

CFTC letter No. 04-29
October 1, 2004
Other Written Communication
Division of Clearing and Intermediary Oversight

Re: Request To Remove Information from Registration Records

Dear :

This is in response to your letter dated September 7, 2004, to the Office of the Secretariat of the Commodity Futures Trading Commission (the "Commission"). Your letter has been referred to the Division of Clearing and Intermediary Oversight (the "Division") for response. By your correspondence, you request removal from your registration records of a reference to "X" in your employment history. In the alternative, you request that you not be treated as having been employed by a "Disciplined Firm" for purposes of a firm's compliance with enhanced supervisory procedures under National Futures Association ("NFA") Compliance Rule 2-9.^[1]

Based upon the representations made in your letter and NFA records, we understand the relevant facts to be as follows. On May 29, 1998 you signed a Form 8-R application for registration in connection with seeking employment with "X". On June 8, 1998 NFA granted a temporary license to act as an associated person ("AP") of "X". On June 9, 1998, "X" submitted a Form 8-T Notice of Termination of AP, indicating your voluntary termination as an AP of "X".

On June 24, 1998, you signed a Form 8-R that was mailed to NFA in connection with your seeking employment as an AP with "Y". In that application, you listed "X" as a previous employer.^[2] On July 9, 1998, NFA issued a letter granting you a temporary license to act as an AP of "Y", effective June 24, 1998, the date your application was mailed to NFA, pursuant to the special registration rules applicable to APs who have been employed at a prior firm within the preceding 60 days. On July 21, 1998, NFA granted you registration as an AP of "Y". Recently, you received an offer of employment from another futures commission merchant, and you began seeking removal from your NFA record of the reference to previous employment with "X". You wrote to NFA in May 2004 requesting that your registration record be changed, and by letter dated May 27, 2004, NFA declined your request, suggesting that you contact the Commission.

The information you have asked to be removed from your NFA record is factually correct, in that you did apply for employment with "X", you signed a Form 8-R in that connection, and you were granted a temporary license as an AP before a Form 8-T was submitted terminating your registration status. However, the information does not constitute a statutory disqualification from registration under Sections 8a(2) or 8a(3) of the Commodity Exchange Act, and does not impede your registration as an AP of another firm. Only if a firm to which you had applied was close to the threshold at which it would be required to adopt enhanced supervisory practices would the information in your record concerning

“X” be of practical concern to the firm. Even then, NFA Compliance Rule 2-9 permits the firm to seek a waiver of the requirement. The information would not prevent you from being hired by a firm that was not close to the threshold, or by a firm that had completed a required period of two years of enhanced supervisory procedures. Further, a firm that was close to, or already over, the threshold could hire you so long as it complied with the enhanced supervisory procedures.

Please be advised that NFA will permit you to submit explanatory material to be included in your record and made available to firms researching your record for purposes of possible employment. Such material may be sent to NFA, attn: Gregory Prusik, National Futures Association, 200 West Madison Street, Suite 1600, Chicago, Illinois 60606.

The longstanding policy of the Commission and NFA is that information is not removed from the registration files. The Division does not find any extraordinary circumstances here that would justify a deviation from that policy and cannot grant your request.

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, Special Counsel, at (202) 418-5445.

Very truly yours,

James L. Carley
Director

^[1] See, NFA Interpretive Notice “Compliance Rule 2-9: Enhanced Supervisory Requirements,” NFA Manual ¶9021 (adopted January 19, 1993; last amended March 18, 2003).

^[2] That application also indicates that you previously worked for “Z”, where your AP registration terminated on June 10, 1998, thus making you eligible for special registration. “Z” is listed in the Interpretive Notice cited in footnote 1 as a Disciplined Firm.