

September 6, 1991

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

Re: National Futures Association: Proposed Amendments to NFA's Code of Arbitration Sections 2 and 11; Proposed Amendments to Rules Governing Arbitration of Disputes Involving Foreign Parties Section 11; and Adoption of NFA's Proposed Member Arbitration Rules Sections 1-15.

Dear Ms. Webb:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended ("Act"), National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("Commission") proposed amendments to NFA's Code of Arbitration Sections 2 and 11; proposed amendments to Rules Governing Arbitration of Disputes Involving Foreign Parties Section 11; and adoption of NFA's Member Arbitration Rules Sections 1-15. These amendments and NFA's proposed Member Arbitration Rules were approved by NFA's Board of Directors ("Board") at its meeting on August 15, 1991. NFA respectfully requests Commission review and approval of the proposed amendments and proposed Member Arbitration Rules.

- I. Proposed Amendments to NFA's Code of Arbitration Section 11 and Rules Governing Arbitration of Disputes Involving Foreign Parties Section 11.
- A. Amendments to NFA's Code of Arbitration Section 11 and Rules Governing Arbitration of Disputes Involving Foreign Parties Section 11 to adopt a hearing fee (additions are underscored and deletions are [bracketed]):



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CODE OF ARBITRATION

* * *

Section 11. Arbitration Fees.

(a) Filing Fees.

- (1) For claims involving disputes between customers and Members or employees thereof, or Associates, each party claiming or counterclaiming shall pay a filing and hearing fee based on the amount claimed or counterclaimed, including punitive and treble damages but 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, the total fee not to exceed \$1,550.00.]

<u>Amount of Claim or Counterclaim</u>	<u>Filing Fee</u>	<u>Hearing Fee</u>
<u>\$ 0.00 - \$ 2,500.00</u>	<u>\$ 50.00</u>	<u>\$ 50.00</u>
<u>\$ 2,500.01 - \$ 5,000.00</u>	<u>\$100.00</u>	<u>\$ 50.00</u>
<u>\$ 5,000.01 - \$ 10,000.00</u>	<u>\$150.00</u>	<u>\$ 150.00</u>
<u>\$10,000.01 - \$ 15,000.00</u>	<u>\$175.00</u>	<u>\$ 450.00</u>
<u>\$15,000.01 - \$150,000.00</u>	<u>\$200.00 plus</u> <u>1% of excess</u> <u>over</u> <u>\$15,000.00</u>	<u>\$ 675.00</u>
<u>More than \$150,000.00</u>	<u>\$1,550.00</u>	<u>\$1,350.00</u>

Where multiple hearing sessions are required in excess of those covered by the hearing fee, the arbitrators shall assess fees for the additional hearing sessions in an amount equal to the standard preset fees to be paid by the Secretary to the arbitrators for the additional hearing sessions. The arbitrators, in their discretion, may assess the entire fee against any party or may divide the fee among any or all parties. Hearing session



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fees shall be paid to the Secretary in advance of the hearing sessions to which they apply.

* * *

(b) Refunds

- (1) A full refund of any filing and hearing fees paid under Section 11(a) above shall be made if, prior to the appointment of a Panel, a claim filed under Section 2 above is found to be not arbitrable or if the President declines to arbitrate the claim under Section 2(b) of this Code.
- (2) If all claims and counterclaims have been settled or withdrawn and the Secretary receives written notice of the settlement or withdrawal at least eight days in advance of the first scheduled hearing or preliminary hearing date, the hearing fee shall be refunded to the party paying the fee.

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**RULES GOVERNING ARBITRATION OF DISPUTES
INVOLVING FOREIGN PARTIES**

* * *

Section 11. Arbitration Fees.

(a) Filing Fees.

- (1) Each party claiming or counterclaiming under these Rules shall pay a filing fee (payable in U.S. dollars only) 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 1.25% of excess over \$15,000.00, the total fee not to exceed



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\$2,000.00.]

<u>Amount of Claim or Counterclaim</u>	<u>Filing Fee</u>	<u>Hearing Fee</u>
\$ 0.00 - \$ 2,500.00	\$ 62.50	\$ 50.00
\$ 2,500.01 - \$ 5,000.00	\$125.00	\$ 50.00
\$ 5,000.01 - \$ 10,000.00	\$187.50	\$ 50.00
\$10,000.01 - \$ 15,000.00	\$218.75	\$ 50.00
\$15,000.01 - \$ 20,000.00	\$250.00	\$ 50.00
More than \$ 20,000.00	\$312.50 plus 1.25% of excess over \$20,000.00	\$ 150.00

Where an oral hearing is held, the arbitrators shall assess fees for the hearing sessions in an amount equal to the standard preset fees to be paid by the Secretary to the arbitrators for the hearing sessions. The arbitrators, in their discretion, may assess the entire fee against any party or may divide the fee among any or all parties. Hearing session fees shall be paid to the Secretary in advance of the hearing sessions to which they apply.

(b) Refunds

- (1) A full refund of any filing and hearing fees paid under Section 11(a) above shall be made if, prior to the appointment of a Panel, a claim filed is found to be not arbitrable or if the President declines to arbitrate the claim.
- (2) If all claims and counterclaims have been settled or withdrawn and the Secretary receives written notice of the settlement or withdrawal at least eight days in advance of the first scheduled hearing or preliminary hearing date, the hearing fee shall be refunded to the party paying the fee.

B. Explanation of Proposed Amendments to NFA's Code of Arbitration Section 11 and Rules Governing Arbitration of Disputes Involving Foreign Parties Section 11 to adopt a hearing fee.

NFA's Code of Arbitration ("Code") governing customer claims establishes a fee schedule for filing customer claims. This fee schedule has remained virtually unchanged since 1983 and



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has not increased at all in that time.¹ At its August 15, 1991 meeting, the Board adopted a hearing fee to supplement the filing fee. The hearing fee will be used to compensate NFA arbitrators for their services. Although the hearing fee will initially be paid by the person filing the claim, the arbitrators can reallocate the fee in the award. The hearing fee will be refunded if the case is settled or withdrawn at least eight days before the first hearing date.

NFA has over 2,000 volunteer arbitrators who serve without compensation. Although NFA has an adequate pool of arbitrators in most cities, NFA's efforts to expand its roster have been hampered somewhat by the lack of a nominal fee. In addition, many of the arbitrators currently on NFA's roster have indicated that it is difficult to serve when they do not receive a nominal fee. NFA believes that providing nominal compensation to arbitrators will help preserve NFA's current pool of arbitrators and assist in expanding the number of arbitrators in the pool.

The Board has approved arbitrator fees of \$50.00 for a summary proceeding, \$150.00 for a half day (4 hours or less) oral hearing, and \$225.00 for a full day oral hearing. The oral hearing fees are based on the fees paid to arbitrators by the National Association of Securities Dealers ("NASD") and the New York Stock Exchange ("NYSE"). NFA will begin paying arbitrators when the hearing fee is implemented.

The hearing fee schedule was derived by multiplying arbitrator fees by the number of arbitrators required and the average length of hearings for different sizes of claims. For example, the hearing fee for a \$2,000.00 claim is \$50.00 (the amount that an arbitrator will be paid for a summary proceeding) and the hearing fee for a \$50,000.00 case is \$675.00 (three arbitrators for a full day at \$225.00 each).

The Rules Governing Arbitration of Disputes Involving Foreign Parties have also been amended by adding a hearing fee. As with the fees for customer claims under the Code, these hearing fees are designed to recover the cost of the fees paid to arbitrators.

Throughout NFA's existence, arbitration has been a highly subsidized program. In fiscal year 1991, arbitration fees

¹ Since 1983, the only change to the filing fees occurred in 1988 when NFA capped the fee at \$1,550.00 for claims of more than \$150,000.00.



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(filing and continuance fees) covered only fourteen percent (14%) of the Arbitration Department's administrative expenses and only seven percent (7%) when services provided to the Arbitration Department by other NFA departments (e.g., General Counsel's Office) are factored into the cost of the program. The proposed hearing fee will have very little impact on these percentages or on the dollar amount subsidized by NFA.

NFA recognizes that the hearing fee will increase the cost of NFA arbitration to the parties. However, NFA arbitration will still be an affordable, low cost forum for the resolution of futures related disputes. (See Exhibit A, attached, for a comparison of NFA's proposed arbitration costs with costs in other arbitration forums.)

II. Proposed Amendments to NFA's Code of Arbitration Sections 2 and 11 and Adoption of NFA's Proposed Member Arbitration Rules Sections 1-15.

- A. Amendments to NFA's Code of Arbitration Sections 2 and 11 and adoption of NFA's proposed Member Arbitration Rules Sections 1-15 to provide for mandatory arbitration between and among NFA Members and Associates (additions are under-scored and deletions are [bracketed]):

CODE OF ARBITRATION

* * *

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 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 futures commission merchant, floor broker, Member or Associate;



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- (B) the dispute does not solely involve cash market transactions that are not part of or directly connected with a commodity futures transaction; and
 - (C) if brought against a Member or employee thereof, the Member is a futures commission merchant, an introducing broker, a commodity pool operator, a commodity trading advisor, or a leverage transaction merchant.
- (ii) a customer claim that is required to be arbitrated by NFA under a lawful agreement that complies with Commission Rule 180.3.
 - (iii) 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 dispute for which arbitration is sought between Members in the categories listed in Section 2(a)(1)(i)(C) 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.]

(2) **Counterclaims.** Except as provided in Sections 5 and 6 of this Code with respect to timeliness requirements, a counterclaim may be asserted against a customer in an arbitration brought under paragraph (1) above if the counterclaim:

- (i) arises out of an act or transaction that is the subject of the customer's claim;
- (ii) does not require for its adjudication the presence of witnesses of other third parties over whom NFA lacks jurisdiction and who are not otherwise available.

A counterclaim that does not meet condition (i) above may be asserted against a customer only if the customer thereafter consents.

(b) Discretionary Arbitration.

Except as required by the Member Arbitration Rules, [O]ther disputes involving commodity futures contracts between or among customers, Members, or Associates may, in the President's discretion, be arbitrated under this Code if the parties



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agree or have agreed to such arbitration and the timeliness requirements of Sections 5 and 6 of this Code are met.

* * *

Section 11. Arbitration Fees.

(a) Filing Fees.

[(1) For claims involving disputes between customers and Members or employees thereof, or Associates, e] Each party claiming or counterclaiming under this Code shall pay a filing fee based on the amount claimed or counterclaimed, including punitive and treble damages but exclusive of interest and costs, as follows:

* * *

[(2) For claims involving disputes between Members or employees thereof, or Associates, 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 1.25% of excess over \$15,000.00, the total fee not to exceed \$2,000.00.]

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MEMBER ARBITRATION RULES

Section 1. Definitions. As used in these Rules--

(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



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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.)

(b) **"Claimant"**-- means a person making a proper and timely Demand for Arbitration under these Rules.

(c) **"Commission"**-- means the Commodity Futures Trading Commission.

(d) **"Contract Market"**-- means an exchange designated by the Commission as a contract market in one or more commodities.

(e) **"Hearings"**-- includes both oral hearings and summary proceedings, unless otherwise specified.

(f) **"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.

(g) **"NFA"**-- means National Futures Association.

(h) **"Panel"**-- means the arbitration panel selected pursuant to Section 3 of these Rules.

(i) **"Person"**-- includes individuals, corporations, partnerships, trusts, associations and other entities.

(j) **"Pleadings"**-- includes the Demand for Arbitration filed by a Claimant, the Answer and any counterclaim filed by a Respondent, and any Reply to a counterclaim filed by a Claimant.

(k) **"President"**-- means the President of NFA.

(l) **"Respondent"**-- means a person against whom a claim is asserted under these Rules.

(m) **"Secretary"**-- means the Secretary of NFA.

(n) **"Self-regulatory organization"**-- means a contract market, a registered national securities exchange, or a registered national securities association.

Section 2. Arbitrable Disputes.

(a) **Claims.** Except as provided in Sections 4 and 5 of these Rules with respect to timeliness requirements, disputes between



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and among Members and Associates shall be arbitrated under these Rules upon the filing of a Demand by a Member or Associate unless:

- (1) the parties, by valid and binding agreement, have committed themselves to the resolution of such dispute in a forum other than NFA;
- (2) the parties to such dispute are all required by the rules of another self-regulatory organization to submit the controversy to the settlement procedures of that self-regulatory organization; or
- (3) all parties to the dispute are members of a contract market which has jurisdiction over the dispute.

(b) Counterclaims. Except as provided in Sections 4 and 5 of these Rules with respect to timeliness requirements, a counterclaim may be asserted in an arbitration brought under paragraph (a) above if the counterclaim arises out of an act or transaction that is the subject of the claim.

Section 3. Arbitration Panel.

(a) Appointment of Panel.

All arbitration proceedings under these Rules shall be conducted before an arbitration panel consisting of three NFA Members or individuals connected therewith (one such Member or individual designated as Panel Chairman) appointed by the President, except that where the aggregate amount of the claims (exclusive of interest and costs) plus the aggregate amount of any counterclaims (exclusive of interest and costs) do not exceed \$20,000, the Panel shall consist of one such person unless the Secretary directs otherwise.

(b) Disclosures Required.

Prior to being appointed to the Panel, each arbitrator under consideration shall disclose to the President any circumstance that might prevent the arbitrator from acting impartially.

(c) Appointment of Panel, Disclosure and Challenge.

The President shall thereupon appoint, pursuant to Section 3(a), an arbitration Panel to resolve the dispute. No arbitrator shall have acted as the mediator in the same dispute. The Secretary shall promptly notify the parties of each arbitra-



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tor's name, business affiliations, and other relevant information. Any objection of a party to such appointment shall be specific and for cause and submitted to the President in written form. Each appointed arbitrator 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 representatives. Upon receipt of such information from such arbitrator or other source, the President shall communicate such information to the parties, and if the President deems it appropriate to do so, to the arbitrator and others. Thereafter, the President shall determine whether the arbitrator should be disqualified and shall inform the parties of the decision, which shall be conclusive.

(d) 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.

(e) Replacement.

If an arbitrator becomes ineligible or otherwise unable to serve on the Panel, the President shall (unless the parties request otherwise) appoint a replacement to the Panel. If such appointment is made after the commencement of the hearing, the Panel shall (unless the parties request otherwise) conduct a re-hearing.

(f) Ex Parte Contacts.

No party to the arbitration, or any representative thereof, shall communicate with any Panel member regarding the arbitration, other than inquiries concerning the status thereof, except at the oral hearing or in writing on notice to the other parties.

Section 4. Time Period for Arbitration.

No claim may be arbitrated under these Rules unless a notice of intent to arbitrate [see Section 5(a) below] is received by the Secretary within two years from the date when the party asserting the claim knew or should have known of the act or transaction that is the subject of the controversy. No counterclaim may be arbitrated under these Rules unless it is received by the Secretary within two years from the date when the party asserting the counterclaim knew or should have known of the act



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or transaction that is the subject of the counterclaim or it is served on the Secretary within 45 days from the date of service of the Demand for Arbitration on the Respondent by the Secretary, whichever is later. The Secretary shall reject any claim or counterclaim that is not timely filed. If, in the course of any arbitration, the Panel determines that the requirements of this section have not been met as to a particular claim or counterclaim, the Panel shall thereupon terminate the arbitration of the claim or counterclaim without decision or award.

Section 5. Initiation of Arbitration.

An arbitration proceeding under these Rules shall be initiated as follows:

(a) Notice of Intent to Arbitrate.

A person desiring arbitration under these Rules shall notify the Secretary, either in writing or orally, of such person's intent to arbitrate. The Secretary shall maintain a record of the receipt of each such notice.

(b) Documents Furnished.

The Secretary shall promptly provide such person with a copy of these Rules and a Demand for Arbitration.

(c) Demand for Arbitration.

If such person wishes to proceed with the arbitration, such person, within 35 days after the date of service by the Secretary under (b) above, shall serve the completed Demand for Arbitration on the Secretary together with the appropriate fee (see Section 11 below). 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 certified mail. In that event, such person shall serve a completed Demand for Arbitration, together with any unpaid fee, within 20 days following service 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. If no separate Notice of Intent has been received the Demand for Arbitration shall serve as the Notice of Intent.

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(d) Notice to Respondent.

The Secretary shall promptly serve a copy of the completed Demand for Arbitration on each person named therein as a Respondent.

(e) Answer.

The Respondent shall serve an Answer on the Secretary within 45 days from the date of service of the Demand for Arbitration on the Respondent by the Secretary. The Respondent shall concurrently serve a copy of the Answer 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) 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 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 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.

(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



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present an objection to the Panel with regard to the timeliness of any filing.

(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.

Section 6. Right to Counsel.

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

(b) A representative of a party may withdraw upon submitting to the Secretary an affidavit that the party represented has actual knowledge of the withdrawal or that the representative has made a good faith effort to provide such notice.

Section 7. Pre-Hearing.

(a) Exchange of Documents and Written Information.

(1) The parties shall cooperate, without resort to issuance of subpoenas, in the voluntary exchange of material and relevant documents and written information which may serve to facilitate a fair, equitable and expeditious hearing.

(2) All requests for documents and written information shall be served on the responding party by the requesting party no later than 30 days after the Answer is due, or no later than 30 days after the Reply is due if a counterclaim has been asserted. The responding party shall serve the requesting party with the documents and written information, including written objections, no later than 30 days after the request is due. Written requests to compel production of documents and written information must be served on the Secretary and all parties no



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later than 10 days after the written objections are due, and written responses to the request to compel must be served on the Secretary and all parties no later than 10 days after the request to compel was served. Unless the Panel directs otherwise, requests to compel will be decided on the written submissions of the parties.

(3) Evidence that is otherwise discoverable or admissible in an arbitration proceeding shall not be rendered non-discoverable or inadmissible as a result of its use in connection with a mediation conference. However, documents and written information in the mediator's possession are not subject to discovery and may not be subpoenaed for use in the subsequent arbitration hearing.

(b) Documents To Be Introduced Into Evidence.

(1) At least 15 days prior to the date assigned for an oral hearing, each party shall serve on every other party all documents in such party's possession which the party intends to introduce into evidence at the hearing as part of its direct case and shall concurrently serve sufficient copies of the documents on the Secretary.

(2) At least 15 days before the date assigned for a summary proceeding to commence, each party shall serve on the Secretary sufficient copies of all documents in such party's possession which are to be submitted to the Panel as part of the party's case and shall concurrently serve copies on every other party. At least 5 days before the date assigned for a summary proceeding to commence, each party shall serve on the Secretary sufficient copies of all documents in such party's possession which are to be submitted to the Panel to rebut the documents previously served by another party and shall concurrently serve copies on every other party.

(c) Hearing Plan.

The Panel may order the parties to formulate a written hearing plan and set a date for serving it on the Secretary.

(d) Failure to Comply.

The failure of any party to comply with Sections 7(a) through 7(c) or any order of the Panel may be brought to the attention of the Panel by the Secretary or party seeking such documents or information. The Panel may take such actions in

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regard to the failure as are just, including, among other things, the following:

- (1) finding that the matters regarding which the request was made or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party making the request;
- (2) refusing to allow the nonresponsive party to support or oppose designated claims or defenses or prohibiting him from introducing designated matters in evidence; or
- (3) striking out pleadings or portions thereof, staying further proceedings until the nonresponsive party complies with the request, dismissing the action or proceeding or any part thereof, or rendering an award by default against the nonresponsive party.

Section 8. Dismissal Without Prejudice.

The Panel may, at the written request of a party or on its own motion, dismiss without prejudice any claim or counterclaim which it determines is not a proper subject for NFA arbitration.

Section 9. Hearing.

(a) Preliminary Hearing.

The Panel may, at the written request of a party or on its own motion, schedule a preliminary hearing in extraordinary circumstances. Such hearing may be conducted orally, by telephone conference, or by written submissions.

(b) Notice of Hearing.

Except as provided in paragraph (i) of this section, 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. Upon setting the initial hearing date, the Secretary shall serve notice on each party at least 20 days before the hearing of the date, time and place. The Secretary shall give reasonable notice of any rescheduled oral hearing date.

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(c) Failure to Prosecute or Defend.

At the written request of any party or on its own motion, the Panel may review the procedural history of the proceeding and any written submissions and may find that a party has failed to prosecute or defend the proceeding. Any party found to have failed to prosecute or defend the proceeding will be deemed to have waived his right to an oral hearing.

(d) Procedure.

- (1) Each party may appear personally at an oral hearing to testify and produce evidence.
- (2) Each party (or the party's representative) may present opening and closing arguments, and may examine any other party or witness at an oral hearing and any evidence produced at the oral hearing.
- (3) The Panel need not apply the technical rules of evidence.
- (4) Any party may cause a verbatim record of an oral hearing to be made at its own expense.
- (5) All testimony at the oral hearing shall be given under oath.
- (6) The Panel may allow stipulations and establish other procedures as appropriate to expedite the hearing. The Panel may consider affidavits but shall give them such weight as it deems appropriate after considering objections to them.
- (7) The Panel may order Members, employees thereof, and Associates to testify and produce documentary evidence. The Panel may issue subpoenas to non-Members as authorized by law.
- (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.
- (9) All conduct and statements, offers and promises, whether oral or written, made by the parties or their representatives in connection with a mediation

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conference shall be confidential and shall not be admissible for any purpose, including impeachment, in any pending or subsequent arbitration proceeding. The mediator may not be called as a witness in a pending or subsequent arbitration proceeding.

- (10) In all other respects, the hearing procedures shall be determined by the Panel. The Panel shall afford the parties every reasonable opportunity to present their case completely.

(e) Extensions and Postponements.

Extensions of time or postponements of the hearing may be granted by the Panel when the interests of justice so require, but a hearing in progress shall not be adjourned or interrupted except in compelling circumstances.

(f) Failure to Comply.

The failure of any party to appear at any hearing or any session thereof, or to comply with any notice, order, or procedure in connection therewith, may subject the party to such adverse action as the Panel deems appropriate, including the entry of an award or the dismissal of a claim or counterclaim.

(g) Reopening the Record.

The record may be reopened by the Panel on its 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 automatically stay the time period in which the award shall be issued.

(h) 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.

(i) Summary Proceeding.

The proceeding shall be conducted entirely through written submissions when:

- (1) the aggregate amount of the claims (exclusive of interest and costs) plus the aggregate amount of counterclaims (exclusive of interest and costs) does



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not exceed \$10,000, unless the Secretary or the Panel directs otherwise;

- (2) the aggregate amount of the claims (exclusive of interest and costs) plus the aggregate amount of counterclaims (exclusive of interest and costs) is more than \$10,000 but not more than \$20,000, unless the Secretary or the Panel directs otherwise or one of the parties to the proceeding serves a written request for an oral hearing on the Secretary no later than 30 days after the Answer is due, or no later than 30 days after the Reply is due if a counterclaim has been asserted;
or
- (3) the Panel has consented to the written agreement of the parties to waive the oral hearing. A written agreement is not required of any party which has waived its right to an oral hearing under any other provision of these Rules.

Section 10. Award, Settlement and Withdrawal.

(a) Issuance of Award.

Within 30 days after the 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 certified mail. The award shall be that of the Panel majority.

(b) Relief.

The award may grant or deny any of the monetary relief requested, and may include an assessment of interest, costs or fees (see Sections 11 and 12).

(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 for modification which is received by the Secretary within 20 days from the date of service of the award on the parties, and the Panel deems modification necessary because:

- (1) there is an evident material miscalculation of figures or an evident material mistake in the description of

Ms. Jean Webb

September 6, 1991

any person, thing, or property referred to in the award;

- (2) the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or
- (3) the award is imperfect in matter of form not affecting the merits of the controversy.

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.

(d) Appeal.

There shall be no right of appeal of the award.

(e) Award Binding.

All parties shall be bound by the award and any modification thereof.

(f) Judgment.

Judgment on the award may be entered in any court of competent jurisdiction.

(g) Failure to Comply.

The failure of a Member or Associate to comply with an award or to pay any fee assessed under Sections 11 or 12 shall be grounds for disciplinary action under NFA Compliance Rules (see Compliance Rule 2-5). When any Member or Associate fails to comply with an award or pay any fee within 30 days from the date of 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 30 days written notice, be summarily suspended by the President until such award has been satisfied. Any Member or Associate subject to a summary suspension may, within 30 days of the date of service of the Notice of Suspension, appeal the suspension to the Commission and may, within 10 days of the date of service of the Notice of Suspension, petition the Commission for a stay of the suspension.



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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 and a Claimant may satisfy a counterclaim by payment or settlement, including settlement through mediation. The arbitration proceeding will terminate upon receipt of written notice of satisfaction and withdrawal of the Demand for Arbitration duly executed by the parties and submitted to the Secretary. If the Secretary is notified that the Demand for Arbitration or a counterclaim has been settled, but the notification is not in writing or is not duly executed by the parties, the Secretary shall send written notice to the parties that the arbitration proceeding will terminate within 20 days of service of such notice unless the Secretary receives written notice that the Demand for Arbitration or counterclaim has not been settled.

(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.

(j) Withdrawal of Demand.

(1) At any time during the course of the arbitration, a Claimant may withdraw the Demand for Arbitration against any Respondent who has not filed an Answer. A written notice of withdrawal must be filed with the Secretary. The withdrawal will be without prejudice unless the notice states otherwise.

(2) After a Respondent has filed an Answer, a Claimant may not withdraw the Demand for Arbitration against that Respondent unless the Respondent consents. The notice and the consent must be in writing and filed with the Secretary. The withdrawal will be without prejudice unless the notice or the consent states otherwise.

(3) A Respondent may not withdraw a counterclaim against a Claimant unless the Claimant consents. The notice and the consent must be in writing and filed with the Secretary. The withdrawal will be without prejudice unless the notice or the consent states otherwise.

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Section 11. Arbitration Fees.

(a) Filing and Hearing Fees.

Each Member or Associate claiming or counterclaiming under these Rules shall pay a filing and hearing fee based on the amount claimed or counterclaimed, including punitive and treble damages but exclusive of interest and costs, as follows:

<u>Amount of Claim or Counterclaim</u>	<u>Filing Fee</u>	<u>Hearing Fee</u>
\$ 0.00 - \$ 10,000.00	\$ 750.00	\$ 50.00
\$ 10,000.01 - \$ 20,000.00	\$1,900.00	\$ 150.00
\$ 20,000.01 - \$150,000.00	\$4,400.00	\$ 675.00
More than \$150,000.00	\$4,400.00	\$1,350.00

Where multiple hearing sessions, including preliminary hearing sessions, are required in excess of those covered by the hearing fee, the arbitrators shall assess fees for the additional hearing sessions in an amount equal to the standard preset fees to be paid by the Secretary to the arbitrators for the additional hearing sessions. The arbitrators, in their discretion, may assess the entire fee against any party or may divide the fee among any or all parties. Hearing session fees shall be paid to the Secretary in advance of the hearing sessions to which they apply.

(b) Refunds.

- (1) A full refund of any filing and hearing fees paid under Section 11(a) above shall be made if, prior to the appointment of a Panel, a claim filed under Section 2 above is found to be not arbitrable.
- (2) If all claims and counterclaims have been settled or withdrawn and the Secretary receives written notice of the settlement or withdrawal at least eight days in advance of the first scheduled hearing or preliminary hearing date, the hearing fee shall be refunded to the party paying the fee.

(c) Postponement Fees.

Each party causing an adjournment or postponement of any scheduled oral hearing shall pay to the Secretary a postponement fee of \$300.00. This fee may be waived at the discretion of the arbitrators. The arbitrators also may assess reasonable and necessary expenses incurred by the parties and

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their witnesses, including reasonable attorneys' fees, as a result of a postponement. No fee shall be assessed if an arbitrator becomes ineligible or otherwise unable to serve, or if a hearing extends over the expected time period.

Section 12. Arbitration Costs.

A Panel may assess against a party any one or more of the following 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. The Panel may also award attorneys' fees provided that a statutory or contractual basis exists for awarding such fees.

Section 13. Non-Waiver of NFA Rights.

The submission of a matter to arbitration under these Rules shall not affect any right of NFA regarding the matter, including the right to initiate a disciplinary proceeding.

Section 14. Mediation.

After the completion of the time period for the filing of all pleadings, the Secretary may, in his discretion, notify the parties of the option to proceed to mediation.

Section 15. Miscellaneous**(a) Computation of Time.**

(1) Except as otherwise provided in these Rules, service shall be deemed to occur on the earlier of the date that documents are mailed, as evidenced by postmark or affidavit of service, or the date personally delivered, as evidenced by affidavit of service.

(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.

(b) Service of Process.

Unless otherwise indicated, service may be accomplished by hand delivery, or by first class or certified mail, or by use



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of a generally recognized overnight delivery service to the party's last known business or home address on record with NFA. All documents which are served on the Secretary shall be concurrently served on each party who has filed a Demand or Answer. Service on a party's representative shall be service on the party.

(c) Address of Record.

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

- B. Explanation of Proposed Amendments to NFA's Code of Arbitration Sections 2 and 11 and adoption of NFA's proposed Member Arbitration Rules Sections 1-15 to provide for mandatory arbitration between and among NFA Members and Associates.

In the Fall of 1990, NFA's Advisory Committees considered a request to make arbitration of Member-to-Member claims mandatory. As a result of those discussions, NFA staff surveyed a sample of the membership to determine whether Members and Associates wanted mandatory arbitration of business disputes.

NFA staff randomly selected 10% of all IB, CPO and CTA Members to be included in the survey. All non-broker-dealer FCMS were included while one-third of the FCMS who are also broker-dealers were randomly selected. In addition, 100 Associate Members were randomly selected to receive questionnaires. In all, NFA mailed 720 questionnaires and 243 were completed and returned to NFA.

An analysis of the responses revealed that 66% of the Members and Associate Members favored mandatory Member-to-Member arbitration. The percentage in favor was relatively consistent among membership categories. Of those Members and Associates who were in favor of mandatory Member-to-Member arbitration, 65% preferred an arbitration format which would allow the Member or Associate an option to file for arbitration at NFA. The other party would then be required to arbitrate the claim at NFA, unless a contractual provision provides otherwise.

In early 1991, the Advisory Committees reviewed the survey results and developed rules to govern the arbitration of Member claims. These rules, which were approved by the Board of Directors on August 15, 1991, generally track NFA's Code of Arbitration governing customer claims. However, certain modifi-



Ms. Jean Webb

September 6, 1991

cations have been made to minimize the anticipated drain on NFA's resources currently devoted to customer claims.

Under Section 2 of the proposed rules, disputes between and among Members and Associates are subject to mandatory arbitration in NFA's forum. The term "disputes" is broad in nature and is designed to ensure that no claims are unintentionally barred. However, this may allow claims to be filed by Members and Associates which are far removed from a futures-related business context. Therefore, Section 8 of the proposed rules allows the arbitrators to dismiss, without prejudice, any claim or counterclaim which is not a proper subject for NFA arbitration. This provision, which is similar to provisions found in the rules of the NYSE and the NASD, would also allow the panel to dismiss cases in which witnesses or documents essential to a fair and final decision are unavailable, which would result in multiple proceedings because some parties to the dispute are not subject to NFA jurisdiction, or which are otherwise better suited to another forum.

Section 2 also limits NFA arbitration to certain jurisdictional circumstances. Specifically, NFA will not accept a Member claim for arbitration if the parties have previously entered into an agreement to resolve the dispute in another forum; are required by the rules of another self-regulatory organization to resolve the dispute there; or are members of a contract market which has jurisdiction over the dispute. Under this approach, Members with no other available arbitration forum will be able to arbitrate their disputes in NFA's forum while the impact on NFA resources is lessened by avoiding hearings which are more appropriately arbitrated elsewhere.

In order to conserve arbitrator resources, the proposed Member rules provide for a three member arbitration panel when the amount of the claim plus the amount of any counterclaim exceeds \$20,000, rather than the \$10,000 limit which applies to customer disputes. By increasing this amount for Member claims, only one arbitrator needs to be appointed to hear a larger number of claims, thus reducing the drain on NFA's Member arbitrator pool.

The proposed rules also provide for a summary proceeding whereby the arbitration will be conducted entirely through written submissions of the parties when the claim and counter-



Ms. Jean Webb

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claim amounts are \$10,000 or less.² Cases with claim amounts in excess of \$10,000 and not more than \$20,000 would also be heard on a summary basis unless a party sends a written request for a hearing. The upper limits for summary proceedings under the proposal are higher than under the regular Code. By providing a larger range for summary proceedings, NFA staff time that would otherwise be spent on oral hearings will be saved.

The proposed rules do not require the parties to prepare a hearing plan but do allow the arbitrators to order one. They also do not require a verbatim record of the hearing to be made, although the parties may have one made at their own expense. Both of these changes save NFA staff time and expense.

The Advisory Committees and the Board determined that NFA should not subsidize Member-to-Member arbitration. The proposal sets forth filing and hearing fee schedules which are designed to cover the entire cost associated with a Member claim at any given claim amount. Because the program will pay for itself, mandatory Member-to-Member arbitration should not have an impact on the budgetary resources available for NFA's customer arbitration program.

The filing fees are based on a cost accounting analysis of NFA arbitration. Unfortunately, the available cost accounting data for the filing fee structure only covered an eight month period and was broken down by the number of arbitrators assigned to a case and not by the dollar amount. Therefore, staff had to extrapolate the data in order to estimate the costs to be incurred over the life of a case. Staff recognizes that some adjustments to this schedule may be necessary as NFA gains experience with this program, and therefore staff plans to implement review procedures to analyze cost figures after the program has been in operation for several months.

Given the provisions of the proposed Member Arbitration Rules, NFA reviewed the NFA Code of Arbitration to determine whether any technical amendments were required to avoid inconsistencies between the two sets of rules. Only three minor modifications to Sections 2 and 11 of the Code of Arbitration are necessary and would be made simultaneously with the adoption of

² CFTC Regulations 180.2(d)(1) and 180.5 do not currently authorize summary proceedings at this level. By letter dated April 17, 1991 to Andrea M. Corcoran, NFA has asked the Commission to amend its regulations to raise the limit for Member disputes which are heard as summary proceedings.



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September 6, 1991

the Member rules. The first change is the deletion of Section 2(a)(1)(iv) which governs Member disputes which are now covered by the new rules. The second is a modification to Section 2(b) to ensure that Member disputes are controlled by the Member Arbitration Rules. The third is the deletion of Section 11(a)(2) which established filing fees for Member claims.

NFA respectfully requests Commission approval of the proposed amendments to NFA's Code of Arbitration Sections 2 and 11; proposed amendments to Rules Governing Arbitration of Disputes Involving Foreign Parties Section 11; and adoption of NFA's proposed Member Arbitration Rules Sections 1-15. NFA further requests that the amendments and proposed rules be declared effective upon Commission approval.

Respectfully submitted,

Daniel J. Roth
General Counsel

cc: Chairman Wendy L. Gramm
Commissioner Fowler C. West
Commissioner William P. Albrecht
Commissioner Sheila C. Bair
Commissioner Joseph B. Dial
Andrea M. Corcoran, Esq.
Dennis A. Klejna, Esq.
Joanne T. Medero, Esq.
Alan L. Siefert, Esq.
Susan C. Ervin, Esq.
Lawrence B. Patent, Esq.
Linda Kurjan, Esq.

TWS:cmc(ltrs-arbs)

EXHIBIT A

CUSTOMER FEES

		<u>Filing Fee</u>	<u>Hearing Fee</u>	<u>Total</u>
<u>\$2,000</u>				
No Oral Hearing	NFA	50	50	100
	AAA	300	0	300
	NASD/NYSE	25	25	50
<u>\$10,000</u>				
½ Day Hearing	NFA	150	150	300
	AAA	300	0	300
	NASD/NYSE	75	200	275
<u>\$50,000</u>				
1 Day Hearing	NFA	550	675	1,225
	AAA	1,250	0	1,250
	NASD/NYSE	120	800	920
<u>\$100,000</u>				
1 Day Hearing	NFA	1,050	675	1,725
	AAA	1,750	0	1,750
	NASD/NYSE	150	1,000	1,150
<u>\$250,000</u>				
2 Day Hearing	NFA	1,550	1,350	2,900
	AAA	2,375	*	*
	NASD/NYSE	200	3,000	3,200
<u>\$1 Million</u>				
2 Day Hearing	NFA	1,550	1,350	2,900
	AAA	4,250	*	*
	NASD/NYSE	250	4,000	4,250

*There is generally no charge for the first day at AAA because the arbitrators are not paid for the first day. After the first day, the arbitrators and the parties agree on the fee.

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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

September 30, 1992



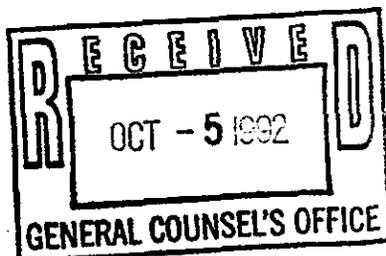
Daniel J. Roth, Esq.
General Counsel
National Futures Association
200 West Madison Street -- Suite 1600
Chicago, IL 60606

Re: Proposed amendments to NFA Code of
Arbitration §9(i) and Member Arbitration
Rules §9(i) (Summary Arbitration)

Dear Mr. Roth:

By letters dated June 7, 1990, April 17, 1991, June 11, 1991, September 6, 1991, and November 12, 1991, the National Futures Association ("NFA") submitted the captioned rule proposals pursuant to section 17(j) of the Commodity Exchange Act ("Act") for Commission approval. Because the proposals were, at the time, inconsistent with Commission regulations, NFA consented to an extension of time for review pending consideration of enabling amendments to the Commission's regulations.

The Commission has amended Regulations 180.2(d)(1) and 180.5 to permit NFA's rule changes. The Commission's amendments will take effect 30 days after publication of the enclosed notice in the Federal Register. Please be advised that the Commission concurrently has approved the captioned NFA rule proposals, to be implemented no sooner than the effective date of the Part 180 changes. In addition, as indicated in the Federal Register notice, the Commission suggests that NFA review the guidance it gives to arbitrators concerning circumstances under which it may be appropriate to provide an oral hearing in a summary proceeding.



Yours truly,

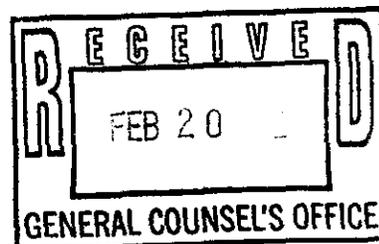
Jean A. Webb
Jean A. Webb
Secretary of the Commission

encl.

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

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

February 18, 1992



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

Re: Proposed amendments to NFA Code of Arbitration, Sections 1, 2, 4, 5, 6, 9, 10, 11, 12, and 16; proposed amendments to Rules Governing Arbitration of Disputes involving Foreign Parties, Section 11; and proposed new Member Arbitration Rules, Sections 1-15.

Dear Mr. Roth:

By letters dated June 11 and September 6, 1991, the National Futures Association ("NFA") submitted the captioned proposals pursuant to section 17(j) of the Commodity Exchange Act ("Act") for Commission approval. NFA requested that the Commission declare the proposals effective upon approval. NFA also requested, by letter of November 12, 1991, that proposed Member Arbitration Rule §9(i) be severed for approval purposes until the Commission amends Part 180 of its regulations with regard to the size of claims eligible for summary arbitration.

Please be advised that the Commission has approved NFA's rule proposals, except Member Arbitration Rules §9(i). The Commission understands that the new rules governing member-member arbitrations will not apply to proceedings initiated at NFA prior to the effective date. The Commission requests NFA, as it gains experience with the various new procedures, to monitor its

Daniel J. Roth, Esq.

Page 2

arbitration process and to advise the Commission regarding the effects of the new hearing fees and other revised procedures.

Sincerely,

A handwritten signature in cursive script that reads "Jean A. Webb".

Jean A. Webb
Secretary of the Commission

November 12, 1991

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

Re: National Futures Association: Adoption of NFA's
Proposed Member Arbitration Rules Sections 1-15

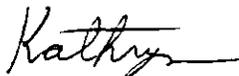
Dear Ms. Kurjan:

NFA recognized in its September 6, 1991 submission letter to Jean Webb that Section 9(i) of NFA's proposed Member Arbitration Rules currently conflicts with CFTC Regulation 180.2(d). As you know, NFA has asked the Commission to amend CFTC Regulation 180.2(d) to allow NFA to adopt Section 9(i) in its current form, and the Commission published proposed amendments on November 5, 1991 (56 Fed. Reg. 56482). However, NFA did not address how the Commission should treat proposed Section 9(i) in any interim period between Commission approval of the proposed Member Arbitration Rules and the effective date of any amendments to CFTC Regulation 180.2(d).

NFA understands that the Commission cannot approve proposed Section 9(i) until CFTC Regulation 180.2(d) is amended. Therefore, as we discussed over the telephone on November 8, 1991, NFA requests that proposed Section 9(i) be severed from the proposed Member Arbitration Rules for approval purposes.

If you have any questions, please contact me.

Very truly yours,



Kathryn Page Camp
Associate General Counsel

KPC:jac(Ltrs\Kurjan.KPC)

September 17, 1991

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

Dear Ms. Webb:

The enclosed letter that we mailed to you was inadvertently sent back to us together with the date-stamped copy that we requested. *

Sincerely,

Dan Roth/cm
Daniel J. Roth
General Counsel

DJR:cm
Enclosure

* Referring to 9-6-91 submission letter