

November 23, 1994

Via Next Business Day Delivery

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

Re: National Futures Association: Proposed Amendments to
NFA Bylaw 1301 and NFA Compliance Rules 3-9, 3-13 and
3-15

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended ("the Act"), National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") proposed amendments to NFA Bylaw 1301 and NFA Compliance Rules 3-9, 3-13 and 3-15. The amendments were approved by NFA's Board of Directors on November 17, 1994.

With respect to NFA Compliance Rules 3-9, 3-13 and 3-15, NFA intends to make the amendments effective ten days after receipt of this submission by the Commission unless the Commission notifies NFA within the ten-day period that the Commission has determined to review the amendments for approval. NFA is also invoking this "ten-day" provision of Section 17(j) of the Act with respect to NFA Bylaw 1301 but intends to make the amendments effective on January 1, 1995.

THE PROPOSED AMENDMENTS

- A. Proposed Amendments to NFA Bylaw 1301 (additions are under-scored and deletions are bracketed):

BYLAWS
OF
NATIONAL FUTURES ASSOCIATION

* * *

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) \$.14 [\$.16] for each commodity futures contract traded on a contract market (other than an option contract) on a round-turn basis, and
- (B) \$.07 [\$.08] 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;

- (C) \$.14 [\$.16] for each commodity futures contract traded on a foreign board of trade



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(other than an option contract) on a round turn basis, and

- (D) \$.07 [\$.08] for each option contract traded on a foreign board of trade on a per trade basis,

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

- (E) \$.07 [\$.08] for each dealer option contract on a per trade basis carried by it for a customer other than a business affiliate of such FCM that directly or indirectly owns 100% of or is owned 100% by or has 100% ownership in common with such FCM Member:

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

- (ii) Each FCM for which NFA serves as the DSRO, as defined in NFA Financial Requirements Section 2, shall pay to NFA annual dues of \$5,000 and each FCM for which NFA does not serve as the DSRO as defined in NFA Financial Requirements Section 2, shall pay to NFA annual dues of \$1,000.

(c) LTM Members.

- (i) Each LTM Member shall pay to NFA an assessment equal to \$.07 [\$.08] for each leverage contract purchased from or sold to the LTM by a customer. *Provided, however, such assessments shall be suspended or adjusted by the Board for a period not to exceed three months when in the judgment of the Board such action is appropriate in light of NFA's overall financial goals. The LTM Member shall invoice these assessments to its customer and shall remit the amount due to NFA; and*



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(ii) Each LTM Member shall pay to NFA annual dues of \$1,000.

* * *

B. Proposed Amendments to NFA Compliance Rules 3-9, 3-13 and 3-15 (additions are underscored and deletions are bracketed):

COMPLIANCE RULES

* * *

Part 3 -- COMPLIANCE PROCEDURES

* * *

Rule 3-9. HEARING.

If a hearing is held --

* * *

(e) A substantially verbatim record of the hearing shall be made (i.e., one that can be accurately transcribed). The cost of transcription shall be borne by the Respondent only if it requests the transcript, appeals the decision under Rule 3-13 below, or applies for Commission review and review is granted (see paragraph (f) [(e)](iii) of Rule 3-13). Otherwise, any transcription costs shall be borne by NFA.

* * *

Rule 3-13. APPEAL; REVIEW.

(a) Appeal.

The Respondent may appeal any adverse decision of the Hearing Panel issued under Rule 3-10 to the Appeals Committee by filing a written notice of appeal with NFA within fifteen (15) days after the date of the decision. The notice must describe those aspects of the disciplinary action to which exception is taken, and must contain any request by the Respondent to present written or oral argument.

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(b) Review.

The Appeals Committee may also order review of any decision of the Hearing Panel issued under Rule 3-10. If such a review will be conducted, the Appeals Committee will give written notice to the Respondent within fifteen (15) days of the date of the decision. Such review may be conducted by the Appeals Committee --

- (i) on its own motion, or
- (ii) pursuant to a petition filed by the Compliance Department, the granting of which shall be discretionary with the Appeals Committee. The petition will state why the Compliance Department is seeking review and must contain any request by the Compliance Department to present written or oral argument.

(c) Stay.

The Respondent's filing of a notice of appeal under paragraph (a) above or the institution by the Appeals Committee of its own review under paragraph (b) above shall operate as a stay of the effective date of the disciplinary order, until the Appeals Committee renders its decision.

(d) Conduct of Proceeding.

No member of the Appeals Committee shall participate in the proceeding if the member participated in any prior stage of the disciplinary proceeding (other than the review of a settlement offer submitted under Rule 3-11) or if the member, or any person with which the member is connected, has a financial, personal or other direct interest in the matter under consideration. Except for good cause shown, the appeal or review shall be conducted solely on the record before the Hearing Panel, the written exceptions filed under paragraph (a) above, and such written or oral arguments of the parties as the Appeals Committee may authorize.



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(e) Briefs

If the Appeals Committee authorizes written argument, briefs shall be filed as follows unless otherwise ordered by the Appeals Committee:

- (i) the party required to submit the initial brief shall file it with NFA's Legal Docketing Department and serve it on the other parties to the appeal within thirty (30) days after the Appeals Committee issues an order authorizing written argument;
- (ii) the responding party shall file its brief with NFA's Legal Docketing Department and serve it on the other parties to the appeal within thirty (30) days after service of the initial brief;
- (iii) the party which filed the initial brief may file an answer to the responding brief with NFA's Legal Docketing Department and serve it on the other parties to the appeal within ten (10) days after service of the responding party's brief;
- (iv) the initial brief or responding brief of any party shall not exceed thirty-five (35) pages and the answer to the responding brief shall not exceed ten (10) pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, rules and regulations; and
- (v) no other written argument on substantive issues raised on appeal will be accepted from the parties or considered by the Appeals Committee.

(f) [(e)] Decision.

Promptly after reviewing the matter, the Appeals Committee shall issue a written and dated decision, based on the weight of the evidence. The decision shall include --

- (i) the findings and conclusions of the Appeals Committee as to each charge and penalty reviewed, including the specific NFA requirement the Respon-



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dent was found by the Hearing Panel to have violated, to be violating, or to be about to violate;

- (ii) a declaration of any penalty imposed by the Appeals Committee, the basis for its imposition, and its effective date;
- (iii) a statement that any person aggrieved by the disciplinary action may appeal the action pursuant to Commission Regulations, Part 171, within thirty (30) days of service; and
- (iv) a statement that any person aggrieved by the disciplinary action may petition the Commission for a stay of the effective date pursuant to Commission Regulations, Part 171, within ten (10) days of service.

(g) [(f)] **Finality.**

The decision of the Appeals Committee shall be final thirty (30) days after the date of service.

* * *

Rule 3-15. MEMBER OR ASSOCIATE RESPONSIBILITY ACTIONS.

* * *

(d) Review.

The Appeals Committee may on its own motion review a decision of the Hearing Panel issued under paragraph (b) (iv) above, by giving written notice to the Respondent of its decision to review within 15 days of the date of the decision. The review shall be conducted in accordance with paragraphs (d), (e), [and] (f) and (g) of Rule 3-13.

EXPLANATION OF PROPOSED AMENDMENTS

A. Explanation of Proposed Amendments to NFA Bylaw 1301

The proposed amendments to NFA Bylaw 1301 reduce NFA's assessment fees from \$.16 to \$.14 per round-turn futures contract and from \$.08 to \$.07 per options transaction. NFA's assessment



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fee income has been running above budget due to unanticipated increases in the volume of public contracts. As a result, NFA's working capital has exceeded the target level set by NFA's Board. NFA's Finance Committee and Board considered a range of possible actions to reduce the level of working capital quickly and responsibly while limiting the possibility of future fluctuations in the level of assessment fees. They concluded that the most appropriate means of managing the problem would be a reduction in the assessment fee levels as proposed. The Finance Committee and Board also determined that the proposed reduction in assessment fees will not impair NFA's ability to perform its mandated functions.

B. Explanation of Proposed Amendments to NFA Compliance Rules 3-9, 3-13 and 3-15

The matters handled by NFA's Appeals Committee have increased substantially in number and complexity during the past several years. This has resulted in a marked increase in the amount of material to be reviewed by the members of the Appeals Committee during their deliberations. A recent phenomena which has added to the burden on the Appeals Committee has been the submission of inordinately lengthy briefs by a few Appellants.

The Appeals Committee routinely orders the Appellant to file a brief within 30 days, gives the Appellee 30 days to file an answering brief and permits further response from the Appellant within 10 days. Currently, NFA's Compliance Rules do not impose any limitation on the length of any of these submissions.

In one recent case, the Appellant firm filed three briefs totalling 332 pages exclusive of appendices. The firm was appealing a finding that it had violated NFA Requirements by filing late financial statements on seven occasions. The only penalty imposed for those infractions was a \$2,000 fine. In a separate case, an individual appealed a finding that he had made a deceptive sales presentation to an NFA investigator, for which he was sanctioned by being ordered to tape customer solicitations for a year. His briefs totalled 50 pages.

As you are aware, the Commission's Part 171 Regulations, which set out rules relating to its review of decisions made by NFA's Appeals Committee, establish page limits on briefs submitted to it. Specifically, CFTC Regulations 171.25 and 171.26 provide that, absent permission from the Commission, the



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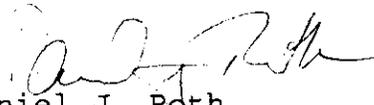
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parties' briefs are limited to 35 pages, exclusive of indices and appendices. This limit is also appropriate in NFA appellate matters since substantially similar issues are briefed before both the Commission and the Appeals Committee.

To give the Appeals Committee control over the amount of written argument which it will have to consider in any given case, the proposed amendment to NFA Compliance Rule 3-13 limits appeal briefs to 35 pages. The rule, as amended, retains the customary NFA practice of allowing the Appellant to file a reply to the Appellee's brief but limits that submission to 10 pages. It also codifies the Appeals Committee's traditional briefing schedule. In addition, the proposed language establishes the authority of the Appeals Committee to make exceptions to the time and page limitations. The proposed amendments to NFA Compliance Rules 3-9 and 3-15 are technical changes.

As stated above, this submission invokes the "ten-day" provision of Section 17(j) of the Act, under which NFA intends to make the amendments to NFA Compliance Rules 3-9, 3-13 and 3-15 effective ten days after Commission receipt of this submission and the amendments to NFA Bylaw 1301 effective on January 1, 1995.

Respectfully submitted,



Daniel J. Roth
General Counsel

cc: Chairman Mary L. Schapiro
Commissioner Barbara Pedersen Holum
Commissioner Sheila C. Bair
Commissioner Joseph P. Dial
Commissioner John E. Tull, Jr.
Andrea M. Corcoran, Esq.
Dennis P. Klejna, Esq.
Alan L. Seifert, Esq.
Susan C. Ervin, Esq.
Lawrence B. Patent, Esq.
David Van Wagner, Esq.



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington, DC 20581

(202) 254 - 8955

(202) 254 - 8010 Facsimile

DIVISION OF
TRADING AND MARKETS

December 5, 1994

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

Re: Proposed Amendment to Bylaw 1301--Transaction
Assessment Fees

Dear Mr. Roth:

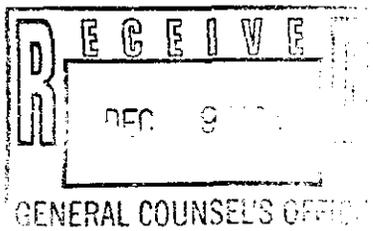
By letter dated November 23, 1994, and received November 25, 1994, the National Futures Association ("NFA") submitted the above-referenced proposal to the Commission. NFA's submission invoked the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("Act") to permit the above-referenced proposal to become effective ten days after Commission receipt unless, within the ten-day period, the Commission determines to review the proposal for approval and so notifies the NFA.

Please be advised that the Division of Trading and Markets has examined the above-referenced proposal and has decided to not review the proposal, as provided under Section 17(j) of the Act.

NFA's submission also included proposed amendments to its Compliance Rules 3-9, 3-13 and 3-15 which would establish new Appeals Committee procedures. Upon discussions with Commission staff, the NFA agreed to permit the Commission to review those proposed amendments for approval rather than considering them under Section 17(j)'s ten-day provision. Those amendments are currently being reviewed by Commission staff.

Sincerely,


David P. Van Wagner
Special Counsel





REDUCTION OF ASSESSMENT FEES
TO BECOME EFFECTIVE ON JANUARY 1, 1995

By letter dated November 23, 1994, NFA submitted to the CFTC proposed amendments to NFA Bylaw 1301 which reduces the assessment fees from \$.16 to \$.14 per round-turn futures contract and from \$.08 to \$.07 for options transactions. NFA's submission invoked the "ten-day" provision of Section 17(j) of the Commodity Exchange Act which would permit the amendments to become effective on January 1, 1995 unless within ten days after the Commission receives NFA's submission the Commission determines to review the proposal for approval and so notifies NFA.

By telephone call, the Commission notified NFA that it had decided not to review the proposed amendments to NFA Bylaw 1301 to reduce the assessment fees. Therefore, the amendments shall become effective on January 1, 1995.

C. Makino
December 8, 1994

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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

February 2, 1995



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

Re: The National Futures Association's Proposed
Amendments to Compliance Rule 3-9, 3-13 and 3-15--
Appeals Committee Procedures

Dear Mr. Roth:

By letter dated November 23, 1994, and received November 25, 1994, the National Futures Association ("NFA") submitted to the Commission proposed amendments to Compliance Rules 3-9, 3-13 and 3-15. NFA's submission invoked the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("Act") to permit the proposal to become effective ten days after Commission receipt unless, within the ten-day period, the Commission determines to review the proposal for approval and so notifies the NFA. In a December 5, 1994 telephone conversation with Division of Trading and Markets staff, the NFA requested that the Commission review and approve its proposed amendments to Compliance Rules 3-9, 3-13 and 3-15 pursuant to the rule approval procedures of Section 17(j) of the Act.

Please be advised that on this date the Commission has determined to approve the proposed amendments to Compliance Rules 3-9, 3-13 and 3-15 pursuant to Section 17(j) of the Commodity Exchange Act.

Sincerely,

Jean A. Webb
Secretary of the Commission

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