

# THE OPENING CALL

*Newsletter of the Commodity Floor Brokers and Traders Association*

## Fines Averted, Paperwork Cut Thanks to CFBTA

Effective immediately, traders no longer have to report fines levied against them by the exchanges to the National Futures Association (NFA), thanks to the efforts of Commodity Floor Brokers and Traders Assn. (CFBTA). In addition to cutting down on paperwork, this change to CFTC Rule 9.11 also averts the potential for fines that could be levied for failure to report. (See *Opening Call* Spring 1999) Now, the exchanges have sole responsibility for the paperwork, reporting either in writing or electronically to the NFA.

“CFBTA took on this issue last summer during meetings with CFTC commissioners and we kept up our efforts all year,” said Chairman A. George Gero. “The industry has sought an end to multiple reporting of fines (both by the traders and the exchanges)

for over ten years. We worked hard coordinating with the Commission, the NFA, and the exchanges. We got the results we wanted.”

Public Director Mel Falis added that the change “really alleviates the floor people of a responsibility they never should have had in the first place.”

CFBTA would like to extend special thanks for work on this

issue to: Falis and James Gargan, public directors who coordinated legal work; Gero, John Hanemann, Pat O’Shea, Madeline Boyd, and Sam Abernethy, CFBTA representatives who visited with the CFTC commissioners last summer; Marc Brenner and Fred Mascia, CFBTA members who coordinated with exchange compliance staffs; and the staffs of the exchanges, the NFA and the CFTC.

### *Cocktail Fund Raiser!!*

*In the Spring of 2000, CFBTA will be hosting a cocktail party/fund raiser to offset the expenses of our Washington efforts. The event will be held on the 10th floor of One North End Ave. Stay tuned for details!!*

*Plan to attend. Give us your ideas/concerns so we can relay them to the CFTC, NFA and Legislators during our trips!*

# CFBTA Wants Relief in NFA Registrations

Traders want relief from National Futures Association (NFA) registration reviews that can result in the revocation or suspension of registrations for brokers and traders for sanctions issued in exchange disciplinary actions as long as five years ago. CFBTA and the New York exchanges are gearing up to do just that -- speak out for fairness and a restoration of review criteria previously used by the CFTC.

"Our role as a floor brokers' organization is to fight for fairness and equity while preserving our way of doing business," CFBTA Chairman A. George Gero told *Opening Call*. "In this instance, there is a strong case for change. This is high on our agenda for our January meetings with the new CFTC chairman and commissioners."

## Problem Started in '97

The problem started in late 1997 when the CFTC transferred its authority to the NFA for registration review cases. The CFTC directed NFA to consider exchange disciplinary action as "other good cause" for reviewing registration fitness. The "other good cause" language appears in Commodity Exchange Act 8a(3) as grounds for revoking or suspending registration. The CFTC also pointed to Regulation 1.63 (which governs fitness standards for service on exchange boards and committees) to provide guidance and it required NFA to go back five years into a trader's disciplinary history, an increase from the three year look-back period for Regulation 1.63.

Therefore, traders who were sanctioned by an exchange for an infraction in the past five years can now be the subject of a statutory disqualification proceeding, which can result in a conditioned registration, or a registration revocation or suspension for conduct which was the cause for a sanction imposed by an exchange long ago. Conditioned registrations could

limit traders from certain types of business, such as handling customer orders. In the past when the CFTC exercised jurisdiction over registration reviews, it did not scrutinize exchange disciplinary actions as a basis for registration fitness reviews.

## CFBTA Board Plans Action

This issue was discussed at length at the October CFBTA board meeting. "The problem is once a trader settles a case, they think the issue is over," said Madeline Boyd. "Now, that is not the case." John Hanemann added that the exchanges, not the trader, should be examined. "If the CFTC and NFA are not happy with action the exchanges took, then the exchanges should be questioned, not the trader," he emphasized.

In addition to taking up these issues during their January Washington trip (see story, page 3), CFBTA is also looking to set up a joint meeting with NFA, CFTC and exchange staffs to come to a solution to this problem. This was the approach taken in the multiple reporting of fines issue (see page 1) and that worked.

To compound the problem, the NFA wants the exchanges to give them copies of their investigations' files to build their cases. The exchanges are in conflict over this since the Commodity Exchange Act prohibits them from dispensing these confidential records to anyone but the CFTC.

The New York Board of Trade (NYBOT) and The New York Mercantile Exchange (NYMEX) have both taken on this issue. NYBOT took on the issue six months ago with then CFTC Chairman Brooksley Born, and is preparing to re-iterate its concerns with new Chairman William Rainer. NYBOT will stress how it is unfair to use old disciplinary settlements to condition registrations years later. NYMEX is also gearing up.

"We want to move ahead on this now," said NYMEX Vice President/Compliance Thomas F. LaSala. He explained that NYMEX is advocating giving the NFA discretionary authority in individual cases and creating a sensitivity to whatever action the exchanges have already taken. If not, he fears, this could have a whiplash effect. It could stymie the exchange's process since traders could be scared to settle cases for fear that their registration status could be threatened by a non-discretionary review by the NFA.

## NYMEX Seeks Support

NYMEX is now pulling together a position paper on this issue and is garnering support from the other exchanges. Some steps NYMEX will seek:

- 1) To re-establish section 8a as a criteria for registration reviews and conditioned registrations. This would restore the review window to three years, as was the case prior to 1997.
- 2) To have NFA reviews take into account exchange disciplinary action, eliminating the threat of "double" sanctions, both from the exchanges and NFA
- 3) To restore discretionary authority to the NFA. Each case can then be reviewed individually and registration restrictions would be based on specific circumstances.

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## CFBTA Officials to Visit CFTC Commissioners

**C**FBTA will ring in the New Year with a trip to Washington, hoping to rack up more victories such as the end to multiple reporting of fines (see story page 1). Focus will be heavy on education, with a mock trading session already in the works for members and staffers of the CFTC, NFA, and Congress. Meetings with the CFTC and Congressmen will also be key, especially during a critical election year.

Focus will begin with the CFTC, since a new chairman – William J. Rainer – was sworn in on August 11, and a new commissioner – Thomas J. Erickson – was sworn in on June 21. These two appointments, coupled with the swearing in last summer of Commissioner James E. Newsome, could very well change the whole focus of the Commission.

“When you have several changes at the Commission at once, it calls for extra attention and extra time to establish personal relationships,” said Gero. “That one-on-one ability to explain our business and our concerns is

paramount for CFBTA. We are now making final arrangements for our Washington visit in January.” CFBTA members slated to participate in the trip are: Gero, John Hanemann, Scott Hess, David Wender, Henry Terranova, David Greenberg and Robert Panzera.

Gero added that two of the newcomers should be familiar with commodities: Commissioner Erickson – who was on the staff of Sen. Thomas Daschle, minority leader and chairman of the Senate Agriculture Committee; and, Commissioner Newsome, a member of the Cattleman’s Association. The new Chairman Rainer has a background in securities and bonds, having worked at Kidder, Peabody, Greenwich Capital Markets and U.S. Enrichment Corp. CFBTA intends to focus on educating all three of these new commissioners on specific concerns/problems of the New York floor community.

Washington insiders, who themselves are still “waiting in line” to meet the new CFTC commissioners, view the changes as positive. “In general, we see a move by the CFTC to back off

and take more of an oversight role,” an insider told *Opening Call*. “Everything I heard so far has been positive.”

### Legislative Front

There is also some cause for optimism on the legislative front as well. In the Spring, the prospect of a 10-cent transaction fee per round turn again was raised by the Congressional Budget Office. At this time, however, insiders say this has a slim chance of passage, considering the anti-tax movement in Washington. One insider told *Opening Call*, “I think they always talk about transaction fees, but the anti-tax movement is significant...they would have a hard time getting a new tax passed.”

In other areas, both the Senate and House Agriculture Committees are considering legislation that would give a freer hand to the exchanges in the development of new futures contracts. If passed, this would allow exchanges to introduce new contracts, change existing contracts’ specifications/

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## How to Handle Meetings with Compliance Staffs

**T**raders should know how to handle meetings with exchange compliance staffs, whether for annual routine reviews, or because of problems that arise. They should also know that records can be pulled going back five years. In either event, preparation and knowledge are the key to a successful meeting with compliance personnel. Some tips:

- 1.) **Read carefully.** The letter from the exchange should clearly state the reason a trader’s cards are pulled, and the scope of questioning.
- 2.) **Stop if you are unsure.** Remember, meetings with compliance staffers can be stopped at any time a trader feels

uncomfortable, and continued at a later time. At that later meeting, the trader may have legal or other representation present.

- 3.) **Be timely.** Gather the records for the period in question. Review them and respond to compliance in a timely manner.
- 4.) **Be prepared.** It is best to do a dry run with someone else of what you think compliance will be asking.
- 5.) **Consider consulting a lawyer.** Depending on your trading background/history, consider consulting a lawyer. Then, either handle the meeting alone based on legal advice, or take an attorney.
- 6.) **Relax.** Remember that most meetings with compliance do not require a second interview. Many

are simply routine meetings. Some are triggered by market events. Others are based on “tips” given to compliance. Others may be about another trader you traded with.

“Typically, compliance interviews are generated by market events or computer runs that show irregularities such as an inordinate number of trades with another trader,” said Public Director Sam Abernethy. “Most of the time, traders just produce the cards and the matter is resolved. However, traders should be prepared and knowledgeable in case compliance pursues the matter.”

In Brief.....

## Website to be Re-Designed; Chat Room Possible

CFBTA's website -- [cfbta.org](http://cfbta.org) - has a new sponsor -- Acknowledge Systems Inc. -- which will provide technical support to the pages. The pages's other sponsor -- Warren Rosen & Co. -- provides financial support for the site.

Acknowledge Systems' partners Rich Jacobs and John Conheeny Jr., will monitor the website for possible changes and improvements. Areas to be looked at include adding a "chat room" for members only; including a football trading game for entertainment; and, bringing guest analysts to the site for members to obtain information from. All ideas are welcome. Please contact Conheeny at: [john.conheeny@gte.net](mailto:john.conheeny@gte.net).

Rosen, the financial sponsor of the site for the past few years, is currently on site at NYBOT to enroll members in the group long-term disability and life insurance plans that they are now entitled to. They are also on site for other supplemental insurance needs. Watch for their signs and flyers, or call for an appointment at 212/949-9200.

### New Directors Named

CFBTA has two new directors: Scott Hess, elected to represent NYMEX at the summer meeting, and Fred Schoenhut, elected to represent

NYBOT during the October meeting. Hess, a member of the NYMEX board, succeeds Eric Plateis. Schoenhut is a principal of COPIA Trading Co. Ltd., a director of Rosenthal Collins Group in New York, and a previous member of the CSCE Board.

### Treasurer's Report

At the October meeting, Treasurer Joe Salvatore reported a treasury balance of \$10,402. A fund-raiser — such as a cocktail party -- is being planned for January. Last year's fund raiser netted \$3,400. The money was used to offset Washington travel expenses.

### PAC Chairman

CFBTA Chairman A. George Gero has been named chairman of the NYMEX Political Action Committee (PAC). Scott Hess, another CFBTA director, will serve as co-chairman.

### Account Numbers

As of August, the CFTC requested NYMEX traders to include account numbers on all trade allocations processed through TMS. All clearing member and ATOM billing information can now be obtained

through a newly created TMS file.

### Charity Dinner

On Thursday, Oct. 7, Futures and Options for Kids, formerly the CEC Children's Fund, held their annual dinner dance at Windows on the World, raising about \$100,000 for area children's charities. This year, the group honored John Conheeny Sr. with the Arthur Kaplan Award, and James McHale and Peter Toumey with the 1999 CEC Community Service Award. Conheeny is formerly chairman of Merrill Lynch, and McHale and Toumey founded Futures and Options for Kids.

### ZONE Opens Restaurant

CFBTA member Steve Ardizzone (ZONE) has opened a new American homestyle restaurant – Samm's Restaurant and Lounge — at 8901 Third Ave., Bay Ridge, Brooklyn. For reservations, call: 718/238-0606.

### Cross Trade Ban

NYMEX will have a 60-day trial of Trading At Settlement in crude oil starting later this year, or in January. During that period, cross trades will be banned during the day.

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## CFBTA to Visit CFTC Commissioners

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trading hours, etc., without prior approval from the CFTC. The CFTC would take action only if there is a resulting problem.

CFBTA and the exchanges will also monitor legislation that would license price or "ticker" information originating from the exchanges.

"It's important to keep up our presence in Washington, especially at this time," said Gero. "We have to keep our momentum going and make sure these positive indications from Washington become reality."