

March 8, 1988

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 Registration Rules; Proposed Amendments to Bylaw  
1301; Proposed New Bylaw 514 and Amendment to Bylaw  
704

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 ("CFTC" or "Commission") proposed amendments to NFA Registration Rules and to Bylaws 1301 and 704. In addition, NFA proposes a new Bylaw 514. The amendments and new Bylaw were approved by NFA's Board of Directors ("Board") at its meeting on February 25, 1988. NFA respectfully requests Commission review and approval of the proposed amendments and Bylaw. With regard to the proposed amendments to NFA Registration Rules, NFA requests that those amendments be reviewed on an expedited basis so that NFA may include the approved amendments in its first printing of the Rules.

I. THE PROPOSED AMENDMENTS TO NFA REGISTRATION RULES

- A. Amendments to NFA Registration Rules to conform them to the approved changes to the CFTC Part 3 Regulation, to clarify registration filing and fee requirements, and to expand the definition of registration records (additions are underscored, and deletions are [bracketed]):



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## REGISTRATION RULES

\* \* \*

### RULE 203. REGISTRATION FEES.

(a) Amount.

- (1) Associated Person. Each Form 8-R submitted in connection with the registration of an associated person must be accompanied by a fee of \$30.
- (2) Introducing Broker. Each application for registration as an introducing broker must be accompanied by a fee of \$75. [plus \$6 for each domestic branch office.]
- (3) Futures Commission Merchant. Each application for registration as a futures commission merchant must be accompanied by a fee of \$250. [plus \$6 for each domestic branch office.]
- (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. [plus \$6 for each domestic branch office.]

[(b)] [Additional Branch Office. Each Form 3-R filed to report the addition of a branch office [See Rule 210] must be accompanied by a fee of \$6 for each such domestic branch office reported.]

[(c)] (b) Form of Remittance. Registration fees must be remitted by check, bank draft or money order payable to National Futures Association. All registration fees are non-refundable.



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**RULE 204. REGISTRATION OF FUTURES COMMISSION MERCHANTS, INTRODUCING BROKERS, COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS.**

\* \* \*

- (c) Periodic Filings. Any person who becomes registered as a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance with paragraph (a) of this Rule shall be required to file a properly completed Form 7-R with NFA annually on a date specified by NFA. Failure to file the Form 7-R within 30 days following such date will be deemed a request for withdrawal from registration. On at least 30 days written notice, and following such action, if any, deemed necessary by the CFTC or NFA [to protect the commodity futures markets, customers or other Members or Associates], NFA may grant the request for withdrawal from registration.

\* \* \*

**RULE 208. CHANGES REQUIRING NEW REGISTRATION.**

- (a) If the registrant is a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor and except as provided in paragraphs (b) and (c) of this Rule, registration is deemed to terminate and a new registration is required (See Rule 204) whenever a person not listed as a principal on the registrant's initial registration application or any amendment thereto:
- (1) Acquires the right to vote or becomes the beneficial owner of 10% or more of the corporate registrant's voting securities;
  - (2) Becomes entitled to receive 10% or more of the corporate registrant's net profits;
  - (3) Contributes 10% or more of the corporate registrant's capital;
  - (4) Becomes a director of the corporate registrant;
  - (5) Becomes the chief executive officer of the corporate registrant or occupies a position of similar status or performs a similar function;



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- (6) Acquires ownership of the registrant's business in the case of a sole proprietorship; or
- (7) Becomes a general partner of the registrant.

\* \* \*

[NOTE: Requests for exemption from the requirements of this Rule must be directed to NFA.]

\* \* \*

**RULE 301. TEMPORARY LICENSING OF APPLICANTS FOR ASSOCIATED PERSON REGISTRATION.**

\* \* \*

- (b) Withdrawal of application.

Failure of an applicant's sponsor or an applicant to respond to a written request by NFA for clarification of application information or resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

\* \* \*

**RULE 302. TEMPORARY LICENSING FOR GUARANTEED INTRODUCING BROKERS.**

- (a) Qualifications.

\* \* \*

- (6) Legible fingerprints on cards provided by NFA for all persons that are principals and branch managers; and [ : Except that, principals currently registered as associated persons and listed principals of current registrants must complete and file only the Disciplinary History portion of the Form 8-R to satisfy the filing requirements of (a)(D) and (a)(E) if they are not required to register as an associated person of the applicant; and]

\* \* \*



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**RULE 601. WITHDRAWAL FROM REGISTRATION.**

- (a) A registrant may request that its registration in one or more capacities be withdrawn in accordance with the requirements of this Rule if:
- (1) The registrant has ceased, or has not commenced, engaging in activities requiring registration in such capacity; or
  - (2) The registrant is exempt from registration in such capacity[:]; or
  - (3) The registrant is excluded from the persons or any class of persons required to be registered in such capacity:

Provided, that NFA may consider separately each capacity for which withdrawal is requested in acting upon such a request.

\* \* \*

**RULE 701. DISCLOSURE OF INFORMATION FROM REGISTRATION RECORDS MAINTAINED BY NFA.**

(a) Definitions.

- (1) Registration Records. For purposes of Rules 701 and 702, the term registration records shall be defined to include only the following types of records which are in the custody of or maintained by NFA because such records were transferred from the Commission to NFA or because such records have been received, generated or compiled by NFA in performance of registration functions which NFA is authorized or required by the Commission to perform pursuant to Section 8a(10) or 17(o) of the Act:
  - (A) Any application forms required to be filed to obtain registration, including any biographical supplements with respect to principals of an applicant or registrant, any schedules or supplementary attachments to such forms, any fingerprint cards and any financial reports, statements and agreements required to be filed with initial applications for registration;



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- (B) Any supplemental statement or filings to correct or update any registration information submitted in a previous filing or to give notice of termination of employment of an associated person;
- (C) Any correspondence relating to registration between the Commission or NFA and an applicant or registrant;
- (D) Reports reflecting information developed from sources outside the Commission or NFA compiled or generated in connection with determining fitness for registration or affiliation as a principal; and
- (E) Reports from foreign governments and self-regulatory organizations and agreements appointing an agent for service of process if such reports and agreements are filed with NFA for the purpose of obtaining an exemption from registration; and any transmittal forms, cover letters, or supplemental materials relating to such filings.

\* \* \*

- B. Explanation of Proposed Amendments to NFA Registration Rules to conform them to the approved changes to the CFTC Part 3 Regulations, to clarify registration filing and fee requirements, and to expand the definition of registration records.

The proposed amendments to Registration Rules 204, 208, 301, and 601 simply conform NFA's Registration Rules to the Commission's recently proposed amendments to the CFTC Part 3 Regulations governing registration under the Commodity Exchange Act.

In addition, NFA proposes that the \$6 branch office fee be eliminated from Rule 203 because the cost to process the fee is too expensive to justify the charge. The proposed amendment to Rule 302 simply clarifies the filing requirements for the temporary licensing for guaranteed introducing brokers. Lastly, new subsection E to Rule 701 expands the definition of registration records to include the records which will



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be filed with NFA for purposes of obtaining an exemption from registration under the new CFTC Part 30 Regulations governing foreign futures and options transactions.

NFA respectfully requests the Commission to expedite review and approval of the foregoing proposed amendments to NFA Registration Rules 203, 204, 208, 301, 302, 601, and 701 and to declare such amendments effective immediately upon approval by the Commission as authorized by Section 17(j) of the Act.

II. THE PROPOSED AMENDMENTS TO NFA BYLAW 1301 AND EXPLANATION THEREOF

- A. Amendments to Bylaw 1301 to reduce the assessment fee and to provide more flexibility to make temporary adjustments to the assessment fee (additions are underscored and deletions are [bracketed]):

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) [~~\$0.28~~] \$0.24 for each commodity futures contract (other than an option contract traded on a contract market and a dealer option contract) on a roundturn basis, and
  - (B) [~~\$0.16~~] \$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 privi-



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leges 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) [~~\$0.16~~] \$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 [during any fiscal year] for a period not to exceed three months when in the judgment of the Board [the budget goals of NFA for the fiscal year, as prescribed by the Board under Section 6 of Article VII, have been met] such action is appropriate in light of NFA's overall financial goals. The FCM Member shall invoice these assessments to its customers and shall remit the amount due to NFA; and

- (ii) Each FCM Member shall pay to NFA annual dues of \$1,000 if such FCM Member does not carry dealer option contracts for customers.

\* \* \*

- B. Explanation of amendments to NFA Bylaw 1301 to reduce the assessment fee and to provide more flexibility to make temporary adjustments to the assessment fee.

On November 23, 1987, NFA submitted to the Commission a proposed amendment to Bylaw 1301 to revise the assessment fee structure by expanding the base of accounts subject to an assessment fee. At the same time NFA requested the Commission to delay the effective date of that amendment until NFA had an opportunity to study and propose a lower assessment fee per transaction based on the additional accounts subject to an assessment fee. The Commission approved that amendment on March 3, 1988, with an effective date of July 1, 1988.





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On February 25, 1988, the Board adopted, by category vote, the following amendments to Bylaw 1301. NFA proposes to reduce the assessment fee from \$0.28 to \$0.24 for each commodity futures contract on a roundturn basis and from \$0.16 to \$0.14 for each option contract traded on a contract market on a per trade basis and for each dealer option contract on a per trade basis. In addition, NFA proposes certain changes to provide its Board with greater flexibility to make temporary adjustments to the assessment fee.

To arrive at the appropriate reduction to the assessment fee, NFA first determined that the desired target level for NFA working capital is between \$5 million and \$6 million. This amount should provide NFA a cushion to ensure that performance of its regulatory functions would not be interrupted or impaired by a sudden, unforeseen drop in income. NFA concluded that this goal should be reached gradually over a three year period.

Based on projections concerning trading volume and public participation over that period, NFA believes that an assessment fee of \$0.24 per roundturn futures transaction and \$0.14 per option transaction would result in a steady reduction in NFA's working capital to the level of \$5.9 million by the end of fiscal year 1991.

NFA recognizes that deviations from such projections are virtually inevitable and can have very dramatic effects on NFA's financial position. NFA therefore believes that it is imperative that its Bylaws provide sufficient flexibility to make temporary mid-course adjustments to the assessment fee to avoid undesired accumulation or reduction of working capital.

Currently, the only such tool available to NFA is Bylaw 1301(b) which provides that its Board may suspend the assessment fee during any fiscal year when the Board determines that NFA's budget goals have been met. However, because the rule allows only the complete suspension of the assessment fee, any such action by the Board would either be for an impractically short period of time or would have a very dramatic impact on NFA's financial position. Practically speaking, such an action could only take place after a thorough review of NFA's position after the first three quarters of the fiscal year. Since any suspension or adjustment of the fee would last for only the balance of the fiscal year and Members would have to be given adequate notice of the change, any suspension or adjustment would last only one or two months at most.



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NFA's proposed amendment allows its Board to temporarily suspend or adjust the assessment fee when appropriate. Such a change would give NFA much more flexibility in dealing with the assessment fee while preserving the protection that changes to the assessment fee be approved only by a category vote of NFA's Board. NFA's proposed amendment also provides its Board the ability to take corrective action whenever appropriate. For example, if the Board determines that NFA's working capital is unnecessarily high or unnecessarily low at the end of fiscal year 1990, under the current amendment an appropriate temporary adjustment to the assessment fee could be made during the first quarter of fiscal year 1991. In summary, as amended, Bylaw 1301 provides NFA the necessary flexibility to make temporary adjustments to the fee when good faith projections concerning trading volume or other variables lead to unanticipated accumulation or depletion of working capital.

NFA respectfully requests Commission approval of the proposed amendments to Bylaw 1301. NFA requests that the Commission declare the proposed amendments effective July 1, 1988.

### III. PROPOSED NEW BYLAW 514 AND AMENDMENT TO BYLAW 704

- A. Proposed new Bylaw 514 and amendment to Bylaw 704 to conform to newly adopted CFTC Regulation 1.59(c):

#### BYLAWS

\* \* \*

#### CHAPTER 5 BOARD OF DIRECTORS

\* \* \*

#### Bylaw 514. Prohibition Against Use of Non-Public Information

No Director shall use or disclose material, non-public information, obtained as a result of participation on the Board of Directors or any subcommittee of the Board of Directors, for any purpose other than the performance of official duties as a Director or subcommittee member.



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## CHAPTER 7 COMMITTEES

### Bylaw 704. Regional Business Conduct Committees.

There shall be three Regional Business Conduct Committees (hereinafter "Regional Committees"), one for each NFA Region (see Article V). Each Regional Committee shall consist of nine (9) Members or persons connected therewith residing in that Region. 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 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. No Committee member shall use or disclose material, non-public information, obtained as result of participation on the Committee, for any purpose other than the performance of official duties as a member of the Committee.



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- B. Explanation of proposed new Bylaw 514 and amendment to Bylaw 704 to conform to newly adopted CFTC Regulation 1.59(c).

On December 22, 1987, the Commission adopted Regulation 1.59(c) which, in effect, requires self regulatory organizations ("SRO") to adopt rules prohibiting members of any governing board or committee of the SRO from improperly using material, non-public information obtained as a result of participation on any committee or governing board. In light of the adoption of CFTC Regulation 1.59(c), NFA proposes the foregoing amendments and new bylaw to incorporate the prohibitions against the misuse of material, non-public information.

NFA respectfully requests the Commission to declare the proposed new Bylaw 514 and amendment to Bylaw 704 effective upon approval by the Commission as authorized by Section 17(j) of the Act.

Respectfully submitted,

Daniel J. Roth  
Vice President, General Counsel,  
and Secretary

KJW:pjf(D1.F9)

cc: Chairman Wendy L. Gramm  
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 A. 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

June 15, 1988



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

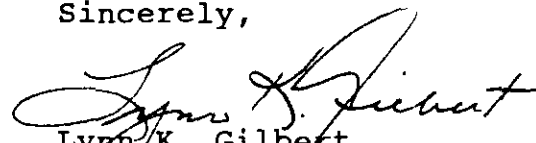
Re: Proposed Amendments to National Futures  
Association Bylaws 704 and 1301 and Proposed  
National Futures Association Bylaw 514

Dear Mr. Roth:

By letters dated March 8, 1988 and May 11, 1988, the National Futures Association ("NFA") submitted pursuant to Section 17(j) of the Commodity Exchange Act ("Act") proposed amendments to NFA Bylaws 704 and 1301 and a proposed new NFA Bylaw 514. The Commission understands that NFA intends to implement proposed Bylaw 514 and the amendments to Bylaw 704, which have been submitted in conformance with Regulation 1.59(c), upon receipt of Commission approval. The Commission further understands that NFA intends to implement the proposed amendments to Bylaw 1301, which pertain to the setting of transaction assessment fees, on July 1, 1988, the first day of NFA's next fiscal year.

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

Sincerely,

  
Lynn K. Gilbert  
Deputy Secretary of the  
Commission

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JUN 21 1988

GENERAL COUNSEL'S OFFICE

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

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



June 9, 1988

Daniel J. Roth, Esq.  
National Futures Association  
200 W. Madison Street  
Chicago, Illinois 60606

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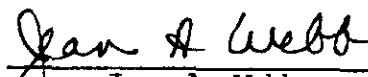
GENERAL COUNSEL'S OFFICE

Re: Proposed Amendments to NFA Rules

Dear Mr. Roth:

This is in response to your letter dated March 8, 1988 concerning, in part, amendments to NFA Registration Rules 203(a), (b) and (c), 204(c), 208(a), 301(b), 302(a) (6), 601(a) and 701(a). 1/ On June 8, 1988 the Commission, pursuant to section 17(j) of the Commodity Exchange Act, approved those amendments.

Very truly yours,

  
\_\_\_\_\_  
Jean A. Webb  
Secretary of the Commission

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1/ Proposed amendments to NFA Bylaws 1301 and 704, and proposed Bylaw 514, which were included in NFA's March 8, 1988 submission, will be considered separately by the Commission.

VIA UPS

June 7, 1988

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

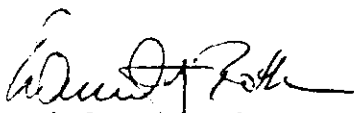
Re: National Futures Association, Proposed New  
Bylaw 514 and Amendment to Bylaw 704

Dear Mr. Van Wagner:

As you are aware, by letter dated March 8, 1988, National Futures Association ("NFA") submitted proposed new NFA Bylaw 514 and proposed amendments to NFA Bylaw 704 to the Commodity Futures Trading Commission for review and approval pursuant to Section 17(j) of the Commodity Exchange Act, as amended. These proposals incorporate prohibitions against the misuse of material, non-public information by members of NFA's governing board and committees, as required by CFTC Regulation 1.59(c).

In response to your request, this letter is to advise you that the language "material non-public information" in proposed Bylaw 514 and the proposed amendment to Bylaw 704 is intended to have the same meaning as the language in CFTC Regulation 1.59(c). Accordingly, NFA will interpret Bylaws 514 and 704 by applying the definitions of material and non-public information which are set forth in CFTC Regulation 1.59(a)(3) and (4).

Very truly yours,

  
Daniel J. Roth  
General Counsel

DJR:tyd(kpcD9:F6)

May 11, 1988

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

Re: National Futures Association, Proposed  
Amendments to Bylaw 1301

Dear Ms. Webb:

By letter dated March 8, 1988, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("Commission"), for approval, proposed amendments to NFA Registration Rules and NFA Bylaws 1301 and 704 and a proposed new Bylaw 514. This letter is to advise the Commission that part of a sentence was inadvertently omitted in the March 8, 1988 letter. The omitted language has not been amended, relates to annual dues rather than assessment fees, and does not affect the submission itself. However, in the interest of accuracy, NFA desires to correct the March 8, 1988 submission. The following is a correct copy of Bylaw 1301, with the proposed amendments indicated (additions are underscored and deletions are [bracketed]).

**NFA BYLAWS**

\* \* \*

**CHAPTER 13**

**DUES AND ASSESSMENTS**

\* \* \*

Bylaw 1301. Schedule of Dues and Assessments.

\* \* \*





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May 11, 1988  
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(b) FCM Members.

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

- (A) [~~\$0.28~~] \$0.24 for each commodity futures contract (other than an option contract traded on a contract market and a dealer option contract) on a round turn basis, and
- (B) [~~\$0.16~~] \$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) [~~\$0.16~~] \$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 [during any fiscal year] for a period not to exceed three months when in the judgment of the Board [the budget goals of NFA for the fiscal year, as prescribed by the Board under Section 6 of Article VII, have been met] such action is appropriate in light of NFA's overall financial goals. The FCM Member shall invoice these assessments to its customers and shall remit the amount due to NFA; and



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May 11, 1988  
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(ii) Each FCM Member shall pay to NFA annual dues of \$1,000 if such FCM Member does not carry dealer option contracts for customers, or \$1,500 if such FCM Member does carry dealer option contracts for customers.

\* \* \*

Respectfully submitted,

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

Daniel J. Roth  
General Counsel

DJR:tyd(X601-JeanWebb)

cc: Chairman Wendy L. Gramm  
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 A. Klejna, Esq.  
Alan L. Seifert, Esq.  
Susan C. Ervin, Esq.  
Lawrence B. Patent, Esq.

March 14, 1988

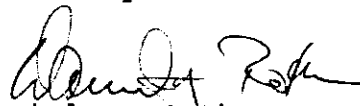
Mr. John C. Lawton  
Associate Director  
Division of Trading and Markets  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Dear Mr. Lawton:

I am in receipt of your letter dated March 4, 1988, concerning Commission Regulation 1.59(c).

Please be advised that pursuant to Section 17(j) of the Commodity Exchange Act, as amended, by letter dated March 8, 1988, National Futures Association submitted to the Commission proposed new NFA Bylaw 514 and proposed amendments to NFA Bylaw 704 which shall become effective upon Commission approval. These proposals incorporate prohibitions against the misuse of material, non-public information by any member of NFA's governing board or committees as required by newly adopted CFTC Regulation 1.59(c).

Sincerely,

  
Daniel J. Roth  
General Counsel

DJR:cm(D40.F20)

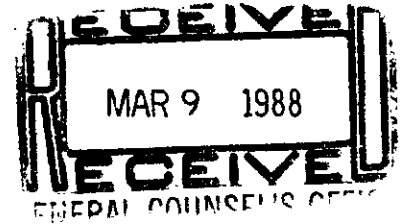


DIVISION OF  
TRADING AND MARKETS

COMMODITY FUTURES TRADING COMMISSION

2033 K STREET, N.W., WASHINGTON, D.C. 20581

March 4, 1988



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

Re: Commission Regulation 1.59(c)

Dear Mr. Roth:

Commission Regulation 1.59(c) requires each self-regulatory organization ("SRO") to adopt and maintain rules that prohibit members of an SRO's governing board or of a committee of such SRO from using or disclosing material, non-public information obtained as a result of such member's participation on any governing board or committee of such SRO, except for the performance of such member's official duties as a governing board or committee member. Regulation 1.59(c) was adopted by the Commission on December 22, 1987 and becomes effective March 28, 1988. To date the NFA has not submitted rules which satisfy the requirements of Regulation 1.59(c).

This letter, therefore, is to remind you of your obligations under the Regulation. You should be aware that the rule may be submitted under Section 5a(12) of the Commodity Exchange Act and Commission Regulation 1.41(c). In such a case, a satisfactory submission can be made effective ten days after the date of its receipt by the Commission. By comparison, a rule for which the Commission's approval is sought under Section 5a(12) and Regulation 1.41(b) generally cannot be made effective prior to Commission approval or until 180 days have elapsed, whichever is earlier.

I have enclosed for your convenience a copy of the Federal Register notice announcing the adoption of Regulation 1.59(c). If you or any members of your staff have any questions concerning this matter, please feel free to contact me or Lystra Blake, Esq. at (202) 254-8955.

Very truly yours,

John C. Lawton  
Associate Director

Enclosure

T.M.

records management, transportation, warehousing, utilities, and mail. It is responsible for all CPSC contracts and procurement of services and supplies. It develops, implements, and maintains management information systems and distributes summary reports on data accumulated by those systems. The Directorate also maintains and updates the reference library, performs data and bibliographic research for the agency and its constituency, and administers the ordering, receiving, and distribution of all publications requested by or for CPSC personnel.

#### § 1000.30 Directorate for Field Operations.

(a) The Directorate for Field Operations, which is managed by the Associate Executive Director for Field Operations, has direct line authority over all Commission field operations: develops, issues, approves, or clears proposals and instructions affecting the field activities; and provides a central point within the Commission from which Headquarters officials can obtain field support services. The Directorate provides direction and leadership to the Regional Center Directors and promulgates policies and operational guidelines which form the framework for management of Commission field operations. The Directorate works closely with the other Headquarters functional units, the Regional Centers, and other field offices to assure effective Headquarters-field relationships, proper allocation of resources to support Commission priorities in the field, and effective performance of field tasks. It represents the field and prepares field program documents. It coordinates direct contact procedures between Headquarter's offices and Regional Centers. The Directorate is also responsible for liaison with State, local, and other Federal agencies on product safety programs in the field.

(b) Regional Centers are responsible for carrying out investigative and compliance activities within their areas. They encourage voluntary industry compliance with the laws and regulations administered by the Commission and implement wide-ranging public information and education programs designed to reduce consumer product injuries. They also provide support and maintain liaison with components of the Commission, other Regional Centers, and appropriate Federal, State, and local government offices.

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

#### Activities of Self-Regulatory Organization Governing Members Who Possess Material, Non-Public Information

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") has adopted final Regulation 1.59(c), which requires self-regulatory organizations to adopt rules prohibiting, in accordance with the standards contained in the regulation, disclosure or other improper use of material, non-public information by members of self-regulatory organization governing boards and committees.

**EFFECTIVE DATE:** New Regulation 1.59(c) becomes effective March 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** De'Ana Hamilton-Brown, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On June 11, 1985, the Commission published proposed Regulation 1.59 relating to the activities of self-regulatory organization ("SRO") employees and governing members who possess material, non-public information. 50 FR 24533. The Commission's proposal was designed to eliminate or minimize the potential misuse of material, non-public information by employees and governing members of SROs with possession of or access to material, non-public information, given that such conduct could undermine the concept of industry self-regulation and diminish public confidence in SROs. 50 FR 24533-34.

On November 25, 1986, the Commission adopted, as final, the provisions of Regulation 1.59 applicable to SRO employees. The rule prohibits the disclosure of material, non-public information obtained as a result of employment by an SRO. Furthermore, the rule requires SROs to adopt rules proscribing such disclosures and barring employees from trading in commodity interests on the employing contract market, in related commodity interests, or in commodity interests traded on other exchanges as to which the

employee has access to material, non-public information.

Concurrently with the Commission's adoption of the final rules pertaining to SRO employees, the Commission deleted the portion of the rule pertaining to governing members. Generally, Regulation 1.59(c) would have prohibited governing members having knowledge of certain final or imminent decisions of a governing board or committee from trading the contract affected by such decisions or related contracts, and from disclosing information concerning the decisions, prior to publication. In addition, the proposed governing members provision would have required each contract market and clearing organization to adopt rules requiring that final decisions of governing boards or committees be announced publicly before the opening of the next trading session in the affected contract. These provisions were intended to prevent the misuse of information concerning decisions which could not be appealed to another body within the SRO and which, without further action, could alter materially the futures trading environment, such as decisions to revise margin levels substantially, limit trading to liquidation only, compel liquidation of positions held by major market participants, and other rule changes that could affect the prices of particular futures or option contracts. 51 FR at 44868 (December 12, 1986).

Objections to the proposal included concerns relating to the scope and operation of the proposed trading prohibition, which some commenters claimed would prohibit far more trading than necessary to preserve the integrity of contract markets and could impair the ability, or diminish the willingness, of knowledgeable SRO members who are also active traders to serve on an SRO board of directors or its major policy and disciplinary committees. Based upon its review of these and other comments, the Commission determined that the proposed restrictions upon the activities of governing members merited further consideration and possible amendment, deleted the governing members provision from Regulation 1.59, as adopted, and by Federal Register release of December 12, 1986, invited comment "on how best to revise the governing members provision" to address the concerns raised by the comments previously received.<sup>1</sup> 51 FR 44866, 44868.

<sup>1</sup> The Commission received nine comment letters in response to its December 12, 1986 request for

Continued

The commenters generally supported the view that governing members must maintain the confidentiality of sensitive information received in the performance of their official duties. However, some commenters questioned the necessity for Commission rulemaking to achieve that end, and a substantial number questioned the specific formulation of the previously proposed rule. In light of these and earlier comments, the Commission revised the proposed rule, and on August 28, 1987, the Commission published the new proposed governing members rule for comment. 52 FR 32568.

## II. Activities of Self-Regulatory Organization Governing Members Who Possess Material Non-Public Information

The proposed Regulation 1.59(c), published in August, 1987, would have required SROs to adopt rules providing that no member of an SRO governing board or committee shall use or disclose, for any purpose other than the performance of such member's official duties as a governing member, material, non-public information obtained as a result of such member's participation on any committee or governing board of an SRO.<sup>2</sup> Proposed Regulation 1.59(c) also would have required contract markets and clearing organizations to adopt rules requiring the publication, except for good cause shown, of final decisions of contract market and clearing organization governing boards and committees prior to the opening of the next trading session in the affected contract on that contract market, and prior to the opening of the next trading session in a contract based on the same

commodity as that contract traded on any linked exchange.

The recently proposed Regulation 1.59(c) differed significantly from the previous proposal. First, Regulation 1.59(c), as revised, would have encompassed the misuse of a potentially broader category of material, non-public information<sup>3</sup> than the original proposal, which would have addressed only those situations in which a governing member had knowledge of a final or imminent board or committee decision. Second, in contrast to the original proposal, which would have created a prohibition against trading by governing members who possessed or had access to material, non-public information, the revised proposal would have required case-by-case enforcement by the SROs. In this regard, the Commission anticipated that SROs would incorporate into their existing affirmative rule enforcement program, the surveillance of the trading activity of governing members where there was a potential nexus to knowledge of material, non-public information in their capacity as such, and other affirmative enforcement measures designed to detect and deter trading based upon such information and other misuse of such information. Finally, the proposed immediate publication provision, which previously would have included certain stringent procedural requirements, as revised, would have permitted delayed publication of a final decision for good cause shown, provided the Commission received prompt, written notification of such decision.

The Commission received six comment letters in response to its August 28, 1987 request for comments on revised Regulation 1.59(c).<sup>4</sup> Generally,

the comments supported the provisions which would have required SROs to prohibit the disclosure or misuse of material, non-public information obtained by governing members as a result of their participation on SRO governing boards or committees, but opposed the immediate publication requirement with respect to final decisions of governing boards and committees.

The commenters agreed that the revised version of Regulation 1.59(c), excluding the immediate publication requirement, represented a significant improvement over the rule as previously proposed. One commenter acknowledged the need to maintain public confidence in the market and supported the Commission's proposal to adopt a performance standard. Another commenter stated that the "performance standard" approach would allow SROs to discipline members who abuse their trust and responsibilities by using or disclosing material, non-public information. The commenter stated further that the flexibility and focused restraint of the proposal, would avoid the loss of services on governing boards and committees by industry volunteers who might fear the restrictions on their trading activity contained in the 1985 proposal. Other commenters stated that the revised proposed regulation demonstrated the Commission's confidence in effective exchange rulemaking by leaving the responsibility for the specific terms to the exchanges, which are uniquely able to tailor their rules to fit their particular circumstance.

As noted, however, the commenters strongly opposed the immediate publication requirement as proposed in Regulation 1.59(c)(2). Most of the commenters agreed that certain board decisions should be announced promptly and publicly, but believed that mandating such disclosure by Commission rule is unnecessary and unduly burdensome. In this regard, several commenters stated that the immediate publication requirement is unnecessary in light of the provisions of proposed § 1.59(c)(1). Specifically, one commenter explained that governing members have a duty to disclose material, non-public information at the appropriate time, and if they breach that duty and make improper use of the information prior to public dissemination, they would be in violation of the exchange rules to be adopted pursuant to § 1.59(c)(1).

The commenters noted further that the immediate publication requirement, as proposed, often would be operationally impossible, particularly with the current

comment: (1) Chicago Board of Trade; (2) Coffee, Sugar & Cocoa Exchange, Inc.; (3) Comex Clearing Association; (4) Commodity Exchange, Inc.; (5) Minneapolis Grain Exchange; (6) National Futures Association; (7) National Grain Trade Council; (8) National Grain and Feed Association; and (9) New York Mercantile Exchange. For an in-depth discussion of the comments received and the Commission's response. See 52 FR 32568 (August 28, 1987).

<sup>2</sup> The initially proposed governing members rule would have applied only to contract markets and clearing organizations. As revised, proposed Regulation 1.59(c)(1) would have applied to SROs, as defined in § 1.59(a)(1), thereby including the National Futures Association ("NFA"). That change reflects reformulation of the rule to apply to the use of material, non-public information as opposed to trading activities in the context of knowledge of final or imminent decisions relevant to such trading. NFA commented that revised Regulation 1.59(c) should not apply to NFA because "the applicability of § 1.59(c) to information obtained and decisions made by NFA board or committee members is remote." The Commission disagrees. NFA governing members have access to information concerning the financial condition of its members which the Commission believes could provide an unfair trading advantage, if used for that purpose.

<sup>3</sup> "For purposes of this section: \* \* \* 'Material information' means information which would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market, including, but not limited to, information relating to present or anticipated cash, futures or option positions, trading strategies, the financial condition of members of [SROs] or their customers, or the regulatory actions or proposed regulatory actions of [SROs]. 'Nonpublic information' means information which has not been disseminated in a manner which makes it generally available to the trading public through recognized channels of distribution." Regulations 1.59(a) (3) and (4). The Commission expects SROs, under the revised rule, to determine the application of the material, non-public information standard in specific factual contexts, a process that will refine the definition of the information that may not be misused or disclosed.

<sup>4</sup> This request elicited formal comment from: (1) Chicago Mercantile Exchange; (2) Coffee, Sugar & Cocoa Exchange, Inc.; (3) Chicago Board of Trade; (4) National Grain and Feed Association; (5) National Futures Association; and (6) National Grain Trade Council.

as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"), stating that Rule 1.59 does not impose any additional paperwork on the public, but that SROs may be required to submit new or altered rules to the Commission pursuant to Regulation 1.41. Rule 1.41 was assigned previously OMB Control No. 3038-0022.

Copies of the OMB approved information collection package associated with this rule may be obtained from Bob Neal, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395-7340.

#### List of Subjects in 17 CFR Part 1

SROS, Contract markets, Clearing organizations, Registered futures associations, Contract market members, Exchange employees, Directors of contract markets and clearing organizations.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b) the Commission is proposing to amend Title 17, Chapter I, Part 1 of the Code of Federal Regulations by adopting new § 1.59(c) as follows:

#### PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.59 is amended by revising the section heading and by adding paragraph (c) to read as follows:

**§ 1.59 Activities of self-regulatory organization employees and governing members who possess material, non-public information.**

(c) *Members of self-regulatory organization governing boards and committees.* Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41 (or pursuant to section 17(j) of the Act in the case of a registered futures association) which provide that no member of such self-regulatory

organization governing board or of a committee of such self-regulatory organization shall use or disclose, for any purpose other than the performance of such member's official duties as a governing board or committee member, material, non-public information obtained as a result of such member's participation on any committee or governing board of such self-regulatory organization.

Issued in Washington, DC on December 22, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-29721 Filed 12-28-87; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

##### 17 CFR Parts 229, 240 and 270

[Release Nos. 34-25217; IC-16181; File No. S7-19-87]

#### Proxy Rules; Amendments To Eliminate Filing Requirements for Certain Preliminary Proxy Material; Amendments With Regard to Rule 14a-8, Shareholder Proposals

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission today announced the adoption of amendments to the proxy rules to eliminate the filing of preliminary proxy and information statements under certain circumstances. To accommodate the changes in filing requirements, related amendments to Rules 14a-3, 14a-8, and 14c-3, Schedule 14C, the filing fee rules and Item 401 of Regulation S-K also are being adopted. In addition, the Commission is adopting an amendment to Rule 14a-8 to delete the limitation on inclusion of a shareholder proposal in the registrant's proxy material where the proponent delivers written proxy materials to holders of more than 25% of a class of the registrant's securities. Other amendments to Rule 14a-8 relating to requests for documentary support of a proponent's beneficial ownership claim require that a registrant make any request for documentary support within 14 calendar days, extend from 14 to 21 calendar days the time period in which such documentation must be furnished, and require that a registrant accept, under certain circumstances, a copy of certain Commission filings, together with a proponent's affidavit, as sufficient documentation of a proponent's beneficial ownership claim.

Technical and clarifying amendments to Schedule 14A also are being adopted.

**EFFECTIVE DATE:** All amendments are effective February 1, 1988, except for the deletion of Rule 14a-8(a)(1)(ii), which is effective December 29, 1987. Refer to the supplementary information section below for a detailed explanation of how the effective date will affect the operation of Rules 14a-6(a), 14a-8(a)(1), 14a-8(d), 14a-8(e), 14c-5(a), and Schedule 14C.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Green or Elizabeth M. Murphy, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. After the effective date, contact Cecilia D. Blye, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance. With respect to investment companies, contact Dorothy M. Donohue, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The Commission is adopting amendments to Regulation 14A<sup>1</sup> (Rules 14a-3<sup>2</sup>, 14a-6<sup>3</sup> and 14a-8<sup>4</sup> and Schedule 14A<sup>5</sup>) and to Regulation 14C<sup>6</sup> (Rules 14c-3<sup>7</sup> and 14c-5<sup>8</sup> and Schedule 14C<sup>9</sup>) under the Securities Exchange Act of 1934 ("Exchange Act").<sup>10</sup> The Commission also is adopting amendments to Rule 20a-1<sup>11</sup> under the Investment Company Act of 1940 ("Investment Company Act")<sup>12</sup> and to Item 401<sup>13</sup> of Regulation S-K.<sup>14</sup>

The deletion of Rule 14a-8(a)(1)(ii)<sup>15</sup> is effective upon publication in the Federal Register. The effective date for all other amendments is February 1, 1988. The following outline indicates how the effective dates will affect the operation of Rules 14a-6(a),<sup>16</sup> 14a-8(a)(1),<sup>17</sup> 14a-8(d),<sup>18</sup> 14a-8(e),<sup>19</sup> 14c-5(a),<sup>20</sup> and Schedule 14C:

<sup>1</sup> 17 CFR 240.14a-1 through 240.14b-2

<sup>2</sup> 17 CFR 240.14a-3.

<sup>3</sup> 17 CFR 240.14a-6.

<sup>4</sup> 17 CFR 240.14a-8.

<sup>5</sup> 17 CFR 240.14a-101.

<sup>6</sup> 17 CFR 240.14c-1 through 240.14c-101.

<sup>7</sup> 17 CFR 240.14c-3.

<sup>8</sup> 17 CFR 240.14c-5.

<sup>9</sup> 17 CFR 240.14c-101.

<sup>10</sup> 15 U.S.C. 78a-78kk.

<sup>11</sup> 17 CFR 270.20a-3.

<sup>12</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>13</sup> 17 CFR 229.401.

<sup>14</sup> 17 CFR 229.1 *et seq.*

<sup>15</sup> 17 CFR 240.14a-8(a)(1)(ii).

<sup>16</sup> 17 CFR 240.14a-6(a).

<sup>17</sup> 17 CFR 240.14a-8(a)(1).

<sup>18</sup> 17 CFR 240.14a-8(b).

<sup>19</sup> 17 CFR 240.14a-8(e).

<sup>20</sup> 17 CFR 240.14c-5(a).