

March 5, 1987

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

Re: National Futures Association, Proposed Amendments to Bylaws 305 (Schedule B, Section I(b)), 701, 702, and 704 and Compliance Rules 2-15, 2-18, and 2-19; Proposed Bylaw 513; and Proposed Repeal of Compliance Rule 2-21.

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act ("Act"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") proposed amendments to NFA Bylaws 305, 701, 702, and 704 and Compliance Rules 2-15, 2-18, and 2-19; proposed Bylaw 513; and the proposed repeal of Compliance Rule 2-21. The amendments, new Bylaw, and repeal were approved by NFA's Board of Directors at its meeting on February 26, 1987.

**I. THE PROPOSED AMENDMENTS, BYLAW AND REPEAL**

- A. Amendment to Bylaw 305 (Schedule B, Section I(b)) to allow NFA to charge a research fee to members of the public for locating registration information, and to provide for advance payment of fees (additions are underscored):

**BYLAWS OF  
NATIONAL FUTURES ASSOCIATION**

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**CHAPTER 3  
MEMBERSHIP AND ASSOCIATION WITH A MEMBER**

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**Bylaw 305. Registration and Proficiency Requirements.**

\* \* \*

**Schedule B**

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Ms. Jean A. Webb  
March 5, 1987  
Page 2

I. Disclosure of Information from Registration Records  
Maintained by NFA

\* \* \*

(b) Disclosure of Public Information

- (i) If any member of the public requests access to registration records, or portions thereof, and the requested record, or portion, is "public" or "publicly available" under CFTC Regulations 1.10(g) and 145.6(b), respectively, then NFA will release that record, or portion, to the requester.
- (ii) NFA may charge any member of the public a copying fee, not to exceed the fee charged by the Commission, for any copies of registration records provided by NFA directly to the requester.
- (iii) NFA may charge any member of the public a research fee, not to exceed the fee charged by the Commission, for locating or making available registration records or copies of registration records maintained by NFA.
- (iv) NFA may require an advance payment of all or part of the fees set forth in paragraphs (ii) and (iii) of this Section.

\* \* \*

- B. Proposed Bylaw 513 prohibiting the participation of NFA Board members as counsel in NFA proceedings (additions are underscored):

BYLAWS OF  
NATIONAL FUTURES ASSOCIATION

\* \* \*

CHAPTER 5  
BOARD OF DIRECTORS

\* \* \*



Ms. Jean A. Webb  
March 5, 1987  
Page 3

**Bylaw 513. Directors Acting as Counsel in NFA Proceedings.**

No Director shall represent or appear as counsel on behalf of any person involved in an NFA investigation or a registration, membership or disciplinary proceeding undertaken by NFA.

- C. Amendments to Bylaws 701, 702 and 704 to change the quorum requirement for the Membership, Appeals, and Business Conduct Committees from a majority of the members of each committee to a majority of those committee members eligible to serve or a majority of the members of a designated Subcommittee or Panel of such committee (additions are underscored and deletions are [bracketed]):

**BYLAWS OF  
NATIONAL FUTURES ASSOCIATION**

\* \* \*

**CHAPTER 7  
COMMITTEES**

\* \* \*

**Bylaw 701. Membership Committee.**

There shall be a Membership Committee, consisting of nine Directors. [Five (5) members of the Committee shall constitute a quorum.] A majority of the Committee members eligible to participate in a proceeding shall constitute a quorum, except that in cases in which a Subcommittee has been designated a quorum shall consist of a majority of such Subcommittee members but no fewer than three. The Committee members shall be proposed by the President and appointed by the Board. The President and the Board shall endeavor to propose and appoint Directors who reflect the various categories of Members described in the Articles. The Committee or its designated Subcommittee shall review actions taken by the President pursuant to the President's authority under Chapter 3 to make the initial determination regarding (a) applicants for membership in NFA or registration as Associates, and (b) continued eligibility for such membership or registration. Each Committee member shall serve for three (3) years, except for the initial Committee members, whose terms shall be staggered, or until the member's successor is appointed and qualified, or until the member's death,



Ms. Jean A. Webb  
March 5, 1987  
Page 4

resignation, ineligibility or removal. A Committee vacancy shall be filled in the manner prescribed in Bylaw 601 for officers. A Committee member may be removed by the Board whenever in its judgment the best interests of NFA will be served thereby.

**Bylaw 702. Appeals Committee.**

There shall be an Appeals Committee, consisting of nine Directors. [Five (5) members of the Committee shall constitute a quorum.] A majority of the Committee members eligible to participate in a proceeding shall constitute a quorum. The Committee members shall be proposed by the President and appointed by the Board. The President and the Board shall endeavor to propose and appoint Directors who reflect the various categories of Members described in the Articles. The Committee shall hear and decide appeals from and reviews of decisions in disciplinary cases by any Regional Business Conduct Committee under the Compliance Rules. Each Committee member shall serve for three (3) years, except for the initial Committee members, whose terms shall be staggered, or until the member's successor is appointed and qualified, or until the member's death, resignation, ineligibility or removal. A Committee vacancy shall be filled in the manner prescribed in Bylaw 601 for officers. A Committee member may be removed by the Board whenever in its judgment the best interests of NFA will be served thereby.

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**Bylaw 704. Regional Business Conduct Committees.**

There shall be three Regional Business Conduct Committees (hereinafter "Regional Committees"), one for each NFA Region (see NFA Article V). Each Regional Committee shall consist of nine (9) Members or persons connected therewith residing in that Region. [Five (5) Members of a Regional Committee shall constitute a quorum of the Committee.] A majority of the Regional Committee members eligible to participate in a proceeding shall constitute a quorum, except that in cases in which a Panel has been appointed (see Compliance Rule 3-6) a quorum shall consist of a majority of such Panel members but no fewer than three, including at least one member of the Regional Committee. The Members of each Regional Committee shall be proposed by the President and appointed by the Board. The President and the Board shall endeavor to propose and appoint individuals who reflect



Ms. Jean A. Webb  
March 5, 1987  
Page 5

the various categories of NFA Members. Each member of a Regional Committee shall serve for three (3) years, except for members of the initial Regional Committees, whose terms shall be staggered, or until the member's successor is appointed and qualified, or until the member's death, resignation, ineligibility or removal. A vacancy in a Regional Committee shall be filled in the manner prescribed in Bylaw 601 for officers. A Committee member may be removed by the Board whenever in its judgment the best interests of NFA will be served thereby. Each Regional Committee or its designated Subcommittee shall have jurisdiction over those compliance matters arising in its Region, including the issuance of warning letters. A matter shall be deemed to arise where the NFA Member or Associate that is the subject of the inquiry resides (see Article XVIII). If a matter arises in two or more Regions, the President shall assign the matter to the Regional Committee the President deems most appropriate to consider the matter.

- D. Amendments to Compliance Rules 2-15, 2-18 and 2-19 and repeal of Compliance Rule 2-21 to conform with recent amendments to the Commission's regulations governing exchange traded options (additions are underscored and deletions are [bracketed]):

#### COMPLIANCE RULES

\* \* \*

#### RULE 2-15. WRITTEN OPTION PROCEDURES.

Each Member FCM or IB which engages in the offer or sale of commodity options traded on or subject to the rules of a contract market must adopt and enforce written procedures [(see Rule 2-21)]:

- (a) Which will enable such Member FCM or IB to supervise adequately each option customer's account, including but not limited to, the solicitation by such FCM or IB of any such account and the handling of complaints received by such FCM or IB relating to any such account (for purposes of this subsection (a) the term "option customer" does not include an FCM or IB).



Ms. Jean A. Webb  
March 5, 1987  
Page 6

- (b) Which will enable such Member FCM to allocate notices of exercise received by such FCM in a fair and nonpreferential manner, and promptly notify the appropriate grantor of such allocation; and
- (c) Which will enable such Member FCM or IB to monitor adequately the solicitation and sale of deep-out-of-the-money options. [For purposes of this subsection (c) such FCM or IB shall define the term "deep-out-of-the-money option" as that term is defined by the contract market on which the option is traded.]

\* \* \*

#### RULE 2-18. OPTION CUSTOMER COMPLAINTS.

With respect to all written option customer complaints [and any oral option customer complaints which result in, or which would result in an adjustment to the option customer's account of more than \$1,000] each Member FCM or IB which engages in the offer or sale of commodity options traded on or subject to the rules of a contract market shall:

- (a) Retain all such written complaints [and make and retain written records of all such oral complaints];
- (b) Make and retain a record of the date the complaint was received, the Associate who serviced the account, a general description of the matter complained of, and what, if any, action was taken in regard to the complaint; and
- (c) Immediately send a copy of such complaint to [NFA] the Member's designated self-regulatory organization ("DSRO") and, upon final disposition thereof, immediately send a copy of the record of such disposition to [NFA] the Member's DSRO.

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#### RULE 2-19. OPTION DISCLOSURE AND OTHER REQUIREMENTS.

Each Member FCM or IB which engages in the offer or sale of commodity options traded on or subject to the rules of a contract market shall:

- (a) Give immediate written notification to [NFA] the Member's DSRO of any disciplinary action taken against the FCM,



Ms. Jean A. Webb  
March 5, 1987  
Page 7

IB or any of its Associates by the Commission or by any other self-regulatory organization.

- (b) Comply with and enforce the disclosure requirements set forth in Commission Regulation 33.7; and
- (c) Promptly submit to [NFA] the Member's DSRO all promotional material, as defined in Commission Regulation 33.1, pertaining to such option trading.

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**[RULE 2-21. SUBMISSIONS TO NFA RELATING TO OPTIONS.]**

Any Member FCM with respect to which NFA is the designated self-regulatory organization for purposes of Part 33 of the Commission Regulations and any Member IB the commodity option related activity of which NFA has determined to regulate pursuant to Commission Regulation 33.3(b)(1)(ii)(A) shall submit to NFA the following material at least 10 days prior to the date such FCM or IB begins the offer or sale of options traded on or subject to the rules of a contract market:

- (a) Option customer account agreement forms;
- (b) Option disclosure statements required by Rule 2-19(b);
- (c) Promotional material, as defined in Commission Regulation 33.1, (if such promotional material has been prepared); and
- (d) Written procedures required under Rule 2-15.

Documents required to be submitted to NFA under Rule 2-18, 2-19 and 2-21 will be considered submitted as of the date received by NFA at its Chicago office.]

**II. EXPLANATION OF THE PROPOSED AMENDMENTS, BYLAW, AND REPEAL**

- A. Explanation of amendment to Bylaw 305 (Schedule B, Section I(b)) to allow NFA to charge a research fee to members of the public for locating registration information, and to provide for advance payment of fees.



Ms. Jean A. Webb  
March 5, 1987  
Page 8

National Futures Association has been authorized by the Commission to perform registration functions with respect to futures commission merchants ("FCMs"), introducing brokers ("IBs"), commodity trading advisors ("CTAs"), commodity pool operators ("CPOs"), associated persons ("APs") and floor brokers. In connection with its performance of these registration functions, NFA has been designated as the official custodian of the registration records that pertain to the above registration categories.

In its role as custodian of the registration records, NFA makes available for inspection and copying, upon reasonable request by third parties, certain portions of the registration records. Frequently, NFA is asked to copy and forward to a third party a significant number of registration records. With respect to costs incurred by NFA in these instances, Bylaw 305, Schedule B, Section I(b)(ii) permits NFA to recover its copying costs. Specifically, Bylaw 305 provides that NFA may charge any member of the public a copying fee, not to exceed the fee charged by the Commission, for any copies of registration records provided by NFA directly to the requester. Appendix B of Part 145 of the Commission's Regulations, which sets forth a schedule of fees to be charged by the Commission for, among other things, searching and copying registration documents, provides the basis for NFA's fees for copying registration documents. However, expenses incurred by NFA as a result of the numerous staff hours spent in locating and verifying records are currently borne directly by NFA, as the Bylaws in their present form do not permit NFA to recover such costs.

A research fee is entirely consistent with the Commission's Order designating NFA as record custodian. In its Order authorizing NFA to serve as custodian of the registration records with respect to FCMs, CPOs, CTAs and the APs thereof, the Commission stated that:

NFA may adopt and charge reasonable fees for locating and copying publicly available documents in the registration records for a requester. Any such fee adopted by NFA must be submitted to the Commission for approval in accordance with Section 17(j) of the Act.<sup>1/</sup>

The proposed amendment to Bylaw 305 will allow NFA to exercise the authority that the Commission believed that NFA should have by providing NFA the basis for recovering the

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<sup>1/</sup> 49 Fed. Reg. 39593, 39596 (October 9, 1984).



Ms. Jean A. Webb  
March 5, 1987  
Page 9

costs that are incurred in locating registration records. The amount that NFA may charge as a research fee will be subject to the same limitations as NFA's copying fee; specifically, the research fee may not exceed the fee charged by the Commission. Additionally, the proposed amendment to the Bylaw will permit NFA in its discretion to require an advance payment of any portion of the copying or research fees.

- B. Explanation of proposed Bylaw 513 prohibiting the participation of NFA Board members as counsel in NFA proceedings.

Bylaw 513 is designed to prevent the appearance of impropriety and any potential conflict of interest which might arise if a member of NFA's Board of Directors were to act as counsel for a person involved in an NFA investigation or a registration, membership, or disciplinary proceeding undertaken by NFA. The proposed Bylaw would prevent Board members from representing parties, witnesses, or persons who, although not named as respondents in NFA adjudicative proceedings, are cited as the cause of a violation of an NFA requirement.

- C. Explanation of Amendments to Bylaws 701, 702, and 704 to change the quorum requirement for the Membership, Appeals, and Business Conduct Committees to a majority of those committee members eligible to serve or a majority of the members of a designated Subcommittee or Panel of such committee.

The Membership, Appeals, and Business Conduct Committees each consist of nine members. Bylaws 701, 702, and 704 currently provide that five members constitute a quorum for each of these Committees. This can present a problem when some of the members of a committee are not eligible to serve.

Members of the Appeals Committee are disqualified pursuant to NFA Compliance Rule 3-10(d) from participating in the appeal if they have participated in an earlier stage of the proceeding. This occurs when an appeal concerns a Member Responsibility Action ("MRA") and members of the Appeals Committee who are also members of the Executive Committee have participated in the decision to concur in the issuance of the MRA. In addition, members of a Regional Business Conduct Committee or its designated Panels are precluded by Compliance Rule 3-6 from participating in a matter if the member, or any person with which the member is connected, has a financial, personal or other direct interest in the matter under consideration. Although there is no corresponding express provision with respect to the Membership Committee and the Appeals Committee, NFA would follow the same standard.



Ms. Jean A. Webb  
March 5, 1987  
Page 10

NFA's procedures for conducting proceedings to deny, condition, suspend, restrict, or revoke registration (Bylaw 305, Schedule A, Sections I(c) and (d)) and membership (Bylaw 301 (g)) allow the Membership Committee to designate Subcommittees of at least three Committee members to hear cases. NFA Compliance Rule 3-6 allows the Regional Business Conduct Committees ("BCCs") to appoint panels of no fewer than three individuals (one of whom must be a BCC member) to hear disciplinary cases. The proposed amendments to Bylaws 701 and 704 provide that a quorum of such Subcommittees and Panels shall be a majority of the members of such Subcommittee or Panel subject to a minimum of three. The purpose of providing that a quorum of a Membership Subcommittee or a BCC Panel is subject to a minimum of three, rather than a simple majority of the Subcommittee or Panel, is to ensure that there will always be at least three members of a Subcommittee or Panel participating in a case.

- D. Explanation of amendments to Compliance Rules 2-15, 2-18, and 2-19 and repeal of Compliance Rule 2-21 to conform with recent amendments to the Commission's regulations governing exchange traded options.

On August 11, 1986, certain amendments to the Commission's rules governing exchange traded options became effective. In general these amendments terminated the pilot status of the program for trading options on futures contracts on domestic non agricultural commodities, eliminated the requirement to identify deep-out-of-the-money options and simplified certain recordkeeping and notice requirements. NFA Compliance Rules 2-15 through 2-21 also deal with exchange traded options and generally paralleled the Commission's regulations. The proposed changes are intended to conform those Rules to the Commission's current Regulations.

NFA Compliance Rule 2-15 requires member FCMs or IBs who engage in the offer or sale of commodity options to adopt and enforce written procedures which will facilitate the supervision of option customer accounts, the allocation of notices of exercise in a nonpreferential manner, and the monitoring of deep-out-of-the-money options. The sole modification of this rule has been the elimination of the requirement to identify deep-out-of-the-money options.

NFA Compliance Rule 2-18 currently requires all written option customer complaints and certain oral complaints to be forwarded to NFA. Consistent with the Commission's amendments,



Ms. Jean A. Webb  
March 5, 1987  
Page 11

the proposed amendment to NFA Compliance Rule 2-18 deletes the requirement to notify NFA of oral complaints and provides that notice of written complaints be provided to the Member's designated self-regulatory organization ("DSRO") rather than NFA.

In its current form NFA Compliance Rule 2-19 requires, in part, that member FCMs and IBs engaging in the sale of exchange traded options notify NFA of any disciplinary action taken against the FCM, IB or any of its Associates and provide NFA with copies of its options promotional material. The amendment substitutes "the Member's DSRO" for NFA and, thus, eliminates duplicative and burdensome reporting requirements.

NFA Compliance Rule 2-21 requires that each Member for whom NFA is the DSRO must submit certain materials, including customer account agreement forms, option disclosure statements, written supervisory procedures and promotional material, at least 10 days before each Member begins to offer exchange traded options. Except for promotional material, none of these submissions have ever been required by CFTC regulations and have not proven to be particularly helpful to NFA's regulatory efforts. As noted earlier, promotional material must be provided to NFA or the member's DSRO pursuant to NFA Compliance Rule 2-19. Therefore, NFA proposes to repeal Compliance Rule 2-21.

NFA respectfully requests that the amendments to NFA Bylaws 305, 701, 702, and 704 and Compliance Rules 2-15, 2-18, and 2-19; proposed Bylaw 513; and the repeal of Compliance Rule 2-21, be declared effective upon approval by the Commission.

Very truly yours,

Kathryn Page Camp  
Regulatory Affairs Attorney

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

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

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



July 1, 1987

Kathryn Page Camp, Esq.  
Regulatory Affairs Attorney  
National Futures Association  
200 W. Madison Street  
Chicago, Illinois 60606

Re: National Futures Association Proposed Amendments to Bylaws 305 (Schedule B, Section I(b)), 701, 702 and 704 and Compliance Rules 2-15, 2-18 and 2-19; Proposed Bylaws 513; and the Proposed Repeal of Compliance Rule 2-21

Dear Ms. Camp:

By letter dated March 5, 1987 and received by the Commission on March 9, 1987, the National Futures Association ("NFA") submitted proposed amendments to NFA Bylaws 305 (Schedule B, Section I(b)), 701, 702 and 704 and NFA Compliance Rules 2-15, 2-18 and 2-19, proposed new NFA Bylaw 513, and the proposed repeal of NFA Compliance Rule 2-21 pursuant to Section 17(j) of the Commodity Exchange Act ("Act"). The Commission understands that NFA intends to implement the proposed revisions to the Bylaws and Rules upon receipt of notice of Commission approval.

Please be advised that the Commission has this date approved the above-referenced revisions to the NFA Bylaws and Rules under Section 17(j) of the Act.

Sincerely,

Lynn K. Gilbert  
Deputy Secretary of the Commission

