

01-03
16

COMMENT

April 9, 2001

RECEIVED
C.F.T.C.

'01 APR 12 AM 11 54
OFFICE OF THE SECRETARIAT

Via E-Mail and Regular Mail

Jean A. Webb
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street
Washington, DC 20581

Re: Proposed Rules Concerning A New Regulatory Framework for
Trading Facilities

Dear Ms. Webb:

In the March 9, 2001 *Federal Register*, the Commodity Futures Trading Commission published a proposal to implement the Commodity Futures Modernization Act of 2000 ("CFMA") and the Commission's new regulatory framework related to trading facilities. NFA appreciates the opportunity to comment on these important changes to the regulatory framework in the futures industry.

NFA continues to support the Commission's initiatives to modernize the regulatory structure in the futures industry. We are pleased that Congress followed the Commission's lead by differentiating between trading facilities based on products traded and users of the markets and applying different regulatory requirements based on these differences. We also appreciate all the hard work and careful thought the Commission put into implementing the CFMA's provisions regarding trading facilities and we commend the Commission for the resulting proposals. NFA requests, however, that the Commission consider the following issues when drafting the final rules implementing the new framework.

NFA recommends that the Commission's current proposal be clarified with regard to a contract market's and DTEF's ability to delegate functions under the core principles. The CFMA specifically allows contract markets and DTEF's to comply with any of the core principles through delegation of functions to a registered futures association or another registered entity. (See Sec. 5c(b)(1)). The Commission's current proposal, however, does not specifically authorize a DTEF to delegate these functions (although NFA believes that the language is sufficiently broad to be interpreted to permit this delegation). Moreover, the proposal does not place any limits on the types of entities that would be acceptable to carry out the delegated functions. NFA believes that the statute specifically identifies the entities that would be acceptable



Jean A. Webb

April 9, 2001

for outsourcing because Congress recognized that the Commission must have some authority over any entity carrying out these functions. NFA encourages the Commission to revise this proposal to specifically identify the types of entities that would be acceptable for outsourcing and to specifically state that a DTEF is authorized to outsource these functions.

NFA also encourages the Commission to provide more flexibility regarding pre-dispute arbitration agreements. The current proposal continues to prohibit an FCM from requiring a customer, including an eligible contract participant, to sign predispute arbitration agreements as a condition of doing business with the FCM. NFA believes this requirement is unnecessary with respect to eligible contract participants. These customers are capable of negotiating favorable terms in their agreements with intermediaries and intermediaries should have the ability to decide not to do business with an eligible contract participant that does not agree to sign a PDA. NFA believes that this notion is supported by the fact that the CFMA specifically allows an FCM to require an eligible contract participant to sign an agreement waiving the right to reparations as a condition to using the FCM's services.

Finally, NFA believes that the Commission should require additional disclosure regarding the reach of pre-dispute arbitration agreements. It is NFA's understanding that, under the Commission's Interpretation of Rule 180.3, a pre-dispute arbitration agreement can bind only the customer to file claims in an arbitration forum. NFA continues to believe that these agreements should bind the customer and the intermediary equally. However, if the Commission is not willing to adopt this position, the Commission should require that the agreement clearly indicate who is precluded from filing claims in arbitration and who is not.

In closing, NFA reiterates its support for the Commission's overall proposal. NFA encourages the Commission to consider the points raised above when drafting its final rules. As always, NFA staff is available to more fully discuss these points with Commission staff.

Sincerely,

Daniel J. Roth
Executive Vice President
and General Counsel