

March 14, 1989

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 1301 and Section 2 of NFA's Code of Arbitration

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 1301 and to Section 2 of NFA's Code of Arbitration. The amendments were approved by NFA's Board of Directors ("the Board") at its meeting on February 28, 1989. NFA respectfully requests Commission review and approval of the proposed amendments.

I. PROPOSED AMENDMENTS TO NFA BYLAW 1301 AND EXPLANATION THEREOF

- A. Amendments to Bylaw 1301 to clarify the assessment fee for foreign options (additions are underscored and deletions are [bracketed]):

BYLAWS

* * *

CHAPTER 13

DUES AND ASSESSMENTS

Bylaw 1301. Schedule of Dues and Assessments.

* * *

(b) FCM Members.

- (i) Each FCM Member shall pay to NFA an assessment equal to:

- (A) \$0.24 for each commodity futures contract traded on a contract market (other than an option contract [traded on a



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contract market and a dealer option contract]) on a round-turn basis, and

- (B) \$0.14 for each option contract traded on a contract market on a per trade basis,

carried by it for a customer other than (1) a person having privileges of membership on a contract market where such contract is entered or (2) a business affiliate of such FCM that directly or indirectly owns 100% of or is owned 100% by or has 100% ownership in common with such FCM provided such FCM has privileges of membership on the contract market where such contract is entered or (3) an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM; [and]

- (C) \$0.24 for each commodity futures contract traded on a foreign board of trade (other than an option contract) on a round turn basis, and

- (D) \$0.14 for each option contract traded on a foreign board of trade on a per trade basis,

carried by it for a customer other than on an omnibus account basis for another FCM Member for which assessments are payable to NFA by the other FCM; and

- (E)[(C)] \$0.14 for each dealer option contract on a per trade basis carried by it for a customer other than a business affiliate of such FCM that directly or indirectly owns 100% of or is owned 100% by or has 100% ownership in common with such FCM Member:

Provided, however, such assessments shall be suspended or adjusted by the Board for a period not to exceed three months when in the judgment of the Board such action is appropriate in light of NFA's overall financial goals. The FCM Member shall invoice these assessments to its customer and shall remit the amount due to NFA; and



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- B. Explanation of amendments to NFA Bylaw 1301 to clarify the assessment fee for foreign options.

In early 1988, the Commission approved certain NFA Bylaw amendments to provide for the regulation of the purchase and sale of foreign futures and options within the United States. One of these amendments altered the definition of "futures" in NFA Bylaw 1507 to include foreign futures and options. Because Bylaw 1301 imposes an assessment fee of \$0.24 per round turn "futures" contract and \$0.14 per U.S. exchange traded option contract, this could have the unintended result of applying the futures contract assessment fee to foreign options. Although this potential ambiguity has not yet created any apparent confusion among NFA Members, the proposed amendments to Bylaw 1301 make clear that foreign and domestic options are both assessed the same assessment fee.

II. PROPOSED AMENDMENTS TO SECTION 2 OF NFA'S CODE OF ARBITRATION AND EXPLANATION THEREOF

- A. Amendments to Section 2 of NFA's Code of Arbitration to delete unnecessary provisions (additions are under-scored and deletions are [bracketed]):

CODE OF ARBITRATION

* * *

Section 2. Arbitrable Disputes

(a) Mandatory Arbitration.

(1) Claims. Except as provided in Sections 5 and 6 of this Code with respect to timeliness requirements, the following disputes shall be arbitrated under this Code if the dispute involves commodity futures contracts and does not require for its adjudication the presence of witnesses or other third parties over whom NFA lacks jurisdiction and who are not otherwise available:

- (i) a dispute for which arbitration is sought by a customer against a Member or employee thereof, or Associate, provided that -
 - (A) the customer is not a futures commission merchant, floor broker, Member or Associate;
 - [(B) the customer has not contractually agreed, before the claim arose, to submit the dispute to a settlement



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procedure other than NFA arbitration, pursuant to a lawful agreement that complies with Commission Rule 180.3;]

(B)[(C)] the dispute does not solely involve cash market transactions that are not part of or directly connected with a commodity futures transaction; and

(C)[(D)] if brought against a Member or employee thereof, the Member is a futures commission merchant, an introducing broker, a commodity pool operator or a commodity trading advisor.

- (ii) a customer claim that is required to be arbitrated by NFA under a lawful agreement that complies with Commission Rule 180.3.
- (iii) a customer claim whose resolution has been delegated to NFA by a contract market under Section 5a(11) of the Commodity Exchange Act.
- (iv) a dispute for which arbitration is sought between Members in the categories listed in Section 2(a)(1)(i)((D)(C)) of this Code, or employees thereof or Associates, where at least one such Member or employer of such employee or Associate is not a member of a contract market.

* * *

B. Explanation of amendments to Section 2 of NFA's Code of Arbitration to delete unnecessary provisions.

On January 10, 1989, the Commission adopted an amendment to Commission Regulation 180.3(b)(4) [54 Fed. Reg. 1682 (January 17, 1989)]. As you know, Regulation 180.3(b)(4) requires that when a customer who has signed a pre-dispute agreement notifies a registrant, or when a registrant notifies such a customer, of its intent to submit a claim to arbitration, the registrant must provide the customer with a list of organizations qualified to conduct arbitrations under the Commission's Rules. This list must now include a registered futures association.

Presently, under Section 2(a)(1)(i)(B) of NFA's Code of Arbitration, NFA will not hear a dispute as a mandatory claim where the customer has "contractually agreed, before the claim arose, to submit the dispute to a settlement procedure other than NFA arbitration, pursuant to a lawful agreement that complies



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with Commission Regulation 180.3." Under Regulation 180.3(b)(4), as amended, a pre-dispute agreement cannot contractually exclude NFA from being included in the list of qualified arbitration forums. Therefore, because NFA must be listed, Section 2(a)(1)(i)(B) is no longer necessary.

NFA respectfully requests that the amendments to Bylaw 1301 and Section 2 of NFA's Code of Arbitration be declared effective upon approval by the Commission as authorized by Section 17(j) of the Act.

Respectfully submitted,

Daniel J. Roth
General Counsel

DJR:cm(WP50\Mak)

cc: Chairman Wendy L. Gramm
Commissioner Kalo A. Hineman
Commissioner Fowler C. West
Commissioner Robert R. Davis
Commissioner William P. Albrecht
Andrea M. Corcoran, Esq.
Dennis P. Klejna, Esq.
Alan L. Seifert, 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



JUN 14 1989

June 12, 1989

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

Re: Proposed Amendments to Sections 2, 4, 6, 7, 8, 9, 10, 11 and 12 and Proposed New Section 15 of the Code of Arbitration, and Proposed Rules Governing Arbitration of Disputes between U.S. Customers and Non-Member Foreign Firms

Dear Mr. Roth:

By letters dated December 12, 1988, and January 16, February 1, and March 14, 1989, pursuant to section 17(j) of the Commodity Exchange Act ("Act"), the National Futures Association ("NFA") submitted the captioned proposals for Commission approval. NFA requested that the Commission declare the proposals for Sections 2 and 15 plus the entire set of rules under Section 15 effective immediately upon approval and the rest of the proposals effective 30 days after approval. Please be advised that the Commission approved the captioned amendments pursuant to section 17(j) of the Act on this date, effective according to the schedule proposed by NFA in its submissions.

The Commission observed in particular that the discovery and preliminary hearing provisions potentially will facilitate and expedite NFA arbitration proceedings. NFA, however, must ensure that parties have a fair opportunity to use those mechanisms to foster these objectives. The Commission requests NFA, as it gains experience with the new procedures, to monitor its arbitration process in light of the availability of those mechanisms and advise the Commission regarding how effective they have been and whether any refinement or expansion of the rules might improve the process further.

Separately, the Commission wishes to alert NFA that the Commission's Division of Trading and Markets is continuing to conduct a rule enforcement review of NFA's arbitration program and to examine various issues related to arbitration, including

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some addressed by NFA's new amendments. As a consequence, and despite its approval today, the Commission or its staff may recommend that NFA adopt modifications to its arbitration rules and procedures at a later date.

Sincerely,

Jean A. Webb

Jean A. Webb
Secretary of the Commission

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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

May 22, 1989



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

Re: Proposed Amendments to National Futures
Association Bylaw 1301

Dear Mr. Roth:

By letter dated March 14, 1989, the National Futures Association ("NFA") submitted pursuant to Section 17(j) of the Commodity Exchange Act ("Act") proposed amendments to NFA Bylaw 1301. The NFA's proposed amendments to Bylaw 1301 would clarify the transaction assessment fees applicable to NFA member futures commission merchants executing foreign futures and option contracts on behalf of customers. The Commission understands that the NFA intends to make the proposed amendments effective upon receipt of notice of Commission approval.

Please be advised that on this date the Commission has approved the above-referenced amendments under Section 17(j) of the Act.

Sincerely,

Jean A. Webb

Jean A. Webb
Secretary of the Commission

RECEIVED
MAY 21 1989

GENERAL COUNSEL'S OFFICE