



NFA Arbitration:

*Resolving
Customer
Disputes*



A high-angle, top-down photograph of three people sitting around a table in a meeting. The image is faded and serves as a background for the document. One person is at the top, another at the bottom, and a third is in the middle right. They appear to be looking at documents or devices on the table. There is a coffee cup and some papers visible on the table surface.

Contents

Why arbitration?	2
What does it cost to arbitrate?	4
What is NFA Arbitration?	6
Glossary of terms	17

National Futures Association (NFA) is a self-regulatory organization developed to maintain the integrity of the futures industry and to protect the public through effective and efficient self-regulation.

On September 22, 1981, NFA was registered by the Commodity Futures Trading Commission (the federal regulatory agency for futures trading) as a registered futures association under the Commodity Exchange Act.

Since that time, NFA has implemented numerous self-regulatory programs designed to oversee the practices of commodity professionals and safeguard the interests of both public and commercial users of United States futures markets.

One of these programs — a nationwide arbitration system — is the subject of this booklet. The information in the pages which follow is intended to provide only a brief introduction to NFA arbitration and its advantages. It is not designed to offer legal advice.

This brochure has been revised to reflect NFA's Code of Arbitration as in effect on June 1, 2010.

Why arbitration?

Disputes occasionally occur in any business, and futures trading is no exception. With more than four million futures contracts traded on an average business day, it is inevitable that disagreements will sometimes arise between customers and the firms and individuals they do business with. The purpose of arbitration is to provide a method for the fair and impartial settlement of disputes that the parties are unable to resolve between themselves.

In most instances, the choice of whether to submit a disagreement to NFA arbitration is up to the customer. The customer can also choose whether to have arbitrators who are associated with an NFA Member firm or a majority of arbitrators who have no connection with NFA.

NFA arbitration can offer a number of advantages. It is generally faster and less expensive than alternative methods of settling controversies. And if hearings are necessary (they may or may not be), they are informal, don't require that either party have a lawyer, and can often be scheduled at a location convenient for the parties.

What kinds of disputes can be decided in arbitration?

Disputes submitted to arbitration normally involve a request by a customer to be compensated for a loss which, in the opinion of the customer, was incurred because of some improper action by a futures trading professional or firm.

The disagreement may, for example, involve a misunderstanding or mistake in which the responsibility for or the extent of the loss is being contested. Or it could involve an allegation that the futures professional or firm was guilty of misrepresentation or negligence, or that there were trading improprieties, such as unauthorized trading.

It is the claimant's responsibility to prove he or she has incurred a monetary loss as a result of improper or unfair treatment and deserves to be compensated for all or some portion of the loss. However, that does not necessarily mean that the claimant has to know what the law is in order to successfully prove his or her claim. The arbitrators can apply their own knowledge of the law and industry practices in evaluating the claim.

Does the other party have to agree to arbitration?

Subject to certain exceptions, which are noted below, when requested by a customer, arbitration is mandatory for all NFA Members and Associates required to be registered with the Commodity Futures Trading Commission and employees of NFA Members.

But there are exceptions. NFA cannot arbitrate a claim if:

- 1) More than two years have passed since the party making the claim knew (or should have known) of the act or transaction that is the subject of the dispute.
- 2) The dispute solely involves cash market transactions that are not part of or directly connected with a futures transaction.

Further, when both parties agree, NFA may at its discretion provide arbitration for other disputes. For example, a case could arise from a disagreement between a firm and its customer about payment of a debit balance.

The arbitrators also have the authority to dismiss, without prejudice, any claim which is not a proper subject for NFA arbitration. For example, arbitrators could dismiss an arbitration claim if witnesses or documents essential to a fair and final decision are unavailable, or if some of the parties are not subject to NFA jurisdiction.

Are there alternatives to NFA arbitration?

Alternative methods of resolving futures-related disputes include bringing a lawsuit, using the Commodity Futures Trading Commission's reparations procedure, using exchange arbitration (if the firm against which the claim is being made is a member of an exchange), or filing a claim at any other arbitration forum mutually agreed to by the parties.

Persons considering NFA arbitration should understand that once they have filed a claim and the other party has submitted an answer to that claim, the dispute can be resolved only through NFA arbitration unless the parties agree to some different method.

What does it cost to arbitrate?

NFA charges a fee for filing an arbitration claim. This filing fee is based on the amount being claimed, exclusive of interest and costs. NFA also charges a hearing fee which is used to reimburse NFA for compensating arbitrators for their services. Each party making a claim must pay both fees.

Fees for claims, including punitive and treble damages, are listed on the next page.

Filing fee

<u>Amount of claim</u>	<u>Filing fee</u>
\$ 0.00 — \$ 2,500.00	\$ 50.00
\$ 2,500.01 — \$ 5,000.00	\$ 100.00
\$ 5,000.01 — \$ 10,000.00	\$ 150.00
\$10,000.01 — \$ 15,000.00	\$ 175.00
\$15,000.01 — \$ 25,000.00	\$ 200.00
\$25,000.01 — \$ 50,000.00	\$ 300.00
\$50,000.01 — \$100,000.00	\$ 550.00 plus 1% of excess over \$50,000.00
\$100,000.01 — \$150,000.00	\$1,050.00 plus 1% of excess over \$100,000.00
\$150,000.01 — \$500,000.00	\$1,550.00
More than \$500,000.00	\$1,550.00

Hearing fee

<u>Amount of claim</u>	<u>Hearing fee</u>
\$ 0.00 — \$ 50,000.00	\$ 125.00
\$ 50,000.01 — \$100,000.00	\$ 275.00
\$100,000.01 — \$ 150,000.00	\$1,275.00
\$150,000.01 — \$ 500,000.00	\$ 2,550.00
More than \$ 500,000.00	\$ 5,100.00

All or a portion of the hearing fee will be refunded if the case is settled or withdrawn. The amount of refund depends on when the case settles.

NFA also charges a motion fee for motions filed after a certain date. The other fee NFA charges is a postponement fee which must be paid to NFA by each party causing an adjournment or postponement of any scheduled oral hearing. This fee may be waived at the discretion of the arbitrators.

Normally, each party is responsible for paying its own expenses, such as legal and travel costs. However, the panel can be asked to add these costs to the amount of the award being requested. For example, if the arbitrators find that one party's claim or defense was frivolous or was made in bad faith, or that the party engaged in willful acts of bad faith during the arbitration, it may order that party to pay the expenses incurred by the other party and its witnesses and/or by the arbitrators.

What is NFA arbitration?

Arbitration is a process whereby the parties to a dispute submit their arguments and supporting evidence to a neutral decision maker — the arbitrator or arbitration panel — and agree to be bound by the decision. NFA arbitration decisions and awards of money cannot be appealed, are binding and are enforceable in any court of competent jurisdiction.

Claims involving \$25,000 or less (including the amount of any other claims but excluding interest and costs) are resolved through a summary proceeding. In other words, the arbitrator will decide the case based entirely through written submissions. Claims of more than \$25,000 but not more than \$50,000 will also be resolved through written submissions unless one of the parties requests an oral hearing and submits the required fee within 30 days after the last pleading is due. Claims of more than \$50,000 require an oral hearing where the parties (and their representatives) have the opportunity to appear in person before the arbitrators.

The total size of the claim also dictates whether the disagreement will be resolved by a single arbitrator or by a three-person arbitration panel.

How does NFA arbitration work?

The first step is for the claimant to notify NFA's Arbitration Department, by telephone, letter or through NFA's Web site, of his intent to seek NFA arbitration of a futures-related dispute involving an NFA Member or its employees. A claim form or notice of intent to arbitrate must be received by NFA within two years from the date the claimant knew or should have known of the act or transaction that is the subject of the controversy.

If a notice of intent is filed, NFA will promptly provide a claim form and a copy of NFA's Code of Arbitration to the claimant. The claim must be returned to the Arbitration Department accompanied by the appropriate fees. A notice of intent to arbitrate will be considered abandoned if not followed by a claim within 35 days. (And, if more than two years have elapsed from the time the claimant knew or should have known of the dispute, it cannot be reinstated.)

Along with the claim form, the claimant should include all necessary documentation to support his claim. By signing the claim form, the claimant agrees to submit the dispute to arbitration and to be bound by NFA's Code of Arbitration and any decision made by the arbitrator(s).

Do I need an attorney?

One benefit of NFA arbitration is that customers, Members or Associates may choose not to hire an attorney. Parties may represent themselves or they may be represented by a family member or other person who is not receiving compensation and does not have an interest in the outcome of the proceeding. However, parties should be aware that some states (e.g., California) restrict who may represent a party in an arbitration proceeding. If a party decides to be represented in an NFA arbitration proceeding, the party should ask the representative to make sure that he or she is not violating any of those restrictions.

When the claimant files the claim, he should state whether or not an attorney or other person represents him, and, if so, include that person's name and address. If NFA is notified that a party is represented, NFA will conduct subsequent communications with the representative.

The decision to have or not to have an attorney should take into account that, although arbitration hearings are informal, following certain procedures in presenting arguments, evidence and rebuttals may give the arbitrators a clearer understanding of your claim. Parties may also want to take into account the amount of money involved, the complexity of the matters in dispute, and whether the other party intends to be represented by an attorney.

Can the other party file a claim?

Yes. Once a claim has been received, NFA will serve it on the other party (known as the respondent). A respondent has the right to assert a claim against another party if the claim involves the same act or transaction as the original claim.

One type of claim that a respondent may file is a counterclaim. For example, if a customer demands arbitration of a claim against a futures broker, the broker may counterclaim for a deficit in the customer's account.

The respondent may also file a claim against any other respondent named in the same case, which is known as a cross-claim. And a respondent may bring into the arbitration a person who is not a party to the original claim but who is or may be liable for all or part of the claimant's claim. This type of claim is called a third-party claim.

If a counterclaim, cross-claim or third-party claim is made, it will be presented to and decided by the arbitration panel along with the original claim.

Once an arbitration claim has been made, what happens next?

NFA will send a copy of the claim to the opposing party or parties, who, depending on the claim amount, will have either 20 or 45 days to submit an answer to the claimant's claim.

Should the respondent choose to include a counterclaim or a cross-claim in the answer, the person the claim is against will have either 10 or 35 days in which to reply to the claim. If a third-party claim is filed, the person the claim is against will have either 20 or 45 days to answer.

There are specified time periods in which parties must request documents and written information and thereafter respond to such requests. Under NFA's discovery rules, the parties must automatically exchange certain documents identified by NFA no later than 15 days after an answer or reply is due. Depending on the claim amount, the parties may request other documents and information no later than 20 or 30 days after an answer or reply is due, and the responding party has either 20 or 30 days to satisfy the request.

Shortly after the time period for exchanging documents and information has passed, if not before, NFA will notify the parties of the name, business affiliation and other relevant information regarding the arbitrator(s) assigned to the case. If the total amount of the claim, including any counterclaim, cross-claim or third-party claim, is \$50,000 or less, NFA will schedule a summary proceeding. During the summary, the arbitrator will consider the written submissions of the parties and render a decision based on the information presented. As mentioned earlier, claims between \$25,000 and \$50,000 will also be decided by the arbitrator through a summary proceeding unless NFA receives a request for an oral hearing and a check for \$675.00 from a party within 30 days after the last pleading (i.e., answer or reply) is due.

If the total claim is for more than \$50,000, NFA will schedule an oral hearing. All parties will be notified as to the time and place of the hearing at least 45 days prior to the hearing date.

Who are the arbitrators?

NFA maintains a list of qualified arbitrators in most states so that, generally, any necessary hearings can be scheduled at a location convenient for the parties. NFA's roster of more than 2,000 arbitrators is comprised of futures industry professionals, lawyers, accountants, professors, and other business professionals located in 47 different states.

At the time a claim is filed with NFA, the customer can elect to have a Member panel consisting of persons who are NFA Members or associated with NFA Members and are generally knowledgeable about practices and procedures in the futures industry. Or the customer can elect to have a non-Member panel consisting of at least a Chairperson and one other arbitrator who have no connection with NFA or an NFA Member.

Similarly, if there is only a single arbitrator (for claims of \$100,000 or less), the customer can choose to have a Member arbitrator (someone who is an NFA Member or connected with a Member) or a non-Member arbitrator (someone with no NFA affiliation). However, in choosing an arbitrator not connected with NFA or an NFA Member, that person may or may not be knowledgeable about the futures markets or procedures involved in futures trading.

Whatever the customer's choice, the arbitrators (who are selected by NFA) are sworn to render a fair and impartial decision.

Arbitrators are informed in advance of the names of the parties to the controversy (and their attorneys or representatives, if any) and

must reveal to NFA any potential conflicts of interest or circumstances likely to influence their impartiality. NFA will notify the parties of any apparent possibility of bias and has the authority to disqualify an arbitrator if appropriate.

If a hearing is necessary, where will the hearing be held?

Since its arbitration program began, NFA has held hearings in over 70 different metropolitan areas. NFA will usually hold the hearing in a city of the customer's choice or one mutually agreed upon between the parties. On rare occasions, however, NFA must select a different city in order to provide all parties with a fair hearing. This could happen, for example, where a necessary witness is no longer in the industry and must be subpoenaed to attend the hearing. In that case, the hearing will be scheduled for a city where the witness can be ordered to appear and testify.

Can I settle the case before the hearing or summary proceeding?

Parties to an arbitration proceeding may mutually agree to settle their differences prior to a hearing or summary proceeding, and NFA encourages them to do so. In fact, over 50 percent of NFA's cases settle. If a case is settled, NFA should be immediately notified.

Neither NFA nor the arbitrators are involved in settlement discussions. However, the parties can ask the arbitrators to issue a Consent Award containing the terms of the settlement. The consent of all parties to the settlement is required before the panel can issue a Consent Award.

To encourage settlements earlier in the process, NFA has incorporated mediation into the preliminary stages of the arbitration process. And NFA pays for the mediator if you use the service selected by NFA.

What preparations are necessary for a summary proceeding or a hearing?

The parties are required to provide each other and NFA with copies of the documents they will introduce as evidence. For cases involving an oral hearing, the parties must exchange these documents at least 10 days before the hearing date unless the arbitrators direct otherwise. For summary proceedings, the parties must exchange documents at least 15 days before the summary begins.

For cases requiring a hearing, the parties are also expected to cooperate with NFA staff in preparing a hearing “plan.” A hearing plan is a written document that summarizes each claim, answer and reply; identifies any facts the parties agree to; identifies the factual and legal issues in dispute; and lists the witnesses and exhibits the parties will present at the hearing. The hearing plan is due 30 days before the hearing begins.

The arbitrators’ decision will be based exclusively on the evidence presented during the hearing or summary proceeding and the materials presented with the claim, any other claim, answer, and reply. Accordingly, each party should carefully and thoroughly prepare his case and arrange for the availability of witnesses (for an oral hearing) and documentary evidence. Neither NFA staff nor the arbitrators are responsible for informing the parties as to the documents and witnesses needed to adequately present a case. That’s the responsibility of the parties alone.

Subpoenas While the parties are encouraged to cooperate in the voluntary exchange of information (and NFA Members are required to cooperate promptly and fully with NFA in an arbitration proceeding), a party may request the arbitrators to subpoena documents or witnesses. Such a request must be made in writing through NFA and should include:

- 1) Reasons why the subpoena is necessary;

- 2) Efforts that have been made to obtain necessary witnesses and documents without the use of a subpoena; and
- 3) A copy of the subpoena the arbitrators are being asked to issue.

The party requesting the subpoena has the obligation to serve the opposing party and bear the cost involved. If the subpoena will have to be enforced by a court, the party may need to consult an attorney to ensure that it meets the necessary legal requirements.

Affidavits If a witness is unable to be present at the hearing (or if it would be too expensive or burdensome to bring the witness from a distant city), the arbitrators can be asked to accept testimony in the form of an affidavit — a sworn statement of fact. The arbitrators will hear arguments of both sides regarding the admissibility of an affidavit before making a determination. If allowed, affidavits will be given such weight as the arbitrators deem appropriate after considering objections.

Witnesses testifying by affidavits obviously aren't subject to cross-examination and, as a result, the evidence may be viewed as less convincing than live testimony.

Briefs Arbitrators may occasionally require further legal or technical clarification regarding the admissibility of evidence or other matters, and may ask the parties to furnish briefs on the issue. (The arbitrators are not expected to research legal or technical issues, but rather decide the issues presented to them.) The parties also may request permission to submit briefs. The manner and time in which briefs are submitted is solely up to the arbitrators.

What happens during the summary proceeding?

As previously explained, summary proceedings involve a decision by the arbitrator based solely on the parties' written submissions. If you

are a party to a summary proceeding and have provided, on a timely basis, the documents you want the arbitrator to consider, nothing further is required of you at this point. The arbitrator has 10 days to review the parties' information and another 30 days to reach a decision. The 10-day review could be extended, however, if the arbitrator determines he needs more information. NFA will notify you if this happens.

What happens at the hearing?

Prior to the hearing, the arbitrators will have reviewed all documents previously submitted to them. And an oath of fairness and impartiality will have been administered to the arbitrators prior to the hearing. The hearing procedure is as follows:

- 1) The parties and the witnesses will be sworn.
- 2) Each party will have the opportunity (but not the obligation) to make a brief opening statement setting forth what he intends to prove.
- 3) Each party is permitted to present witnesses and documentary evidence and is given the opportunity to question the opposing party's witnesses and to object to any evidence prior to its receipt by the arbitrators.
- 4) Any other claims will be presented. Again, each party may present witnesses and documents, question the opposing party's witnesses, and object to any evidence prior to its receipt by the arbitrators.
- 5) Each party will have the opportunity to present a brief closing statement consisting of a final argument and commentary on the testimony and evidence introduced at the hearing. The closing statement should not include any new evidence.

- 6) The parties or the arbitrators may request the filing of post-hearing briefs.
- 7) The hearing will be closed after each party has had a reasonable opportunity to present his case completely.

When will the arbitrators make their decision?

Unless further evidence or briefs are required, the arbitrators may meet to arrive at a decision (the Award) directly after the close of the hearing. The arbitrators must notify NFA of their decision within 30 days after the record is closed. NFA will then prepare a written Award, which will be signed by at least a majority of the arbitrators who heard the case, before being served on the parties. (In complicated cases, the arbitrators may ask the parties to waive the 30-day requirement.)

An Award does not contain reasons for the decision. Rather, the Award will simply state the issues presented to and decided by the arbitrators, which party prevailed and the amount, if any, that the opposing party must pay.

There are three reasons that this type of approach is favored in arbitration. First, in contrast to court decisions, the outcome of an arbitration proceeding is not used to establish a precedent. Second, preparing a statement of reasons that is consistent with the reasoning and composition style of each arbitrator increases the time it takes to issue the Award. Third, the absence of stated reasons reduces the likelihood of subsequent review by a court which would delay and increase the cost of arriving at a final resolution of the dispute.

An Award is final when signed by a majority of the arbitrators. While it can't be appealed to the arbitrators, under NFA's rules it may be modified subject to specific standards if a party requests modification within 20 days and the arbitrators deem modification necessary to correct a technical or clerical error in the Award. However, the arbitrators cannot and will not reconsider the merits.

Is an arbitration Award subject to review by the courts?

Although an Award is final and cannot be appealed to NFA's Board of Directors or any NFA officer, the law provides for review by the courts on limited grounds:

- 1) The Award was obtained by corruption, fraud or other undue means; or
- 2) An arbitrator was obviously not impartial or any arbitrator engaged in misconduct which prejudiced (unfairly limited) the rights of any party; or
- 3) The arbitrators were guilty of misconduct in refusing to postpone the hearing when there was good reason to do so, or refusing to hear evidence pertinent and material to the controversy, or any other misbehavior by which the rights of any party have been prejudiced; or
- 4) The arbitrators decided issues they didn't have any right to decide, did not decide issues they should have decided, or issued an Award that is unclear.

Courts are hesitant to invalidate an Award. The arbitrators' Award carries a strong presumption of validity and the challenging party has the burden to prove otherwise.

How are arbitration Awards and settlement agreements enforced?

Any NFA Member, employee thereof, or Associate who fails to comply with an Award or settlement agreement is subject to disciplinary action under NFA Compliance Rules. In addition, NFA's President is authorized to suspend the Member or Associate.

Moreover, if a party fails to comply with an Award or settlement agreement, the Award or settlement agreement may be enforced in any court of competent jurisdiction.

Glossary of terms

Answer The respondent's written response to a claim or a third-party claim.

Arbitration Panel The arbitrators (one or three) appointed by NFA to hear and decide disputes brought to NFA for arbitration.

Arbitrator A person chosen to decide disputes between parties.

Award The written decision of the arbitrators.

Claim A request for money from another party.

Claimant A person who files an arbitration claim.

Counterclaim A claim filed by a respondent against a claimant.

Cross-claim A claim filed by a respondent against another respondent.

Futures Futures and options on futures traded on a domestic or foreign exchange, dealer options, leverage transactions, security futures products and off-exchange retail foreign currency futures and options transactions involving a forex dealer member.

Hearing A meeting of the parties to a dispute, their representatives and witnesses, if any, and the arbitrator(s).

Mediation A process where an independent third-party (the mediator) works with the parties to help them settle their dispute.

Member Panel A panel in which all of the arbitrators are connected with an NFA Member or NFA.

Non-Member Panel A panel in which a majority of the arbitrators are not connected with an NFA Member or NFA.

Notice of Intent A notice by a claimant to NFA that he intends to file a claim at NFA.

Party A claimant or respondent.

Reply A written response to a counterclaim or a cross-claim.

Representative An attorney or other person who assists a party in an arbitration.

Respondent A person a claim is made against.

Third-party Claim A claim filed against a person who is not a party to the original action.

Summary Proceeding A proceeding where the arbitrator will decide the case entirely through written submissions.



National Futures Association
Arbitration Department

300 South Riverside Plaza, Suite 1800
Chicago, Illinois 60606-6615

800-621-3570

www.nfa.futures.org

© 2005, 2007, 2009, 2010
National Futures Association