

June 7, 1990

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

Re: National Futures Association:
Proposed Amendments to NFA Bylaw 406; NFA
Registration Rules 201 and 203; and NFA Code of
Arbitration Section 9

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 amendments to NFA Bylaw 406, NFA Registration Rules 201 and 203, and NFA Code of Arbitration Section 9. These amendments were approved by NFA's Board of Directors ("the Board") and its meeting on May 17, 1990. NFA respectfully requests Commission review and approval of the proposed amendments.

I. AMENDMENT TO NFA BYLAW 406

- A. Amendments to NFA Bylaw 406 to set the timing for mailing of written ballots for election to NFA's Board (additions are underscored and deletions are [bracketed]):

**BYLAWS
OF
NATIONAL FUTURES ASSOCIATION**

* * *

**CHAPTER 4
MEMBER MEETINGS AND ELECTIONS**

* * *



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Bylaw 406. Elections.

Beginning with the calendar year of 1983, the Annual Election shall be held on the second Tuesday in January, at which the vacancies on the Board and Nominating Committee shall be filled. Before the October 15 preceding the election, the Secretary shall (i) notify all Members in the FCM and LTM; IB; and Industry Participant categories of the elected Directors and the members of the Nominating Committee whose terms will expire at the Annual Election and (ii) request the submission to the Nominating Committee of the names of eligible persons to fill those positions. Before the November 20 preceding the election, the Nominating Committee shall submit its list of nominees for the positions to the Secretary, who shall promptly notify the Members of the nominations. Other nominations may be made by petition, as prescribed in the Articles. Each petition must identify the position to which the nomination pertains. Petitions must be received by the Secretary within 21 days of the issuance of the Secretary's notification of the candidates proposed by the Nominating Committee. Promptly after the expiration of the period within which petitions may be submitted, the Secretary shall notify the Members of all of the candidates whose names will appear on the ballot. The Secretary shall cause written ballots to be sent to all FCM and LTM; IB; and Industry Participant Members by December 15.

- B. Explanation of amendments to NFA Bylaw 406 to set the timing for mailing of written ballots for election to NFA's Board.

NFA's Board has recognized a potential weakness in NFA's election procedures resulting from a recent increase in competition for Board positions. NFA Bylaw 406 provides that the results of the Nominating Committee deliberations are to be announced each year by November 20. Persons interested in submitting petitions have 21 days from the date of notice in which to do so, and "promptly" after the expiration of the 21-day submission period NFA must provide ballots to its Members. Ballots must be returned by the second Tuesday in January.

Because the ballots are mailed "promptly" after the close of the nomination period and because many Members tend to vote immediately upon receipt of the ballot, candidates have a very limited time in which to put forth their platforms and to respond to the proposals of their opponents. This problem is compounded by the fact that NFA's nationwide membership essentially requires that all such campaigning be done through costly and time consuming mailings to its membership. The result is



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that many Members may vote based on incomplete information from the candidates, simply reacting to the first piece of literature they receive.

By holding the Nominating Committee meetings earlier and announcing the results by mid-October, petition candidates would have until early- to mid-November to file their petitions for nomination. NFA could notify the membership of all of the candidates who will be appearing on the ballot by mid-November. The candidates could conduct their campaigns for one month before the ballots were sent to Members on December 15. This would provide a far greater opportunity for a thoughtful discussion of the issues before Members actually cast their votes.

NFA respectfully requests that the proposed amendment to Bylaw 406 be declared effective upon approval.

II. AMENDMENTS TO NFA REGISTRATION RULES 201 AND 203

- A. Amendments to NFA Registration Rules 201 and 203 to set registration fees for floor brokers (additions are underscored and deletions are [bracketed]):

REGISTRATION RULES

* * *

PART 200. REGISTRATION REQUIREMENTS AND PROCEDURES

Rule 201. Registration Requirements and Procedures.

* * *

NFA shall perform registration functions with respect to persons required to register under the Act as floor brokers in accordance with all of the Regulations governing the registration of floor brokers contained in Part 3 of the Commission's Regulations, except that Rule 203 of these Rules shall govern floor broker registration fees and Part 700 of these Rules shall govern access to and certification of floor broker records maintained by NFA.

* * *

Rule 203. Registration Fees.

- (a) Amount.



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- (1) **Associated Person.** Each Form 8-R submitted in connection with the registration of an associated person must be accompanied by a fee of \$35.
- (2) **Futures Commission Merchant.** Each application for registration as a futures commission merchant must be accompanied by a fee of \$250.
- (3) **Introducing Broker.** Each application for registration as an introducing broker must be accompanied by a fee of \$75.
- (4) **Commodity Pool Operator and Commodity Trading Advisor.** Each application for registration as a commodity pool operator or commodity trading advisor must be accompanied by a fee of \$50.
- (5) **Leverage Transaction Merchant.** Each application for registration as a leverage transaction merchant must be accompanied by a fee of \$250.
- (6) **Floor Broker.** Each application for registration as a floor broker must be accompanied by a fee of \$30.

* * *

- B. Explanation of amendments to NFA Registration Rules 201 and 203 to set registration fees for floor brokers.

Effective March 1, 1990, the Federal Bureau of Investigation ("FBI") increased its fingerprint processing fee from \$14.00 to \$20.00. NFA processes between 14,000 to 15,000 associated person ("AP") and floor broker applications per year, and based on those figures, the FBI increase will cost NFA an additional \$80,000 to \$90,000 per year in processing costs. The Board has determined that the majority of the FBI increase should be passed on to AP and floor broker applicants. Therefore, on February 15, 1990, the Board approved a proposed amendment to Registration Rule 203 to raise the application fee for APs to \$35.00 and authorized NFA staff to request that the Commission amend CFTC Regulation 3.3 to raise the floor broker application fee to \$30.00.

By letter dated February 22, 1990 to Andrea Corcoran, Director, Division of Trading and Markets, NFA staff requested that the Commission amend CFTC Regulation 3.3 to raise the application fee for floor brokers from \$25.00 to \$30.00. After

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further consideration and discussions with Commission staff, NFA decided that it would be less cumbersome for NFA to set floor broker application fees directly. Therefore, on May 17, 1990 the Board adopted the proposed amendments to NFA Registration Rules 201 and 203. NFA's general responsibilities for processing floor broker applications will still be governed solely by Commission regulations and additional revisions to those responsibilities are not contemplated herein.

NFA recognizes that at present, the approval of its amendments would result in an inconsistency with CFTC Regulation 3.3. In the event this inconsistency is deemed problematic and a bar to Commission approval, NFA respectfully requests that the amendments to NFA Registration Rules 201 and 203 become effective upon the effective date of the change in CFTC Regulation 3.3.

III. AMENDMENTS TO NFA CODE OF ARBITRATION SECTION 9

- A. Amendments to Section 9 of NFA Code of Arbitration to increase the claim amounts which qualify for summary proceedings (additions are underscored and deletions are [bracketed]):

CODE OF ARBITRATION

* * *

Section 9. Hearing.

* * *

(h) Summary Proceeding.

The proceeding shall be conducted entirely through written submissions when:

- (1) the aggregate amount of the [customer's] claims (exclusive of interest and costs) plus the aggregate amount of counterclaims (exclusive of interest and costs) is under [\$2500] \$5,000, unless the Secretary or the Panel directs otherwise; or
- (2) the aggregate amount of the claims (exclusive of interest and costs) plus the aggregate amount of counterclaims (exclusive of interest and costs) is \$5,000 or more but not exceeding \$10,000, unless the Secretary or the Panel directs otherwise or one of the parties to the proceeding serves a written request for

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an oral hearing on the Secretary no later than 30 days after the Answer is due, or no later than 30 days after the Reply is due if a counterclaim has been asserted; or

(3) the Panel has consented to the written agreement of the parties to waive the oral hearing.

B. Explanation of amendments to Section 9 of NFA's Code of Arbitration to increase the claim amounts which qualify for summary proceedings.

Section 9(h) of NFA's Code of Arbitration ("Code") provides that claims under \$2,500 will be decided on the written submissions of the parties. The \$2,500 limit on summary proceedings is the maximum allowable under CFTC Regulation 180.2(d)(1), which has remained unchanged since its adoption in 1976. In comparing NFA's maximum limit with those of other arbitration forums, it would appear that the claim amounts which qualify for NFA summary proceedings may be unnecessarily low.

The Securities Arbitration Rules of the American Arbitration Association ("AAA") provide that disputes of \$5,000 or less will be decided on the written submissions of the parties unless either party requests an oral hearing. The rules of the New York Stock Exchange ("NYSE") provide for decisions based on the written submissions of the parties if the amount in dispute is \$5,000 or less unless the customer (but not the member) requests or agrees to an oral hearing. The National Association of Securities Dealers ("NASD") has a similar rule except that it applies to claims of \$10,000 or less. The rules of the AAA, NYSE, and NASD are not entirely analogous to NFA Code Section 9(h) because they provide at least one party with a right to an oral hearing regardless of the claim amount. However, this distinction is not a significant one. Although the AAA, NYSE, and NASD hold hearings in a number of regional centers throughout the country, they do not hold hearings in as many different locations as NFA does. Therefore, customers are presumably less likely to seek hearings at AAA, NYSE, and NASD, where the travel costs would be higher, than at NFA.

Summary proceedings are designed to benefit the parties to the arbitration by expediting the proceeding and eliminating the expense of an oral hearing and to benefit NFA by closing cases more quickly and eliminating staff time necessary to prepare for and attend hearings. Summary proceedings also benefit NFA by allowing NFA to use qualified arbitrators located in more remote areas of the country where hearings are not



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usually held, thereby freeing up arbitrators in metropolitan areas to serve on cases which require oral hearings. Since claim amounts have been gradually increasing over the last five years, the percentage of cases heard as summary proceedings should continue to decrease. In fact, increasing the maximum claim amount to the \$5,000 level would increase the percentage of arbitration cases subject to summary proceedings from 13% to 29%, based on fiscal year 1990 filings. Thus, this change would produce substantial savings while still providing the parties in most cases with the opportunity for an oral hearing.

NFA respectfully requests that the Commission amend CFTC Regulation 180.2(d)(1) to raise the ceiling for summary proceedings from \$2,500 to \$5,000. A separate letter is being sent to Andrea Corcoran, Director, Division of Trading and Markets, requesting that CFTC Regulation 180.2(d)(1) be amended accordingly. NFA chose to proceed with its internal process of proposing and adopting the amendments to NFA Code of Arbitration Section 9 despite the current inconsistency with CFTC Regulation 180.2(d)(1) in order to expedite the implementation of the increase in the ceiling for summary proceedings at NFA if the Commission amends CFTC Regulation 180.2(d)(1) as requested.

The Board also believes that a more flexible approach, such as those used by other forums, should be applied to claims between \$5,000 and \$10,000. These claims would be handled as summary proceedings unless either party requested an oral hearing. The request for an oral hearing would have to be filed no later than 30 days after the last pleading is due. The deadline for requesting a hearing is set late enough to give the parties sufficient time to evaluate their case and early enough so that NFA will know the type of proceeding before selecting an arbitrator to decide the case. This provision will not deprive any party of a right to a hearing but should further increase the number of summary proceedings at NFA.

Therefore, NFA respectfully requests that the amendments to NFA Code of Arbitration Section 9 become effective upon the effective date of the recommended change to CFTC Regulation 180.2(d)(1).

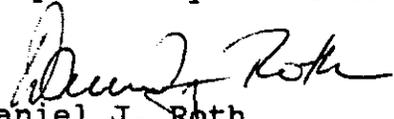
Although the proposed amendments have been submitted together for ease of transmittal to the Commission, they should be considered separately due to the variety of effective dates that may be associated with Commission approval. NFA respectfully requests Commission approval of the proposed amendment to NFA Bylaw 406 and further requests that this amendment be declared effective upon Commission approval. NFA respectfully

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requests Commission approval of the amendments to NFA Registration Rules 201 and 203 and further requests that the amendments to NFA Registration Rules 201 and 203 be declared effective either upon Commission approval or, if necessary, upon the effective date of the change to CFTC Regulation 3.3. Finally, NFA respectfully requests Commission approval of the proposed amendments to NFA Code of Arbitration Section 9 and further requests that these amendments be declared effective upon the effective date of a corresponding change to CFTC Regulation 180.2(d)(1).

Respectfully submitted,



Daniel J. Roth
General Counsel

DJR:cmc(ltrs-webb)

cc: Chairman Wendy L. Gramm
Commissioner Kalo A. Hineman
Commissioner Fowler C. West
Commissioner William P. Albrecht
Andrea M. Corcoran, Esq.
Joanne T. Medero, Esq.
Dennis P. Klejna, Esq.
Alan L. Siefert, Esq.
Susan C. Ervin, Esq.
Lawrence B. Patent, Esq.

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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

September 30, 1992



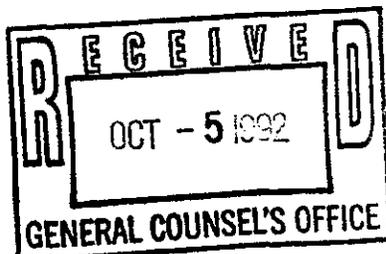
Daniel J. Roth, Esq.
General Counsel
National Futures Association
200 West Madison Street -- Suite 1600
Chicago, IL 60606

Re: Proposed amendments to NFA Code of
Arbitration §9(i) and Member Arbitration
Rules §9(i) (Summary Arbitration)

Dear Mr. Roth:

By letters dated June 7, 1990, April 17, 1991, June 11, 1991, September 6, 1991, and November 12, 1991, the National Futures Association ("NFA") submitted the captioned rule proposals pursuant to section 17(j) of the Commodity Exchange Act ("Act") for Commission approval. Because the proposals were, at the time, inconsistent with Commission regulations, NFA consented to an extension of time for review pending consideration of enabling amendments to the Commission's regulations.

The Commission has amended Regulations 180.2(d)(1) and 180.5 to permit NFA's rule changes. The Commission's amendments will take effect 30 days after publication of the enclosed notice in the Federal Register. Please be advised that the Commission concurrently has approved the captioned NFA rule proposals, to be implemented no sooner than the effective date of the Part 180 changes. In addition, as indicated in the Federal Register notice, the Commission suggests that NFA review the guidance it gives to arbitrators concerning circumstances under which it may be appropriate to provide an oral hearing in a summary proceeding.



Yours truly,

Jean A. Webb
Jean A. Webb

Secretary of the Commission

encl.

April 17, 1991

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

Re: National Futures Association: Proposed Amendment to
NFA Code of Arbitration Section 9

Dear Ms. Webb:

By letter dated June 7, 1990, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission, for approval, proposed amendments to various NFA requirements, including proposed changes to Section 9 of NFA's Code of Arbitration ("Code"). As explained in the submission letter, the proposed amendments to Section 9 would increase the claim amounts which qualify cases to be heard as summary proceedings. The proposed amendments are inconsistent with CFTC Regulation 180.2(d)(1) and were submitted contingent upon changes to that regulation.

In reviewing the proposed amendments to Section 9 of the Code, NFA has noted a drafting inconsistency within the Code. The proposed amendments to Section 9(h)(1) provide for summary proceedings to be conducted without the right to an oral hearing if the claim amount is under \$5,000. Other sections of the Code provide for procedural distinctions where the amount of the claim does not exceed a specified amount. (See Section 4(a) and proposed Section 9(h)(2).) While this drafting inconsistency does not create a conflict in the Code's provisions, it does create some confusion among parties to NFA arbitration proceedings. Therefore, in order to avoid this inconsistency, NFA has revised the proposed amendment to change the lower amount from "under \$5,000" to "does not exceed \$5,000" -- an effective change of one cent.

The proposed amendments to Section 9(h) of the Code, as revised, follow. The following amendments to Section 9 should replace the amendments submitted to the Commission on June 7, 1990. (Additions are underscored and deletions are [bracketed].)

CODE OF ARBITRATION

* * *

Section 9. Hearing.

* * *



Ms. Jean A. Webb

April 17, 1991

(h) Summary Proceeding.

The proceeding shall be conducted entirely through written submissions when:

- (1) the aggregate amount of the [customer's] claims (exclusive of interest and costs) plus the aggregate amount of counterclaims (exclusive of interest and costs) [is under \$2500.00] does not exceed \$5,000, unless the Secretary or the Panel directs otherwise; or
- (2) the aggregate amount of the claims (exclusive of interest and costs) plus the aggregate amount of counterclaims (exclusive of interest and costs) is more than \$5,000 but not more than \$10,000, unless the Secretary or the Panel directs otherwise or one of the parties to the proceeding serves a written request for an oral hearing on the Secretary no later than 30 days after the Answer is due, or no later than 30 days after the Reply is due if a counterclaim has been asserted;
or
- (3) the Panel has consented to the written agreement of the parties to waive the oral hearing.

* * *

Since the proposed amendments to Section 9(h) of the Code conflict with CFTC Regulation 180.2(d)(1), NFA realizes that the Commission will not be able to approve the proposed amendments until CFTC Regulation 180.2(d)(1) has also been amended. Therefore, NFA agrees that the time period for Commission approval of the proposed amendments to Section 9(h) will not expire until the effective date of the necessary amendments to CFTC Regulation 180.2(d)(1).

Respectfully submitted,

Daniel J. Roth
General Counsel

DJR:jac(Ltrs\Webb3.KPC)

cc: Chairman Wendy L. Gramm
Commissioner Kalo A. Hineman
Commissioner Fowler C. West
Commissioner William P. Albrecht
Andrea M. Corcoran, Esq.
Joanne T. Medero, Esq.

Dennis P. Klejna, Esq.
Alan L. Siefert, Esq.
Susan C. Ervin, Esq.
Lawrence B. Patent, Esq.
Linda Kurjan, Esq.

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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



August 3, 1990

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

Re: The National Futures Association's Proposed
Amendments to Bylaw 406 and Registration
Rules 201 and 203

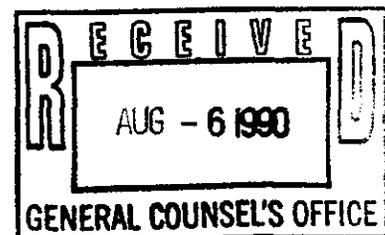
Dear Mr. Roth:

By letters dated March 12, 1990 and June 7, 1990, the National Futures Association ("NFA") submitted pursuant to Section 17(j) of the Commodity Exchange Act ("Act") proposed amendments to its Bylaw 406 and Registration Rules 201 and 203.

The Commission understands that NFA intends to implement the proposed amendments upon receipt of notice of Commission approval. Please be advised that on this date the Commission has approved the above-referenced proposed amendments under Section 17(j) of the Act.

Sincerely,


Lynn K. Gilbert
Deputy Secretary
of the Commission



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

May 31, 1990

Andrea M. Corcoran, Esq.
Director
Division of Trading & Markets
Commodity Futures Trading
Commission
2033 K Street, N.W.
Washington, D.C. 20581

Re: CFTC Regulation 3.3

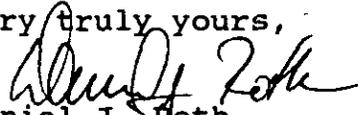
Dear Ms. Corcoran:

NFA's Board of Directors ("Board") voted at its meeting on May 17, 1990 to amend NFA Registration Rule 201 to allow NFA to set the application fee for floor brokers. The Board also voted to amend NFA Registration Rule 203 to provide for a floor broker application fee of \$30.00. NFA will submit these proposed rule changes to the Commission in the near future.

The proposed amendments to NFA Registration Rules 201 and 203 will be inconsistent with CFTC Regulation 3.3. Following discussions between Commission staff and NFA staff in response to my letter to you dated February 22, 1990 and pursuant to the aforementioned actions of the Board, NFA respectfully requests that prior to the effective date of these amendments, the Commission delete CFTC Regulation 3.3 in its entirety. The deletion of this Regulation will allow NFA to set the application fee for floor brokers without the necessity for a corresponding change to Commission rules. Of course, NFA's general responsibilities for processing floor broker applications will still be governed solely by Commission regulations and additional revisions to those responsibilities are not contemplated herein.

Please feel free to contact me should you have any questions or comments regarding this matter.

Very truly yours,


Daniel J. Roth
General Counsel

(LETTERS:Reg-3.3.AM:nm)