

August 26, 2009

Via Federal Express

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Increasing the Number of Summary and One-Arbitrator NFA Arbitration Proceedings - Proposed Amendments to Sections 4, 6, 8, 9 and 11 of NFA's Code of Arbitration and Sections 3, 9 and 11 of NFA's Member Arbitration Rules*

Dear Mr. Stawick:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed amendments to Sections 4, 6, 8, 9 and 11 of NFA's Code of Arbitration and Sections 3, 9 and 11 of NFA's Member Arbitration Rules. This proposal was approved by NFA's Board of Directors ("Board") on August 20, 2009.

NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("CEA") and will make these proposals effective for all claims filed on or after October 1, 2009, unless the Commission notifies NFA within ten days after receiving this submission that the Commission has determined to review the proposals for approval.

PROPOSED AMENDMENTS

(additions are underscored and deletions are ~~stricken through~~)

CODE OF ARBITRATION

* * *

SECTION 4. ARBITRATION PANEL

a) Appointment of Panel.

NFA shall conduct all arbitration proceedings under this Code before an arbitration Panel consisting of the following:

(1) Where the aggregate claim amount does not exceed ~~\$50,000~~ \$100,000, NFA shall appoint one arbitrator. However, if the aggregate amount of the claim exceeds ~~\$25,000~~ \$50,000 but is not more than ~~\$50,000~~ \$100,000, NFA shall appoint three arbitrators if ~~one of the parties serves a~~ all parties serve a written request on NFA for three arbitrators by no later than 30 days after the last pleading is due or the sole arbitrator asks NFA to appoint two additional arbitrators.

(2) Where the aggregate claim amount exceeds ~~\$50,000~~ \$100,000, NFA shall appoint three arbitrators.

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SECTION 6. INITIATION OF ARBITRATION

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(e) Answer to an Arbitration Claim.

A Respondent shall serve its Answer on NFA and concurrently serve a copy on the Claimant within the time period provided below. Any Member FCM served with the Arbitration Claim under Section 6(d)(2) above that wishes to intervene in the arbitration proceeding must serve an Answer and written notice of intervention on NFA and concurrently serve a copy on the Claimant within the time period provided below for filing the Answer. An allegation in the Arbitration Claim that is not denied in the Answer shall be deemed by the Panel to be admitted.

(1) **Claims of ~~\$25,000~~ \$50,000 or Less.** Where the Arbitration Claim amount does not exceed ~~\$25,000~~ \$50,000, the Answer shall be served within 20 days following service of the Arbitration Claim by NFA.

(2) **Claims of more than ~~\$25,000~~ \$50,000 through ~~\$50,000~~ \$100,000.** Where the Arbitration Claim amount exceeds ~~\$25,000~~ \$50,000 but is not more than ~~\$50,000~~ \$100,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. An arbitration service fee of \$275.00 shall accompany each Answer. Any Answer which is not accompanied by the appropriate fee shall be returned to the filing party by NFA. In that event, the filing party shall serve a completed Answer on NFA, together with any unpaid

fee, within 20 days following service by NFA. NFA shall reject any Answer for which the appropriate fee has not been paid. Each Respondent who files an Answer but does not pay the service fee will have waived its right to an oral hearing and to otherwise participate in the proceeding. However, the Panel may, for good cause shown, accept the Answer and allow the Respondent to participate.

(3) **Claims of more than ~~\$50,000~~ \$100,000.** Where the Arbitration Claim amount exceeds ~~\$50,000~~ \$100,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. An arbitration service fee of \$675.00 shall accompany each Answer. Any Answer which is not accompanied by the appropriate fee shall be returned to the filing party by NFA. In that event, the filing party shall serve a completed Answer on NFA, together with any unpaid fee, within 20 days following service by NFA. NFA shall reject any Answer for which the appropriate fee has not been paid. Each Respondent who files an Answer but does not pay the service fee will have waived its right to an oral hearing and to otherwise participate in the proceeding. However, the Panel may, for good cause shown, accept the Answer and allow the Respondent to participate.

(f) Counterclaim and Cross-claim.

Any counterclaim or cross-claim under Section 2(a)(2) must be asserted in the Answer, unless the person against whom the counterclaim or cross-claim is asserted consents to a later assertion of the counterclaim or cross-claim. If any counterclaim or cross-claim is asserted, the party asserting the counterclaim or cross-claim shall promptly remit the appropriate fee to NFA. (See Sections 11 and 18.) Any counterclaim or cross-claim which NFA deems to be incomplete, or which is not accompanied by the appropriate fee, shall be returned to the filing party by NFA. In that event, the filing party shall serve a completed counterclaim or cross-claim on NFA, together with any unpaid fee, within the time period provided below. NFA shall reject any counterclaim or cross-claim which has not been timely filed, or for which the appropriate fee has not been paid.

(1) **Claims of ~~\$25,000~~ \$50,000 or Less.** Where the aggregate claim amount does not exceed ~~\$25,000~~ \$50,000, the completed counterclaim or cross-claim shall be served within 10 days following service of the incomplete counterclaim or cross-claim by NFA.

(2) **Claims of more than ~~\$25,000~~ \$50,000.** Where the aggregate claim amount exceeds ~~\$25,000~~ \$50,000, the completed counterclaim or cross-claim shall be

served within 20 days following service of the incomplete counterclaim or cross-claim by NFA.

(g) Reply to Counterclaim or Cross-claim.

The person against whom the counterclaim or cross-claim is asserted shall serve its Reply to the counterclaim or cross-claim on NFA and concurrently serve a copy on the counterclaiming or cross-claiming Respondent within the time period provided below. Any allegation in the counterclaim or cross-claim that is not denied in the Reply shall be deemed by the Panel to be admitted.

(1) **Claims of ~~\$25,000~~ \$50,000 or Less.** Where the aggregate claim amount does not exceed ~~\$25,000~~ \$50,000, the Reply shall be served within 10 days following service of the Answer, counterclaim or cross-claim by NFA.

(2) **Claims of more than ~~\$25,000~~ \$50,000.** Where the aggregate claim amount exceeds ~~\$25,000~~ \$50,000, the Reply shall be served within 35 days following service of the Answer, counterclaim or cross-claim by NFA.

(h) Third-party Claim.

Any third-party claim under Section 2(a)(2) must be asserted in the Answer, unless the third party consents to a later assertion of the claim. If the third party is not a Member or Associate, such person must agree or have agreed to submit to arbitration. If any third-party claim is asserted, the Respondent asserting the third-party claim shall promptly remit the appropriate fee to NFA. (See Sections 11 and 18 below.) Any third-party claim which NFA deems to be incomplete, or which is not accompanied by the appropriate fee, shall be returned to the filing party by NFA. In that event, the filing party shall serve a completed third-party claim on NFA, together with any unpaid fee, within the time period provided below. NFA shall reject any third-party claim which has not been timely filed, or for which the appropriate fee has not been paid.

(1) **Claims of ~~\$25,000~~ \$50,000 or Less.** Where the aggregate claim amount does not exceed ~~\$25,000~~ \$50,000, the completed third-party claim shall be served within 10 days following service of the incomplete third-party claim by NFA.

(2) **Claims of more than ~~\$25,000~~ \$50,000.** Where the aggregate claim amount exceeds ~~\$25,000~~ \$50,000, the completed third-party claim shall be served within 20 days following service of the incomplete third-party claim by NFA.

(j) Answer to Third-party Claim.

A third-party Respondent shall serve its Answer on NFA and concurrently serve a copy on the third-party Claimant within the time period provided below. An allegation in the third-party claim that is not denied in the Answer shall be deemed by the Panel to be admitted.

(1) **Claims of ~~\$25,000~~ \$50,000 or Less.** Where the aggregate claim amount does not exceed ~~\$25,000~~ \$50,000, the Answer shall be served within 20 days following service of the third-party claim by NFA.

(2) **Claims of more than ~~\$25,000~~ \$50,000.** Where the aggregate claim amount exceeds ~~\$25,000~~ \$50,000, the Answer shall be served within 45 days following service of the third-party claim by NFA.

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SECTION 8. PRE-HEARING.

(a) Exchange of Documents and Written Information

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(3) All other requests for documents and written information shall be served as follows:

(i) Where the aggregate claim amount does not exceed ~~\$25,000~~ \$50,000, the requesting party shall serve its requests for documents and written information on the responding party no later than 20 days after the last pleading is due. The responding party shall serve the documents and written information, including written objections, no later than 20 days after the request is due.

(ii) Where the aggregate claim amount exceeds ~~\$25,000~~ \$50,000, the requesting party shall serve its request for documents and written information on the responding party no later than 30 days after the last pleading is due. The responding party shall serve the requesting party with the documents and written information, including written objections, no later than 30 days after the request is due.

* * *

SECTION 9. HEARING

* * *

(i) Summary Proceeding.

The proceeding shall be conducted entirely through written submissions when:

- (1) the aggregate amount of the claims (exclusive of interest and costs) does not exceed ~~\$15,000~~ \$25,000, unless the Secretary or the Panel directs otherwise;
- (2) the aggregate amount of the claims (exclusive of interest and costs) is more than ~~\$15,000~~ \$25,000 but not more than ~~\$25,000~~ \$50,000, unless the Secretary or the Panel directs otherwise or one of the parties to the proceeding serves a written request for an oral hearing on NFA, accompanied by a fee of ~~\$525.00~~ \$675, no later than 30 days after the last pleading is due; or

* * *

SECTION 11. ARBITRATION FEES

(a) Filing and Hearing Fees.

<u>Amount of Claim</u>	<u>Filing Fee</u>	<u>Hearing Fee</u>
\$0.00 - \$2,500.00	\$50.00	\$125.00
\$2,500.01 - \$5,000.00	\$100.00	\$125.00
\$5,000.01 - \$10,000.00	\$150.00	\$125.00
\$10,000.01 - \$15,000.00	\$175.00	\$125.00
\$15,000.01 - \$25,000.00	\$200.00	\$125.00
\$25,000.01 - \$50,000.00	\$300.00	\$275.00 \$125.00
\$50,000.01 - \$150,000.00	\$550.00 plus 1% of excess over \$50,000.00	\$1,275.00

<u>\$50,000.00 - \$100,000.00</u>	<u>\$550.00 plus 1%</u> <u>of excess over</u> <u>\$50,000.00</u>	<u>\$275.00</u>
<u>\$100,000.00 - \$150,000.00</u>	<u>\$1050.00 plus 1%</u> <u>of excess over</u> <u>\$100,000.00</u>	<u>\$1,275.00</u>
\$150,000.01 - \$500,000.00	\$1,550.00	\$2,550.00
More than \$500,000.00	\$1,550.00	\$5,100.00

(2) Where the hearing fees paid by the parties is not enough to cover the standard preset fees to be paid by NFA to the arbitrators, NFA shall collect additional fees to cover the fees to be paid to the arbitrators. If a case requires more than four days of hearing, the hearing fees will be twice the standard preset fees, unless the arbitrators order the fees to remain at the standard amount.

(3) NFA shall also collect additional hearing fees when:

- (i) a party requests a preliminary hearing under Section 9(a);
- (ii) a party requests an oral hearing under Section 9(i)(2); or
- (iii) ~~a party requests~~ all the parties make a written request for three arbitrators under Section 4(a)(1). However, where the sole arbitrator asks NFA to appoint two additional arbitrators, NFA shall assess the additional fees equally against the parties.

(b) Refunds.

(1) A full refund of any filing and hearing fees paid under Section 11(a) above shall be made if, prior to the appointment of a Panel, a claim filed under Section 2(a) above is found to be not arbitrable or if the President declines to arbitrate a claim under Section 2(b) of this Code.

(2) If all claims have been settled or withdrawn and NFA receives notice of the settlement or withdrawal at least five days in advance of the first scheduled pre-hearing conference date, if one is scheduled, or at least 30 days in advance of the first scheduled preliminary hearing date or oral hearing date, if no pre-hearing conference is scheduled, a full refund of the hearing fees paid under Section 11(a) and the arbitration service fees paid under Section 6(e) shall be made to the party paying the fee.

(3) If all claims have been settled or withdrawn and NFA receives written notice of the settlement or withdrawal at least 15 days in advance of the summary proceeding start date or first scheduled oral hearing date or preliminary hearing date, the hearing fees paid under Section 11(a) and arbitration service fees paid under Section 6(e) shall be refunded to the party paying the fee in accordance with the schedule below.

Amount of Claim	Hearing Fee Refund	Service Fee Refund
\$0.00 - \$25,00.00	\$ 125.00	N/A
\$25,000.01 - \$50,000.00	\$ 125.00	N/A \$ 125.00
\$50,000.01 - \$150,000.00	\$ 925.00	\$ 325.00
<u>\$50,000.00 - \$100,000.00</u>	<u>\$125.00</u>	<u>\$125.00</u>
<u>\$100,000.00 - \$150,000.00</u>	<u>\$925.00</u>	<u>\$325.00</u>
\$150,000.01 - \$500,000.00	\$ 2,200.00	\$ 325.00
More than \$500,000.00	\$ 4,750.00	\$ 325.00

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MEMBER ARBITRATION RULES

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SECTION 3. ARBITRATION PANEL.

(a) Appointment of Panel.

Except as provided under Section 7(e) of the Rules, NFA shall conduct all arbitration proceedings under these Rules before an arbitration Panel consisting of the following:

1. Where the aggregate claim amount does not exceed \$100,000, NFA shall appoint one arbitrator. However, if the aggregate amount of the claim exceeds \$50,000 but is not more than \$100,000, NFA shall appoint three arbitrators if ~~one of the parties serves a~~ all the parties serve a written request on NFA for three arbitrators by no later than 30 days after the last pleading is due or the sole arbitrator asks NFA to appoint two additional arbitrators.

* * *

SECTION 9. HEARING

* * *

(i) Summary Proceeding.

The proceedings shall be conducted entirely through written submissions when:

(1) the aggregate amount of the claims (exclusive of interest and costs) does not exceed ~~\$15,000~~ \$25,000, unless the Secretary of the Panel directs otherwise;

(2) the aggregate amount of the claims (exclusive of interest and costs) is more than ~~\$15,000~~ \$25,000 but not more than \$50,000, unless the Secretary or the Panel directs otherwise or one of the parties to the proceeding serves a written request for an oral hearing on NFA no later than 30 days after the last pleading is due; or

* * *

SECTION 11. ARBITRATION FEES

(a) Filing and Hearing Fees.

(3) NFA shall also collect additional hearing fees when:

(i) a party requests a preliminary hearing under Section 9(a);

(ii) a party requests an oral hearing under Section 9(i)(2); or

(iii) ~~a party requests~~ all the parties make a written request for three arbitrators under Section 4(a)(1). However, where the sole arbitrator asks NFA to appoint two additional arbitrators, NFA shall assess the additional fees equally against the parties.

EXPLANATION OF PROPOSED AMENDMENTS

During recently completed FY 2009, NFA received 243 arbitration claims, which is nearly a 40% increase over FY 2008. Given this significant increase in the caseload, NFA's arbitration staff reviewed the program to determine whether any procedural changes could be made to ensure that the program continues to operate efficiently without sacrificing any procedural rights of the parties. NFA has identified two areas where both the Code of Arbitration ("Code") and Member Arbitration Rules ("Rules") could be amended to ensure NFA continues to provide a fair, convenient and efficient forum for the resolution of disputes.

Under the Code, all cases with claim amounts under \$25,000 are administered by a summary proceeding where one arbitrator decides the case based on the parties' written submissions. Currently, however, a party with a claim amount

between \$15,000-\$25,000 has the option to request an oral hearing provided it pays the additional fees to offset the costs associated with proceeding with a hearing. Under the Rules, all claims under \$50,000 are administered by summary proceeding. Similar to the Code, however, a party with a claim that exceeds \$15,000 has the option to request an oral hearing provided it pays additional hearing fees.

Over the years, summary proceedings have proven to be an effective method of resolving disputes. Summary proceedings provide advantages to both the parties and to NFA. First, summary proceedings move along a much faster time line, with final resolution occurring approximately four months earlier than cases that require an oral hearing. In addition, summary proceedings are less costly to the parties because the hearing fees are lower. Summary proceedings are also less costly to NFA because fewer staff hours are spent on administering a summary and NFA does not incur any hearing-related costs.

NFA believes that the upper threshold for summary proceedings under the Code could be raised to the same level as the threshold under the Rules without sacrificing any procedural protections and still providing a fair, convenient and efficient forum for the resolution of disputes. Therefore, the amendments to the Code provide that all cases with claim amounts under \$50,000 will be processed as summary proceedings. Parties will be permitted to request an oral hearing if the claim amount exceeds \$25,000. The hearing fee under the Code for cases between \$25,000 and \$50,000 will be reduced from \$275 to \$125 (which is the hearing fee for all summaries). However, if a party requests an oral hearing for claims between \$25,000 and \$50,000, a \$675 fee will be imposed on a party making this request.¹ The proposed amendments to the Rules parallel the changes to the Code so that an oral hearing may be requested for cases that exceed \$25,000 (rather than the current \$15,000).

Under the Code, all claims between \$25,000 and \$50,000 are heard by one arbitrator unless a party requests that NFA appoint three arbitrators. Under the Rules, all claims between \$50,000 and \$100,000 are heard by one arbitrator unless a

¹ This fee approximates the fees a party would have paid if the case was originally filed as an oral hearing. Specifically, the \$675 fee includes \$250 for the difference between the filing fee for a summary and the lowest oral hearing filing fee, \$150 for the difference between the hearing fee for a summary and lowest oral hearing fee and \$275 for the arbitrator service fee that is charged for any oral hearing. There is no fee increase under the Rules because the Rules currently provide for a summary up to \$50,000. The only change is to eliminate the request for an oral hearing between \$15,000 - \$25,000.

Mr. David A. Stawick

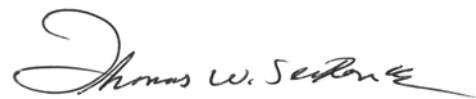
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party asks NFA to appoint three. Appointing one arbitrator instead of three simplifies the arbitration process because it is easier to schedule teleconferences and the hearing. It also reduces costs because parties pay lower hearing fees. In addition, NFA can generally process one arbitrator claims more quickly, and these types of hearings reduce the drain on NFA's arbitrator roster.

The amendments increase the threshold for three arbitrator panels under the Code so it is consistent with the Rules. This means all claims under \$100,000 will be heard by one arbitrator unless both parties in a proceeding with a claim amount above \$50,000 submit a written request to NFA for three arbitrators. NFA believes it is appropriate that both parties agree to this request since appointing additional arbitrators delays the proceeding and potentially requires the non-requesting party to incur additional hearing fees.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make the amendments to Sections 4, 6, 8, 9 and 11 of NFA's Code of Arbitration and Sections 3, 9 and 11 of NFA's Member Arbitration Rules effective for all claims filed on or after October 1, 2009 unless the Commission notifies NFA within ten days after receiving this submission that the Commission has determined to review the proposal for approval.

Respectfully submitted,



Thomas W. Sexton
Senior Vice President and
General Counsel

* The proposed amendments to Sections 4, 6, 8, 9 and 11 of NFA's Code of Arbitration and Sections 3, 9 and 11 of NFA's Member Arbitration Rules become effective October 1, 2009.