



NATIONAL FUTURES ASSOCIATION

06-04  
12

September 6, 2006

Received CFTC  
Records Section  
09/06/06

Via E-Mail: [Secretary@CFTC.gov](mailto:Secretary@CFTC.gov)

Ms. Eileen Donovan  
Acting Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

COMMENT

RECEIVED  
SEP 11 2006  
CFTC

Re: Conflicts of Interest in Self-Regulation and  
Self-Regulatory Organizations

Dear Ms. Donovan:

NFA commends the Commission for further advancing its study of conflicts of interest in self-regulation and self-regulatory organizations ("SROs"), and affirming the importance of self-regulation in the futures industry. As NFA has stated throughout the Commission's review, we are a strong supporter of self-regulation, and we are confident that it is and will remain the most effective and efficient regulatory model.

NFA also applauds the Commission's decision not to include registered futures associations ("RFAs") in the current proposed acceptable practices for exchange governance and conflicts of interest. In his separate statement, Commissioner Dunn notes that in its September 30, 2004 comment letter, NFA wrote that RFAs "should be subject to the same governance standards as the other SROs," as long as these standards are flexible. To clarify, though, NFA also wrote, "NFA faces different challenges than SROs that operate a market, however, and the standards should be flexible enough to account for these differences." Those differences include the following:

NFA does not need to insulate its regulatory operations from its business operations because NFA does not operate a business. Regulation is all that we do.

The increasing competition, changing ownership structures and evolving business models that the Commission cites as the basis for the proposed changes do not affect NFA.



Ms. Eileen Donovan

September 6, 2006

Every rule change adopted by NFA must be approved by the CFTC.

NFA's current board structure already ensures that a majority of the board is disinterested on virtually every rule change considered by the Board.

In sum, although all futures SROs should have transparent and flexible governance standards, NFA should not have to adopt the proposed acceptable practice regarding board structure that is designed to address the inherent tension between exchanges' dual roles as SROs and markets.

With respect to Regulatory Oversight Committees ("ROCs"), NFA recognizes that such committees are one way to insulate an SRO's regulatory functions from its market functions and manage conflicts between these two functions. However, a ROC is not the only way to do so and is not an efficient solution for all SROs. As stated above, regulation is all that we do at NFA and, therefore, it is our business function and the only function that NFA's Board oversees. Therefore, creating a separate committee to oversee NFA's regulatory functions would serve no governance purpose and be redundant. We do believe, however, that our regulatory activities should be fully transparent to our board, and therefore we provide an annual report to our Board on our compliance and enforcement activities.

Lastly, NFA's disciplinary process has always been fair and impartial. The principal safeguard in the rules is the requirement that no committee or panel member shall participate in a disciplinary matter if the member, or any person with which the member is connected, has a financial, personal, or other direct interest in the matter. Further safeguards are provided in NFA Bylaw 708, which prohibits an individual from serving on any NFA disciplinary committee if the person is subject to a disqualification set forth in CFTC Regulation 1.63(b),<sup>1</sup> and prohibits members from voting on any matter in which there is a conflict of interest under CFTC Regulation 1.69.

NFA Compliance Rule 3-17 governs the composition of NFA's various disciplinary committees and provides, in part, that panels shall include at least one

---

<sup>1</sup> NFA believes that it would be in the public interest for the Commission to prohibit persons subject to a disqualification set forth in CFTC Regulation 1.63(b) from being employed at SROs or acting as a consultant, independent contractor or unpaid volunteer for SROs.



Ms. Eileen Donovan

September 6, 2006

member who is not an NFA Member or Associate or an employee of an NFA Member. NFA endeavors to appoint individuals with diverse interests to its disciplinary committees and panels so that no Member category can dominate or otherwise exercise disproportionate influence in disciplinary matters.

In sum, NFA does play a "unique role" in the industry's self-regulatory system and we look forward to a further dialogue with the Commission regarding NFA's governance structure as the Commission continues its review of conflicts of interest at RFAs. We also encourage the Commission to seriously consider the comments of those directly impacted by its proposed acceptable practices relating to exchange governance and conflicts of interest.

NFA appreciates this opportunity to comment on the Commission's proposed acceptable practices for exchange governance and conflicts of interest and we look forward to the conclusion of this important review.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas W. Sexton, III", is written over a horizontal line.

Thomas W. Sexton, III  
Vice President and General Counsel