

June 16, 1992

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

Re: Proposed Amendment to NFA Compliance Rule 2-9 and  
Interpretive Statement

Dear Ms. Webb:

At a time when the futures industry is facing a myriad of complex and important regulatory issues, some may view the problem of high-pressure or deceptive telemarketing practices as relatively insignificant. Admittedly, only a minute percentage of NFA Members engage in such practices and that tiny fraction of Members accounts for an imperceptibly small percentage of overall trading volume. On the other hand, there is nothing insignificant about telemarketing abuses to a victimized customer who has suffered severe financial harm, perhaps losing his life savings, based on a slick and misleading sales pitch designed solely to part a naive or gullible customer from his money.

In a larger sense, though, not just the customer but the entire futures industry is the victim of such boilerroom sales practices. All over the world futures markets have become recognized as a vital part of the financial services industry. Ironically, here in the United States, where futures markets were born, grew and matured into such a valuable national asset, there are those in Congress and in the press who view these markets as at best a necessary evil and at worst as a collective den of thieves. This misperception is based, at least in part, on those few in this industry who view free markets as a free license to commit fraud.

The lingering image of the futures industry as a haven for fast-talking con men is certainly not the result of any lack of regulatory zeal. Both the Commission and NFA have strong and effective rules to prohibit high-pressure sales practices and have vigorously enforced those rules. Enforcement statistics alone, however, no matter how impressive, will do little to prevent such telemarketing practices in the future or to erase the negative image which has dogged the industry for so long. By their very nature, enforcement actions occur after customers have been abused. Both the Commission and NFA share the goal of not only punishing such deception of customers through enforcement



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actions but also of preventing such practices through fair and effective regulations.

In one critical respect the current sales practice regulations in the futures industry do not meet that goal. All too often disciplinary actions taken by the CFTC or NFA do not put an end to the abusive practices which prompted them. A familiar pattern has developed in which the closure of one firm for widespread deceptive telemarketing practices results in large numbers of APs who have now received their training in the wrong way to solicit customers moving to another firm. Thus, First Commodity Corporation of Boston begat Options America, Inc.; Chillmark Commodities begat Churchill Commodities; and Gabriel Brokerage, Inc. begat Nationwide Futures Corporation. In each of these instances, and many others, all that really changed was the name of the firm. Logic indicates and history confirms that in the absence of strict supervisory procedures at the new firm, the same sales pitches produce the same problems and the time consuming cycle of investigation and litigation begins anew, with a fresh set of new victims being chewed up while the process drones on. Until the futures industry develops a regulatory response to break this cycle of customer deception, the problem of telemarketing fraud in the futures industry will not be solved -- it will simply keep changing names.

While it is clear that something must be done to break this cycle, several other points are just as clear. And just as important. For one thing, NFA's response to this problem should be as narrowly focused as the problem itself. Historically, the greatest harm to customers and to the industry has been done by those few Members where telemarketing abuses were widespread. Those few Members with widespread telemarketing problems have typically recruited a large portion of their sales forces from other firms which have been closed for fraud and their supervision of their APs has failed to prevent a recurrence of widespread fraud. Imposing additional supervisory requirements on all firms, including those where there is no reason to believe that a firm-wide problem exists or could develop, could provide the right medicine to the wrong patients. The additional requirements could increase costs to the firms and, ultimately, to their customers, with no concomitant increase in customer protection. In short, we must ensure that NFA's regulatory response to the problem of firm-wide telemarketing abuse is neither overbroad nor unduly burdensome.

It is also clear that any new telemarketing regulation that we develop should do more than make the NFA rulebook thicker. We need a rule which works. We all recognize that it



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is impossible to legislate fraud out of existence. However, regulations can and should recognize that a firm whose APs have been schooled in improper sales practices at other firms which have been closed for fraud must supervise its APs closely to ensure that past problems do not recur. To be truly effective, any rules developed by NFA should do exactly that.

Finally, we must recognize that the concept of fundamental fairness is just as important as the concept of customer protection. It is not enough to develop supervisory requirements which are both focused and effective. We must also ensure that those requirements are imposed fairly and flexibly. Though these additional rules would presumably affect only a relative handful of Member firms, those firms may vary significantly in their types of business, the size of their operations and their financial resources. Each of these factors could affect the types of additional supervisory steps which the firm should or can adopt to guard against widespread telemarketing abuses. Though any rules developed by NFA should clearly state the specific supervisory measures the affected Members must adopt, the rule should also provide enough flexibility to balance the Member's circumstances with the public's need for protection.

The goals of developing regulations which are effective, focused and fair are more easily stated than achieved. For well over one year NFA's Special Committee for the Review of NFA's Enforcement Procedures has explored and discussed all of the complexities involved in this issue. The Special Committee sought comment from all of NFA's Advisory Committees and directly from the Members. All of the issues were discussed extensively and thoroughly. The Special Committee eventually developed an approach outlined in this letter. After carefully reviewing the Special Committee's recommendation and the recommendations of NFA's Executive Committee, NFA's Board of Directors has unanimously approved the approach recommended by the Special Committee. NFA hereby respectfully requests, pursuant to Section 17(j) of the Act, Commission approval of the amendments to NFA Compliance Rule 2-9 and its Interpretive Statement as set forth below.

**PROPOSED AMENDMENT TO NFA COMPLIANCE RULE 2-9  
AND INTERPRETIVE STATEMENT**

The Board has approved the following amendment to NFA Compliance Rule 2-9 and Interpretive Statement. Additions to the rule are underlined:



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COMPLIANCE RULES

\* \* \*

Part 2 -- RULES GOVERNING THE BUSINESS CONDUCT  
OF MEMBERS REGISTERED  
WITH THE COMMISSION

\* \* \*

Rule 2-9. SUPERVISION OF TELEMARKETING ACTIVITY.

- (a) Each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member.
- (b) NFA's Board of Directors may require Members which meet certain specific criteria established by the Board to adopt supervisory procedures specified by the Board. This requirement may, in NFA's discretion, be waived upon a showing by the Member that the Member's current supervisory procedures provide effective supervision over its employees and agents. Any Member seeking such a waiver may submit a written request to a three-member panel consisting of one member from each Regional Business Conduct Committee, said Members to be appointed by the Board from time to time. Within 30 days after a Member submits a waiver request the Compliance Director will submit a written response to the panel. The decision of the panel shall be final and shall be based upon the written submissions of the Member and of the Compliance Director.

INTERPRETIVE NOTICE TO NFA MEMBERS  
COMPLIANCE RULE 2-9:  
SUPERVISION OF TELEMARKETING ACTIVITY

NFA's Board of Directors has over the years adopted strict and effective rules to prohibit deceptive sales practices, and those rules have been vigorously enforced by NFA's Business Conduct Committees. The Board notes, however, that by their very nature enforcement actions occur after the customer abuse has taken place. The Board recognizes that NFA's goal must be not only to punish such deception of customers through enforcement actions but to prevent it, or minimize its likelihood, through fair and effective regulation.



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One NFA rule designed to prevent abusive sales practices is NFA Compliance Rule 2-9. That rule places a continuing responsibility on every Member to supervise diligently its employees and agents in all aspects of their futures activities, including telemarketing. Although NFA has not attempted to prescribe a set of supervisory procedures to be followed by all NFA Members, NFA's Board of Directors believes that Member firms which are identified as having a sales force which has received questionable training in sales practices should be required to adopt specific supervisory procedures designed to prevent sales practice abuse. Rule 2-9 authorizes the Board of Directors to require Members which meet certain criteria established by the Board to adopt specific supervisory procedures designed to prevent abusive sales practices.

The Board believes that in order for the criteria used to identify firms subject to the enhanced supervisory requirements to be useful, those criteria must be specific, objective and readily measurable. The Board also believes that any supervisory requirements imposed on a Member must be designed to quickly identify potential problem areas so that the Member will be able to take corrective action before any customer abuse occurs. The purpose of this Interpretive Notice is to set forth the criteria established by the Board and the enhanced supervisory procedures which are required of firms meeting these criteria.

In developing the criteria, the Board concluded that it would be helpful to review Member firms which had been closed through enforcement actions taken by the CFTC or NFA for deceptive sales practices. The Board's purpose was to identify factors common to these Member firms and probative of their sales practice problems which could be used to identify other Member firms with potential sales practice problems.

One factor identified by the Board as common to these firms and directly related to their sales practice problems is the employment history and training of their sales forces. For many of these Members, a significant portion of their sales force was previously employed and trained by one or more of the other Member firms closed for fraud. The Board believes that the employment history of a Member's sales force is a relevant factor to consider in identifying firms with potential sales practice problems. If a Member firm is closed for fraud related to widespread telemarketing problems, it is reasonable to conclude that the Member's



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training and supervision of its sales force was wholly inadequate or inappropriate. It is also reasonable to conclude that an AP who received inadequate or inappropriate training and supervision may have learned improper sales tactics which he will carry with him to his next job. Therefore, the Board believes that a Member firm employing such a sales force must have stringent supervision procedures in place in order to ensure that the improper training its APs have previously received does not taint their sales efforts on behalf of the Member.

The Board has determined that a Member will be required to adopt the specific supervisory procedures over its telemarketing activities if:

- for firms with at least 5 but less than 10 APs, 50% or more of its APs have been employed by one or more Member firms which have been disciplined by NFA or the CFTC for sales practice fraud;
- for firms with at least 10 but less than 20 APs, 5 or more of its APs have been employed by one or more Member firms which have been disciplined by NFA or the CFTC for sales practice fraud;
- for firms with 20 or more APs, 25% or more of its APs have been employed by one or more Member firms which have been disciplined by NFA or the CFTC for sales practice fraud.

For purposes of this requirement, a disciplined Member firm is defined very narrowly to include only those firms which meet the following three criteria:

1. The firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices;
2. those charges have been resolved; and
3. the firm has been closed down and permanently barred from the industry as a result of those charges.

Attached is a list of firms meeting the definition of a disciplined firm. Although this list is current as of the date of this Interpretive Notice, NFA will provide Members with updated lists as necessary.



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Those Members meeting the criteria will be required to tape record all sales solicitations which occur prior to the receipt of a customer's initial deposit and until the first order is received and entered for the customer's account. The Board believes that tape recording sales solicitations provides these Members with the best opportunity to monitor closely the sales solicitations of their APs and also provides these Members with complete and immediate feedback on each AP's method of soliciting customers. Members meeting the criteria must tape record solicitations for a period of one year and must retain such tapes for a period of six months.

Any Member required to adopt these enhanced procedures may seek a waiver of the enhanced supervisory requirements. NFA may grant such a waiver upon a satisfactory showing that the Member's current supervisory procedures provide effective supervision over its employees including enabling the Member to identify potential problem areas before customer abuse occurs.

A Member firm that does not comply with this Interpretive Notice will violate NFA Compliance Rule 2-9 and will be subject to disciplinary action.

**THE PROPOSED RULE AND INTERPRETIVE STATEMENT IMPOSE  
ADDITIONAL SUPERVISORY REQUIREMENTS PRECISELY  
WHERE THEY ARE NEEDED**

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As stated earlier, NFA's goal is to develop regulations which will prevent the recurrence of firm-wide telemarketing abuses and to do so in a way which does not impose additional, unnecessary regulations on the overwhelming majority of NFA Members which pose no threat of such abuses. A threshold question, then, is whether it is possible to develop criteria which are specific, objective and readily measurable which would reliably identify those firms which need to adopt enhanced procedures for the supervision of telemarketing activity. The answer is yes.

In developing the appropriate criteria, the Special Committee first conducted an historical overview of those firms which have been closed through enforcement actions taken by either the CFTC or NFA for deceptive sales practices. The Committee then attempted to isolate factors common to such firms which could help identify firms with potential sales practice problems before they occur or become widespread.



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The first step in identifying factors common among firms known to have had significant sales practice problems is identifying the firms themselves. In developing such a list, the Special Committee excluded those firms which have been merely suspected of such violations or which were charged with some form of fraud not related to telemarketing. Instead, it included only those firms which met three criteria: (1) formal charges involving deceptive telemarketing practices were brought against the firm by either the CFTC or NFA, (2) those charges have resulted in a formal decision, and (3) the action taken against the firm resulted in the firm being closed down and permanently barred from the industry. Using these criteria, the Special Committee identified 32 firms which provided the basis for its review. That list is attached as Exhibit A.

The next step was to begin to identify characteristics which were common to a significant number of these firms and which would be probative of potential problems in other firms. Since all 32 firms essentially had significant problems in their sales operations, the Special Committee first examined the background of their sales forces, looking for any common pattern in the employment history or training of those sales forces. To do this, NFA staff examined the employment history of each AP associated with the 27 firms for which information was available from the time of each firm's registration until the date of the enforcement action.

The results of this review are striking. For example, in 20 of the 27 firms reviewed, at least 20% of the APs ever employed by the firm had been employed by and received their training from one or more of the other firms which have been closed by the CFTC or NFA for fraud. In fact, for 11 of the 27 firms reviewed, 40% or more of their APs had received their training from one of the other firms closed for fraud and six of the 27 firms had 50% or more of their APs come from that background.

To provide some basis for comparison, NFA staff also examined the employment history of the APs of six selected FCMS in the zero to 15, 16 to 50 and 51 or more branch office categories. Not one of the six FCMS had any principals or branch office managers who have worked for firms which have been expelled or revoked for telemarketing fraud. While four of the six firms employ a relative handful of APs who fit that employment history, not one of the six firms had even 1% of its sales force meet that description.





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The results of this analysis are not particularly surprising. If a firm is closed for fraud related to widespread telemarketing problems, it is reasonable to conclude that the firm's training and supervision of its sales force was wholly inadequate or inappropriate. The above analysis simply indicates that an AP who has received inadequate or inappropriate supervision and training may carry with him the improper sales tactics he has been taught if he is not closely supervised.

The Board felt that this historical data supports the common sense view that what constitutes "diligent supervision" of telemarketing activities can vary widely from firm to firm. Member firms vary widely in their telemarketing activities -- in the products they offer, the clients they solicit and in the size and composition of their sales forces. Common sense dictates that a firm whose sales force, or a significant portion of it, received training in telemarketing from firms which have been closed for telemarketing abuses must do more to "diligently" supervise its sales force. The historical data tends to confirm that point.

To further test the basic premise that firms which recruit a significant percentage of their sales force from other firms which have been closed for fraud should be required to adopt enhanced supervisory requirements for telemarketing, the Special Committee attempted to identify those firms which would have been appropriate subjects of enhanced supervisory requirements as of January 1, 1986. It is not possible to reconstruct the exact composition of any given firm's roster of APs as of January 1, 1986. NFA staff, however, estimates that as of that date 37 Member firms employed a sufficient percentage of APs from firms which had been closed for fraud to warrant the imposition of enhanced supervision. Since January 1, 1986, those 37 firms, which represented less than 1% of NFA Member:

- were named in 75% of all customer complaints received by NFA's Compliance Department;
- accounted for 43% of all of the sales practice arbitration claims filed at NFA and 34% of all NFA arbitration claims;
- were named in 1,175 CFTC reparations proceedings;
- were named in 21 CFTC administrative cases, 9 CFTC injunctive cases, 23 NFA BCC Complaints and 5 MRAs. In all, 30 of the 37 firms were named in one or more actions; and



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- sponsored 20% of all of the APs against whom NFA initiated proceedings to deny or revoke registration.

More recent, and more precise, registration information confirms that Member firms which recruit APs from other firms which have been closed for fraud are few in number but create a grossly disproportionate share of customer complaints. NFA staff has identified 47 Member firms which, at some point during the last six months of 1991, employed more than 5 APs of which 20% or more had received training from firms which have been closed for fraud. Those 47 Members constitute approximately 1% of NFA Members, but accounted for 52% of all arbitration demands and 53% of all customer complaints received by NFA during that period.

All of this information overwhelmingly supports the notion that firms which hire 20% or more of their APs from firms which have been closed for fraud should be required to take additional steps in order to provide the "diligent" supervision required by NFA Compliance Rule 2-9. The Board ultimately determined to further narrow the focus of the Interpretive Statement by restricting the number of firms which would be required to adopt enhanced supervisory requirements. Thus, the Board concluded that Member firms which have drawn 25% or more of their sales force from other firms which have been closed for fraud should be subject to the additional supervisory requirements. Even at this higher level, however, the Board recognized that firms with relatively few APs could be covered by the rule even if they had only one or two APs who had received sales training from firms which had been closed for fraud. To ensure that the rule is not overbroad, the Board exempted completely any firm with fewer than five APs and provided a higher trigger level for firms with less than 20 APs. Thus, firms with between 5 and 10 APs would be subject to the enhanced supervisory procedures only if 50% or more of their APs had been hired from firms which had been closed for telemarketing fraud. Firms with more than 10 but less than 20 APs would be subject to the enhanced requirements if 5 or more APs had previously worked for firms which had been closed for fraud. Currently, approximately 19 firms would be affected by this proposal.

The Board's focused approach in imposing additional supervisory requirements on firms described in the interpretive statement is precisely what the Senate Committee on Agriculture, Nutrition and Forestry had in mind when it approved Section 812 of the Futures Trading Act of 1989. In describing that provision, the Committee reported that:



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The amendment would require each registered futures association to establish specific standards, which must be approved by the Commission, to pinpoint those types of firms which need to establish enhanced telemarketing supervisory procedures for the solicitation of new futures or options customers. For example, firms which have previously been the subject of enforcement actions involving telemarketing or firms whose sales force or management structure includes a large percentage of persons who previously worked for and received training from such firms could be required to adopt enhanced supervisory procedures.

(cite) (emphasis supplied).

In short, the criteria selected by the Board to trigger the enhanced supervisory requirements are right on target. Those criteria are based on specific, objective and readily measurable factors which are directly linked to the likelihood that a firm could develop firm-wide telemarketing problems.

**THE PROPOSED RULE AND INTERPRETIVE STATEMENT  
WILL EFFECTIVELY PREVENT INSTANCES OF  
FIRM-WIDE TELEMARKETING ABUSE**

NFA's proposal is not a panacea. It will not convert dishonest individuals into honest ones and will neither prevent nor detect every possible instance of deceptive telemarketing. It will, however, do exactly what it is intended to do -- it will sharply reduce the likelihood of an NFA Member engaging in firm-wide telemarketing fraud.

As described above, NFA's proposal will affect only those firms which have drawn 25% or more of their sales force from other firms which have been closed for fraud. Currently, the proposal would affect approximately 19 Members. Those 19 firms fall into two general categories, those who want to comply with NFA's sales practice requirements and those that do not. For firms in the first category NFA's proposal would provide not only a strong deterrent to any of the firm's APs inclined to use the sales techniques applied at their previous firms but also a mechanism for the comprehensive monitoring of solicitations of all of its APs. Firm supervisory personnel would not be limited



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to monitoring some solicitations of some APs at times when the AP knows he is being temporarily monitored. Firm supervisory personnel could not only review any or all of a given AP's solicitations but could also review those solicitations directly with the AP to correct any specific problems the particular AP is encountering.

If, on the other hand, a firm is not interested in complying with NFA's sales practice rules, it most certainly will not be interested in complying with and will attempt to circumvent the enhanced supervisory requirements. Admittedly, the proposed rule and Interpretive Statement will not detect every possible instance of telemarketing abuse within a firm. Based on NFA's experience, however, the goal of preventing firm-wide deceptive sales practices should not be thwarted by selective tape recording of conversations by firms subject to the enhanced supervisory requirements. Over the years NFA has issued no fewer than 164 disciplinary actions involving deceptive sales practices. In the overwhelming majority of cases the deceptive practices were not limited to the solicitations of isolated customers or to isolated conversations with those customers. To the contrary, most of the victims of telemarketing abuse have been subjected to numerous solicitation calls, most of which employ some variation of the recurring themes of high profit potential, low risk and successful track records. For a firm bent on committing firm-wide telemarketing fraud to successfully avoid the taping requirement, its non-compliance with the requirement would have to be so pervasive that it should be subject to ready detection. This could be accomplished through random checks of newly opened customer accounts, inquiries into customer complaints received by NFA and NFA's practice of attempting to have staff members solicited as customers. Our experience has also shown that the flat out misrepresentations of fact made by APs are often in response to specific customer questions regarding risk or past performance. Since the AP cannot anticipate when such questions might arise, it would be difficult to anticipate at what point in the solicitation the tape recorder should be turned off.

NFA's experience with similar taping requirements imposed in NFA disciplinary actions, though limited, also indicates the effectiveness of the current proposal. NFA has imposed such taping requirements in two actions. It is impossible to evaluate the effectiveness of the taping in one case since the firm involved experienced such a precipitous drop in its sales after the taping system was installed that it went out of business before NFA could review the tapes that were made. In the second case, however, a recently completed NFA audit of a firm



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which was subject to a taping requirement indicates a continuation of the same deceptive practices which led to the first complaint and which may, if the Business Conduct Committee agrees, lead to a second.

Finally, both the Commission and Congress have recognized the effectiveness of taping as a supervisory requirement. The Commission itself settled an injunctive case involving alleged telemarketing abuse by requiring, among other things, the tape recording of all sales solicitations by the firm. Clearly, the Commission would not have required the firm to undertake a supervisory procedure which the Commission considered ineffective. The Senate Committee on Agriculture, Nutrition and Forestry also recognized the effectiveness of tape recording sales solicitations and specifically stated that the enhanced supervisory requirements to be imposed by NFA could include the tape recording of sales solicitations.

The tape recording of sales solicitations by the few firms subject to these requirements will help dramatically in either preventing firm-wide problems from occurring or in detecting those problems more quickly. This proposal, in short, will help break the cycle of deception by which the closing of one boilerroom simply leads to the opening of another.

**THE PROPOSED RULE AND INTERPRETIVE STATEMENT  
PROVIDE FAIRNESS AND FLEXIBILITY  
TO ALL AFFECTED MEMBERS**

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The proposed rule and Interpretive Statement ensure that all Members covered by the rule will be treated with fundamental fairness. In setting specific supervisory steps which firms subject to the rule must adopt, the Board has avoided a "one size fits all" approach to the problem of preventing firm-wide telemarketing fraud. Though only a handful of Members would be affected by the proposal, the Board recognized that those few Members may vary significantly in a number of important ways and that based on their unique circumstances certain firms may develop alternative supervisory procedures which offer the same degree of protection as the taping of sales solicitations. The proposed rule lets those firms do just that. The rule specifically provides that firms which meet the criteria established by the Board may seek a waiver of the enhanced supervisory procedures set by the Board upon a showing that "the Member's current supervisory procedures provide effective supervision over its employees and agents."



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In the Board's view the important attribute of taping is that it allows an objective evaluation of each AP's sales practices by an independent party. Though the taping of solicitations may be the optimum means of providing that independent evaluation, it is certainly not the only way. Each firm affected by the proposed rule would be free to fashion an alternative means of providing such an objective and independent evaluation tailored to its particular circumstances. If acceptable to a three-Member panel of BCC members, the firm's alternative would be an acceptable means of fulfilling the firm's supervisory responsibilities.

In evaluating the method, scope and frequency of the Member's alternative proposal the panel could consider a wide variety of factors relating to each Member's individual operations, including:

- the total number of APs sponsored by the Member;
- the number of branch offices operated by the Member;
- the experience and background of the Member's supervisory personnel;
- the number of the Member's APs who had received training from firms which have been closed for fraud, the length of time those APs worked for those firms and the amount of time which has elapsed since those APs worked for the disciplined firms;
- the results of any previous NFA examinations; and
- the cost effectiveness of the taping requirement in light of the firm's net worth, operating income and related telemarketing expenses.

In addition to the waiver provision, any Members affected by the proposed rule and Interpretive Statement would, of course, be afforded all of the procedural protections provided under NFA rules. Thus, no Member could be subject to a disciplinary sanction for a failure to supervise its telemarketing activities without a full opportunity for a hearing before the appropriate Business Conduct Committee. At that hearing NFA would bear the full burden of establishing that the Member, in fact, failed to supervise diligently the activities of its employees or agents. Though NFA could make a prima facie showing of the failure to supervise by proving that the Member meets the criteria established by the Board and failed to implement the



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enhanced supervisory procedures called for in the Interpretive Notice, the Member could still defend on the grounds that its supervisory procedures were nonetheless adequate. In effect, the Business Conduct Committee could review any refusal by the waiver panel to grant the requested relief in the context of a disciplinary proceeding. The Business Conduct Committee's decision, in turn, would be subject to review by NFA's Appeals Committee, the Commission and the federal courts, as with any other disciplinary action.

In sum, the proposed rule contains ample assurances and safeguards to ensure that the rule is implemented fairly and flexibly for all affected Members.

For all of the reasons outlined above, NFA feels that the proposed rule and Interpretive Statement are important improvements to the futures industry's ongoing efforts to protect the public from high-pressured, deceptive and misleading telephone solicitations. NFA intends to make the proposed rule and Interpretive Statement effective upon the earlier of Commission approval or six months from the date of this submission. We look forward to cooperating with the Commission and its staff in addressing any questions which the Commission may have.

Sincerely,

  
Daniel J. Roth  
General Counsel

DJR:cm(ltr/webb.djr)  
Enclosure

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 A. Klejna, Esq.  
Joanne T. Medero, Esq.  
Alan L. Seifert, Esq.  
Susan C. Ervin, Esq.  
Lawrence B. Patent, Esq.  
David Van Wagner, Esq.

EXHIBIT A

FIRMS CLOSED FOR FRAUD BY NFA OR THE CFTC

<u>FIRM NAME</u>	<u>PENALTY</u>
Churchill Group Inc.	expelled
Great American Commodities Corp.	permanent withdrawal
Multivest Options Inc.	permanent injunction
Option America Inc.	expelled
Presidential Futures Inc.	expelled
Chilmark Commodities Corp.	expelled, \$50,000
Masters Trading Organization Ltd.	permanent bar
Nationwide Futures Corp.	expelled
BP Financial of Boston Inc.	permanent bar
Neiman-Lloyds Inc.	expelled
Investment Syndication Corp.	permanent bar
William Zipkin Index Services	expelled
Montgomery International Trading Inc.	expelled
Barry Stirn	permanent bar
Waters Tan & Co.	expelled
International Trading Group Ltd.	restraining order, freeze assets
Murlas Commodities Inc	registration revoked
Whitehall Investors International Inc.	registration revoked
Tara Securities Corp.	permanent injunction
Premex Inc.	registration revoked
Commodity Fluctuations Systems Inc.	permanent injunction
D.E. Jones Commodities Inc.	permanent injunction
Gabriel Brokerage Inc.	permanent injunction
First National Monetary Corp.	permanent injunction
Paragon Futures Assoc.	revoked trading priv. not to apply for registration
Durkin & Associates Inc.	revoked trading privileges, never to seek reg.
Financial Services Group Inc.	registration revoked
Atlantic Futures Inc.	not to reapply for registration
Lincolnwood Inc.	permanent injunction
First Commodity Corporation of Boston	registration revoked
Apache Trading Corp.	permanent bar

cm(log/exhsABC)



UNITED STATES OF AMERICA  
**COMMODITY FUTURES TRADING COMMISSION**

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

January 19, 1993



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

RE: National Futures Association's Proposed Amendment  
 and Interpretive Notice to its Compliance Rule 2-9

Dear Mr. Roth:

By letters dated June 16, 1992 through January 12, 1993, the National Futures Association ("NFA") submitted to the Commission for its approval, pursuant to Section 17(j) of the Commodity Exchange Act ("Act"), a proposed amendment and interpretive notice to its Compliance Rule 2-9. The NFA represents that it intends to make the proposed amendment and interpretive notice effective upon notice of Commission approval.

The Commission considers the NFA's proposed amendment and interpretive notice to be timely filed since the NFA filed the amendment and notice in anticipation of final Congressional action and enactment of the Futures Trading Practices Act of 1992. The Commission finds that the proposed amendment and interpretive notice are in furtherance of the requirement of recently-amended Section 17(p) of the Act that the NFA establish special supervisory guidelines for telephone solicitation of new futures and options accounts and make those guidelines applicable to those members determined to require such procedures.

Please be advised that on this date the Commission has approved the above-referenced proposed amendment and interpretive notice under Section 17(j) of the Act. The Commission will monitor the implementation of the NFA's amendment and interpretive notice to determine whether the Commission, pursuant to Section 17(p) of the Act, should establish express standards for monitoring telemarketing for new futures and options customers in addition to existing sales practice guidelines which would require the NFA to implement further special supervisory guidelines to protect the public interest relating to the solicitation by telephone of new futures and options accounts.

Very truly yours,

*Lynn K. Gilbert*  
 Lynn K. Gilbert  
 Deputy Secretary  
 of the Commission

Post-It™ brand fax transmittal memo 7671		# of pages	1
To	Dan Roth		
From	Liz Patterson		
Co.	NFA		
Co.	CFTC		
Dept.	General Counsel		
Phone #	(202) 254-8955		
Fax #	(312) 781-1467		
Fax #			



# COMMODITY FUTURES TRADING COMMISSION

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

Fowler C. West  
Commissioner

(202) 254-8541

## STATEMENT OF COMMISSIONER FOWLER C. WEST

### NFA's Proposed Amendment and Interpretive Notice to its Compliance Rule 2-9

JANUARY 19, 1993

I am pleased that the Commodity Futures Trading Commission has approved a rule proposal by National Futures Association (NFA) concerning the supervision by its member firms of their employees. The rule would require that NFA members "diligently supervise...employees and agents in all aspects of their futures activities" in order to "prohibit abusive and deceptive sales practices".

I strongly supported this NFA proposal and applaud NFA for taking this initiative to require its members to better oversee the activities of those employees who had been employed and trained at firms which were closed due to fraudulent sales practices. So often retail commodity salesmen jump from one questionable firm to another, thus perpetuating the improper sales practices learned at these firms. By proposing these additional supervisory requirements, NFA will be in a better position to address the problem of telemarketing fraud within the futures industry. Other regulators also have viewed this rule as a good way in which to monitor these activities.

NFA has taken a leadership role in the effort to improve the integrity of the futures industry, and we are fortunate to have a self-regulatory organization which takes such an active and sincere interest in the industry's well-being.

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To	Laura Odrey/Bob	From	Fowler West
Co.	Wilmarth	Co.	
Dept.		Phone #	
Fax #	(*Fowler's last CFTC statement)		

January 12, 1993

Via Fax

David Van Wagner, Esq.  
Division of Trading & Markets  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Dear David:

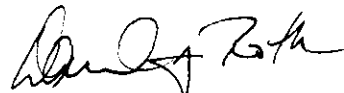
This will confirm our conversation of today's date regarding NFA's proposed amendments to NFA Compliance Rule 2-9 and the Interpretive Notice Regarding the Supervision of Telemarketing Activities. As I mentioned, the title of Rule 2-9 will remain "Supervision" and subparagraph (a) of the rule covers all aspects of a Member's operations, not just its telemarketing activities.

With respect to waiver requests, the waiver panel's evaluation of the Member's proposed alternative supervisory procedures will be limited to a review of whether the alternative procedures provide an adequate substitute for the taping requirements. Any waiver granted to a firm will state only that the three-member panel has determined that the proposed alternative, if properly implemented, is an adequate substitute for the taping requirements.

Finally, NFA would expect all Members subject to the proposed taping requirements to carry out their responsibilities in a manner consistent with all applicable federal and state laws.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Daniel J. Roth  
General Counsel

DJR:cm(ltr/dvw3)

January 7, 1993


Via Fax and Next-Day Delivery

David Van Wagner, Esq.  
Division of Trading & Markets  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Dear David:

To confirm your recent conversation with Kathryn Camp, the proposed Interpretive Notice to NFA Compliance Rule 2-9, Supervision of Telemarketing Activity, does not refer to a cooling-off period as an enhanced supervisory procedure which Member firms falling under the specified criteria may be required to undertake. However, pursuant to NFA Compliance Rule 3-11, in a disciplinary case a Regional Business Conduct Committee may impose a cooling-off period as a remedial sanction if the BCC deems it appropriate.

Sincerely,

  
Daniel J. Roth  
General Counsel

DJR:cm(ltr/dvw)