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INTERMEDIARIES STUDY

STATEMENT BY
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BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

JUNE 6, 2002

Thank you Mr. Chairman. As always we welcome the opportunity to appear before you and your distinguished colleagues, this time to comment on the Intermediaries Study required by the CFMA. As we all know, the CFMA requires, in part, that this Study identify whether "core principles" can replace certain of the Commission's rules and regulations. We all recognize that in a rapidly changing business environment, flexibility is key, not just for registrants but for regulators too. A "core principles" approach to regulation is one way to achieve that flexibility, but it's not the only way. In fact, the Commission has already made great strides in adapting CFTC rules to the changing business environment. Even with these changes, there are still a number of CFTC rules that can be eliminated or amended to provide intermediaries with additional flexibility in meeting customer and business needs with no reduction in customer protection.

In identifying these rules, we generally noted that these rules are problematic for any one of three general reasons: (1) the rules don't just tell the registrant what to do but tell him how to do it; (2) technology has made the requirements obsolete; and (3) the rules add no real regulatory value. Our letter of May 29, 2002 summarizes our comments, but let me make a few observations to emphasize my point.

Rules Overly Restrictive in How to Implement

Several rules set appropriate regulatory standards but are overly restrictive in how those requirements are met. For example,

- Part 1's General Regulations don't just tell firms what kind of notices they have to file but also dictate how to file those notices. These rules should be amended to (1) allow certified statements to be filed electronically; and (2) allow firms to file required notices by any form of electronic communication, not just by fax, and those notices should be filed with the DSRO only.

- Regulation 1.31 requires registrants to maintain books and records but also dictates specific technology requirements relating to the electronic

storage of books and records. The rule should be replaced with general reliability and accessibility standards similar to the language we previously proposed to the CFTC;

Technologically Obsolete Rules

Several rules have been rendered obsolete by technological developments. For example:

- Regulation 1.57 governing how IBs transmit orders was written before electronic exchanges and automated order-routing systems were in place and, therefore, needs to be updated to respond to technological changes. This rule currently appears to impose greater restrictions on IBs than on customers, and we have recommended a specific rewriting.

Rules With No Apparent Regulatory Value

- Part 1's Requirements mandate that firms file certain financial reports with both the CFTC and their DSRO. There is no need for these dual filings. Firms should file these items with their DSRO, which can make their databases available to CFTC staff;

- Regulation 30.8 requiring FCMs to file certain quarterly reports with NFA relating to their foreign futures and options transactions should be eliminated. This rule was adopted when the Commission began regulating these transactions and NFA has never found a good use for the information reported under the rule.

- Rule 155.3 and Rule 155.4 require that copies of all statements and order tickets be sent to an individual's employer if the individual is employed by another FCM or IB. We believe that the employer should be able to obtain copies of the order tickets upon request, but we do not see a need to routinely provide copies of order tickets to the employer, and we suggest that requirement be deleted from the rules.

Lastly, we note that the Commission has been responsive to many of the concerns expressed by the CPO and CTA community over the years, but there are still a number of areas where the Commission's rules could be further revised to meet the business needs of the managed funds industry without lessening customer protection. I wanted to highlight two areas:

- With respect to Rule 1.35, NFA recommends that it be amended to provide the benefits of post-execution allocation procedures to ALL customers of those account managers that meet specific criteria. We consider this change a high priority so that smaller, retail customers are not at a disadvantage when it comes to execution quality.

- With respect to Regulations 4.13 and 4.14. NFA continues to urge the Commission to adopt an exemption from registration for CPOs who operate collective investment vehicles that do only a *de minimis* amount of futures transactions and for CTAs who provide their trading advice solely to such vehicles.

In conclusion, as always, NFA wishes to stress its ongoing willingness to assist the Commission not only in identifying those areas that need to be addressed but also in drafting the general standards and related interpretive guidance and assuming any additional responsibilities delegated by the Commission. We believe that our qualifications over the past two decades have been clearly demonstrated. Our longstanding and successful process of obtaining industry and user input has been extremely successful and we stand ready and willing to assume the responsibility of developing guidance in all appropriate areas.

We appreciate the opportunity to provide input on this important study and our staff is readily available to more fully discuss any of the issues raised in our recent discussions as well as our May 29th letter. We look forward to a close working relationship with the Commissioners and staff as you conduct your study.

Thank you very much for your attention.