

**American Futures Group, Inc.**COMMODITY FUTURES  
TRADING COMMISSION

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March 24, 1998

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

**COMMENT**

From: George J. Perk, Jr.  
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Re: Comments on Proposed Regulation 1.69

On January 23, 1998, the Commodity Futures Trading Commission ("Commission") published for comment in the Federal Register an amended, proposed new Regulation 1.69 that would implement the statutory directives of section 5a (a) (17) of the Commodity Exchange Act as it was amended by Section 217 of the Futures Trading Practices Act of 1992. Proposed Commission Regulation 1.69 would require self-regulatory organizations to adopt rules prohibiting governing board, disciplinary committee, and oversight panel members from deliberating or voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome.

After reviewing the amended, proposed Regulation 1.69, the undersigned respectfully suggests that the Commission broaden the concept of the "nature of a relationship" to include relationships of a regulatory nature and relationships arising out of

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antagonistic, competitive behavior. The Commission also should broaden the definition of "significant actions" to include certain types of actions taken by committees of registered futures associations.

For example, on September 5, 1995, the Business Conduct Committee of the National Futures Association ("NFA") issued a complaint against American Futures Group, Inc. ("AFG") and three of its principals. The complaint alleged, among other things, that AFG and one of its principals instructed brokers at Arnekay to engage in unethical sales practices. Arnekay was a guaranteed introducing broker of ING Derivatives Clearing, Inc. ("ING") during the relevant time period covered by the Complaint. On March 24, 1997, a NFA Hearing Panel issued a decision expelling AFG and two of its principals. That decision was appealed, but on February 18, 1998, the Appeals Committee of the NFA affirmed the Hearing Panel decision in all respects. Arnekay was cited also for failing to supervise in that it allowed AFG to conduct unethical sales training. ING has not yet been cited.

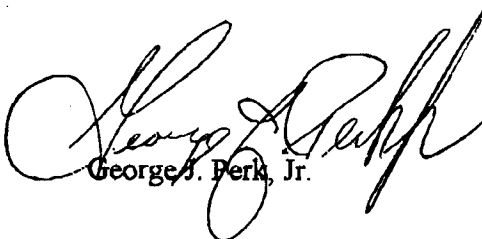
Shortly after the Appeals Committee decision was issued, it was discovered that Wallace Weisenborn ("Weisenborn", Chairman of the NFA Appeals Committee) and William Pauly ("Pauly", a member of the NFA Hearing Panel that found against AFG and its principals) had a serious conflict of interest of a regulatory nature which was never disclosed. Weisenborn and Pauly were both employees and registered principals of ING. Weisenborn was president of ING and Pauly was ING's chief financial officer. It follows that Weisenborn and ING had a statutory responsibility to diligently supervise their GIB Arnekay throughout the relevant time period covered by the complaint.

They also had a competitive conflict in that their firm had been losing business to AFG. Arnekay contributed roughly one hundred thousand dollars per year to AFG's bottom line. This benefit accrued to AFG for all of 1995 and 1996 - the same year in which the hearing took place. It is reasonable to assume that ING, a clearing FCM, had a significantly lower clearing cost than AFG, a non-clearing FCM. It follows, therefore, that during the very year in which Pauly sat as a member of the Hearing Panel, ING was and had been losing as much as one-hundred and fifty thousand dollars per year of pre-tax profits. This lost revenue was a direct result of AFG's successful efforts to recruit Arnekay away from ING.

In effect, the individuals who should have been AFG's co-respondents were instead its judge, jury and executioner.

With regard to significant actions, the NFA Hearing Panel expelled AFG and two of its principals from NFA membership. In so doing they destroyed a \$40 million per year firm and severely disrupted the lives of its 200 employees and associated persons. This was a "significant action", and the NFA panel members must be held accountable for any possible conflict of interest.

Respectively submitted,



George J. Perk, Jr.