



May 19, 2020

Via Email (secretary@cftc.gov)

Mr. Christopher J. Kirkpatrick
Secretary
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Proposed Amendments to Part 3 of NFA's Compliance Rules

Dear Mr. Kirkpatrick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("CEA" or "Act"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed amendments to NFA's Part 3 Compliance Rules regarding NFA's Business Conduct Committee disciplinary process and procedures and to make minor technical amendments. NFA's Board of Directors ("Board") unanimously approved the proposed amendments at its meeting on May 14, 2020.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to issue a Notice to Members establishing an effective date for this proposal as early as ten days after receipt of this submission by the Commission unless NFA is notified that the Commission has determined to review the proposal for approval.

PROPOSED AMENDMENTS

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

COMPLIANCE RULES

PART 3 – COMPLIANCE PROCEDURES

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RULE 3-2. INVESTIGATION.

* * *

(b) Termination.

~~If upon completing the investigation the Compliance Department concludes that there is no reason to believe that an NFA requirement is being, has been or is about to be violated, the Compliance Department shall submit a report to the Business Conduct Committee, containing the information specified in paragraph (a) above and, if applicable, recommending whether the Business Conduct Committee should issue or authorize the Compliance Department to issue a warning letter. The report, and any warning letter issued, shall become part of the investigation file, which may thereafter be closed as the Compliance Department deems appropriate. Investigations shall be completed within four months of commencement except for good cause.~~

(c) (b) Review of Report.

Each investigation report shall be reviewed by the Business Conduct Committee. If, upon review of the report, the Business Conduct Committee finds that additional investigation or evidence is necessary, it shall so instruct the Compliance Department. Within 30 days after receiving a completed report the Business Conduct Committee shall either:

(i) close the matter, if it finds (A) no reasonable basis that a violation has occurred, is occurring or is about to occur; or (B) that prosecution is otherwise unwarranted (in which case the Business Conduct Committee may issue or cause to be issued a warning letter). The closure order shall be in writing and briefly state the reasons therefor, and a copy of the order shall be promptly furnished to the President. Such order shall become final 10 days after the President's receipt thereof unless, within such time, the President refers the matter to the Appeals Committee (See NFA Bylaw 702) for its review. In such case, the closure order shall become final 30 days after the date of referral by the President unless, within such time, the Appeals Committee directs the Business Conduct Committee to issue a complaint; or

(ii) serve a written and dated Complaint, if it finds reason to believe that an NFA requirement is being, has been or is about to be violated and that the matter should be adjudicated.

No member of the Business Conduct Committee or its designated Panel shall participate in the matter if the member, or any person with which the member is



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connected, has a financial, personal or other direct interest in the matter under consideration or is disqualified under Bylaw 708(c).

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RULE 3-3. SERVICE.

For purposes of any proceeding brought under Part 3 of these Rules:

(a) service of a Complaint will be sufficient if mailed to the person charged ("the Respondent") by first class ~~and~~ or overnight mail, to the last address provided by the Respondent on record with NFA, or the address of his duly authorized agent for service;

(b) one copy of all pleadings, motions and briefs filed with NFA subsequent to the Complaint shall be served by the party upon all parties not in default (including the attorney of record in NFA's General Counsel's Office), unless otherwise provided. Service on a party's representative shall be service on the party. Service shall be made either by personal service (effective upon delivery), mail (effective upon deposit), ~~facsimile (effective upon receipt of a readable document)~~, or e-mail (effective upon receipt of a readable document): *provided, however*, that service by ~~facsimile or~~ e-mail shall only be permitted on parties ~~Parties~~ who have consented to service by that means. Proof of service of a document shall be made by attaching thereto an affidavit or certificate of service. To mail means to deposit in the U.S. Mail, first-class postage prepaid, or with an overnight delivery service, delivery fee prepaid; and

(c) documents filed with NFA under this Part must be delivered or mailed to:

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, IL 60606
Attn: Legal Docketing Department

~~or sent by facsimile to the attention of the Legal Docketing Department at a facsimile number provided in the original complaint~~ or sent by e-mail to Docketing@nfa.futures.org. Filing by delivery or mailing is effective upon receipt. Filing by electronic means is effective upon receipt of a readable document; and

(d) parties who file documents by electronic means thereby consent to accept service of pleadings in the proceedings by same method and waive any objection based on authenticity and genuineness to the use and admissibility into evidence in the



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proceeding of any document that they file by electronic means. The first document that a party files by electronic means must identify that party's ~~facsimile number or~~ e-mail address at which other parties may serve pleadings in the proceeding. Parties who provide a ~~facsimile number or~~ an e-mail address must advise the Legal Docketing Department and all other parties not in default of any change to the ~~facsimile number or~~ e-mail address.

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RULE 3-6. ANSWER.

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~~(b) Failure to file a timely Answer shall be deemed an admission of the facts and legal conclusions contained in the Complaint, and a waiver of hearing.~~ The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that the Respondent lacks sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may be made only after a diligent effort has been made to ascertain the relevant facts, and shall be deemed to be a denial of the pertinent allegation. The failure to respond to any allegation shall be deemed an admission of that allegation.

(c) Failure to file a timely Answer shall be deemed an admission of the facts and legal conclusions contained in the Complaint, and a waiver of hearing. If a timely Answer is not filed, the Business Conduct Committee may issue a default decision. The Respondent may appeal a default decision to the Appeals Committee by filing a written notice of appeal with NFA within 15 days after the date of the default decision.

~~(c)-(d)~~ For good cause shown, the Business Conduct Committee, or a Hearing Panel may waive the effects of failure to file a timely or complete Answer.

~~(d)-(e)~~ On motion of the Respondent for good cause shown, the Chairman of the Business Conduct Committee, or another member of the Business Conduct Committee designated by the Chairman may grant an extension of time in which to comply with this Rule.

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RULE 3-7. APPOINTMENT OF HEARING PANEL.

The Respondent shall be afforded a hearing on the charges and possible sanctions. The hearing shall be before a designated Hearing Panel of the Hearing Committee ("Hearing Panel"). A Hearing Panel shall consist of no fewer than three members of the Hearing Committee. The Chairman and the remaining members of the Hearing Panel shall be appointed by the Chairman of the Hearing Committee or his designee. No member of the Hearing Committee shall participate in a Hearing Panel if the member, or any person with which the member is connected, has a personal, financial or other direct interest in the matter under consideration or is disqualified under Bylaw 708(c). If a Hearing Panel member's term on the Hearing Committee expires while the member is serving on a Hearing Panel, the member may continue to serve on that Hearing Panel until the matter is concluded. The hearing shall be held at such location as the Chairman of the Hearing Panel shall determine.

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RULE 3-9. HEARING.

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(d) Any party to a hearing may move for an order of the Hearing Panel, on its own motion, may issue an order requiring an NFA a Member, Associate, or person connected therewith to testify or produce documents at a hearing at the moving party's expense. Such an order is discretionary with the Hearing Panel and shall be issued only for good cause shown; and

* * *

~~No member of the Hearing Panel shall participate in the matter if the member, or any person with which the member is connected, has a financial, personal or other direct interest in the matter under consideration or is disqualified under Bylaw 708(c).~~

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RULE 3-10. DECISION.

After the hearing or other consideration of the matter, the Hearing Panel shall render a written decision, based upon the weight of the evidence, containing:

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(c) a brief summary of the evidence produced at the hearing, or, where appropriate, incorporation by reference of the ~~investigation report~~ Complaint;

* * *

RULE 3-14. PENALTIES.

(a) Types of Penalties.

The Business Conduct Committee, BCC Panel or Hearing Panel, or the Appeals Committee on appeal or review, may at the conclusion of the disciplinary proceeding impose one or more of the following penalties:

* * *

(ii) Bar or suspension for a specified period from association with ~~an NFA a~~ Member;

* * *

(iv) A monetary fine, not to exceed \$500,000 ~~\$250,000~~ per violation.

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EXPLANATION OF PROPOSED AMENDMENTS

Part 3 of NFA's Rulebook sets forth the compliance procedures that control NFA's disciplinary process. As described more fully below, NFA's Board has approved amendments to Part 3 of NFA's Compliance Rules to increase the maximum penalty amount available to NFA disciplinary panels and Appeals Committee, modify the Rules related to certain Business Conduct Committee's ("BCC") practices and make minor technical amendments.

Specifically, the Board amended NFA Compliance Rule 3-14 to increase the maximum penalty fine amount from \$250,000 to \$500,000 per violation. While NFA has not encountered any issues with the current maximum penalty fine amount, NFA has not increased this amount since 1990, and NFA believes that the increase will help deter violations of NFA requirements and provide NFA's disciplinary panels with the flexibility they need in assessing penalties.



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The Board also approved an amendment to eliminate current Compliance Rule 3-2(b) (Termination), which contemplates staff bringing an investigation to the BCC where staff concludes that there is no reason to believe that an NFA requirement has been violated, and potentially recommending that the BCC issue a warning letter. This provision is unnecessary since there is no purpose to the BCC reviewing matters where staff concludes that there is no potential rule violation and would not recommend that the BCC issue a warning letter absent a belief that a potential rule violation has occurred. Moreover, the BCC has the authority to issue a warning letter under current Compliance Rule 3-2(c) (Review of Report).

Additionally, the Board amended Compliance Rule 3-6 to specifically provide that if a timely Answer is not filed, the BCC may issue a default decision, which may be appealed to the Appeals Committee within 15 days. The current rule provides that the failure to file a timely Answer shall be deemed an admission of the facts and legal conclusions contained in the Complaint and a waiver of hearing, but does not specify that the BCC may issue a default decision. The amendment codifies the practice in the limited instances where a Member failed to file an Answer.

Finally, the Board also approved several technical and minor amendments to several NFA Part 3 Rules. These changes do not impose any additional obligations on Members and are described below:

- Compliance Rule 3-3 (Service) will be amended to reflect that a Complaint may be served by first class or overnight mail instead of both first class and overnight mail. References to facsimile will also be removed because it is no longer a common delivery method and is difficult for staff to monitor;
- Language prohibiting Hearing Panel members from participating in a Hearing Panel in which they have a personal, financial or other direct interest will be removed from Compliance Rule 3-9 (Hearing) and added to Compliance Rule 3-7 (Appointment of Hearing Panel); and
- Compliance Rule 3-10 (Decision) will be modified to indicate that the decision may, where appropriate, incorporate the Complaint by reference.

NFA's FCM, IB, CPO/CTA and Swap Participant Advisory Committees supported the proposed amendments. As stated earlier, NFA's Board unanimously approved the proposed amendments on May 14, 2020.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA. NFA intends to issue a Notice to Members establishing an effective



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date for the proposed amendments to NFA Compliance Rules 3-2, 3-3, 3-6, 3-7, 3-9, 3-10 and 3-14, as early as ten days after receipt of this submission by the Commission, unless NFA is notified that the Commission has determined to review the proposal for approval.

Respectfully submitted,

A handwritten signature in black ink that reads "Carol A. Wooding". The signature is written in a cursive, flowing style.

Carol A. Wooding
Senior Vice President and
General Counsel