NFA NATIONAL FUTURES ASSOCIATION
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October 28, 1999

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Via Facsimile and U.S. Mail

Ms. Jean A. Webb
Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Use of Electronic Signatures by Customers, Participants and Clients of Registrants; 64 Fed. Reg. 47151 (August 30, 1999)

Dear Ms. Webb:

On August 30, 1999, the Commodity Futures Trading Commission ("Commission") requested comments on proposed rules regarding the use of electronic signatures by customers, participants and clients of registrants. The release also raises several issues in the areas of security, customer protection and contract law on which the Commission specifically requests comments. National Futures Association ("NFA") welcomes the opportunity to submit the following comments in response to the issues raised by the Commission's release.

NFA fully supports the Commission's initiative in permitting the use of electronic signatures for purposes of complying with the Commission's rules and regulations that require a document to be signed by a customer of a registrant. Indeed, the futures industry and its regulators should embrace technology to the greatest extent possible without enacting burdensome rules or compromising customer protection. The most effective way to accomplish this is to set broad standards analogous to the paper based world that will permit the use of evolving and still undeveloped technologies. This is exactly what the Commission has done by adopting the definition of "electronic signature" contained in the Uniform Electronic Transactions Act ("UETA"). NFA supports that approach.

Proposed Rule 1.4(a)(ii) requires that registrants adopt and utilize reasonable procedures for the purpose of verifying that an electronic signature is that of the person purporting to use it, to prevent alteration of the electronic record with which the electronic signature is associated after it has been electronically signed, and to detect changes or errors in an electronic signature. NFA fully agrees that registrants should adopt and use reasonable safeguards to ensure the integrity of both the

signature and the signed record, just as they are required to do for paper signatures and hard-copy documents. We also commend the Commission for recognizing that the particular procedures should be left up to the registrant so that they can be tailored to the registrant's own particular situation.

The Commission asks for comment on whether opening an account entirely by electronic means is inherently less conducive to establishing that a customer is who he or she claims to be than current practices involving exchange of paper documents and/or face-to-face dealings. Electronic communications may be no less anonymous or verifiable than paper communications. A registrant that deals with a customer over the telephone and sends the account documents back and forth through the mail has no greater assurance that the customer is who he or she claims to be than a registrant that deals with a customer electronically. Even face-to-face dealings have the potential for impersonation, and we are not aware that registrants routinely ask new customers for passports or driver's licenses to prove their identity.

Encryption, personal identification numbers and callbacks can make fraud less likely in an electronic world, but they are not foolproof, nor are they necessarily the only way to achieve reasonable certainty that the person "signing" a document is who he or she claims to be. No procedures can provide complete certainty that all signatures – manual or electronic – are authentic. The procedures for both media should be adequate to provide reasonable certainty that the person is who he or she claims to be but should not require an impossible standard that makes the registrant an insurer against fraud by the person signing the account statements.

The Commission's release also solicits comments on customer protection issues raised by an electronic account-opening process. Certainly, there is a legitimate concern that if a customer is able to entirely open an account electronically, that customer may be more vulnerable to high-pressure sales tactics or impulsive entry into potentially risky markets. However, NFA strongly believes that the rules should be medium neutral. If a customer wants to place a trade the same day he or she decides to open a commodity account, telephones, facsimile machines, and wire-transfers make it almost as easily in the paper world as in the electronic world. High pressure is a violation of NFA and Commission rules regardless of the medium used to obtain signed account documents. The answer is to vigorously enforce the rules that already exist rather than to impose more stringent requirements on accounts that are opened electronically.

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Proposed Rule 1.4(b) provides that any futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor who accepts electronic signatures must disclose to the customer that, although an electronic signature is sufficient for purposes of the Commission's rules and regulations, it may not be sufficient for purposes of other Federal or State laws. NFA does not recommend that such a blanket disclosure be required of firms since these are legal issues that are subject to rapid change. If, for example, the states enact UETA many of these issues may be resolved. In addition, if a firm is willing to absorb the risk of accepting arbitration agreements electronically, then that should be its prerogative. The Commission states that broker-dealers have been unwilling to accept arbitration agreements electronically because they may not be executed in such a way as to survive a court challenge. Nevertheless, broker-dealers are still permitted to do so if they wish to assume that risk. The same should be true for FCMs and other CFTC registrants.

NFA also believes that it is unlikely that a customer would not be able to enforce an arbitration agreement or other provisions in a customer agreement. After all, the firm has drafted the agreement and has permitted customers to electronically sign it. It is unlikely that a court would allow a firm to subsequently claim that it is not bound by that agreement even if the court has to rely on waiver or ratification theory to reach that result. Thus, the customer is protected as well as the firm.

NFA also feels that the Commission should not expressly provide that self-regulatory organization ("SRO") rules must be consistent with the proposed rules. Sections 5a(12) and 17(j) of the Commodity Exchange Act already provide standards that SRO rules must meet in order to receive Commission approval. Furthermore, since SRO rules are submitted to the Commission for review, the Commission will have an opportunity to address any specific concerns at that time. There is no need to add a specific requirement to these rules, especially since doing so could create ambiguity, raising the question of whether there is a different standard for SRO rules regarding electronic signatures than there is for other SRO rules.

Certainly, the Commission's release is a laudable step in the right direction. NFA would like to see a much broader proposal than this one though. There are numerous other areas where electronic signatures could be employed to the benefit of the industry. For example, the Commission should consider permitting certified financial statements to be filed electronically. Also, as the Commission is aware, NFA is working on a paperless registration system where the use of electronic signatures could greatly improve the efficiency of the registration process. These are just some of the areas where the Commission could take a proactive position in reaping the benefits of electronic signatures.

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We appreciate this opportunity to present our views to the Commission and, as always, we look forward to working with the Commission on the important issues raised in this release.

Respectfully submitted,

Daniel J. Roth
General Counsel

Ram/comment letters/electronic signatures