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November 17, 2004

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Via E-Mail (secretary@cftc.gov)

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

COMMENT

**Re: Rules Relating To Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration and Member Responsibility Actions, 69 Fed. Reg. 205 (October 25, 2004)**

Dear Ms. Webb:

NFA supports the Commission's proposed amendment to Part 171 to clarify that it will not review NFA membership suspensions based solely on a Member or Associate's failure to pay a settlement or arbitration award. The proposed amendment merely codifies the Commission's current practice of rejecting these cases when they involve nothing more than the ministerial imposition of a predetermined sanction. The amendment will benefit everyone involved by reducing futile appeals and ensuring that the Commission's rules do not create a false impression that the suspension is appealable.

Since November 1, 1990, when Part 171 became effective, NFA has closed approximately 2750 arbitration cases. Approximately 450 of these cases have resulted in awards against Members and Associates. Approximately 1150 more of these cases settled since June 1, 1993, when we added unpaid settlements to the suspension rules. These 1600 cases generated only 61 suspensions, and only five of those have been appealed to the Commission. The Commission denied review in each of these five cases, ruling that the ministerial imposition of a predetermined sanction is not a proper subject for Commission review. Nonetheless, in each one of these cases the Commission and NFA – as well as the suspended Member or Associate – expended significant resources on the appeal.

Since the Commission has never accepted review of a suspension for failure to pay a settlement or arbitration award, the proposed amendment will not eliminate any existing rights. Instead, the amendment will clarify the current practice, eliminate any false hope that the existing rules may give Members and Associates, reduce the number of unwarranted appeals, and conserve resources that Members and Associates, NFA, and the Commission would otherwise waste on appeals that will not be accepted for review.

Furthermore, the Commission's proposed amendment does not preclude all appeals. The amendment reserves the Commission's authority to review an arbitration suspension if the Member or Associate has a colorable claim that NFA acted arbitrarily in imposing the suspension or if other extraordinary circumstances exist that involve something more than the ministerial application of a predetermined sanction. This provides Members and Associates with an adequate remedy against unreasonable suspensions.

NFA rules provide suspended Members and Associates with an adequate remedy against all other suspensions. Section 10(g) of NFA's Code of Arbitration and Member Arbitration Rules allows NFA to suspend a Member or Associate for failing to pay an arbitration award or a settlement reached during an arbitration proceeding or through NFA's pre-arbitration mediation program. These rules also provide, however, that any suspension will be lifted – or will not be imposed in the first place – if the Member or Associate pays the award or settlement or files a proceeding to vacate or modify the award in a court of competent jurisdiction, staying the suspension while the proceeding is pending. Furthermore, as the Commission notes in its release, the rules give Members and Associates 30 days to pay the award or settlement (or longer if the award or settlement so provides), after which NFA must provide 30 days prior written notice before a suspension takes effect, effectively giving Members and Associates 60 days to either pay or file a motion to vacate. Therefore, whether a Member or Associate is suspended is within its own control.

Clarifying that award suspensions are not appealable absent extraordinary circumstances would discourage Members and Associates from filing appeals that involve nothing more than the ministerial application of a pre-determined sanction while preserving the Commission's authority to accept an appeal if the Member or Associate can make a colorable argument that NFA acted arbitrarily in imposing the suspension. Therefore, we urge the Commission to adopt the proposal.

If you have any questions concerning this letter, please contact me at 312-781-1413 or [ts Sexton@nfa.futures.org](mailto:ts Sexton@nfa.futures.org).

Respectfully submitted,

Thomas W. Sexton  
Vice President and General Counsel