

October 5, 1988

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

Re: National Futures Association: Proposed Amendment to Bylaw 703; Proposed Bylaw 706; and Proposed Amendments to Sections 1, 2, 3, 4, 6, 7, 9, 10, 11, and 12 of NFA's Code of Arbitration.

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act as amended ("the Act"), National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") a proposed amendment to NFA Bylaw 703, a proposed Bylaw 706, and amendments to Sections 1, 2, 3, 4, 6, 7, 9, 10, 11, and 12 of NFA's Code of Arbitration. The amendments were approved by NFA's Board of Directors ("the Board") at its meeting on August 25, 1988. NFA respectfully requests Commission review and approval of the proposed amendments and new Bylaw.

I. PROPOSED AMENDMENT TO NFA BYLAW 703, PROPOSED NEW BYLAW 706 AND EXPLANATION THEREOF

- A. Amendment to Bylaw 703 and proposed new Bylaw 706 to prohibit members of NFA's Advisory Committees and Nominating Committee from misusing material, non-public information (additions are underscored):

**BYLAWS**

\* \* \*

**CHAPTER 7  
COMMITTEES**

**Bylaw 703. Advisory Committee.**

The Board shall appoint advisory committees, not having or exercising the authority of the Board, including a committee to advise the Board on FCM matters and a committee to advise the Board on matters relating to



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commodity pool operators and commodity trading advisors. No person then serving as a member of the Board shall simultaneously serve as a member of any NFA advisory committee. Each member of an advisory committee shall serve for three (3) years, except that the terms initially established 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 an advisory 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 judgement the best interests of NFA will be served thereby. No member of an advisory committee shall use or disclose material, non-public information, obtained as a result of participation on the advisory committee, for any purpose other than the performance of official duties as a member of the advisory committee.

\* \* \*

Bylaw 706. Nominating Committee

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

B. Explanation of proposed amendment to Bylaw 703 and proposed new Bylaw 706.

The proposed amendment to Bylaw 703 and proposed new Bylaw 706 will conform NFA's Bylaws with Commission 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. On February 25, 1988, the Board amended Bylaw 704 and adopted Bylaw 514 to apply the prohibitions against the misuse of material, non-public information to members of the Board of Directors and the Regional Business Conduct Committees. The present amendment to Bylaw 703 and the adoption



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of new Bylaw 706 will extend these prohibitions to the Advisory Committees and to the Nominating Committee.

NFA respectfully requests Commission approval of the proposed amendment to Bylaw 703 and the adoption of Bylaw 706. NFA requests that the Commission declare the proposed amendment and new Bylaw effective immediately upon approval by the Commission.

II. PROPOSED AMENDMENTS TO SECTIONS 1, 2, 3, 4, 6, 7, 9, 10, 11, and 12 OF NFA'S CODE OF ARBITRATION.

- A. Amendments to NFA's Code of Arbitration, Sections 1, 2, 3, 4, 6, 7, 9, 10, 11, and 12 to incorporate existing policies (additions are underscored and deletions are [bracketed]):

CODE OF ARBITRATION

Section 1. Definitions. As used in this Code-

(a) "Associate" - means a person who is registered with NFA as an Associate or was so registered when the acts or transactions that are the subject of the dispute occurred. (Under NFA Bylaws every person who is associated with a Member within the meaning of the term "associated person" as used in Section 4k of the Commodity Exchange Act, and who is required to be registered as such with the Commission, must register with NFA as an Associate.)

\* \* \*

(g) ["FCM"] "Futures Commission Merchant" - 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 Commodity Exchange Act and Commission Rules.

\* \* \*

- (i) "Futures" - includes:

[(a)] (1) options contracts traded on a CFTC licensed exchange;

[(b)] (2) options contracts granted by a person that has registered with the Commission under Section 4c(d) of the



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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

- [(c)] (3) 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.

\* \* \*

(k) "Member" - means a Member of NFA or a person that was a Member at the time the acts or transactions that are the subject of the dispute occurred.

\* \* \*

## Section 2. Arbitrable Disputes.

### (a) Mandatory Arbitration.

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

- (i) [A]a dispute for which arbitration is sought by a customer against a Member or employee thereof, or Associate, provided that-
- (A) the customer is not a[n FCM] futures commission merchant, [F]floor [B]broker, Member or Associate;
  - (B) the customer has not contractually agreed, before the claim arose, to submit the dispute to a settlement procedure other than NFA arbitration, pursuant to a lawful agreement that complies with Commission Rule 180.3;



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- (C) the dispute does not solely involve cash market transactions that are not part of or directly connected with a commodity futures transaction; and
  - (D) if brought against a Member or employee thereof, the Member is a[n FCM] futures commission merchant, an [I] introducing [B] broker, a [C] commodity [P] pool [O] operator or a [C] commodity [T] trading [A] advisor.
- (ii) [A] a customer claim that is required to be arbitrated by NFA under a lawful agreement that complies with Commission Rule 180.3.
  - (iii) [A] a customer claim whose resolution has been delegated to NFA by a contract market under Section 5a(11) of the Commodity Exchange Act.
  - (iv) [A] a dispute for which arbitration is sought between Members in the categories listed in Section 2(a)(1)(i)(D) of this Code, or employees thereof or Associates, where at least one such Member or employer of such employee or Associate is not a Member of a contract market.

\* \* \*

### Section 3. Pre-Dispute Arbitration Agreements.

Any pre-dispute arbitration agreement between a customer and a[n FCM, IB, CPO, or CTA] futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor Member or Associate thereof that does not comply with Commission Rule 180.3 shall be unenforceable under this Code.

### Section 4. Arbitration Panel.

#### (a) Appointment of Panel.

All arbitration proceedings under this Code shall be conducted before an arbitration Panel consisting of three NFA Members or individuals connected therewith (one such Member or individual designated as [p] Panel Chairman) appointed by the President, except that where the aggregate amount of the customer's claims



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(exclusive of interest and costs) plus the aggregate amount of any counterclaims (exclusive of interest and costs) do not exceed \$5,000, the Panel shall consist of one such person unless the Secretary directs otherwise: Provided, however, if the customer in an arbitration under Section 2(a) of this Code so requests in the Demand for Arbitration (see Section 6(c) of this Code), the Chairman and at least one other member of the Panel, and the Panel member where there is a single-member Panel, shall not be connected with an NFA Member or NFA (except as NFA arbitrators). For purposes of this section, any individual who performs a significant amount of work on behalf of NFA Members or Associates and any individual who was a Member or Associate or was an employee of a Member within the past two years shall be considered to be connected with an NFA Member.

\* \* \*

Section 6. Initiation of Arbitration.

\* \* \*

(c) Demand for Arbitration.

If such person wishes to proceed with the arbitration, such person, within 35 days after the date of transmittal by the Secretary under (b) above, shall [return] serve the completed Demand for Arbitration [to] on the Secretary together with the appropriate fee (see Section 11 below) and, in an arbitration under Section 2(a)(1)(ii) or 2(b) above, a copy of the agreement to arbitrate. The Secretary shall promptly review each Demand for Arbitration for completeness. Any Demand for Arbitration which the Secretary deems to be incomplete, or which is not accompanied by the appropriate fee, shall be returned by [registered] certified mail. In that event, such person shall [submit] serve a completed Demand for Arbitration, together with any unpaid fee, within 20 days following transmittal by the Secretary. The Secretary shall reject any Demand for Arbitration which has not been timely filed, or for which the appropriate fee has not been paid.

(d) Notice to Respondent.

The Secretary shall promptly [provide] serve a copy of the completed Demand for Arbitration [to] on each person named therein as a Respondent, and a copy of any agreement to arbitrate.



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(e) Answer.

The Respondent shall [submit] serve an A[answer] [to] on the Secretary within 45 days from the date of [transmittal] service of the Demand for Arbitration [to] on the Respondent by the Secretary. The Respondent shall concurrently [provide] serve a copy of the Answer [to] on the Claimant. An allegation in the Demand for Arbitration that is not denied in the Answer shall be deemed by the Panel to be admitted.

(f) Section 2(a)(2) Counterclaim.

Any counterclaim under Section 2(a)(2) must be asserted in the Answer, unless the Claimant consents to a later assertion of the counterclaim. If any counterclaim is asserted, the party asserting the counterclaim shall promptly remit the appropriate fee to the Secretary (see Section 11 below). Any counterclaim which the Secretary deems to be incomplete, or which is not accompanied by the appropriate fee, shall be returned by certified mail. In that event, such person shall serve a completed counterclaim, together with any unpaid fee, within 20 days following service by the Secretary. [The person against whom the counterclaim is asserted shall answer the counterclaim by submitting a Reply to the Secretary, within 35 days after the date of the Answer or later assertion of the counterclaim, and concurrently shall provide a copy to the counterclaiming Respondent. Any allegation in the counterclaim that is not denied in the Reply shall be deemed by the Panel to be admitted.] The Secretary shall reject any counterclaim which has not been timely filed, or for which the appropriate fee has not been paid.

(g) Reply to Counterclaim.

The person against whom the counterclaim is asserted shall reply to the counterclaim by serving a Reply on the Secretary within 35 days after the date of service of the Answer or counterclaim by the Secretary, and concurrently shall serve a copy of the Reply on the counterclaiming Respondent. Any allegation in the counterclaim that is not denied in the Reply shall be deemed by the panel to be admitted.

(h) Amendments to Claim or Counterclaim

After the appointment of a Panel, no new or different claim or counterclaim may be filed except with the Panel's consent.



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(i) Late Answer or Reply.

The Secretary shall accept any Answer or Reply filed prior to the hearing. However, the Secretary or any party may present an objection to the Panel with regard to the timeliness of any filing.

[(g)] (j) Consolidation.

When Demands for Arbitration involving common questions of fact or arising from the same act or transaction are received by the Secretary, the Secretary may, whether or not at the request of any party, order any or all of the proceedings to be consolidated for hearing in the interest of providing a fair, equitable, and expeditious procedure and may take such action concerning the proceedings herein as may tend to avoid unnecessary or unreasonable delay.

[(h)] (k) Appointment of Panel; Disclosure and Challenge.

The President shall thereupon appoint, pursuant to Section 4(a), an arbitration Panel to resolve the dispute [,]. [and t]The Secretary shall promptly notify the parties of the names, business affiliations, and other information relevant to the classification of the arbitrator as a Member or non-Member panelist. [of the members of the Panel so appointed.] Any objection of a party to such appointment shall be specific and for cause and submitted to the President in written form. Each member appointed shall disclose to the President any circumstances likely to affect impartiality, including any bias or any financial interest in the result of the arbitration or any past or present relationship with the parties or their [counsel] representatives. Upon receipt of such information from such member or other source, the President shall communicate such information to the parties, and if the President deems it appropriate to do so, to the member and others. Thereafter, the President shall determine whether the member should be disqualified and shall inform the parties of the decision, which shall be conclusive.

(l) Arbitrator's Oath.

Before proceeding with the hearing, each arbitrator shall execute an oath whereby the arbitrator promises to faithfully and fairly determine the matter before the Panel.





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[(i)](m) Computation of Time.

(1) For purposes of satisfying the timeliness requirements of Sections 6(c), 6(e), [and] 6(f), and 6(g), [transmittal] service shall be deemed to occur on the earlier of the dates that documents are mailed by NFA or the date that documents are delivered by NFA and [submission or return] service on NFA shall be deemed to occur on the earlier of the dates that documents are mailed to NFA as evidenced by postmark or affidavit of service, or the date personally delivered to NFA.

(2) The counting of days shall include all calendar days and should a due date fall on a weekend or legal holiday, such due date will be computed as the next business day on which mail is delivered.

(n) Service of Process.

Unless otherwise indicated, service may be accomplished by hand delivery, or by first class or certified mail, or by use of a generally recognized overnight delivery service to the party's last known address on record with NFA. Service on a party's representative shall be service on the party.

(o) Address of Record.

A party shall promptly notify the Secretary of any change in the party's address or the address of the party's representative on record with NFA.

**Section 7. Right to Counsel.**

A party may be represented at any time throughout the arbitration proceeding by an attorney-at-law or other representative [in the arbitration proceeding, but] and shall serve timely notice in writing on the Secretary and the other parties of the name and address of any such representative. [t]The Panel may bar from the proceeding any representative for dilatory, disruptive or contumacious conduct.

\* \* \*



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## Section 9. Hearing.

### (a) Place, Time and Notice of Hearing.

Except as provided in paragraph [(f)] (g) of this section, [as soon as practicable after appointment of the Panel,] the place and time of the hearing shall be determined in the sole discretion of the Secretary, who shall endeavor to accommodate, if possible, the preferences of all parties and members of the Panel. [The Secretary shall give notice to each party of the place and time of the hearing at least 10 days before the hearing date.] Upon setting the initial hearing date, the Secretary shall give notice to each party at least 15 days before the hearing of the date, time and place. The Secretary shall give reasonable notice of any rescheduled hearing date.

### (b) Procedure.

- [(i)](1) Each party may appear personally at the hearing to testify and produce evidence.
- [(ii)](2) Each party (or the party's representative) may present opening and closing arguments, and may examine any other party or witness at the hearing and any evidence produced at the hearing.
- [(iii)](3) The Panel need not apply the technical rules of evidence.
- [(iv)](4) Unless waived by the parties, the Panel shall cause a verbatim record to be made of the hearing, but no party shall be required to bear the costs of making the record unless the party requests a transcript, in which case a transcript must be furnished.
- [(v)](5) All testimony at the hearing shall be given under oath.
- [(vi)](6) The Panel may allow stipulations and establish other procedures as appropriate to expedite the proceeding. The Panel may consider affidavits but shall give them such weight as it deems appropriate after considering objections to them.



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- [(vii)](7) The Panel may direct Members and persons connected therewith to testify and produce documentary evidence.
- (8) The party requesting the appearance of a non-party witness shall bear all reasonable costs of such appearance. For purposes of this section, an employee or an Associate of any party shall be considered a party witness.
- [(viii)](9) In all other respects, the hearing procedure shall be determined by the Panel. The Panel shall afford the parties every reasonable opportunity to present their case completely.

\* \* \*

(e) Reopening the Record.

The record may be reopened by the Panel on their own motion or on the motion of a party for good cause at any time prior to the issuance of the award. A motion to reopen the record shall stay automatically the time period in which the award shall be issued.

[(e)](f) Waiver of Defects.

Where appropriate, the Panel may excuse any failure to comply with any provision of this section, or any Panel notice, order, or procedure.

[(f)](g) Summary Proceeding.

The proceeding shall be conducted entirely through written submissions when:

- (1) [Where] the aggregate amount of the customer's claims (exclusive of interest and costs) plus the aggregate amount of counterclaims (exclusive of interest and costs) is under \$2500.00, [the proceeding shall be conducted entirely through written submissions] unless the Secretary or the Panel directs otherwise [.] ; or
- (2) the Panel has consented to the written agreement of the parties to waive the oral hearing.



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**Section 10. Award.**

**(a) Issuance.**

Within 30 days after the [conclusion of the hearing] record is closed, the Panel shall render its award, in writing, dated and signed by the Panel members, which shall be delivered to the Secretary, who shall promptly serve a copy on each party or its representative either personally or by [registered or] certified mail. The award shall be that of the Panel majority.

\* \* \*

**(c) Finality.**

The Panel's award shall be final on the date thereof. The award may be modified by the Panel if a party submits a written request[s] for modification which is received by the Secretary within 20 days [of] from the date of service of the award on the parties, and the Panel deems modification necessary in the interests of justice. The timely filing of a request for modification shall stay automatically the finality of any award until the Panel either modifies the award or denies the request for modification.

\* \* \*

**(g) Failure to Comply.**

The failure of a Member or employee thereof, or Associate, to comply with an award shall be ground for disciplinary action under NFA Compliance Rules (see Compliance Rule 2-5). When any Member or employee thereof, or Associate, [thereof] fails to comply with an award within 30 days from the date of [transmittal] service of the award by NFA or such other period as specified in the award, and unless there is pending a request to modify the award under Section 10(c) or an application to vacate, modify or correct the award in a court of competent jurisdiction, that Member or Associate may, on seven days written notice, be summarily suspended by the President until such award has been satisfied.



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(h) Satisfaction of Demand.

At any time during the course of an arbitration, a Respondent may satisfy a Demand for Arbitration by payment or settlement. A written notice of satisfaction and withdrawal of the Demand for Arbitration shall be duly executed by the parties and submitted to the Secretary.

(i) Consent Award.

If parties agree to satisfy the Demand for Arbitration at any time during the arbitration, the Panel may, at the request of such parties, set forth the terms of the satisfied Demand for Arbitration in a consent award.

Section 11. Arbitration Fees.

(a) Filing Fees.

[(a)] (1) For [C]laims involving disputes between customers and Members or employees thereof, or Associates [.], [E]each party claiming or counterclaiming shall pay a filing fee based on the amount claimed or counterclaimed (exclusive of interest and costs) as follows:

<u>Amount of Claim or Counterclaim</u>	<u>Fee</u>
\$ 0.00 - \$ 2,499.99	\$ 50.00
\$ 2,500.00 - \$ 5,000.99	\$100.00
\$ 5,001.00 - \$10,000.99	\$150.00
\$10,001.00 - \$15,000.00	\$175.00
More than \$15,000.00	\$200.00 (plus 1% of excess over \$15,000.00).

\* \* \*



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[(b)] (2) For [C]claims involving disputes between Members or employees thereof, or Associates [.] , [E]each Member or employee thereof, or Associate claiming or counterclaiming shall pay a filing fee based on the amount claimed or counterclaimed (exclusive of interest and costs) as follows:

<u>Amount of Claim or Counterclaim</u>	<u>Fee</u>
\$ 0.00 - \$ 2,499.99	\$ 62.50
\$ 2,500.00 - \$ 5,000.99	\$125.00
\$ 5,001.00 - \$10,000.99	\$187.50
\$10,001.00 - \$15,000.00	\$218.75
More than \$15,000.00	\$250.00 (plus 1% of excess over \$15,000.00).

(b) Refunds.

A full refund of any filing fee paid under Section 11(a) above shall be made if, prior to the appointment of a Panel, a claim filed under Section 2(a) above is found to be not arbitrable or if the President declines to arbitrate a claim under Section 2(b) of this Code.

Section 12. Arbitration Costs.

Costs which may be included in an award shall normally be limited to the costs of any transcript which a party may request (see Section [8]9(b) [(iv)] (4) above). A Panel may, however, assess against a party any one or more of the following other costs, upon a finding that such party's claim, counterclaim, or defense was frivolous or was made in bad faith, or that the party engaged in willful acts of bad faith during the arbitration: Reasonable and necessary expenses incurred by (a) the arbitrators or (b) any other party or witness, including reasonable attorneys' fees.

\* \* \*

B. Explanation of the proposed amendments to Sections 1, 2, 3, 4, 6, 7, 9, 10, 11, and 12 of NFA's Code of Arbitration to incorporate existing policies.



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The proposed amendments to NFA's Code of Arbitration are for the most part minor, technical or conforming. These amendments are intended to make the Code easier to read and more understandable to a party who is not represented by an attorney. Additionally, there are several changes to the Code which codify existing NFA policies.

The proposed amendments to Section 1(a) and 1(k) simply incorporate the provisions of NFA Bylaw 301(h) into the definitions of "Associate" or "Member". NFA Bylaw 301(h) states that the termination of NFA membership shall not relieve the Associate or Member of any responsibility under the Code of Arbitration for activities prior to termination. Incorporating the provisions of this Bylaw into Section 1 of the Code will make it clear to persons reading only the Code that arbitration is mandatory if the customer claim is against a person or firm that either is or, at the time the dispute arose, was an NFA Member or Associate.

The proposed amendment to Section 4(a) addresses a concern of both the Commission and NFA regarding the impartiality of non-Member arbitrators. Securities arbitration forums have been roundly criticized because certain supposedly "non-Member" panelists have had close ties to the industry through recent employment or otherwise. From the time its program began, NFA has had a recognized policy of avoiding even the appearance of bias by non-Member panelists. NFA has excluded from the Member category any individual who performs a significant amount of work on behalf of NFA Members or Associates and any individual who was a Member or Associate or was an employee of a Member within the past two years. The proposed amendment to Section 4(a) codifies this recognized policy.

The proposed amendment to Section 6(h), renumbered 6(k), codifies a current NFA policy which will allow the parties to challenge the selection of arbitrators for cause. Furthermore, under current Section 6(h), the Code only requires that NFA's Secretary notify the parties of the names of the arbitrators appointed to hear their case. However, NFA routinely supplements this requirement by notifying the parties of the business affiliation of the arbitrator and to the arbitrator's classification as a Member or non-Member panelist. The proposed amendment to Section 6(h) will require NFA to notify the parties of the name, business affiliations, and other information relevant to the classification of the arbitrator as a Member or



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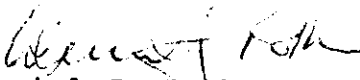
non-Member panelist. In addition, as proposed, Section 6 also codifies current policies regarding the arbitrator's oath of office and the filing by a party of a late claim, counterclaim, Answer and Reply.

The proposed amendment to Section 9(b) codifies NFA's policy with regard to the cost of producing a witness at the oral hearing. Section 9(e) codifies NFA's policy that, prior to the issuance of the award, the record may be reopened by the Panel on its own motion or, for good cause, on the written request of a party. Lastly, Section 10(h) and 10(i) codify NFA's policy with regard to settlements.

In sum, most of the proposed amendments to NFA's Code of Arbitration are minor, technical and conforming amendments which are intended to make the Code easier to read and more understandable to a party who is not represented by an attorney. The more substantial amendments merely codify existing NFA policies.

NFA respectfully requests Commission approval of the foregoing proposed amendments to Sections 1, 2, 3, 4, 6, 7, 9, 10, 11, and 12 of NFA's Code of Arbitration. NFA requests that the Commission declare the proposed amendment effective immediately upon approval by the Commission.

Respectfully submitted,

  
Daniel J. Roth  
General Counsel

ACS:rh(X601- #2 - Bylaw.703)

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



November 9, 1988

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

Re: Proposed Amendments to Bylaws 703 and 706 and  
Code of Arbitration Sections 1, 2, 3, 4, 6,  
7, 9, 10, 11 and 12

Dear Mr. Roth:

By letter dated October 5, 1988, pursuant to section 17(j) of the Commodity Exchange Act ("Act"), the National Futures Association ("NFA") submitted the captioned proposals for Commission approval. NFA requested that the Commission declare all of those amendments effective immediately upon approval. Please be advised that the Commission approved the captioned amendments pursuant to section 17(j) of the Act on November 9, 1988.

Sincerely,

Jean A. Webb  
Secretary of the Commission

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GENERAL COUNSEL'S OFFICE

October 19, 1988

Linda Kurjan, Esq.  
Special Counsel  
Division of Trading and Markets  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

Re: National Futures Association, Proposed  
Amendments to NFA Bylaws 703 and 706

Dear Ms. Kurjan:

As you are aware, by letter dated October 5, 1988, National Futures Association ("NFA") submitted proposed amendments to NFA Bylaws 703 and 706 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 the proposed amendments to NFA Bylaws 703 and 706 is intended to have the same meaning as the language in CFTC Regulation 1.59(c). Accordingly, NFA will interpret Bylaws 703 and 706 by applying the definitions of material and non-public information which are set forth in CFTC Regulation 1.59(a)(3) and (4).

Sincerely,



Daniel J. Roth  
General Counsel

DJR:cm(D46.F13)

October 19, 1988

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

Re: National Futures Association: Proposed Amendment  
to Section 4 of NFA's Code of Arbitration.

Dear Ms. Webb:

By letter dated October 5, 1988, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("Commission"), for approval, a proposed amendment to NFA Bylaw 703, proposed NFA Bylaw 706, and proposed amendments to Sections 1, 2, 3, 4, 6, 7, 9, 10, 11, and 12 of NFA's Code of Arbitration. This letter is to advise the Commission that on page 15 of the submission there is a typographical error in NFA's explanation of the proposed amendment to Section 4(a) of NFA's Code of Arbitration. In the interest of accuracy, NFA desires to correct the October 5, 1988 submission. The following is a corrected copy of the explanatory paragraph along with a copy of the proposed amendment to Section 4(a) of NFA's Code of Arbitration (additions are underscored).

\* \* \*

The proposed amendment to Section 4(a) addresses a concern of both the Commission and NFA regarding the impartiality of non-Member arbitrators. Securities arbitration forums have been roundly criticized because certain supposedly "non-Member" panelists have had close ties to the industry through recent employment or otherwise. From the time its program began, NFA has had a recognized policy of avoiding even the appearance of bias by non-Member panelists. NFA has excluded from the non-Member category any individual who performs a significant amount of work on behalf of NFA Members or Associates and any individual who was a Member or Associate or was an employee of a Member within the past two years. The proposed amendment to Section 4(a) codifies this recognized policy.



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## CODE OF ARBITRATION

### Section 4. Arbitration Panel.

#### (a) Appointment of Panel.

All arbitration proceedings under this Code shall be conducted before an arbitration Panel consisting of three NFA Members or individuals connected therewith (one such Member or individual designated as [p]Panel Chairman) appointed by the President, except that where the aggregate amount of the customer's claims (exclusive of interest and costs) plus the aggregate amount of any counterclaims (exclusive of interest and costs) do not exceed \$5,000, the Panel shall consist of one such person unless the Secretary directs otherwise: Provided, however, if the customer in an arbitration under Section 2(a) of this Code so requests in the Demand for Arbitration (see Section 6(c) of this Code), the Chairman and at least one other member of the Panel, and the Panel member where there is a single-member Panel, shall not be connected with an NFA Member or NFA (except as NFA arbitrators). For purposes of this section, any individual who performs a significant amount of work on behalf of NFA Members or Associates and any individual who was a Member or Associate or was an employee of a Member within the past two years shall be considered to be connected with an NFA Member.

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Respectfully submitted,

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DJR:tyd(acsDl:F38)

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