

NIBA

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OFFICE OF THE SECRETARIAT

Jean A. Webb, Secretary
Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Rules Concerning Intermediaries

To the Commission:

The following comments are submitted for the record from the National Introducing Brokers Association (NIBA). NIBA, founded in 1991, is an organization of over 300 Introducing Brokers (IBs), which lists among its associate members ten futures commission merchants (FCMs), six domestic futures and options exchanges, and various vendors and suppliers of goods and services. IBs are the field salespeople of the futures industry, and referred to as "intermediaries" in the proposed regulation.

The mission of the Association is to assure that IBs stay in business, and that business is conducted at a highly professional level. Our goals are: 1) To represent the concerns of the IB community to regulatory and other agencies which effect their business; 2) To offer substantial and useful ideas for an IBs continued growth and prosperity; and, 3) To provide a forum in which IBs can communicate with one another.

The Association's newsletter is published ten times per year, and over two hundred industry professionals attended the Association's recent ninth annual conference.

The NIBA congratulates the Commission and specifically its staff task force for its thoughtful endeavors toward modernizing regulation of our marketplaces. While many of the proposed changes will affect the daily activities of an IB only after the clearing FCM and trading facilities have first interpreted them, our Association wants to direct a few specific comments to the Commission.

Comments Regarding the Proposed Changes in General:

1) Utilizing Core Principles as the fundamental standard to assuring proper conduct by intermediaries of commodity interest transactions appears to be a good idea. But where there is no certainty of standard behavior, there is room for non-uniformity of interpretation and for innocent mistakes that result in non-compliance. The Association believes that these Principles should be adopted and

intermediaries should be guided by the policies and procedures promulgated by their FCMs or the National Futures Association (NFA) in manuals and other documentation to insure that mistakes and inconsistent interpretation do not occur.

2) The Commission has specifically exempted agricultural commodities from those eligible to be traded on the facility known as "Derivative Transaction Facilities" (DTFs). The Association believes this is the correct treatment of these commodity interests.

NIBA does not believe that significant numbers of ag-commodity interests will seek other alternatives to hedging products if they are not permitted on DTFs; therefore there will be no reduction in the participation in Regulated Futures Exchanges (RFEs). Nor does it believe that price transparency or discovery will in any way be threatened by continuing to offer farmers, consumers, and speculators the protections of regulated marketplaces and the services of transactional professionals. To the contrary, the Association believes that the safeguards which a regulated market offers these participants is the very reason they work well.

If trading of agricultural commodities is permitted on both DTFs and RFEs, the Association believes the following will occur:

1) Large ag-consortiums will trade exclusively on DTFs, thereby avoiding the regulation and oversight of RFEs. Volume, price discovery and transparency will be greatly reduced, or even non-existent on RFEs. RFEs will be left to trade under completely distorted and inaccurate conditions.

2) Large ag-consortiums will seek to qualify all producers regardless of size or sophistication as "commercials," and trade for all farmers and ranchers on DTFs, possibly in pools, or elevator, feedlot or dairy firm accounts. Customer protections will be lessened, the opportunity for abuse is obvious and these same farmers and ranchers will be the losers.

3) There will be no need for ag risk-management programs. The US Department of Agriculture, Risk Management Agency, won't have any functions to perform because the large consortiums will develop programs to take the producer's product from "cradle to grave" - providing financing, seed, chemicals, storage, pricing and marketing, including any futures and options positions. This activity will eliminate the free enterprise system that American agriculture thrives on, and could even encourage backsliding to the "company store" days of the past. The grain, dairy and livestock industries are already the targets of such programs; the grain industry is still feeling the effects of recent abuses.

4) RFEs may become exclusively speculative markets. While it remains to be seen if this would eventually be a "bad" thing for the industry, it would certainly make for a changed marketplace. We will have a two-tiered market - - one for the pros and one for everyone else. This leads to many

questions, including whether a farmer or rancher who produces a minimum amount of marketable goods should be qualified as a commercial or should be treated as a speculator with the full protections of the RFE facilities.

The Association does not wish to appear "old-fashioned" or resistant to changes which may prove beneficial to the entire industry. However, much more consideration must be given to all the complex questions surrounding the permitted offering of ag-commodities on DTFs.

Specific Comments:

1) Allowing futures commission merchants (FCMs) to invest customers' funds into a broader range of instruments would ultimately benefit the customer. The Association believes this proposal should be accepted, and implemented.

2) Using electronic means to deliver purchase and sales monthly and other account statements to customers who request them, is both cost-effective and timely. The Association believes this proposal should be accepted and implemented.

3) Reducing the number of signature lines required on account opening documentation is a positive step toward paperwork reduction and is in line with requirements of other financial investment industries. The Association believes this proposal should be accepted and implemented.

4) Allowing IB applicants to file an unaudited financial report with their registration materials, then be subject to an on-site review with six months of registration by the firm's DSRO, appears to be a procedure working successfully in the securities industry. The Association believes this proposal should be accepted and implemented.

5) Electronic signature on account documentation is changing the way business is done. Although President Clinton has signed into law the bill giving the online John Hancock the same force of law as a written signature, some states have not adopted the rule as yet. Customer account documentation is the IB's legal contract with the customer; contracts are currently interpreted and enforced under state law. Until every state recognizes an e-signature rule, does federal law supersede state law when dealing with commodity account documentation? The Association believe this proposal should be accepted after determining the legal certainty of this method of making contracts for all customers.

6) Deleting the current ethics training requirement (Rule 3.34) and replacing it with a "standard practices" code or on-going education requirement which the registrants and their DSROs can format and administer flexibly, is in keeping with Congressional intent that futures industry professionals remain "fit" and abreast of their responsibilities to the public. The Association believes this rule should be deleted, and the Commission should not specify any particular programs or procedures that must be followed to meet these responsibilities.

7) The Commission proposes to allow certain firms that conduct business solely for institutional customers on DTFs to avoid certain elements of registration if they are authorized by the SEC or similar institution to perform like functions. Sales personnel of these firms acting in the capacity of APs for these FCMs or IBs would not be required to be registered or listed, and would not be subject to proficiency testing or ethics training requirements because, among other reasons, "the Commission anticipates that they will conduct most of their business in the securities or banking fields, with only **a minor portion of their activities involving commodity interests.**" (Emphasis added)

What is the definition of "minor portion?" The Association believes that any person or organization conducting any portion of their business in commodity interests should be subject to full registration requirements and membership in the appropriate DSRO; this proposal should not be implemented as proposed.

8) Requiring reports of transactions (identifying concentrations of position and market composition) on DTFs on a non-routine basis only, while reporting on RFEs would be required routinely, will cause market participants to be misled by distorted information. Large commercial positions on DTFs will definitely affect price and other market factors of positions held by traders on RFEs - DTFs can effectively set the price for those commodities, and because large numbers of positions will not be known for periods of time, RFE traders will not have the benefits of price transparency and discovery associated with free markets. The Association believes this proposal should not be implemented.

Thank you for the opportunity to comment on the Proposed Regulatory Framework for the futures and options industry. This is important work. The Association believes the Commission has made significant steps toward modernizing our marketplace and keeping it globally competitive. But these changes will affect our members' professional lives forever, and will affect the habits and practices of our customers. Therefore, the NIBA urges the Commission not to implement any of these proposals in haste, and without the proper consideration of their impact on all industry participants. We believe the business as a whole would benefit from more discussion and evaluation; accordingly, we reiterate our request for an extension of time for comments and conversations on these proposals.

The National Introducing Brokers Association is pleased to be a valuable part of this dialogue, and offers our continued help and support in building the new regulatory framework for our industry.

Sincerely,



National Introducing Brokers Association, by its
Board of Directors, Melinda H. Schramm, Chairman