

November 23, 1987

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 Bylaw 1301; Compliance Rule 2-26; Financial Requirements Schedule A, Section A4; and Proposed Changes to Provide for the Regulation of Foreign Futures and Foreign Options Transactions (Proposed Amendments to Bylaw 1507; Compliance Rules 1-1, 2-8, and 2-28; Code of Arbitration Section 1; Financial Requirements Section 1, Schedule A, Schedule B, Schedule C, and Schedule D; and Proposed Compliance Rule 2-31).

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 Bylaw 1301; NFA Compliance Rule 2-26; NFA Financial Requirements Schedule A, Section A4; and proposed amendments to NFA Bylaws, Compliance Rules, Code of Arbitration, and Financial Requirements to provide for the regulation of the foreign futures and options activities of NFA Members and Associates. These amendments were approved by NFA's Board of Directors at its meeting on November 19, 1987. NFA respectfully requests Commission review and approval of the proposed amendments on an expedited basis so that the provisions regarding foreign futures and options can become effective on January 4, 1988.

I. THE AMENDMENTS TO NFA BYLAW 1301 AND EXPLANATION THEREOF

- A. Amendments to NFA Bylaw 1301 to revise the assessment fee structure (additions are underscored and deletions are [bracketed]):



Ms. Jean A. Webb
November 23, 1987
Page 2

BYLAWS

* * *

CHAPTER 13 DUES AND ASSESSMENTS

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Bylaw 1301. Schedule of Dues and Assessments.

Subject to the provisions of Article XII, dues and assessments of Members shall be as follows:

(a) Contract Markets.

Each contract market Member shall pay to NFA an assessment calculated on the basis of \$.01 for each round turn transaction in a commodity futures contract (purchase and sale or sale and purchase) executed on the contract market, except that in any NFA fiscal year, the total of such assessments paid by a contract market Member with two (2) Directors on the Board shall not be more than \$150,000 and the total of such assessments paid by a contract market Member with one (1) Director on the Board shall not be more than \$100,000.

(b) FCM Members.

- (i) Each FCM Member shall pay to NFA an assessment equal to:
 - (A) \$0.28 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 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 person whose contracts are carried in a proprietary account, as defined in Commission Rule § 1.3(y), by a person having privileges of



Ms. Jean A. Webb
November 23, 1987
Page 3

membership on such contract market] 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 for each dealer option contract on a per trade basis carried by it for a customer other than [a person whose contracts are carried in a proprietary account, as defined in Commission Rule § 1.3(y), by] 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 by the Board during any fiscal year 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. The FCM Member shall invoice these assessments to its customer 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, or \$1,500 if such FCM Member does carry dealer option contracts for customers.

- B. Explanation of amendments to NFA Bylaw 1301 to revise the assessment fee structure.

NFA Bylaw 1301(b), which sets forth NFA's current assessment fee structure, requires FCMS to invoice to customers and to pay to NFA an assessment of \$.28 per round turn futures contract and \$.16 per trade for exchange traded and dealer options. The current bylaw includes two general exemptions from the assessment fee in addition to an exemption for trades in omnibus accounts.



Ms. Jean A. Webb
November 23, 1987
Page 4

The first exemption is for persons "having privileges of membership on a contract market where such contract is entered." NFA has traditionally taken a very liberal view of what constitutes "a privilege of membership" on a contract market. Obviously, any person whose trades are exempt from paying public fees by the exchange will automatically be considered to have "privileges of membership" and thus exempt from NFA's assessment fee. However, NFA's current interpretation of "privileges of membership" also exempts persons or trades which may be charged public fees by the exchanges, including lessors of exchange memberships, trades by permit holders or divisional members on contracts they are not entitled to trade on the floor, and trades in accounts owned jointly by an exchange member and a non-member.

The second exception under NFA Bylaw 1301(b) covers trades in proprietary accounts, as that term is defined in CFTC Regulation 1.3(y), carried by a member of the contract market where the contract is traded. This provision exempts a wide variety of persons associated with exchange Member FCMs, including, among others, directors, officers, many employees, and business affiliates.

After a thorough review of the current fee structure the Board of Directors concluded that it would be more equitable to expand the base of those persons who are subject to the assessment fee by narrowing the scope of both exemptions discussed above. This could ultimately lead to a reduction of the assessment fee, thus easing the public's burden in funding NFA. The Board of Directors therefore adopted the following changes to NFA's current assessment fee structure:

- 1) that the phrase "privileges of membership on a contract market where such contract is entered" in NFA Bylaw 1301(b)(i)(1) be interpreted to apply only to the privilege of paying member rather than public fees to the contract market; and
- 2) that the only proprietary accounts carried by exchange member FCMs to be exempt from the fee should be accounts wholly owned by firms which, directly or indirectly, own 100% of, are owned 100% by, or are subject to 100% common ownership with such exchange member FCM.



Ms. Jean A. Webb
November 23, 1987
Page 5

The Board also directed the Finance Committee to consider what adjustments to NFA's assessment fee would be appropriate in light of the expanded base for those fees.

For the foregoing reasons NFA believes that the proposed amendment to Bylaw 1301 is consistent with the requirements of Section 17(b)(6) of the Act and Commission Regulation 170.4 that dues be equitably allocated among Members and that dues not constitute a barrier to entry. NFA respectfully requests Commission approval of the proposed amendments to NFA Bylaw 1301. NFA further requests that the effective date be delayed until NFA has had an opportunity to study and propose a lower assessment fee per transaction.

II. THE AMENDMENT TO NFA COMPLIANCE RULE 2-26 AND EXPLANATION THEREOF

- A. Amendment to NFA Compliance Rule 2-26 to include NFA Associates (additions are underscored):

COMPLIANCE RULES

* * *

RULE 2-26. FCM AND IB REGULATIONS

Any Member or Associate who violates any of CFTC Regulations 1.33, 1.55 or 1.56 shall be deemed to have violated an NFA Requirement.

- B. Explanation of amendment to NFA Compliance Rule 2-26 to include NFA Associates.

NFA Compliance Rule 2-26 provides that any Member who violates any of CFTC Regulations 1.33, 1.55 or 1.56 shall be deemed to have violated an NFA Requirement. This rule was adopted prior to August 1, 1985, the date that NFA assumed jurisdiction over associated persons ("APs"). Since that time, NFA has confronted situations in which an associated person of an FCM or IB has guaranteed customers against losses in violation of CFTC Regulation 1.56. However, these APs could not be charged with violation of NFA Compliance Rule 2-26 because the rule applies to Members but not Associates. By amending the rule to apply to



Ms. Jean A. Webb
November 23, 1987
Page 6

Associates as well as Members, individual APs could be charged directly, and NFA's enforcement ability would be enhanced.

NFA respectfully requests the Commission to declare the proposed amendment to NFA Compliance Rule 2-26 effective upon approval by the Commission as authorized by Section 17(j) of the Act.

**III. THE AMENDMENT TO NFA FINANCIAL REQUIREMENTS SCHEDULE A,
SECTION A4 AND EXPLANATION THEREOF**

- A. Amendment to NFA Financial Requirements Schedule A, Section A4-a to change the treatment of debit/deficit accounts (additions are underscored):

FINANCIAL REQUIREMENTS

* * *

SCHEDULE A

* * *

Section A4-a. Debit and Deficit Accounts.

Exclude any unsecured commodity futures or option account containing a ledger balance and open trades, the combination of which liquidates to a deficit, or containing a debit ledger balance only. Deficits or debit ledger balances in unsecured Customers', Non-Customers', and Proprietary Accounts which are the subject of calls for margin or other required deposits may be included in Current Assets until the close of business the day following the date on which such deficit or debit ledger balance originated; provided that the account had timely satisfied, through the deposit of new funds, the previous day's debit or deficit, if any, in its entirety;



Ms. Jean A. Webb
November 23, 1987
Page 7

B. Explanation of amendment to NFA Financial Requirements Schedule A, Section A4-a to change the treatment of debit/deficit accounts.

On July 23, 1987, the Commission adopted amendments to its Regulation 1.17(c)(2)(i) pertaining to the treatment of debit/deficit accounts for purposes of computing current assets. Those amendments became effective on August 28, 1987. The proposed amendment to NFA Financial Requirements, Section A4-a, would bring NFA's Financial Requirements into conformity with CFTC Regulation 1.17(c)(2)(i), as amended. NFA respectfully requests that the Commission declare the proposed amendment effective immediately upon approval by the Commission.

IV. AMENDMENTS TO NFA BYLAW 1507; COMPLIANCE RULES 1-1, 2-8, AND 2-28; CODE OF ARBITRATION SECTION 1; FINANCIAL REQUIREMENTS SECTION 1, SCHEDULE A, SCHEDULE B, SCHEDULE C, AND SCHEDULE D; AND PROPOSED NFA COMPLIANCE RULE 2-31

As you know, on July 23, 1987 the Commission adopted final regulations ("Part 30 Regulations") governing the domestic offer and sale of futures and options made or to be made on or subject to the rules of a foreign board of trade. In the discussion which precedes the final rules in the adopting release (52 Fed. Reg. 28980 (1987)), the Commission expresses its support for, and in fact presumes, NFA regulation of the foreign futures and options activities of its Members and Associates. The Board has approved a number of changes to NFA requirements to give NFA jurisdiction over the foreign futures and options activities of NFA Members and Associates and to otherwise conform NFA requirements with the Part 30 Regulations.

The proposed amendments to NFA requirements are of three types and will therefore be discussed in three sections. These sections will cover definitions, including the definition sections of NFA's Compliance Rules and Code of Arbitration; NFA's Compliance Rules governing the business conduct of Members registered with the Commission; and NFA's Financial Requirements.



Ms. Jean A. Webb
November 23, 1987
Page 8

Amendments to NFA Bylaw 1507, Compliance Rule 1-1, and Code of Arbitration Section 1, and Explanations Thereof

- A. Amendments to NFA Bylaw 1507, NFA Compliance Rule 1-1, and Code of Arbitration Section 1 to include foreign futures and foreign options transactions in the definition of "futures" (additions are underscored and deletions are [bracketed]):

BYLAWS

* * *

CHAPTER 15

MISCELLANEOUS PROVISIONS

* * *

Bylaw 1507. Definitions

The terms used in these Bylaws shall have the same meaning as in the Articles: Provided, however, that the term "futures" as used in these Bylaws shall include:

- (1) option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts, and
- (2) foreign futures and foreign options transactions made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's rules.

Such [option] contracts are hereby declared to be a proper subject of NFA regulation and oversight (see Article XVIII, paragraph (k)).



Ms. Jean A. Webb
November 23, 1987
Page 9

COMPLIANCE RULES

Part 1-DEFINITIONS

Rule 1-1. DEFINITIONS.

As used in these Rules --

* * *

(g) "Foreign Board of Trade" -- means a board of trade, exchange, or market located outside the United States, its territories or possessions.

(h) "Foreign Futures" and "Foreign Options" -- mean futures and options transactions made or to be made on or subject to the rules of a foreign board of trade.

(i) "Foreign Futures or Foreign Options Customer" -- means any person located in the United States, its territories or possessions who trades in foreign futures or foreign options.

[(g)] (j) "Futures" includes:

(1) option contracts traded on a contract market;
[and]

(2) option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts;
and

(3) foreign futures and foreign options made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's rules.

[(h)] (k) "Futures Commission Merchant" or "FCM" -- means a futures commission merchant as that term is used in the Commodity Exchange Act, and that is required to be registered as such under the Act and Commission Rules.



Ms. Jean A. Webb
November 23, 1987
Page 10

[(i)] (l) "Introducing Broker" -- means an Introducing Broker as that term is used in the Commodity Exchange Act and that is required to be registered as such under the Act and Commission Rules.

[(j)] (m) "Member" -- means a Member of NFA that is required to be registered with the Commission, except a person required to register as a floor broker.

[(k)] (n) "Person" -- includes individuals, corporations, partnerships, trust, associations and other entities.

[(l)] (o) "Regional Committee" -- means a Regional Business Conduct Committee established under Section 704 of NFA Bylaws.

[(m)] (p) "Requirements" -- includes any duty, restriction, procedure or standard imposed by a charter, bylaw, rule, regulation, resolution or similar provision.

* * *

CODE OF ARBITRATION

Section 1. Definitions. As used in this Code --

* * *

(i) "Futures" -- includes:

(a) options contracts traded on a CFTC-licensed exchange; [and]

(b) options contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts; and



Ms. Jean A. Webb
November 23, 1987
Page 11

(c) foreign futures and foreign options transactions made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's rules.

* * *

- B. Explanation of amendments to NFA Bylaw 1507, NFA Compliance Rule 1-1, and Code of Arbitration Section 1 to include foreign futures and options transactions in the definition of "futures."

The proposed amendment to NFA Bylaw 1507 authorizes NFA to regulate the foreign futures and options activities of its Members and Associates. Similarly, the proposed amendments to NFA Compliance Rule 1-1(g), redennominated 1-1(j), and Code of Arbitration Section 1(i) give NFA compliance and arbitration jurisdiction over foreign futures and options transactions.

NFA Compliance Rule 1-1 as proposed, would also add new definitions of "foreign board of trade," "foreign futures" and "foreign options," and "foreign futures or foreign options customer." Although these definitions are not taken word-for-word from the Commission's definitions in Commission Regulations § 1.3(ss) and § 30.1, they are intended to have the same meanings as the Commission's definitions of the same terms.

Amendments to NFA Compliance Rules 2-8 and 2-28 and Proposed Compliance Rule 2-31, and Explanations Thereof

- A. Amendments to NFA Compliance Rules 2-8 and 2-28 and proposed NFA Compliance Rule 2-31 to conform NFA Compliance Rules with the Part 30 Regulations (additions are underscored):



Ms. Jean A. Webb
November 23, 1987
Page 12

COMPLIANCE RULES

* * *

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

* * *

Rule 2-8. DISCRETIONARY ACCOUNTS.

(a) Grant of Discretion Must Be in Writing.

No Member or Associate thereof shall exercise discretion over a customer's futures account unless the customer or account controller has authorized the Member or Associate thereof, in writing (by power of attorney or other instrument) to exercise such discretion. No Member or Associate thereof shall exercise discretion with regard to foreign futures or foreign options transactions on behalf of a foreign futures or foreign options customer unless the customer or account controller has specifically authorized the Member or Associate thereof, in writing, to exercise discretion with regard to foreign futures or foreign options transactions. For purposes of this Rule, a person does not exercise discretion where the customer or account controller specifies the commodity, year and delivery month of the contract, the number of contracts, and that the transaction is either to buy or to sell. Each Member must maintain a record or system or records which clearly identifies which of the Member's accounts are accounts over which the Member or any Associate thereof has discretionary authority.

* * *

Rule 2-28. LINKED MARKET TRANSACTION AUTHORIZATION AND DISCLOSURE REQUIREMENTS.

Each Member FCM or IB which engages in transactions on a foreign futures exchange pursuant to a linked market agreement between a domestic contract market and a foreign futures exchange on behalf of a customer's account carried or introduced by the Member must have



Ms. Jean A. Webb
November 23, 1987
Page 13

on file an authorization executed by the customer to engage in such transactions. The authorization may either be in the customer agreement or on a separate form and must include either the language set forth in CFTC Regulation 30.6 or the following language in boldface type or print:

"[Name] may from time to time execute transactions as customer's agent on a foreign futures exchange pursuant to an agreement between the foreign futures exchange and a domestic futures exchange that a trade executed on one exchange liquidates or establishes a position on the other exchange. Participation in such a transaction may involve the execution and clearing of trades on a foreign futures exchange. Neither the Commodity Futures Trading Commission ("Commission"), the National Futures Association ("NFA") nor any domestic futures exchange regulates the activities of a foreign futures exchange, including the execution, delivery and clearing of transactions on such an exchange, or has the power to compel enforcement of the rules of the foreign futures exchange and the laws of the foreign country. For these reasons, customers who trade on a foreign futures exchange may not be afforded certain of the protective measures provided by the Commodity Exchange Act, the Commission's regulations, and the rules of NFA and any domestic futures exchange, including the right to use reparation proceedings before the Commission and arbitration proceedings provided by NFA or any domestic futures exchange."

In addition to the above requirements, each non-discretionary order executed on one exchange to liquidate or establish a position on another exchange pursuant to a linked market agreement must be authorized by the customer and designated as such when the order is taken. With respect to a discretionary customer account, if the authorization to engage in such transactions is in the customer agreement, the customer must separately acknowledge the section of the customer agreement that contains the risk disclosure language required under this rule. Provided, however, that if the language set forth in CFTC Regulation 30.6 is used, this requirement may be satisfied by incorporating into



Ms. Jean A. Webb
November 23, 1987
Page 14

the text of the customer's written grant of discretion an express acknowledgment that the customer has received and understood the risk disclosure statement required by this rule. In the case of an introduced account carried by an FCM on a fully disclosed basis, the requirements of this rule apply only to the introducing IB or the introducing FCM unless the carrying FCM has agreed to be responsible for compliance.

* * *

Rule 2-31. FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

Any Member who violates any of the CFTC Part 30 Regulations shall be deemed to have violated an NFA requirement.

- B. Explanation of amendments to NFA Compliance Rules 2-8 and 2-28 and proposed NFA Compliance Rule 2-31 to conform NFA Compliance Rules with the Part 30 Regulations.

The proposed amendment to NFA Compliance Rule 2-8 is consistent with CFTC Regulation § 166.2(b), as amended, which provides that the grant of discretion for foreign futures and options transactions must be expressly documented. NFA Compliance Rule 2-8, as amended, would require the trading authorization to specifically include foreign futures and options transactions.

The disclosures required by NFA Compliance Rule 2-28 have been incorporated in the statement required by CFTC Regulation § 30.6. The proposed amendments to NFA Compliance Rule 2-28 clarify that the § 30.6 disclosure can be substituted for the language set out in NFA Compliance Rule 2-28. The proposed amendments to NFA Compliance Rule 2-28 further provide that a separate acknowledgment is not required if the trading authorization contains an express acknowledgment that the § 30.6 disclosure has been given. This procedure is consistent with the Commission's comments in the Federal Register release adopting the Part 30 Regulations (52 Fed. Reg. 28980, 28992 (1987)).



Ms. Jean A. Webb
November 23, 1987
Page 15

Proposed NFA Compliance Rule 2-31 incorporates the Part 30 Regulations by reference. It gives NFA compliance jurisdiction over violations of the Part 30 Regulations.

Amendments to NFA Financial Requirements Section 1, Schedule A, Schedule B, Schedule C, and Schedule D, and Explanations Thereof

- A. Amendments to NFA Financial Requirements Section 1, Schedule A, Schedule B, Schedule C, and Schedule D to include foreign futures and foreign options secured amounts (additions are underscored and deletions are [bracketed]):

FINANCIAL REQUIREMENTS

Section 1. Minimum Financial Requirement.

Each NFA Member that is registered or required to be registered with the Commodity Futures Trading Commission (herein after "CFTC") as a Futures Commission Merchant (hereinafter "Member FCM") must maintain "Adjusted Net Capital" (as defined in Schedule A hereto) equal to or in excess of -

- (a) The greatest of -
- (i) \$50,000, or
 - (ii) 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by [option] customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each [option] customer shall be limited to the amount of customer funds in such [option] customer's account and foreign futures and foreign options secured amounts; or,



Ms. Jean A. Webb
November 23, 1987
Page 16

(iii) (for securities brokers and dealers), the amount of net capital specified in Rule 15c3-1(a) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1(a)).

* * *

SCHEDULE A

FINANCIAL REQUIREMENTS COMPUTATION

Section A1. Definitions.

* * *

A1-e. Customer: means a person trading in any commodity future, except the holder of a "proprietary account" as defined in CFTC Regulation 1.3(y); in addition it means an "option customer" as defined in CFTC Regulation 1.3(jj) and includes a foreign futures and foreign options customer.

* * *

A1-j. Foreign Futures or Foreign Options Secured Amount: has the same meaning as in CFTC Regulation 1.3(rr).

* * *

Section A6. Adjusted Net Capital:

Means Net Capital less:

* * *

A6-i. Commodity Options.

For customer commodity options, four percent of the market value of commodity options granted (sold) by options customers on or subject to the rules of a contract market or a foreign board of trade.

* * *

Section A8-a.

Every Member FCM that is not a member of a contract market or foreign board of trade must collect performance



Ms. Jean A. Webb
November 23, 1987
Page 17

margin (initial and maintenance) for all customer accounts at a level no less than that established for customer accounts by the rules of the applicable contract market or foreign board of trade.

SCHEDULE B

EQUITY CAPITAL

* * *

Section B2-a. The following are prohibited:

- (i) The withdrawal of equity capital (B1 above) from a Member FCM (or subsidiary or affiliate where equity capital is consolidated under Schedule A, Sec. A8) or
- (ii) The making of an unsecured loan (including an advance) to a stockbroker, partner, sole proprietor, or employee - if, after giving effect to such withdrawal or loan, and capital reductions which are scheduled to occur within 6 months, Adjusted Net Capital of any of the consolidated entities would be less than the greatest of -
 - (A) \$60,000;
 - (B) 7% of the funds required to be segregated and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by [option] customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each [option] customer shall be limited to the amount of customer funds in such [option] customer's account and foreign futures and foreign options secured amounts; or,
 - (C) For securities brokers or dealers, the amount of net capital specified in Rule 15c3-1(e) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1(e))



Ms. Jean A. Webb
November 23, 1987
Page 18

or, in the case of a Member FCM which is included within such consolidation, if its equity capital would be less than 30% of the required debt-equity total as defined in Section 3.

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SCHEDULE C

SUBORDINATED LOAN AGREEMENTS

* * *

Section C1-b(vi)

- (C) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by (B) above, the lender with the prior written consent of the Member FCM and the DSRO may reduce the unpaid principal amount of the secured demand note: Provided, that after giving effect to such reduction the Adjusted Net Capital of the Member FCM would not be less than the greater of 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by [option] customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each [option] customer shall be limited to the amount of customer funds in such [option] customer's account and foreign futures and foreign options secured amounts; or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3-1d(b) (6) (iii) of the Regulations of the Securities and Exchange Commission (17 CFR 240. 15c3-1d(b)(6) (iii)). Provided further, that no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn. The DSRO shall not consent to a reduction of the principal amount of a secured demand note if, after giving effect to such



Ms. Jean A. Webb
November 23, 1987
Page 19

reduction, Adjusted Net Capital would be less than \$60,000.

Section C1-b(vii) Permissive prepayments "and special prepayments."

A Member FCM at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as "prepayment"), but in no event may any prepayment be made before the expiration of 1 year from the date such subordination agreement became effective: Provided, however, that the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of C2-e below, nor shall it apply to revolving agreements covered under Section C2-f. No prepayments shall be made, if, after giving effect thereto (and to all payments of payment obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within 6 months after the date such prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the Member FCM, either the Adjusted Net Capital of the Member FCM is less than the greatest of 7 percent of the funds required to be segregated under the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by [options] customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each [option] customer shall be limited to the amount of customer funds in such [option] customer's account and foreign futures and foreign options secured amounts; or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3-1d (b) (7) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1d (b) (7)); or \$60,000. Notwithstanding the above, no prepayment shall occur without the prior written approval of the Member FCM's DSRO.



Ms. Jean A. Webb
November 23, 1987
Page 20

Section C1-b(viii) Suspended repayment.

- (A) The payment obligation of the Member FCM with respect to any subordination agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the Member FCM under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such payment obligation), the Adjusted Net Capital of the Member FCM would be less than the greatest of 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by [option] customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each [option] customer shall be limited to the amount of customer funds in such [option] customer's account and foreign futures and foreign options secured amounts; or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3-1d(b)(8)(i) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1d(b)(8)(i)); or \$60,000. Provided, that the subordinated agreement may provide that if the payment obligation of the Member FCM thereunder does not mature and is suspended as a result of the requirement of this paragraph for a period of not less than 6 months, the Member FCM shall then commence the rapid and orderly liquidation of its business but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Section.

* * *

Section C2-b. Notice of Maturity or Accelerated Maturity.

Every Member FCM shall immediately notify its DSRO if, after giving effect to all payments of payment obligations under subordination agreements then outstanding which are then due or mature within the following 6 months without reference to any projection of profit or loss of the Member FCM, its Adjusted Net Capital would be less than \$60,000 or, its Adjusted Net Capital would be less than the greatest of



Ms. Jean A. Webb
November 23, 1987
Page 21

6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by [option] customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each [option] customer shall be limited to the amount of customer funds in such [option] customer's account and foreign futures and foreign options secured amounts; or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3-1d(c) (2) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1d(c) (2)).

* * *

Section C2-e Temporary Subordination.

To enable a Member FCM to participate as an underwriter of securities or undertake other extraordinary activities and remain in compliance with the financial requirements, a Member FCM shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date the subordination agreement became effective. Provided, that this temporary relief shall not apply to any Member FCM if the Adjusted Net Capital of the Member FCM is less than the greatest of 7 percent of the funds required to be segregated under the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by [option] customers on or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each [option] customer shall be limited to the amount of customer funds in such [option] customer's account and foreign futures and foreign options secured amounts; or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3-1d(c) (5) (1) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1d(c) (5) (1)); or \$60,000, or if the amount of equity capital as defined in Schedule B is less than the limits specified in Section 3. Such temporary subordination agreement shall be subject to all of the other provisions of Schedule C.



Ms. Jean A. Webb
November 23, 1987
Page 22

Section C2-f. Revolving Subordination-Special Payments.

A Member FCM shall be allowed to enter into a revolving subordination agreement which, at the option of the Member FCM but not at the option of the lender, if the agreement so provides, allows a prepayment at anytime prior to the scheduled maturity date, subject to the prior written approval of the Member FCM's DSRO. However, no such prepayment shall be made if:

- i. After giving effect thereto (and to all payments of payment obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such special payment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such special payment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the Adjusted Net Capital of the applicant or registrant is less than the greatest of 10 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and CFTC Regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by [option] customers or or subject to the rules of a contract market or a foreign board of trade, provided, however, the deduction for each [option] customer shall be limited to the amount of customer funds in such [option] customer's account and foreign futures and foreign options secured amounts; or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3-1d(c)(5)(ii) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1d(c)(5)(ii)); or \$100,000, or
- ii. Pre-tax losses during the latest three-month period were greater than 15 percent of current excess Adjusted Net Capital.

* * *



Ms. Jean A. Webb
November 23, 1987
Page 23

SCHEDULE D

FINANCIAL REPORTS

* * *

Section D1-b. Required Statements.

The Certified Report must contain the following statements:

* * *

- (v) Schedule of Funds Required to be on Deposit and Funds Actually on Deposit in Separate Accounts;
- (vi) [(v)] Statement of Income (Loss);
- (vii) [(vi)] Statement of Changes in Liabilities Subordinated to Claims of General Creditors; and,
- (viii) [(vii)] Attestation Letter.

* * *

Section D2-b. Required Statements.

The interim Financial Report must contain the following statements:

* * *

- (iv) Schedule of Segregated Funds Required to Commodity Futures and Options and Schedule of Segregated Funds on Deposit; [and,]
- (v) Schedule of Funds Required to be on Deposit and Funds Actually on Deposit in Separate Accounts; and
- (vi) [(v)] Attestation Letter.



Ms. Jean A. Webb
November 23, 1987
Page 24

- B. Explanation of amendments to NFA Financial Requirements Section 1, Schedule A, Schedule B, Schedule C, and Schedule D to include foreign futures and foreign options secured amounts.

The proposed changes to NFA Financial Requirements conform NFA Financial Requirements with amendments to CFTC Regulations § 1.10 and § 1.17, effective January 4, 1988. The proposed amendment to NFA Financial Requirements Section 1 requires futures commission merchants ("FCMs") to include foreign futures and options secured amounts in the calculation of their minimum financial requirements. This amendment tracks the amendment to CFTC Regulation §1.17(a)(1)(i)(B).

As proposed, Schedule A of NFA's Financial Requirements is amended to add a definition of foreign futures and foreign options secured amount by referring to the definition in CFTC Regulation § 1.3(rr), and Section A8-a is amended to require NFA Member FCMs to collect margin from foreign futures and options customers if the foreign board of trade requires its members to do so. The remaining proposed amendments to Schedule A and the proposed amendments to Schedule B and Schedule C conform to and track the language of the Commission's amendments to CFTC Regulation § 1.17. Similarly, the proposed amendments to Schedule D conform to the Commission's amendments to CFTC Regulation § 1.10.

NFA respectfully requests Commission approval of the proposed amendments to NFA's Bylaws, Compliance Rules, Code of Arbitration, and Financial Requirements to provide for the regulation of the foreign futures and options



Ms. Jean A. Webb
November 23, 1987
Page 25

activities of NFA Members and Associates. NFA further requests that these amendments be declared effective as of January 4, 1988, to coincide with the effective date of the Part 30 Regulations.

Respectfully submitted,

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

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

DJR:tyd (X860KPC02)

cc: Acting Chairman 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

March 3, 1988



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

Re: Proposed Amendment and Interpretation of National Futures
Association Bylaw 1301(b)

Dear Mr. Roth:

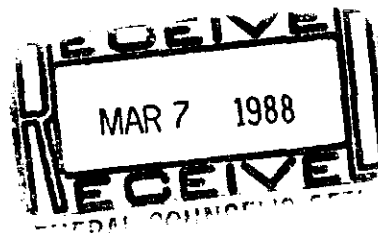
By letter dated November 23, 1987 and received by the Commission on November 24, 1987, the National Futures Association ("NFA") submitted pursuant to Section 17(j) of the Commodity Exchange Act ("Act") a proposed amendment and interpretation of its Bylaw 1301(b). The proposed amendment and interpretation would revise the criteria for exemptions from NFA's futures commission merchant transaction assessment fees. The Commission understands that NFA intends to implement the proposed revisions by July 1, 1988, the start of NFA's next fiscal year.

Please be advised that the Commission has this date approved the above-referenced revisions to NFA's Bylaw 1301(b) under Section 17(j) of the Act.

Sincerely,

A handwritten signature in cursive script that reads "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



January 14, 1988

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

RE: National Futures Association Proposed Amendments to Bylaw 1507;
Compliance Rules 1-1, 2-8, 2-26 and 2-28; Code of Arbitration
Section 1; Financial Requirements Section 1 and Schedules A, B, C
and D; and Proposed New Compliance Rule 2-31

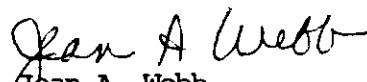
Dear Mr. Roth:

By a letter dated November 23, 1987 and received by the Commission on November 24, 1987, the National Futures Association ("NFA") submitted pursuant to Section 17(j) of the Commodity Exchange Act ("Act") proposed amendments to its Bylaw 1507; Compliance Rules 1-1, 2-8, 2-26 and 2-28; Code of Arbitration Section 1; Financial Requirements Section 1 and Schedules A, B, C and D; as well as a proposed new Compliance Rule 2-31.

The Commission understands that NFA intends to implement the proposed amendments to its Bylaw 1507; Compliance Rules 1-1, 2-8 and 2-28; Code of Arbitration Section 1; Financial Requirements Section 1 and Schedules A, B, C and D; as well as its proposed new Compliance Rule 2-31 on February 1, 1988. The Commission further understands that NFA intends to make its proposed amendments to Compliance Rule 2-26 and Financial Requirements Schedule A, Section A4-a effective upon receipt notice of Commission approval.

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

Sincerely,


Jean A. Webb
Secretary of the Commission

