

September 14, 2010

**Via Federal Express**

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

Re: National Futures Association: Legal Actions Relating to Pending NFA  
Arbitration Actions – Proposed Amendments to NFA's Code of Arbitration\*

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 NFA's Code of Arbitration regarding legal actions relating to pending NFA arbitration actions. This proposal was approved by NFA's Board of Directors (“Board”) on August 19, 2010.

NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”) and will make these proposals effective ten days after receipt of this submission by the Commission unless the Commission notifies NFA that the Commission has determined to review the proposals for approval.

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**PROPOSED AMENDMENTS**

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

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**CODE OF ARBITRATION**

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**SECTION 20. OTHER LEGAL PROCEEDINGS**

During an arbitration proceeding filed by a customer that is not an eligible contract participant as defined in Section 1a(12) of the Act, no party to the arbitration may institute any suit, legal action, or proceeding outside of the

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arbitration proceeding against any other party that concerns or would resolve any of the matters raised in the arbitration.

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### **EXPLANATION OF PROPOSED AMENDMENTS**

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NFA provides an arbitration forum that offers customers a fair, equitable and expeditious procedure for resolving their disputes with NFA Members. The Code of Arbitration (Code) requires that NFA Members arbitrate all claims involving commodity futures contracts brought by a customer within two years of the date the customer knew or should have known a dispute existed. Since a Member may have a legitimate defense to a customer claim that is better resolved early in the process, the Code provides that a Member may file a motion to dismiss and request a preliminary hearing to decide the motion prior to a hearing on the merits.

Over the years, Members have raised any number of defenses in an arbitration action pursuant to the Code's motion to dismiss and preliminary hearing provisions. When appropriate, arbitrators have granted the motion and the matter is resolved prior to a hearing on the merits. Although this process has worked efficiently, NFA has recently encountered several instances where an NFA Member has filed a legal action in court requesting that an arbitration proceeding initiated by a non-eligible contract participant be stayed based on the Member's claim that it has previously settled the dispute with the customer or that a one year time limit in the firm's customer agreement makes the claim untimely and prohibits the customer from proceeding at NFA. In NFA's view, although not explicitly stated in the Code, these are matters that should be decided only pursuant to the Code's motion to dismiss and preliminary hearing provisions, and this conduct is contrary to the Code's intent because it effectively takes away a customer's right to pursue a claim at NFA.

NFA discussed this issue with the Futures Commission Merchant ("FCM"), Introducing Broker and Commodity Pool Operator/Commodity Trading Advisor Advisory Committees at their June meetings. Each of the Committees supported adopting a rule that would prohibit any party to an arbitration claim from a filing claim outside of the arbitration proceeding that would resolve any of the matters raised in the arbitration. The proposed rule is similar to Section 12209 of the Financial Industry Regulatory Authority's Code of Arbitration, which prohibits a party during an arbitration proceeding

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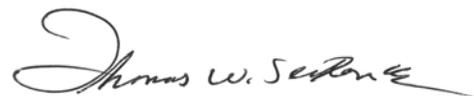
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from bringing any other type of legal action that would resolve any of the matters raised in the arbitration.

The proposed amendments to NFA's Code of Arbitration provide that during any arbitration proceeding filed by a customer that is not an eligible contract participant as defined in Section 1a(12) the Act, all parties to the arbitration are prohibited from instituting any suit, legal action, or proceeding outside the arbitration proceeding against any other party that concerns or involves any matter raised in the arbitration.

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 NFA's Code of Arbitration regarding legal actions relating to pending NFA arbitration actions effective ten days after receipt of this submission by the Commission, unless the Commission notifies NFA that the Commission has determined to review the proposal for approval.

Respectfully submitted,



Thomas W. Sexton  
Senior Vice President and  
General Counsel

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\* The proposed amendments to NFA's Code of Arbitration become effective on October 7, 2010.