FCMS, clearing members and foreign brokers to provide large trader information on compatible data processing media, which may include direct entry through dial up transmission.<sup>3</sup> The Commission does not require that the data entry filings be followed up with a paper filing.

Finally, the idea of eliminating paper filings is not unique to NFA. The NASD is currently implementing a program which will permit its member firms to file registration forms through the computer without any follow-up filings. Currently the NASD permits the electronic filing of all Form U-4s for the

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<sup>3</sup> 17 C.F.R. § 17.00(a)(1) and 17 C.F.R. § 17.02(a).



transfer of a representative. The member firm must submit the hard copy of the Form U-4 and the fingerprint card within twenty-one days of the electronic filing. The NASD, however, is developing a proposal which will permit all member firms to file transfer applications electronically without having to follow-up with the hard copy U-4.

The NASD also permits its member firms to update page one of Form U-4 (employee name and address information, firm name and address information and type of registration being sought) for current employees without submitting any paper follow-up. The NASD is in the process of implementing this procedure for pages two through four of the Form U-4. When this is complete, the NASD member firms will be able to update their current employees' Forms U-4 exclusively through electronic filing.

In addition, the NASD requires its member firms to file employee terminations electronically. No follow-up filing with the NASD is required, nor is the firm required to maintain a hard copy of the termination.

The program being implemented by the NASD is very similar to NFA's proposal. Obviously, the NASD also recognizes the advantages of electronic filing and is moving towards the elimination of paper filing requirements.

C. Future Considerations

NFA's ultimate goal is total electronic filing of registration information for associated persons. Although NFA

recognizes the difficulty of eliminating the entire Form 8-R from the paper filing requirement, NFA believes that the signature issue, as well as issues concerning the definition of official records and NFA's responsibilities as custodian of these records, can be resolved. Once these issues have been resolved, NFA seek the Commission's approval to eliminate the follow-up paper filings for Forms 8-R.

#### VI. CONCLUSION

As noted in the pilot program petition, a decision to change the current registration process must be based in part on whether the projected advantages of the changes outweigh the potential disadvantages. NFA believes that the direct entry pilot program has proven that the electronic filing of registration forms will benefit both the futures industry and the public without any corresponding adverse impact on the registration process.

The participants in Phase III of the program have realized significant time savings in obtaining temporary licenses for their applicants. This dramatic time savings is not only responsive to industry needs but is also consistent with Congress' intent to expedite the registration process. When Congress enacted Section 8a(1) of the Act allowing the Commission to grant temporary licenses, it indicated that its intent was to streamline and expedite the current registration procedures so that a qualified applicant would not have to wait until a com-

plete fitness review was conducted but could begin working as soon as the Commission determined that the applicant was apparently qualified. Phase III of the direct entry program has furthered Congress' goal by dramatically expediting this initial determination.

Furthermore, the pilot program has enabled NFA to reduce the staffing required to process registration filings. Obviously, offering the program to all Member firms and eliminating the requirement that NFA do a line-by-line comparison on all forms will further reduce staffing requirements. This reduction in staff will not only benefit the public, through reallocation of resources to customer protection areas, but may also benefit the industry if NFA is able to reduce registration fees through cost savings.

In addition to the obvious advantages realized during the pilot program, the pilot program demonstrated that the danger of an unqualified individual receiving a temporary license does not appear any more likely than it is with paper filings. As noted earlier, not one ineligible individual received a temporary license during the pilot program.

Finally, NFA's proposed changes will further the goals of EXCELLENCE 2000 by preparing the industry for the computer driven challenges of the 21st century, and it will do so by reducing, rather than increasing, the burden on the industry. No firm will be required to enter its registration information

electronically, and NFA anticipates that the privilege will most often be exercised by firms with large numbers of APs. However, the choice not to enter information electronically will not be dictated by cost considerations since the only requirement for participating in the program is access to a personal computer.

NFA is convinced that the pilot program has proven beyond a doubt that the direct entry of registration data by participating firms provides a more effective, expeditious and industry-oriented method for entering registration information into MRRS. Furthermore, NFA believes that the proposed changes to the program will increase the utility of the program and provide substantial benefits to both the industry and the public. Therefore, NFA requests the Commission to remove the pilot status of the program, to approve the changes to the program as outlined herein, and approve proposed NFA Registration Rule 801 implementing the program. NFA further requests that these changes become effective immediately upon Commission approval.

CAW:pjf(Mem01/DirEnt1)

meeting will discuss the possible formation of a research consortium including NIST, The American Dental Association Health Foundation and industry to conduct research in this area. This is not a grant program.

**DATES:** Interested parties should contact NIST at the address or telephone number shown below no later than January 11, 1993.

**ADDRESSES:** Dr. David Lashmore, Bldg. 224, room B-166, National Institute of Standards and Technology, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Lashmore, (301) 975-6405.

**SUPPLEMENTARY INFORMATION:** NIST seeks qualified United States industrial parties interested in entering into a cooperative consortium research program to develop a metallic, mercury-free, direct-filling replacement for dental amalgam. NIST has filed for a patent for a "Process for Forming Alloys in situ in Absence of Liquid-Phase Sintering" which may be useful in the development of such new direct-filling replacements for dental amalgams. Members will receive a time-limited, royalty bearing, co-exclusive license, limited to the dental field, for any patent issuing from the current application. In addition, it is anticipated that participating companies will receive time-limited, royalty bearing co-exclusive licenses, limited to the dental field, for any new materials developed by the consortium.

Companies should be prepared to invest \$50,000 per year in the collaboration and be firmly committed to the goal of developing a new dental restorative material that would be a viable alternative to silver-mercury amalgams.

This program is being undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502, 15 U.S.C. 3710a), which authorizes government owned and operated federal laboratories, including NIST, to enter into cooperative research and development agreements ("CRADAs") with qualified parties. Under the law, a CRADA may provide for contributions from the federal laboratory of personnel, equipment, intellectual property and facilities, but not direct funding. NIST intends to hold a planning meeting in January, 1993 for interested parties.

Dated: December 16, 1992.

John W. Lyons,  
Director.

[FR Doc. 92-31042 Filed 12-21-92; 8:45 am]

BILLING CODE 3510-13-01

## National Oceanic and Atmospheric Administration

### Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone in 1993 under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). Specifically, the Russian Federation has submitted an application which requests 10,000 metric tons (mt) of Atlantic mackerel for directed fishing and 10,000 mt of Atlantic mackerel for joint venture purchases. The large stern trawler/processors GISSAR and PIONER NIKOLAEV are identified as the vessels that will fish and receive fish from U.S. vessels. Send comments on this application to: NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910 and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 671/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

For further information contact Robert A. Dickinson, Office of Fisheries Conservation and Management, (301) 713-2337.

Dated: December 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-30921 Filed 12-21-92; 8:45 am]

BILLING CODE 3510-22-01

### Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Modification No. 2 to Permit No. 634.

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit

No. 634 issued to Marine World Africa, USA, Marine World Parkway, Vallejo, California 94589, on April 29, 1988 (53 FR 16307), modified on January 18, 1991 (56 FR 3542) is further modified as follows:

Section B.4, first sentence is changed to read:

4. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through June 30, 1993.

This modification becomes effective upon publication in the Federal Register.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD, 20910 (301/713-2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Long Beach, CA 90802-4213 (310/980-4016).

Dated: December 16, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-30958 Filed 12-21-92; 8:45 am]

BILLING CODE 3510-22-01

## COMMODITY FUTURES TRADING COMMISSION

**Authorization of the National Futures Association To Implement the Direct Electronic Entry Registration Program on a Permanent Basis; Approval of Proposed New Registration Rule 801**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice and Order authorizing the National Futures Association (NFA) to offer its current pilot Program for the Direct Electronic Entry of Registration Data on a permanent basis. Under the program, specified registrants may enter registration data electronically into the NFA computer system with respect to associated person (AP) applicants and NFA may grant temporary AP licenses on the basis of such electronic filings.

**SUMMARY:** Section 8a(1) of the Commodity Exchange Act (Act) provides, in part, that the Commodity Futures Trading Commission (Commission or CFTC) may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt. 7

U.S.C. 12a(1) (1988), as amended by the Futures Trading Practices Act of 1992, Pub. L. No. 102-546, 106 Stat. 3590 (October 28, 1992). The direct entry pilot program was established in 1990 to expedite the temporary licensing process. As discussed below, NFA has submitted, and the Commission has approved, new NFA Registration Rule 801 which will permit NFA to offer the direct entry program on a permanent basis. As proposed to be operated under the new rule, the direct entry program should expedite and increase the efficiency of the temporary licensing process and other aspects of registration processing.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Introduction

By Commission order of August 28, 1990 (1990 Order), for the past nineteen months NFA has operated a program for the direct entry of certain registration information on a pilot basis. Under the pilot program, a limited number of firms have access to registration data in NFA's computer database, the Membership Registration Receivables System (MRRS). The program also permits certain participating firms to enter registration data concerning AP applicants sponsored by such firms directly into the MRRS database via computer terminals in their offices for the purpose of obtaining temporary licenses for their employees.<sup>1</sup>

NFA now seeks Commission approval to terminate the pilot status of and make permanent the direct entry program, expand the types of filings for which direct entry may be used and make various procedural modifications to the operation of the program.<sup>2</sup> Under NFA's Proposed Rule 801, registrant sponsors would electronically enter into MRRS all information required to be filed on Form 8-R (application for registration for individuals), Form 3-R (supplemental statement to application for registration), Form 8-T (notice of termination) or Form U-5 (uniform termination notice for securities

<sup>1</sup> A temporary AP license allows an applicant who is eligible for registration to act as an AP of his sponsoring firm without waiting for completion of a full fitness screening which, due to the necessity to have fingerprint cards processed by the Federal Bureau of Investigation, may take six to eight weeks. The applicant may not be granted AP registration until the fitness screening is concluded.

<sup>2</sup> Request for an Order Granting NFA Permission to Offer the Direct Entry Registration Program on a Permanent Basis Pursuant to Proposed New Registration Rule 801, submitted by NFA, July 9, 1992 (Submission), as supplemented by submissions dated August 27, 1992, October 8, 1992, November 13, 1992, November 25, 1992 and December 8, 1992. Submission at 2.

industry registration) for all AP applicant's, APs, principals and branch office managers<sup>3</sup> of such sponsors and of any introducing brokers (IBs) guaranteed by such sponsors for whom the sponsors have assumed registration responsibilities.

As set forth in the Submission, NFA also proposes to modify the procedures followed under the pilot program in a number of respects designed to increase the efficiency of the program, including: (1) Elimination of the notice to the Commission and approval requirements for adding firms to the program; (2) reduction of the period of Phase II operational experience required before firms may advance to Phase III of the program; (3) reduction of line-by-line review by NFA of electronically filed forms; (4) reduction of statistics provided to the Commission; (5) elimination of the requirement that all forms be entered electronically by each participating firm; (6) expansion of the program to permit electronic filings of Forms 8-R and 8-T for principals and of Forms 3-R updating Forms 7-R; and (7) elimination of certain paper filings.

###### B. History of the Direct Entry Program<sup>4</sup>

NFA's direct entry procedures were developed to expedite the temporary licensing process by allowing direct input of data by firms into NFA's MRRS database, thereby permitting applicants to act as APs sooner than if their applications were mailed or delivered to NFA and the data entered into the NFA database by NFA personnel. This mechanism is fully consistent with the primary purpose of the temporary license procedure—to enable apparently qualified applicants to begin work as soon as possible prior to completion of a full fitness check.<sup>5</sup>

The direct entry program had its genesis in a 1987 proposal by NFA to provide certain member firms the capability to access and query the MRRS database. This access capability, which later became known as Phase I of the direct entry pilot program, simply provided firms with computer access to registration information concerning their own employees and public information concerning other registrants without having to obtain such information from NFA's Registration Department or Information Center. This

<sup>3</sup> Branch office managers are APs but also are required to disclose their status as branch office managers on Forms 8-R, 3-R and 8-T.

<sup>4</sup> A more detailed discussion of the direct entry pilot program is provided in the Federal Register release accompanying the Commission's order approving the pilot program. 55 FR 35925 (September 4, 1990).

<sup>5</sup> 49 FR 8208, 8210 (March 5, 1984).

procedure became operational on November 10, 1987 when the Commission approved NFA's proposal to provide two futures commission merchants (FCMs) with direct inquiry access to NFA's registration database.<sup>6</sup> NFA states that this phase of the program has enabled it to reduce the resources required to respond to member firm inquiries and provide improved service to members of the public requesting information from the NFA Information Center.

On January 5, 1989, NFA petitioned the Commission for authorization to implement a program for direct entry of AP registration data into NFA's MRRS system by the sponsors of APs (Phase II) and ultimately the electronic granting of temporary licenses for APs following such direct entry of registration data (Phase III).<sup>7</sup> By order dated August 28, 1990, the Commission authorized NFA to implement Phases II and III of the direct entry program as a pilot program subject to certain conditions which generally incorporated procedures proposed by NFA.<sup>8</sup> These conditions included the following: (1) Sponsors would continue to be required to file with NFA the required paper registration forms, fingerprint cards and sponsor certifications, which would be compared with electronically entered data material to the granting of a temporary license and used to complete the fitness processing for final registration determinations; (2) all participating firms would be required to sign NFA's Agreement For Firm Direct Entry Privileges to MRRS (Direct Entry Agreement), setting forth the conditions, responsibilities and obligations of pilot program participants; (3) NFA would comply with its responsibilities under the direct entry pilot program as set forth in its January 5, 1989 petition; (4) any firm not specified in the Commission's order would be required to receive permission to participate in Phase II; (5) implementation of Phase III of the pilot program would be subject to Commission approval; (6) NFA would provide the Commission with monthly statistical reports relating to the pilot

<sup>6</sup> See letter from Lawrence B. Papani, Associate Chief Counsel, Division of Trading and Markets, CFTC to Daniel J. Roth, Vice President, General Counsel and Secretary, National Futures Association, dated November 10, 1987 responding to letters dated October 8 and 29, 1987 from Daniel J. Roth to Andrea M. Corcoran, Director, Division of Trading and Markets, CFTC.

<sup>7</sup> This petition was supplemented by a letter dated July 17, 1990 from Daniel J. Roth, Vice President, General Counsel and Secretary, NFA, to the Division of Trading and Markets, CFTC, which identified the firms seeking authorization to participate in Phase II.

<sup>8</sup> See 55 FR 35925, 35934 (September 4, 1990).

program; and (7) NFA would terminate any temporary license granted under the pilot program if NFA did not receive all required follow-up paper filings or if NFA's review of the paper filings revealed that an applicant was not eligible for a temporary license or the temporary license had been granted by mistake or as a result of fraudulent means.

Currently, the direct entry pilot program operated by NFA pursuant to the Commission's Order consists of three phases. Under Phase I, as noted above, participating FCMs are provided with direct inquiry access, via computer terminals at those firms, to all registration information in the MRRS database to which they are entitled under NFA Registration Rules 701 (b) and (c). This information includes all registration information relating to a firm's own employees and prospective employees and public information regarding all registrants. As of October 31, 1992, 25 firms were participating in Phase I.<sup>9</sup>

Phases II and III of the pilot program permit participating firms to enter electronically into NFA's registration computer system, through terminals located in their offices, information required to be filed on Form 8-R, Form 3-R, Form 8-T or Form U-5 for all AP applicants, APs and branch office managers. Under Phase II, although the participating firm enters the AP application data by computer, only NFA personnel are authorized to instruct the NFA computer system to process an application and, if appropriate, grant a temporary license. The Commission's 1990 Order authorized participation by ten firms in Phases II and III of the program but provided that additional firms could be added with prior approval. The 1990 Order also required that Commission staff be provided an opportunity to review data concerning the accuracy, timeliness and completeness of data entry during Phase II and to raise any concerns or objections deemed appropriate based upon the Phase II data and other experience prior to implementation of

Phase III of the pilot program. See 55 FR 35925 (September 4, 1990). As of October 31, 1992, three firms were participating in Phase II of the program: Refco, Inc., Prudential Securities Inc., and Shearson Lehman Brothers Inc. Another Phase I participant, Cargill Investor Services, Inc., has been approved but is not yet participating in Phase II. The 1990 Order also provided that a participating Phase II firm would not become eligible for participation in Phase III until completion of ninety days in Phase II.

Under Phase III of the pilot program, participating firms continue to enter AP registration data directly into NFA's registration computer system. However, under Phase III, qualifying AP applicants are issued a temporary license upon entry of a computer command by the participating firm when the application data entered by the firm indicate that the AP is eligible for a temporary license.<sup>10</sup> The participating firm must file the hardcopy Form 8-R, together with the applicant's fingerprint card and evidence of the applicant's satisfaction of the NFA proficiency requirements,<sup>11</sup> by mailing it to NFA on the same day on which the firm directs MRRS to process the application. A temporary license is issued by NFA immediately when the data entered in MRRS by the participating firm indicate that the AP applicant is eligible for a temporary license. NFA immediately terminates any previously issued temporary license if the applicant's Form 8-R, fingerprint card or proof of passage of the Series 3 examination are not received by NFA within five business days of the date on

<sup>10</sup> In order for an applicant to qualify for a temporary license, the applicant must submit a completed registration application which includes a fingerprint card and sponsor's certification. In addition, in order for the applicant to qualify for a temporary license, the application may not contain a "Yes" answer to any of the disciplinary history questions on the application (questions 14-18) (self-declared derogatory information). In addition, the applicant may not have a conditional, suspended or revoked registration and must not be the subject of a current NFA investigation. Finally, the applicant must provide proof of successful completion of the National Commodity Futures Examination (Series 3).

<sup>11</sup> NFA Bylaw 401(b) provides that no person may be associated with an NFA member (i.e., as an AP) unless the person is registered with NFA as an associate. NFA Registration Rule 401 requires as a condition for associate registration evidence that the applicant has taken and passed the National Commodity Futures Examination no more than two years prior to the date the application is received by NFA, has been duly registered in another capacity within that two-year period, or is registered with the National Association of Securities Dealers (NASD) as a general securities representative and the applicant's activities will be limited to the solicitation of funds for commodity pools or referring clients to an AP who has satisfied the proficiency requirements.

which the application was filed electronically. NFA registration staff compare the information on the hardcopy Form 8-R with the application information previously entered into MRRS by the sponsoring firm. If such comparison discloses different information from that entered directly by the sponsoring firm and that information indicates that the applicant is not eligible for a temporary license because of, for example, derogatory information indicating a statutory disqualification, NFA terminates the temporary license. Subsequent FBI fitness reports or fitness checks with the Securities and Exchange Commission (SEC) revealing disqualifications not previously disclosed result in termination of the temporary license upon five days notice.<sup>12</sup> Currently, four firms are participating in Phase III of the program: LIT America, Inc., Merrill Lynch, Pierce, Fenner & Smith, Index Futures Group and Brokers Resource Corp.<sup>13</sup>

As of October 31, 1992, 1,078 filings had been processed under Phase II of the pilot program and 1,094 filings had been processed under Phase III of the pilot program.<sup>14</sup> Filings under Phases II and III represent about four percent of all registration filings received by NFA during the same period. Of the 1,078 forms filed under Phase II, 376 were Forms 8-R, 75 were Forms 3-R, and 627 were termination notices (either Form 8-T or Form U-5). Of the 1,094 forms filed under Phase III, 489 were Forms 8-R, 158 were Forms 3-R and 447 were termination notices.

Based upon its item-by-item comparison of the data entered into MRRS and the information on the registration forms submitted by participating firms, NFA describes the performance of participating firms during the pilot program as

<sup>12</sup> If a firm were to make a data entry error that was potentially adverse to the applicant's registration status, there would be an opportunity for correction of the error prior to any adverse action being taken. Before any action is taken to deny registration, the affected applicant usually is notified by a letter from the NFA Director of Compliance, or the Director's designee, of the contemplated action and the basis for it and provided with an opportunity to withdraw the registration application. Registrants are provided with a notice of commencement of a revocation proceeding and an opportunity for a hearing before any adverse action is taken with respect to their registration status.

<sup>13</sup> Index Futures Group and Brokers Resource Corp. are treated as one firm for the purpose of compiling performance data.

<sup>14</sup> The Submission cites 1,037 as the total number of filings received during the pilot program, representing electronic filings from April 12, 1991 through April 12, 1992. The number cited in the text represents the total number of electronic filings filed from April 12, 1991 through October 31, 1992.

<sup>9</sup> As of October 31, 1992, the firms participating in Phase I are: ADM Investor Services, Inc., Advest, Inc., Brody White & Co., Inc., BT Futures Corp., Cargill Investor Services, Inc., Colorado Commodities Management Corp., Commodities Corp., Daiwa Securities America, Inc., Dean-Witter Reynolds, Inc., ED&F Mann International Futures, Inc., First American Discount Corporation; Geldermann Inc., Goldman Sachs & Co., J.P. Morgan Futures, Inc., Kamper Securities Group, Inc., Lind-Waldock & Company, Linnco Futures, Inc., Nomura Securities, Inc., Paine Webber Inc., Rodman & Renshaw, Inc., R.J. O'Brien Associates, Inc., Rosenthal Collins Group, Salomon Brothers, Inc., UBS Securities, Inc., and Vision Limited Partnership.

"outstanding."<sup>15</sup> Specifically, NFA reports that since the implementation of Phase II of the pilot program, of the 2,172 direct entry filings received, only one contained a material discrepancy between the electronic filing and the paper filing.<sup>16</sup> Fewer than five percent of these filings contained non-material discrepancies, primarily typographical errors.<sup>17</sup> NFA submits that these data demonstrate that the reliability of registration data has not been affected by use of direct entry procedures.<sup>18</sup> NFA also notes that during the nineteen months that the pilot program has been in operation, all paper filings have been timely received.

With regard to the fitness screening process during the pilot program, when an applicant disclosed a potential disqualification, a temporary license was not issued and the applicant was accorded the same fitness review applicable where a potential disqualification was disclosed in a paper filing. During Phases II and III of the pilot program, any filings deemed not qualified for a temporary license due to a disciplinary history disclosure were referred to NFA's fitness review staff, and potentially to NFA's Registration Compliance Legal Committee, for a full fitness review. As of October 31, 1992, thirty-one applications had resulted in such referrals. In addition, all FBI fingerprint cards were received within one day of the electronic filing, enabling the FBI background checks to begin virtually immediately. NFA reports that it identified no instances during the pilot program in which an individual ineligible for registration received a temporary license.<sup>19</sup>

NFA states that its experience with the pilot program demonstrates that neither fitness screening nor any other aspect of the registration process is compromised by the substitution of electronic filing for paper filing. NFA

also reports that due to the transfer to the clerical data entry responsibility from NFA to sponsoring firms under the direct entry program, it has experienced a significant decrease in the resources required for registration processing functions. NFA notes that soon after the start of Phase I, NFA's registration processing staff was reduced by more than fifty percent, a reduction it attributes to the efficiencies of the MRRS system as well as the decrease in NFA processing activities due to the direct entry program. NFA also notes that since the direct entry program became operational the number of calls received at its Information Center has remained steady and in some years has decreased, whereas prior to the direct entry program the number of calls to the Information Center had increased substantially each year. NFA represents that the firms participating in Phase II of the program receive temporary licenses for their AP applicants approximately four business days sooner than those firms using paper filings.

## II. Discussion

### A. The Proposed Rule

NFA Registration Rule 801 would make the direct entry program permanent.<sup>20</sup> Subject to certain conditions, the rule allows, but does not require, all sponsoring firms to file Forms 8-R, 3-R, 8-T and U-5 electronically by direct dial-up transmission to NFA's registration and membership database. With respect to the electronic filing of Forms 8-R, a sponsoring registrant must send to NFA,<sup>21</sup> on the same day it has directed the computer to process the electronic filing, the applicant's disciplinary history on a hardcopy form provided by NFA and signed by the applicant, together with the applicant's fingerprints and proof of successful completion of the proficiency examination, as provided by NFA Registration Rule 206(a)(3). The disciplinary history section of Form 8-R contains important information

concerning the applicant's background which directly relates to eligibility for registration. The disciplinary history form required to be signed by the applicant and provided in hardcopy to NFA will contain the applicant's signature certifying to the truthfulness and accuracy of the disciplinary history set forth therein and all other certifications and agreements by the applicant currently required by the Form 8-R.<sup>22</sup> By signing the disciplinary history form, the applicant will further certify: (1) That all information he has provided to his sponsoring firm in connection with the electronically filed portion of the application is true and not misleading, and (2) that he understands that a willfully false or misleading statement or omission made to his sponsoring firm and electronically transmitted by the firm to NFA will have the same effect as a willfully false or misleading statement or omission made in a hard copy application signed by him.

With respect to the remainder of the Form 8-R, which comprises the bulk of the form and includes information relating to the applicant's residential, employment and educational history, no paper filing requirement would exist, and thus no handwritten signature by the AP applicant attesting to the accuracy and completeness of the information, would be incorporated in the submission to NFA. Proposed Rule 801(b), however, provides that by authorizing the computer to process an electronically filed form, the registrant firm electronically certifies that it has complied with all requirements of the rule and has made all reasonable efforts to ensure that the applicant information

<sup>15</sup> A Form 8-R currently requires certifications by the individual applicant as to, among other things, his understanding that he is subject to the imposition of criminal penalties for any false statements or omissions made in the application, that he will at all times keep accurate and current the answers to the items required to be updated, and that his answers and statements on the Form 8-R are true and not misleading. Form 8-R currently incorporates, and the disciplinary history form to be employed under Rule 801 will also incorporate, certain agreements by the applicant relating to application for membership as an Associate member of NFA. (Letter from Daniel J. Roth, dated November 25, 1992 to Jean A. Welsh, Secretariat, CFTC). As noted above, Rule 801 will not require filing with NFA of the hardcopy of the complete Form 8-R including the applicant's employment and educational history. Therefore, absent action by the sponsoring firm to maintain hardcopy records of information on the latter topics supplied by the applicant, no hardcopy record of the applicant's employment and educational history to support the firm's electronic filing will be preserved. The requirements of Commission rules as to the necessary support for the sponsors certifications required under Rule 3.12 are discussed *infra*.

<sup>16</sup> Submission at 4.

<sup>17</sup> In that case, one of the Form 8-R disciplinary history questions was not answered on the hardcopy Form 8-R although the electronic filing indicated a "no" answer. As soon as NFA discovered the discrepancy, it terminated the temporary license. That same day, however, NFA learned that the "no" response was the appropriate answer and the temporary license was reinstated. Submission at 8, n.1.

<sup>18</sup> Submission at 4.

<sup>19</sup> NFA also notes that it receives completed applications more expeditiously from firms participating in the direct entry program, as evidenced by a significantly lower number of deficiency letters being issued as a result of direct entry filings than for paper filings. Approximately thirty-eight percent of paper filings result in a deficiency letter being sent to the firm as compared to less than one percent issued as a result of direct entry filings.

<sup>20</sup> Submission at 7.

<sup>21</sup> NFA Registration Rules 701 (Disclosure of Information from Registration Records Maintained by NFA) and 702 (Certification of the Authenticity of Registration Records Maintained by NFA) make reference to "registration records" and "application forms". With the adoption of Registration Rule 801, the terms "registration records" and "application forms" will encompass any forms filed electronically pursuant to that rule. Thus, NFA will consider a registration form filed electronically to be a registration record and/or an application form pursuant to NFA Registration Rules 701 and 702.

<sup>22</sup> Rule 801 would require that such filing be made by first-class mail, hand-delivery or any other standard means of conveyance including a generally recognized overnight delivery service.



entered by electronic filing is accurate.<sup>23</sup> Rule 801 requires a firm to make all of the certifications required by Rule 3.12(c) and the current Form 8-R.<sup>24</sup> The Rule also provides that these electronic certifications "shall have the same force and effect as a certification on the Form itself signed by an authorized officer of

the registrant."<sup>25</sup> Proposed Registration Rule 801(b).<sup>26</sup>

The applicant's disciplinary history, with all required attachments, must be received by NFA within five business days after the electronic filing is processed. If the applicant's disciplinary history and required attachments indicate that the applicant does not qualify for a temporary license or NFA fails to receive the form with all

required attachments and certifications within five days after the electronic filing was processed, NFA will terminate immediately, upon notice to the sponsoring firm, any temporary license previously granted. Proposed Registration Rule 801(a)(2).

Proposed Rule 801 also provides that no registrant may electronically file registration forms until NFA has assigned it an identifying code and password and that each registrant is responsible for maintaining the security and confidentiality of its identifying code and for controlling access to all terminals that have inquiry or data entry access to NFA's MRRS database. Proposed Registration Rule 801(c) and (d). Finally, the rule states that electronic filing "is a privilege and not a right" and that NFA may disable a registrant's identifying code and password, thereby terminating the registrant's ability to file forms electronically, as opposed to in hard copy, at any time, without notice or hearing, in NFA's sole discretion. Proposed Registration Rule 801(f).

#### B. Consistency With Commission Rule 3.12(c)

The direct entry of registration data, pursuant to proposed Rule 801, would substantially modify the manner of submitting registration application data from that contemplated by paper filing systems such as were in use at the time of the promulgation of the Commission's requirements for registration applications. The Commission has reviewed proposed Rule 801 to assure that it is consistent with the requirements of the Commission's registration rules, in particular, Rule 3.12(c) governing applications for registration as an AP of an FCM or IB, and to determine whether any modifications of Commission rules are needed to accommodate the use of direct entry procedures. Based upon this review, the Commission has determined that no rule changes are necessary and that existing requirements can be applied in the direct entry context.

Commission Rule 3.12(c) requires that an application for registration as an AP of an FCM or IB must be on Form 8-R, completed and filed in accordance with the instructions thereto and that specified certifications "in writing" and signed and dated by the sponsor must be submitted concurrently with the Form 8-R. Rule 3.12(c) also requires that each Form 8-R filed pursuant to that rule must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the NFA. Rule 3.12(e) provides that the sponsor must retain in

<sup>23</sup> The certification required by the rule is accomplished by electronic data entry. After all the information required on the Form 8-R, 3-R, 8-T or U-8 has been entered into the computer, a question will appear on the screen asking the data entry operator whether he or she is ready to process the form. A "yes" answer to this question means that the firm is certifying, and in effect, verifying all of the previously entered data. In addition, by answering "yes" to the question, the firm is also certifying that it is forwarding the fingerprint card and proof of the applicant's successful completion of the National Commodity Futures Examination. Proposed Registration Rule 801(a)(1).

<sup>24</sup> Under proposed Rule 801, the sponsoring firm must certify that: (1) the information supplied by the applicant in response to questions contained in the electronically filed Form 8-R relating to the applicant's employment and education history for the past three years has been verified; (2) the applicant has been hired or is employed by the firm or that it is the intention of the firm to hire or otherwise employ the applicant as an AP within thirty days after the firm receives notification that the applicant has received a temporary license; (3) the applicant will not be permitted to act as an AP until a temporary license has been issued or he has been registered pursuant to the electronically filed application; (4) the firm understands that it is under a duty not to employ a person subject to a statutory disqualification under Section 8a(2) of the Act, to notify the Commission when any employee becomes subject to such a disqualification and to supervise applicants named in electronic filings with a view towards preventing applicants from violating the Act; (5) in the case of an applicant answering items 14 or 18 on the Form 8-R in the affirmative, the firm has received a copy of the complaint or letter issued by the Commission or NFA; and (6) the information contained in the electronically filed Form 8-R has been obtained by the firm for the sole purpose of verifying the information contained in the applicant's Form 8-R and the firm will seek to prevent the wrongful dissemination of any of the information contained in the electronically filed Form 8-R and of any records and documents retained in support thereof.

<sup>25</sup> Although the validity of an electronic certification as an authorized "signature" of a firm or its officers has not been established as yet by judicial precedent, there is precedent establishing the validity of "signatures" other than handwritten signatures. See *Corn v. Bessemer Cement Company*, 558 F. Supp. 706 (W.D. Pa. 1983) (holding pre-printed company name constituted company's signature on a bill of lading for purposes of exercising the consignee's "non-recourse" option under such bill of lading and noting that it "appears to be settled under the common law that a printed name on an instrument which is intended to have the force of a signature is valid and thus will have the intended effect"). See also, Uniform Commercial Code § 1-201(39) which provides that the term "signature" means any symbol executed or adopted by a party with the present intention to authenticate a writing. On August 7, 1992, the SEC published for comment in the Federal Register proposed rules and procedures to implement the operational phase of its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. See 57 FR 35070 (August 7, 1992). The proposed regulation, Regulation S-T, will apply to electronic submissions processed by the SEC's Division of Corporation Finance, and in some cases, to those processed by the Division of Investment Management. The proposed rules provide that:

Signatures to or within any electronic filing shall be in typed form rather than manual format. For purposes of Regulation S-T (part 232 of this chapter), the term "signature" means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters comprising a name, executed, adopted or authorized as a signature. Proposed § 232.13 of Regulation S-T.

The SEC is proposing to require that essentially all documents, including filings, correspondence and supplemental information submitted by or relating to registrants under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939 and the Investment Company Act of 1940, be submitted electronically. This would include periodic and other filings by domestic companies on Forms 10-K, 10-Q, 8-K, 10 and definitive proxy statements, annual and quarterly reports of domestic companies on Forms 10-K and 10-Q, Securities Act registration statements, filings made in connection with tender offers on Schedules 13D, 13G, 14D-1, 14D-2, 13E-3, and 13E-4, stock ownership reports on Forms 3, 4, 5, 144 and 13F, and Schedules 13D, 13G and 14D-1, and periodic reports filed under the Investment Company Act on Forms N-SAR-A, N-SAR-B and N-SAR-U. Although such filings do not involve licenses, the NASD currently permits electronic filing of certain information relating to licenses of securities professionals. With respect to electronic filing of registration information, see note 46 *infra*.

<sup>26</sup> Rule 801 also requires that each firm filing registration information electronically make available its data entry personnel having duties relating to filing under the direct entry program for testimony in court or before the Commission, NFA or any contract market regarding the authenticity, integrity or accuracy of any electronic filing. Proposed Registration Rule 801(e).

accordance with Rule 1.31 "such records as are necessary to support the certifications required by this section."

The Commission believes that the requirement of "signed and dated" written certifications by the applicant's sponsor may be satisfied by electronically filed certifications of the sponsor pursuant to Rule 801, which establishes that by directing the computer to process an electronically filed form, the sponsoring registrant makes the certifications required as part of the current Form 8-R, including the certifications required by Rule 3.12(c), and that these certifications "shall have the same force and effect as a certification on the form itself signed by an authorized officer of the registrant." These certifications are in written text submitted electronically and are "signed" by the firm by typewritten rendering of the firm name on the electronic filing and by the firm's affirmative action authorizing the computer to process the electronically filed form. As noted above, each registrant using direct entry procedures must be assigned an identifying code and password and is responsible for maintaining the confidentiality of its identifying code and for controlling access to terminals that are used for electronic filing. Consequently, the sponsoring firm is properly charged with responsibility for data entered pursuant to its identifying code and password. Thus, under the terms of Rule 801, a firm that has directed the computer to process an electronically filed form is fully responsible for the submission of that information and for the certifications included therein.

Rule 3.12(e) further requires that the sponsor retain such records as are necessary to support the certifications required by this section. The Commission emphasizes that the required certification under Rule 801 by the applicant's sponsor that it has verified the information supplied by the applicant in response to questions contained in the electronically filed Form 8-R relating to the applicant's employment and education history for the past three years would necessitate that the firm retain either in hardcopy, optical disc format, or comparable recordkeeping system the information supplied by the applicant, certified by the applicant's signature, and such further records as are necessary to evidence verification of this information from other sources.<sup>27</sup>

<sup>27</sup> The requirement of Rule 3.12(c) that fingerprint cards for the applicant be filed with the Form 8-R is satisfied by filing of such cards with the disciplinary history portion of the Form 8-R, which

### C. Fitness Screening

The direct entry program substitutes instantaneous electronic transmission of information for mailed transmission of hardcopy forms, effectively transferring the clerical data entry function for registration information from NFA to the sponsoring firm. The direct entry program does not change the content of the information required or the nature of NFA's review of that information; the only change is in the manner in which data are supplied to NFA and entered into the MRRS system. The evaluation of potential registration disqualifications is not modified by reason of the electronic filing of registration data.<sup>28</sup> Under the proposed Rule, temporary licenses granted on the basis of an electronic filing terminate immediately upon notice to the sponsoring registrant that the applicant's disciplinary history, with all required attachments, has not been received by NFA within five business days after the electronic filing was processed or that the Form 8-R or required attachments indicate that the applicant does not qualify for a temporary license.<sup>29</sup> All information critical to temporary license eligibility will continue to be reviewed by NFA staff, as under the pilot program. NFA will conduct the same fitness review of electronically filed information and will retain the same ability to terminate a temporary license based upon electronically filed applications as in the case of paper applications. As noted above, NFA has identified no instance under the pilot program in which an individual ineligible for registration received a temporary license.

### D. Reliability of Registration Data in the MRRS System

In approving the direct entry pilot program, the Commission addressed the potential impact of the program upon the reliability of the MRRS data due to the performance by sponsoring firms of data entry functions, noting that applicants and their sponsors would have the same incentives to provide accurate registration information as under preexisting procedures. 55 FR 35925, 35930 (September 4, 1990). Firms and individual applicants continue to be bound by section 8a(2)(G)

is required to be submitted in hardcopy under Rule 801.

<sup>28</sup> Submission at 7.

<sup>29</sup> Notice of termination may be given by electronic transmission to a terminal on the sponsoring registrant's premises, by United States mail, by hand delivery, or by "any other standard means of conveyance including a generally recognized overnight delivery service." Proposed Registration Rule 801(a)(2).

and section 8a(3)(G) of the Act, 7 U.S.C. 12a(2)(G) and 12a(3)(g) (1988), as amended by the Futures Trading Practices Act of 1992, which make the willful submission of inaccurate registration information grounds for denial, revocation, restriction, conditioning or suspension of registration. In addition, firms could be sanctioned under NFA Compliance Rule 2-2(f)<sup>30</sup> for the willful submission of materially false or misleading information through direct entry of such data into MRRS. Further, unintentional but frequent data entry errors could subject a firm to disciplinary action under NFA Compliance Rule 2-9 for lack of appropriate supervision.<sup>31</sup> Finally, a participating firm's failure to diligently supervise the operation of direct entry filings of registration data would constitute a violation of Commission Rule 166.3, 17 CFR 166.3 (1992), which generally requires diligent supervision of all activities of the firm's partners, officers, employees or agents relating to the firm's business as a Commission registrant.<sup>32</sup> The direct entry program, therefore, should not provide any unique incentive for a firm to falsify data in order to obtain a temporary license or a materially greater opportunity to do so than under current procedures in which a temporary license is granted or denied on the basis of self-declared information filed in hard copy.<sup>33</sup>

NFA developed extensive review procedures to detect data entry errors and to assure the accuracy of the information in MRRS during the pilot program. These review procedures included the line-by-line comparison of all hardcopy registration forms received as follow-ups to the electronic filings. NFA has proposed to change its line-by-line review procedure from a review of all information on the Form 8-R

<sup>30</sup> NFA Compliance Rule 2-2(f) provides that no NFA member or associate shall willfully submit materially false or misleading information to NFA or its agents.

<sup>31</sup> NFA Compliance Rule 2-9 provides that each NFA member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the member.

<sup>32</sup> Commission Rule 166.3, 17 CFR 166.3 (1992), provides that:

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

<sup>33</sup> See 55 FR 35925, 35931 (September 4, 1990).

program to a review of only that information critical to the granting of a temporary license, i.e., the applicant's disciplinary history. However, NFA will review all Forms 8-R on a line-by-line basis during a firm's training period (currently Phase II). Once NFA is satisfied that the firm has become proficient at the data entry function it will allow that firm to proceed to Phase III, in which only an applicant's disciplinary information will be required in hardcopy and reviewed on a line-by-line basis. NFA states that this change in its review procedures will not reduce the thoroughness of fitness screening or the reliability of the MRRS registration data. The statistics provided by NFA during the pilot program indicate that the firms participating in the program are entering data accurately and there appears to be no reason why firms would enter data less accurately if NFA alters its review procedures as proposed. As previously noted, repeated problems in entering accurate data by a firm operating under the direct entry program could lead to loss of that privilege (See Rule 801(f)), as well as sanctions under NFA Compliance Rule 2-9 or Commission Rule 166.3.

#### E. Computer Security

A further concern relevant to the proposal to make the direct entry program generally available to all sponsoring registrants is the potential impact upon the integrity of MRRS data as a result of unauthorized access to the MRRS system. NFA represents, however, that its state of the art security system makes a breach of security almost impossible. NFA states that its security practices make unauthorized access extremely difficult, limit exposure if unauthorized access is gained, and give NFA the ability to reconstruct data prior to the point of unauthorized access.<sup>34</sup> NFA's security procedures include membership in both IBM's Resource Access Control Facility (RACF), which protects access to MRRS by identifying and verifying the person attempting to gain access to MRRS and tracks unauthorized attempts to gain access to MRRS, and the IBM Information Network, which affords remote access to MRRS.

In order to obtain access to MRRS, other than from a terminal on NFA's premises, a user would need to have five different pieces of information:

NFA's IBM Information Network account number, a user ID and a password for access to the IBM Information Network, and a user ID and password for access to NFA's computer system. Every authorized user is given a security profile by NFA's Security Administrator which is made unique by assigning the user his or her own individualized user ID. The security profile determines which systems, screens and fields the user is allowed to view and the systems, screens and fields to which the user is allowed access. For example, based on its security profile, a Phase II/Phase III user would not be allowed to update information in the files of an unaffiliated firm. All attempts to breach security are recorded by the computer. As a security safeguard, any terminal which remains inactive for fifteen minutes is automatically signed off by the computer. Member firms will not have programming access to NFA's computer system.

NFA states that the chance of a computer virus entering the system through a participating firm's terminal are "practically non-existent." In the unlikely event of unauthorized access, the access gained would be limited and NFA has the ability to reconstruct data prior to the point of contamination. NFA uses the Journaling Facility of the Computer Associates' Integrated Database Management System DATA BASE product to record all changes to the data in the system. This journal shows the data in existence before the change, the data as changed, and the cause of the change. By use of the journal, NFA personnel can determine when any damage occurred.<sup>35</sup>

Although NFA acknowledges that no security system is completely failsafe, it represents that the chances of unauthorized access to the MRRS system are extremely small and will be virtually unchanged by the limited access to be gained through off-site terminals in the offices of participating firms.<sup>36</sup> Moreover, NFA states that it is virtually impossible to cause damage to the MRRS system or the data stored on MRRS.

#### III. Proposed Procedural Changes to the Pilot Program

NFA has proposed certain changes to the direct entry program to facilitate making the program generally available to all sponsoring registrants and to

increase the benefits of the program to participating firms. These changes are discussed below.

#### A. Preconditions to Participation

Under the pilot program procedures, NFA is required to notify the Commission before it provides inquiry access to a firm and to obtain Commission approval before it provides direct entry access to a firm. Proposed Rule 801 would eliminate these notification and approval requirements. NFA will provide the Commission with quarterly updates to identify those firms with inquiry and direct entry access.<sup>37</sup>

A further procedural modification proposed by NFA is a reduction in the time period that a firm must participate in Phase II prior to becoming eligible for participation in Phase III from ninety days to two weeks. NFA states that it takes approximately two weeks for a firm to demonstrate its proficiency at the data entry function. NFA would have the discretion to require a longer period of training for firms processing only a small number of applications during the two-week period.<sup>38</sup>

Finally, Rule 801 will supplant the Direct Entry Agreement for firms filing information electronically by codifying in the rule the conditions of direct entry participation.<sup>39</sup> Consequently, following

<sup>37</sup> Submission at 14.

<sup>38</sup> NFA will make a determination in each case as to when a firm has demonstrated that it has become proficient at the data entry aspects of the program but in no event will a firm be moved from Phase II to Phase III prior to the completion of the two-week training period.

<sup>39</sup> Among other things, the Direct Entry Agreement requires that firms: (1) enter into NFA's MRRS database all information required to be filed on Forms 8-R, 3-R and 8-T for all APs of the participating firm and of the participating firm's guaranteed IBs for whom the participating firm has assumed registration responsibilities; (2) mail by first class mail or hand deliver to NFA, on the day that the firm enters a command in MRRS to process an application, the corresponding registration form with all required attachments; (3) adopt and enforce procedures to ensure the integrity and confidentiality of all individual filings; and (4) make its data entry personnel available for testimony in court, before the Commission, NFA or any contract market, in regard to the authenticity, integrity or accuracy of any paper or electronic filing covered by the agreement. The Direct Entry Agreement also requires that firms make certain certifications as part of its electronic filing as provided in Commission Rule 3.12(c)(1) (i)-(iv). The agreement further provides that the entry of an instruction by the participating firm to NFA to process an electronic filing constitutes a certification that the electronic filing accurately reflects the information on the paper filing and that the firm acknowledges that the willful submission of a false special certification constitutes cause for denial, suspension or revocation of the firm's registration under Sections 8a(2) and 8a(3) of the Act. In addition, the agreement provides that temporary licenses granted on the basis of an electronic filing shall terminate immediately upon notice to the firm that the paper filing was not

Continued

<sup>34</sup> Submission at 9. See also Description of Security Measures Presently in Use at National Futures Association's Data Center, Supplemental Submission to NFA's Petition for an Order Granting NFA Permission to Conduct a Pilot Program for the Direct Entry of Registration Data by a Sponsoring Registrant, July 16, 1990.

<sup>35</sup> For a more detailed description of the security procedures currently in place at NFA, see 55 FR 35925, 35932-35933 (September 4, 1990).

<sup>36</sup> NFA represents that there have been no instances of unauthorized access or attempts at such access or of any breach of security during the pilot program. Submission at 12.

the approval of Registration Rule 801, firms will not be required to sign the Direct Entry Agreement.

#### B. Line-by-Line Review

Under current procedures, NFA reviews for accuracy on a line-by-line basis all forms filed electronically by firms participating in Phases II and III of the program by comparing the electronic filing to the hard copy. As noted above, NFA proposes to revise this procedure such that upon completion of a firm's training period (Phase II), during which time NFA will continue to review all Forms 8-R on a line-by-line basis, NFA will perform a line-by-line comparison of only the information critical to the granting of a temporary license, the applicant's disciplinary history, which will be required to be submitted separately on the paper form provided by NFA. Other information would be spot-checked for accuracy. As noted above, during the nineteen months the pilot program has been in operation, NFA staff has made a line-by-line comparison of 2,172 registration forms, which revealed a total of 83 errors, only one of which was material.<sup>40</sup>

As all information critical to temporary license eligibility will continue to be reviewed on a line-by-line basis, this procedural modification should not reduce the efficacy of the fitness screening process as it now exists. Reliability of registration data also should not be materially reduced. The data generated under the pilot program to date demonstrate the proficiency of the participating firms performing the data entry function and continuation of the line-by-line review of the information critical to the granting of a temporary license should be sufficient to assure data reliability.

#### C. Electronic Filing of All Forms

Under the current pilot program, participating firms are required to electronically enter every Form 8-R, Form 3-R, Form 8-T and Form U-5. NFA believed this requirement to be necessary in the early stages of the program in order to provide NFA staff with sufficient data for meaningful evaluation of the program. NFA states that it is no longer necessary to require that each participating firm file all of these forms electronically and proposes that participating firms have the option of filing either by mail or electronically.

received by NFA within five business days after the electronic filing or that the paper filing contains information different from the information in the electronic filing that indicates that the applicant does not qualify for a temporary license.

<sup>40</sup> See note 16 *supra*.

#### D. Elimination of Paper Filing Requirement

NFA notes that the single most important aspect of the direct entry program to its members is the reduction of the amount of paper filings with NFA. NFA reports that its members have emphasized that having to file hard copy forms with NFA after completing the electronic filing significantly reduces the benefits of the program. NFA recognizes that the elimination of all paper filings is not possible due to the potentially important role in judicial or administrative proceedings of the certifications contained in certain filing signed by individuals. As discussed above, Rule 801 would still require the submission of a hardcopy form containing the information that directly bears upon the individual's eligibility to become registered, *i.e.*, the disciplinary history information, certified by the applicant. By signing this paper form, the individual applicant certifies the truthfulness and completeness of the information on the form. Rule 801 will allow firms to file electronically the bulk of the information required by Form 8-R, which relates to the applicant's residential, employment and educational history, for AP applicants sponsored by the firm, without submitting a corresponding paper filing.<sup>41</sup> Rule 801 also states that the registrant is deemed to make the certifications specified therein when it files the Form 8-R electronically. See note 24 *supra*.

Certain registration forms do not require individual certifications. Forms 8-T (notice of termination), U-5 (uniform termination notice for securities industry registration) and 3-R (except a Form 3-R amendment amending a Form 8-R) are certified by the firm and not the individual. The paper filing requirement with respect to these forms will be eliminated. The required certification for these forms is made when the firm directs the computer to process these forms due to the status accorded the electronic certification as a binding signature under proposed Rule 801. Although a Form 3-R updating a Form 8-R is certified by the individual registrant, the information certified on the Form 3-R is less likely to be critical to an individual's registration eligibility than the information on the original Form 8-

<sup>41</sup> See letter dated August 27, 1992 from Daniel J. Roth, General Counsel, NFA, to Jean Webb, Secretary, CFTC and letter dated October 8, 1992 from Carol Wooding, Attorney, NFA to Mary Cademartori, Staff Attorney, Division of Trading and Markets.

R. The only circumstances in which information material to registration fitness would be involved is where an individual changed a "no" answer to a disciplinary history question to a "yes" answer by means of the Form 3-R. NFA notes that in this example, there is little likelihood that the change is not truthful and accurate due to the detrimental effect such change would have on the individual's registration status.<sup>42</sup> Proposed Registration Rule 801, therefore, provides for Forms 3-R and 8-T filings to be made exclusively by means of electronic filings. The Commission notes, however, that if a disciplinary history question answer is being changed from "no" to "yes" this may require the filing of supplementary documents in hardcopy form.<sup>43</sup>

NFA represents that elimination of the paper filing requirement for these forms will not impair NFA's ability to perform its delegated duties as the official custodian of the Commission's registration records or to provide accurate certifications concerning the authenticity and completeness of the records maintained. With respect to the forms for which electronic filing is substituted for paper filing, the computer records maintained in MRRS will constitute the registration record maintained on behalf of the Commission since there will be no hard copy form.<sup>44</sup> Furthermore, NFA will continue to certify the authenticity of the record and the accuracy of any computer printout.

The modifications of the direct entry program to reduce the number of paper filings have the potential to significantly reduce the number of paper filings received by NFA.<sup>45</sup> In the last year NFA received almost 14,000 Forms 3-R and more than 9,000 Forms 8-T. NFA notes that the elimination of the paper filing requirement for these forms is consistent with the Paperwork

<sup>42</sup> As noted above, in the event that a firm erroneously entered data negatively affecting an AP's registration eligibility, NFA would undertake further review before taking any adverse registration action.

<sup>43</sup> The instructions to the Disciplinary History section of Form 8-R that if a person answers "yes" to any of the questions in that section, he must supply a certified copy of any applicable documents, such as any complaint, plea, order, agreement of settlement, verdict or other findings made, and sanctions or sentences imposed. If such documents are not obtainable must be furnished.

<sup>44</sup> See note 20 *supra*.

<sup>45</sup> NFA members who choose to prepare hard copy forms prior to completing the electronic filing will be required under NFA Compliance Rule 2-10 to maintain these forms as a business record. See also Commission Rules 3.12(e) and 1.31 (1992). NFA will not, however, require member firms to prepare and retain hard copies of these forms. See letter from Carol A. Wooding, Staff Attorney, NFA, to Mary Cademartori, Attorney, Division of Trading and Markets, CFTC, dated October 8, 1992.

Reduction Act. Further, NFA notes that the NASD is developing a program which will permit its member firms to file registration forms by computer without any follow-up paper filings.<sup>46</sup>

#### E. Statistical Information

Under the pilot program, NFA is required to provide the Commission on a monthly basis with certain statistics to provide a factual basis for evaluation of the pilot program. Statistics classified by type of filing, phase of the program in which the filing was made, and firm, are provided with respect to the time required to grant temporary licenses to the APs of participating firms and to APs of non-participating firms, the average time between the electronic filing and NFA's receipt of the complete filing, and the number and type of material and non-material discrepancies between the electronic filing and paper filings.

NFA proposes to provide the Commission with similar statistics on a quarterly rather than on a monthly basis.<sup>47</sup> The Commission believes that quarterly statistics will provide it with sufficient opportunity to monitor and review the direct entry program and, after further experience is gained with the direct entry program, may consider further reduction of the frequency of statistical data filings.

#### IV. Benefits of Direct Entry

NFA submits that the direct entry pilot program has proved that the electronic filing of registration forms has benefitted both the futures industry and the public without any negative impact on the registration process. Benefits cited include a significant decrease in the time within which temporary licenses for AP applicants are granted and reduction in the number of NFA staff required to process registration filings, permitting reallocation of staff to customer protection efforts and

potentially leading to cost savings that could be reflected in reduced registration fees. The modifications of the program set forth herein should increase the efficiency of the registration process and reduce costs.<sup>48</sup>

#### Conclusion and Order

Based upon the foregoing, the Commission believes that the direct entry program can be implemented in a manner consistent with NFA's registration responsibilities under prior Commission orders and with the required degree of accuracy, reliability and security for NSFA registration processing and fitness screening.

Accordingly, pursuant to sections 8a(1), 8a(10), 17(j) and 17(o) of the Commodity Exchange Act, 7 U.S.C. 12a(1), 12a(10), 21(j) and 21(o) (1988), the Commission hereby authorizes NFA to put into effect NFA Registration Rule 801, which implements the direct entry program as described herein, subject to the conditions set forth below:

a. The direct entry pilot program is described in NFA's Submission dated July 9, 1992, as supplemented by submissions dated August 27, 1992, October 8, 1992, November 13, 1992, November 25, 1992 and December 8, 1992. The representations set forth in the foregoing submissions, as well as those contained in the Commission September 4, 1990 Order authorizing NFA to implement Phases II and III of the direct entry pilot program, as modified by the foregoing submissions, constitute the responsibilities of NFA unless otherwise stated or modified by this order.

b. In addition to providing the statistics described herein on a quarterly basis, NFA will provide the Commission with such data as may be requested from time to time concerning the direct entry program.

Issued in Washington, DC on December 16, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-30922 Filed 12-21-92; 8:45 am]

BILLING CODE 6361-01-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### USAF Scientific Advisory Board; Meeting

The Architecture & Assessment Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 11 January 1993, at Langley AFB, VA from 8 a.m. to 5 p.m.

<sup>48</sup> The Commission has previously allowed the substitution of electronic filings for paper filings in the context of large trader reporting. See CFR 17.00(a)(1) and 17 CFR 17.02(a) (1992).

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-31019 Filed 12-21-92; 8:45 am]

BILLING CODE 3010-01-M

#### USAF Scientific Advisory Board; Meeting

The Boost Phase Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 22 January 1993, at the RAND Corporation, 1700 Main Street, Santa Monica, CA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-31015 Filed 12-21-92; 8:45 am]

BILLING CODE 3010-01-M

#### USAF Scientific Advisory Board; Meeting

The C3 Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 27 January 1993, at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense through the year 2020.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-31021 Filed 12-21-92; 8:45 am]

BILLING CODE 3010-01-M

<sup>46</sup> Currently, the NASD permits the electronic filing of all Form U-4s for the transfer of account representatives. The member firm must submit the hard copy of the Form U-4 and the fingerprint card within twenty-one days of the electronic filing. The NASD is developing a proposal to permit member firms to file transfer applications electronically without having to follow-up with the hard copy U-4. NASD also is in the process of implementing a procedure for electronic filing of updates of Form U-4 without submitting paper follow-ups. Currently, this is permitted for page one of Form U-4. NASD is in the process of implementing this procedure for pages two through four of Form U-4. NASD permits its member firms to file employee terminations electronically without follow-up paper filings.

<sup>47</sup> See 55 FR 35925, 35928 (September 4, 1990). In a telephone conversation with Division staff on October 14, 1992, Daniel Roth, NFA's General Counsel, represented to the Division that NFA will provide these statistics on a quarterly basis.



November 25, 1992

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

Re: National Futures Association: Amendments to Proposed  
NFA Registration Rule 801

Dear Ms. Webb:

By letters dated July 9, 1992 and August 27, 1992, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("Commission") for its review and approval proposed NFA Registration Rule 801 which will allow NFA to offer the Direct Entry Program on a permanent basis and which will allow sponsoring registrants to file Forms 8-R, 3-R and 8-T electronically. After discussions with Commission staff, NFA has revised the proposed rule to specifically incorporate the same certifications currently signed by the sponsor on the Form 8-R. The rule also provides that the applicant must provide information on his disciplinary history on a form provided by NFA. That form will require the applicant to sign the same certification which the applicant must currently sign on the Form 8-R. The amendments were approved by NFA's Board of Directors on November 19, 1992. What follows is proposed NFA Registration Rule 801 in its entirety. Proposed new language is underscored and proposed deletions are placed within brackets.

#### REGISTRATION RULES

\* \* \*

#### PART 800. ALTERNATIVE METHODS OF FILING REGISTRATION FORMS

#### RULE 801. Electronic Filing of Forms 8-R, 3-R and 8-T

Registrants which are futures commission merchants, introducing brokers, commodity pool operators, or commodity trading advisors can file Forms 8-R, 3-R, and 8-T electronically by direct dial-up transmission to NFA's registration and membership database under the following conditions.

(a)[.] The following requirements apply to the electronic filing of Forms 8-R by a sponsoring registrant for its principals and associated persons and for the principals and associated persons of its guaranteed introducing brokers.

Ms. Jean A. Webb

November 25, 1992

- (1)[.] On the day that the sponsoring registrant authorizes the computer to process the electronic filing, the sponsoring registrant must send the applicant's disciplinary history on a form provided by NFA and signed by the applicant, to NFA's Director of Registration, with all attachments required by [Registration] Rule 206(a)(3) or [(b)(4)] 301(b)(3), by placing it in the United States mail (first class postage prepaid), by hand-delivery, or by any other standard means of conveyance including a generally recognized overnight delivery service.
- (2)[.] Temporary licenses granted on the basis of an electronic filing shall terminate immediately upon notice to the sponsoring registrant that the applicant's disciplinary history, with all required attachments, was not received by NFA within five business days after the electronic filing was processed or that the applicant's disciplinary history[,] or the required attachments indicate that the applicant does not qualify for a temporary license. The notice may be given by electronic transmission to a terminal on the sponsoring registrant's premises, by United States mail, by hand delivery, or by any other standard means of conveyance including a generally recognized overnight delivery service. This Rule does not affect NFA's right to terminate temporary licenses under the conditions authorized by [Registration] Rule 301.
- (b)[.] By authorizing the computer to process an electronically filed form, the registrant filing the form electronically certifies that it has complied with the requirements of this Rule and has made all reasonable efforts to ensure that the electronic filing is accurate. The registrant also makes the following specific certifications for each electronically filed Form 8-R:
- (1) that the information supplied by the applicant in response to questions contained in the electronically filed Form 8-R which relate to the applicant's employment and education history for the past three years has been verified;
  - (2) that the applicant has been hired or is employed by the sponsoring firm; or it is the intention of the sponsor to hire or otherwise employ the applicant as an associated person within thirty days after receipt of notification that the applicant has received a





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- temporary license or has been so registered (contingent upon the sponsor hiring or otherwise employing the applicant as an associated person within thirty days);
- (3) that the applicant will not be permitted to act as an associated person until the applicant has received a temporary license or has been registered pursuant to the electronically filed application;
- (4) that the registrant understands it is the duty and obligation of the firm not to employ a person with a statutory disqualification under Section 8a(2) of the Act, to notify the Commission when any person with the firm is subject to a statutory disqualification under Section 8a(2) of the Act and to supervise the sponsored person named in the electronically filed Form 8-R, once he or she is employed, with a view toward preventing him or her from committing violations of the Act and the rules, regulations, and orders thereunder;
- (5) that if the applicant answered "Yes" to item 14 or 16 on the Form 8-R, the registrant firm has received a copy of the complaint or letter issued by the Commission or NFA; and
- (6) that the information contained in the electronically filed Form 8-R has been supplied to the firm for the sole purpose of allowing it to verify the information contained in Form 8-R in connection with the registration of the person named in the electronically filed Form 8-R as an associated person and the firm has taken, and will take, such measures as are necessary to prevent the unwarranted dissemination of any of the information contained in the electronically filed Form 8-R and the records and documents retained in support of Form 8-R.

These certifications shall have the same force and effect as a certification on the form itself signed by an authorized officer of the registrant.

(c)[.] No registrant may electronically file registration forms until NFA has assigned it an identifying code and password. The registrant may not file forms electronically using any other identifying code.

(d)[.] Each registrant is responsible for maintaining the security and confidentiality of its identifying code and pass-





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word and for controlling access to all terminals which are signed on to NFA's registration and membership database.

(e)[.] Each registrant which files electronically shall make available its data entry personnel, authorized to or actually performing duties related to electronic filings, for testimony in court or before the [CFTC] Commission, NFA[, ] or any contract market regarding the authentication, integrity or accuracy of any electronic filing.

(f)[.] The availability of electronic filing is a privilege and not a right. NFA may disable a registrant's identifying code and password and terminate the registrant's ability to electronically file forms at any time, without notice or a hearing, and in NFA's sole discretion.

\* \* \*

NFA respectfully requests that, pursuant to Section 17(j) of the Commodity Exchange Act, the Commission approve the amendments to proposed new NFA Registration Rule 801. NFA intends to make Registration Rule 801 effective upon approval by the Commission.

Respectfully submitted,

Daniel J. Roth  
General Counsel

DJR:cm(111792/801)

cc: Chairman Wendy L. Gramm  
Commissioner Fowler C. West  
Commissioner William P. Albrecht  
Commissioner Sheila C. Bair  
Commissioner Joseph B. Dial  
Andrea M. Corcoran, Esq.  
Dennis P. Klejna, Esq.  
Joanne T. Medero, Esq.  
Alan L. Seifert, Esq.  
Susan C. Ervin, Esq.  
Lawrence B. Patent, Esq.  
David Van Wagner, Esq.



NATIONAL FUTURES ASSOCIATION

200 W. MADISON ST. • CHICAGO, IL • 60606-3447 • (312) 781-1300

November 13, 1992

Susan C. Ervin, Esq.  
Division of Trading and Markets  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Re: NFA's Proposed Registration Rule 801 -- Direct Entry

Dear Ms. Ervin:

Pursuant to your discussion with Dan Roth, enclosed please find the revision to NFA Registration Rule 801.

If you have any further questions, please do not hesitate to contact Dan or me.

Sincerely,

A handwritten signature in cursive script that reads "Carol A. Wooding". The signature is written in dark ink and is positioned above the typed name.

Carol A. Wooding  
Attorney

CAW:cm(ltr)  
Enclosure

b. By authorizing the computer to process an electronically filed form, the registrant filing the form electronically certifies that it has complied with the requirements of this Rule and has made all reasonable efforts to ensure that the electronic filing is accurate. The registrant also makes the following specific certifications for each electronically filed Form 8-R:

1) that the information supplied by the Applicant in response to questions contained in the electronically filed Form 8-R which relate to the Applicant's employment and education history for the past three years has been verified;

2) that the Applicant has been hired or is employed by the sponsoring firm; or it is the intention of the sponsor to hire or otherwise employ the Applicant as an associated person within thirty days after receipt of notification that the Applicant has received a temporary license or has been so registered (contingent upon the sponsor hiring or otherwise employing the Applicant as an associated person within thirty days);

3) that the Applicant will not be permitted to act as an associated person until the Applicant has received a temporary license or has been registered pursuant to the electronically filed application;

4) that the registrant understands it is the duty and obligation of the firm not to employ a person with a statutory disqualification under Section 8a(2) of the Act, to notify the Commission when any person with the firm is subject to a statutory disqualification under Section 8a(2) of the Act and to supervise the sponsored person named in the electronically filed Form 8-R, once he or she is employed, with a view toward preventing him or her from committing violations of the Commodity Exchange Act and the rules, regulations, and orders thereunder;

5) that if the Applicant answered "Yes" to item 14 or 16 on the Form 8-R, the registrant firm has received a copy of the complaint or letter issued by the Commission or NFA; and

6) that the information contained in the electronically filed Form 8-R has been supplied to the firm for the sole purpose of allowing it to verify the information contained in Form 8-R in connection with the registration of the person named in the electronically filed Form 8-R as an associated person and the firm has taken, and will take, such measures as are necessary to prevent the unwarranted dissemination of any of the information contained in the electronically filed Form 8-R and the records and documents retained in support of Form 8-R.

These certifications shall have the same force and effect as a certification on the form itself signed by an authorized officer of the registrant.

October 8, 1992

Ms. Mary Cademartori  
Commodity Futures Trading  
Commission  
Division of Trading & Markets  
2033 K Street, N.W.  
Washington, D.C. 20581

Re: National Futures Association Request for an Order  
Granting NFA Permission to Offer the Direct Entry  
Program on a Permanent Basis Pursuant to Proposed  
New Registration Rule 801

Dear Ms. Cademartori:

This letter is in response to your inquiry regarding whether NFA would require Members to keep hard copies of all forms filed by Members electronically.

NFA Members which prepared hard copy forms prior to completing the electronic filing would be required under NFA Compliance Rule 2-10 to maintain these forms as a business record. NFA does not intend, however, to specifically require Members to prepare hard copies of these forms. NFA believes that a requirement that Members prepare and maintain copies of electronically filed forms would reduce the benefit of the direct entry program. Furthermore, NFA does not believe that there is any reason to require Members to prepare hard copies of forms prior to inputting the information into the computer. The only significant issue arising from the elimination of the hard copy form is the existence of the certification required by registration forms. NFA believes, however, that it has adequately addressed this issue in Rule 801.

Under Rule 801, NFA receives the required firm certification for Forms 8T, 3R to Form 7R and 8T when the firm directs the computer to process these forms. Although NFA does not receive an individual's certification when a Form 3R updating a Form 8R is electronically filed, NFA does not believe that there is any need to obtain this certification. As noted in NFA's submission letter, the only circumstance which would involve information sensitive to an individual's eligibility would be if the individual changed a "no" answer to a disciplinary history question to a "yes" answer. Although it is unlikely that the accuracy or truthfulness of this type of change would be in question, NFA could request, during its follow-up to this change,



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Ms. Mary Cademartori

October 8, 1992

the required certification from the individual if it seemed necessary. Finally, with regard to Form 8R, although an applicant's residential, employment and educational and disciplinary history information may be submitted electronically, a follow-up paper filing, bearing the applicant's signature will be required for the applicant's disciplinary history.

I hope this letter has been responsive to your inquiry. If I can be of further assistance, please do not hesitate to contact me at (312) 781-1409.

Sincerely,

A handwritten signature in cursive script that reads "Carol A. Wooding".

Carol A. Wooding  
Attorney

CAW:pjf(Ltrs/Cademartori)

August 27, 1992

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

Re: National Futures Association: Proposed NFA Registration Rule 801

Dear Ms. Webb:

By letter dated July 9, 1992, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("Commission") for its review and approval proposed NFA Registration Rule 801 which will allow NFA to offer the Direct Entry Program on a permanent basis. NFA's Board of Directors ("Board") on August 20, 1992 approved an amendment to proposed NFA Registration Rule 801. The proposed amendment will effect the filing of the Form 8-R by allowing the electronic filing of a registrant's residential, employment and educational information and requiring a paper filing, bearing the applicant's signature, only for the registrant's disciplinary information. NFA respectfully requests the Commission's review and approval of the proposed amendments.

**PROPOSED NEW REGISTRATION RULE 801**

Amendments to proposed new Registration Rule 801 to reduce the paper filing requirements for electronically filed Form 8-Rs (new language in the proposed rule is underscored and deleted language is placed within brackets):

**REGISTRATION RULES**

\* \* \*

**PART 800. ALTERNATIVE METHODS OF FILING REGISTRATION FORMS**

**RULE 801. Electronic Filing of Forms 8-R, 3-R and 8-T**

Registrants which are futures commission merchants, introducing brokers, commodity pool operators, or commodity trading advisors can file Forms 8-R, 3-R, and 8-T electronically by direct dial-up transmission to NFA's registration and membership database under the following conditions.



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a. The following requirements apply to the electronic filing of Forms 8-R by a sponsoring registrant for its principals and associated persons and for the principals and associated persons of its guaranteed introducing brokers.

1. On the day that the sponsoring registrant authorizes the computer to process the electronic filing, the sponsoring registrant must send the applicant's disciplinary history on a form provided by NFA and signed by the applicant, [the original Form 8-R] to NFA's Director of Registration, with all attachments [and certifications] required by Registration Rule 206(a)(3) or (b)(4), by placing it in the United States mail (first class postage prepaid), by hand-delivery, or by any other standard means of conveyance including a generally recognized overnight delivery service.

2. Temporary licenses granted on the basis of an electronic filing shall terminate immediately upon notice to the sponsoring registrant that the applicant's disciplinary history [Form 8-R], with all required attachments, [and certifications,] was not received by NFA within five business days after the electronic filing was processed or that the applicant's disciplinary history, [Form 8-R] or the required attachments [or certifications] indicate that the applicant does not qualify for a temporary license. The notice may be given by electronic transmission to a terminal on the sponsoring registrant's premises, by United States mail, by hand delivery, or by any other standard means of conveyance including a generally recognized overnight delivery service. This Rule does not affect NFA's right to terminate temporary licenses under the conditions authorized by Registration Rule 301.

b. By authorizing the computer to process an electronically filed form, the registrant filing the form electronically certifies that it has complied with the requirements of this Rule and has made all reasonable efforts to ensure that the electronic filing is accurate. This certification shall have the same force and effect as a certification on the Form itself signed by an authorized officer of the registrant.

c. No registrant may electronically file registration forms until NFA has assigned it an identifying code and password. The registrant may not file forms electronically using any other identifying code.



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d. Each registrant is responsible for maintaining the security and confidentiality of its identifying code and password and for controlling access to all terminals which are signed on to NFA's registration and membership database.

e. Each registrant which files electronically shall make available its data entry personnel, authorized to or actually performing duties related to electronic filings, for testimony in court or before the CFTC, NFA, or any contract market regarding the authentication, integrity or accuracy of any electronic filing.

f. The availability of electronic filing is a privilege and not a right. NFA may disable a registrant's identifying code and password and terminate the registrant's ability to electronically file forms at any time, without notice or a hearing, and in NFA's sole discretion.

#### EXPLANATION OF AMENDMENTS

The ultimate goal of the Direct Entry Program is total electronic filing of registration information for associated persons. One of the most difficult aspects of this goal is the electronic filing of the Form 8-R which contains important information on an individual's background which directly impacts the individual's eligibility to be registered. Furthermore, the individual must sign the form certifying the truthfulness and accuracy of this information, and this signature may have legal significance at a later date if the information provided is not accurate and complete.

Although an applicant's signature certifying to the truthfulness and accuracy of the disciplinary history information contained in the Form 8-R is important, NFA feels that the disciplinary history information is the only section of the Form 8-R for which the applicant's signature could be significant. Therefore, NFA proposes that firms in the Direct Entry Program be allowed to electronically file the bulk of the Form 8-R for associated persons the firms sponsor, with no paper filing requirement at all for information related to the applicant's residential, employment and educational history. The only paper filing related to the Form 8-R would be a single page signed by the applicant relating to his disciplinary history. Reducing the Form 8-R paper filing requirement to this one page will signifi-





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cantly reduce the amount of paper processed by both NFA and Members without sacrificing the applicant's signature.

NFA respectfully requests that, pursuant to Section 17(j) of the Commodity Exchange Act, the Commission approve the amendments to proposed new Registration Rule 801. NFA intends to make the amendments to Registration Rule 801 effective upon approval by the Commission.

Respectfully submitted,

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

Daniel J. Roth  
General Counsel

DJR:cm(sub/801)

cc: Chairman Wendy L. Gramm  
Commissioner Fowler C. West  
Commissioner William P. Albrecht  
Commissioner Sheila C. Bair  
Commissioner Joseph B. Dial  
Andrea M. Corcoran, Esq.  
Dennis P. Klejna, Esq.  
Joanne T. Medero, Esq.  
Alan L. Seifert, Esq.  
Susan C. Ervin, Esq.  
Lawrence B. Patent, Esq.  
David Van Wagner, Esq.