

March 11, 2024

**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 Code of Arbitration and Member Arbitration 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 Code of Arbitration ("Code") and Member Arbitration Rules ("Member Rules"), which govern the administration of arbitration claims at NFA. The proposed amendments increase the hearing and service fees NFA charges and reallocate how those fees are assessed between parties. In addition, NFA is proposing amendments to increase postponement fees for scheduled oral hearings; allow Panel (or sole arbitrator for cases involving only one arbitrator) to order that the hearing take place virtually; consolidate lower claim amount tiers; and eliminate the motion fee waiver provision. NFA's Board of Directors ("Board") unanimously approved the proposed amendments at its meeting on February 15, 2024.

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.

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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 6. INITIATION OF ARBITRATION.**

\* \* \*

**(e) Answer to an Arbitration Claim.**

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

~~(2-ii)~~ Claims of more than \$50,000 through \$150,000. Where the Arbitration Claim amount exceeds \$50,000 but is not more than \$150,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. An arbitration service fee of \$375 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 \$150,000. Where the Arbitration Claim amount exceeds \$150,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. An arbitration service fee of \$975 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.

**(2)** Each named Respondent is responsible for an equal portion of the Respondent hearing fee set forth in Section 11(a), which must accompany the Respondent's Answer. In the event an Answer is filed by more than one Respondent, the hearing fee will be equal to the combined portions owed by each Respondent filing the Answer. Any Answer that is not accompanied by the appropriate fee shall be returned to each 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 that files an Answer but does not pay its portion of the Respondent hearing fee will have waived its right to an oral hearing or otherwise participate in the proceeding. However, the Panel may, for good cause shown, accept the Answer and allow the Respondent to participate.

(i) NFA shall assess additional hearing fees equally against Respondent(s) filing an Answer(s) when a named Respondent does not participate in the proceeding.

**(n) Special Consolidation Procedures for Claims Involving Customer Segregated Funds and/or Customer Secured Amount Funds Losses.**

(7) Any pre-hearing motions or requests for preliminary hearing are subject to a fee of ~~\$675~~ \$725 assessed against the filing party. Fees assessed against the consolidated group of claimants will be applied against the initial hearing deposit. Fees assessed against the Respondent(s) are due at the time of filing;

\* \* \*

**SECTION 8. PRE-HEARING.**

\* \* \*

**(e) Other Pre-Hearing Motions.**

\* \* \*

(3) Except as provided in Section 6(n), NFA shall assess a motion fee as follows:

(i) In cases involving one arbitrator, a party filing a motion shall include a ~~\$200~~ \$325 motion fee for each motion filed more than 80 days after the last pleading is due. ~~This fee may be subsequently waived at the discretion of the arbitrator, or the arbitrator may assess the motion fee against the party causing the filing of the motion.~~ However, this fee shall

not apply to a request for a preliminary hearing under Section 9(a) or a request for a postponement under Section 11(c) below.

(ii) In cases involving three arbitrators, any party filing a motion shall include a ~~\$650~~ \$725 motion fee for each motion filed more than 100 days after the last pleading is due. ~~This fee may be subsequently waived at the discretion of the arbitrator, or~~ The arbitrators may assess the motion fee against the party causing the filing of the motion. However, this fee shall not apply to a request for a preliminary hearing under Section 9(a) or a request for a postponement under Section 11(c) below.

## **SECTION 9. HEARING.**

\* \* \*

### **(b) Place, Time and Notice of Hearing.**

(1) Except as provided in Section 7(h) or Paragraph (i) of this Section, the place and time of the hearing shall be determined in the sole discretion of the Secretary, who shall endeavor to accommodate, if possible, the preferences of all parties as indicated in a timely-filed pleading.

(2) ~~Upon setting the initial hearing date, NFA shall serve notice on each party at least 45 days before the hearing of the date, time and place. NFA shall give reasonable notice of any rescheduled oral hearing date. In extraordinary circumstances, the~~ The Panel (or the sole arbitrator for cases involving only one arbitrator) shall have the authority to order that the hearing take place on a virtual basis using an electronic online meeting provider with audio and/or video capabilities.

(3) Upon setting the initial hearing date, NFA shall serve notice on each party at least 45 days before the hearing of the date, time and place. NFA shall give reasonable notice of any rescheduled oral hearing date.

\* \* \*

### **(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 \$50,000, unless the Secretary or the Panel directs otherwise; or

(2) the aggregate amount of the claims (exclusive of interest and costs) is more than \$25,000 but not more than \$50,000, unless a customer serves a written request for an oral hearing on NFA, accompanied by ~~an additional filing fee of \$1,250 and an additional Claimant hearing hearing fee of \$500~~ in accordance with Section 11, no later than 30 days after the last pleading is due; or

(3) the Panel has consented to the written agreement of the parties to waive the oral hearing. A written agreement is not required of any party which has waived its rights to an oral hearing under any other provision of this Code.

\* \* \*

**SECTION 11. ARBITRATION FEES.**

**(a) Filing and Hearing Fees.**

(1) Except as provided in Section 6(n) and Section 18 of this Code, each party filing a claim under this Code shall pay a filing and hearing fee based on the amount claimed, including punitive and treble damages but exclusive of interest and costs, as follows:

<b>Amount of Claim</b>	<b>Filing Fee</b>	<b><u>Claimant Hearing Fee</u></b>	<b><u>Respondent Hearing Fee</u></b>
<del>\$0.00 – \$25,000.00</del>	<del>\$125.00</del>	<del>\$250.00</del>	
<del>\$25,000.01 – \$50,000.00</del>	<del>\$250.00</del>	<del>\$250.00</del>	
<u>\$0.00 - \$50,000.00</u>	<u>\$250.00</u>	<u>\$175.00</u>	<u>\$175.00</u>
\$25,000.01 - \$50,000.00 (if an oral hearing is requested by customer)	\$1,250 (in addition to any filing fee paid when claim was first filed)	<del>\$500.00</del> <u>250.00</u> (in addition to any hearing fee paid when claim was first filed)	<u>\$250.00</u>
\$50,000.01 - \$150,000.00	\$1,500.00	<del>\$375.00</del> <u>425.00</u>	<u>\$425.00</u>
\$150,000.01 - \$500,000.00	\$2,000.00	<del>\$1,875.00</del> <u>1,537.50</u>	<u>\$1,537.50</u>
\$500,000.01 - \$1,000,000.00	\$3,000.00	<del>\$3,750.00</del> <u>2,562.50</u>	<u>\$2,562.50</u>
More than \$1,000,000.00	\$4,500.00	<del>\$7,500.00</del> <u>4,612.50</u>	<u>\$4,612.50</u>

(2) Except as provided in Section 6(n), 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 hearing fees, assessed equally between the Claimants and Respondents, 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.

\* \* \*

(4) The arbitrators, in their discretion, may assess the entire hearing fee against any party or may divide the fee among any or all parties. Hearing fees shall be paid to NFA in advance of the scheduled hearing sessions to which they apply.

\* \* \*

**(b) Refunds.**

\* \* \*

(2) Except as provided in Section 6(n) with respect to the initial hearing fee paid by the consolidated group of claimants, 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) Except as provided in Section 6(n) with respect to the initial hearing fee paid by the consolidated group of claimants, 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.

<b>Amount of Claim</b>	<b><u>Claimant Hearing Fee Refund</u></b>	<b><u>Service Respondent Hearing Fee Refund</u></b>
<del>\$0.00 - \$25,000.00</del>	<del>\$125.00</del>	N/A
<del>\$25,000.01 - \$50,000.00</del>	<del>\$250.00</del>	N/A
<u>\$0.00 - \$50,000.00</u>	<u>\$175.00</u>	<u>\$175.00</u>
<u>\$25,000.01 - \$50,000.00</u> (if an oral hearing is requested by customer)	<del>\$375.00</del> <u>212.50</u>	<del>\$0</del> <u>212.50</u>
<u>\$50,000.01-\$150,000.00</u>	<del>\$475.00</del> <u>212.50</u>	<del>\$475.00</del> <u>212.50</u>
<u>\$150,000.01-\$500,000.00</u>	<del>\$1,375.00</del> <u>1,025.00</u>	<del>\$475.00</del> <u>1,025.00</u>
<u>\$500,000.01-\$1,000,000.00</u>	<del>\$3,250.00</del> <u>2,050.00</u>	<del>\$475.00</del> <u>2,050.00</u>
<u>More than \$1,000,000.00</u>	<del>\$7,000.00</del> <u>4,100.00</u>	<del>\$475.00</del> <u>4,100.00</u>

### **(c) Postponement Fees.**

- (1) Each party causing an adjournment or postponement of any scheduled oral hearing shall pay to NFA a postponement fee of ~~\$250~~ 500 for the first postponement request by that party, ~~\$500~~ 1,000 for the second request by that party, and ~~\$1,000~~ 2,000 for any subsequent request by that party. This fee may be waived at the discretion of the arbitrators. The arbitrators also may assess reasonable and necessary expenses incurred by the parties and their witnesses, including reasonable attorneys' fees, as a result of a postponement. No fee shall be assessed when a customer files a request for postponement in accordance with Section 9(e) with respect to a Member or Associate respondent withdrawing from membership within 60 days of the scheduled hearing or if an arbitrator becomes ineligible or otherwise unable to serve, or if a hearing extends over the expected time period.
- (2) Each party causing the postponement of any scheduled oral hearing within 10 days of the first scheduled day of the hearing shall pay to NFA an additional postponement fee of \$600 per arbitrator. This fee may be waived at the discretion of the arbitrators. No fee shall be assessed when a customer files a request for postponement in accordance with Section 9(e) with respect to a Member or Associate respondent withdrawing from membership within 60 days of the scheduled hearing.

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## **MEMBER ARBITRATION RULES**

### **SECTION 5. INITIATION OF ARBITRATION.**

An arbitration proceeding under these Rules shall be initiated as follows:

\* \* \*

**(e) Answer to an Arbitration Claim.**

\* \* \*

**(1)** 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 or RFED served with the Arbitration Claim under Section 5(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-i)~~ Claims of \$50,000 or Less. Where the Arbitration Claim amount does not exceed \$50,000, the Answer shall be served within 20 days following service of the Arbitration Claim by NFA.

~~(2-ii)~~ Claims of more than \$50,000 through ~~\$250,000~~. Where the Arbitration Claim amount exceeds \$50,000 but is not more than \$250,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. ~~An arbitration service fee of \$375 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 \$250,000. Where the Arbitration Claim amount exceeds \$250,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. ~~An arbitration service fee of \$975 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.~~

**(2)** Each named Respondent is responsible for an equal portion of the Respondent hearing fee set forth in Section 11(a), which must accompany the Respondent's Answer. In the event an Answer is filed by more than one Respondent, the hearing fee will be equal to the combined portions owed by each Respondent filing the Answer. Any Answer which is not accompanied by the appropriate fee shall be returned to each 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 that files an Answer but does not pay its portion of the Respondent hearing fee will have waived its right to an oral hearing or otherwise participate in the proceeding. However, the Panel may, for good cause shown, accept the Answer and allow the Respondent to participate.

(ii) NFA shall assess additional hearing fees equally against Respondent(s) filing an Answer(s) when a named Respondent does not participate in the proceeding.

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**SECTION 7. PRE-HEARING.**

\* \* \*

**(e) Motions for Emergency Relief.**

(1) A motion for emergency relief may be filed with an Arbitration Claim or at any time after a Demand is filed. The motion should include a statement explaining why emergency relief is needed and indicate the party or parties against whom the relief is sought. The party filing the motion shall pay a non-refundable fee of \$500 and a hearing fee of ~~\$675~~ \$725 when filing the motion.

\* \* \*

**(f) Other Pre-Hearing Motions.**

(1) Motions to dismiss for failing to state a claim will not be heard by the Panel. Other motions to dismiss must be included in a timely filed Answer or Reply. Motions for summary judgment may be raised at any time. Motions for directed verdict may be raised at the hearing.

(2) Except as provided in Section 7(a)(4) and Section 7(e) above, a party has 10 days from the date a pre-hearing motion is received in which to serve a written response on NFA and all other parties. However, where a motion is received less than 20 days in advance of the date the hearing or summary proceeding is scheduled to commence, NFA may, in its discretion, require a written response within less than 10 days. No written replies to a party's response to a motion will be allowed except in the Panel's discretion.

(3) NFA shall assess a motion fee as follows:

(i) In cases involving one arbitrator, a party filing a motion shall include a ~~\$200~~ \$325 motion fee for each motion filed more than 80 days after the last pleading is due. ~~This fee may be subsequently waived at the discretion of the arbitrator, or~~ The arbitrator may assess the motion fee against the party causing the filing of the motion. However, this fee shall not apply to a request for a preliminary hearing under Section 9(a) or a request for a postponement under Section 11(c) below.

(ii) In cases involving three arbitrators, any party filing a motion shall include a ~~\$650~~ \$725 motion fee for each motion filed more than 100 days after the last pleading is due. ~~This fee may be subsequently waived at the discretion of the arbitrators, or~~ The arbitrators may assess the motion fee against the party causing the filing of the motion. However, this fee shall not apply to a request for a preliminary hearing under Section 9(a) or a request for a postponement under Section 11(c) below.

\* \* \*

**SECTION 9. HEARING.**

\* \* \*

**(b) Place, Time and Notice of Hearing.**

(1) Except as provided in Section 7(h) or Paragraph (i) of this Section, the place and time of the hearing shall be determined in the sole discretion of the Secretary, who shall endeavor to accommodate, if possible, the preferences of all parties as indicated in a timely-filed pleading.

(2) ~~Upon setting the initial hearing date, NFA shall serve notice on each party at least 45 days before the hearing of the date, time and place. NFA shall give reasonable notice of any rescheduled oral hearing date. In extraordinary circumstances, the~~ The Panel (or the sole arbitrator for cases involving only one arbitrator) shall have the authority to order that the hearing take place on a virtual

basis using an electronic online meeting provider with audio and/or video capabilities.

(3) Upon setting the initial hearing date, NFA shall serve notice on each party at least 45 days before the hearing of the date, time and place. NFA shall give reasonable notice of any rescheduled oral hearing date.

\* \* \*

**SECTION 11. ARBITRATION FEES.**

**(a) Filing and Hearing Fees.**

(1) Each Member or Associate filing a claim under these Rules shall pay a filing and hearing fee based on the amount claimed, including punitive and treble damages but exclusive of interest and costs, and Respondent(s) shall pay a hearing fee assessed equally among Respondents, as follows:

<b>Amount of Claim</b>	<b>Filing Fee</b>	<b><u>Claimant</u> Hearing Fee</b>	<b><u>Respondent</u> Hearing Fee</b>
<del>\$0.00 – \$25,000.00</del>	<del>\$975.00</del>	<del>\$250.00</del>	
<del>\$25,000.01 – \$50,000.00</del>	<del>\$2,500.00</del>	<del>\$250.00</del> <u>\$350.00</u>	
<del>\$50,000.01 – \$250,000.00</del>	<del>\$4,500.00</del>	<del>\$375.00</del> <u>\$425.00</u>	<u>\$425.00</u>
<del>\$250,000.01 – \$500,000.00</del>	<del>\$6,600.00</del>	<del>\$1,875.00</del> <u>\$2,050.00</u>	<u>\$1,025.00</u>
<del>\$500,000.01 – \$1,000,000.00</del>	<del>\$8,250.00</del>	<del>\$3,750.00</del> <u>\$4,100.00</u>	<u>\$1,025.00</u>
<del>More than \$1,000,000.00</del>	<del>\$10,000.00</del>	<del>\$7,500.00</del> <u>\$8,200.00</u>	<u>\$1,025.00</u>

\* \* \*

(4) The arbitrators, in their discretion, may assess the entire hearing fee against any party or may divide the fee among any or all parties. Hearing fees shall be paid to NFA in advance of the scheduled hearing sessions to which they apply.

**(b) Refunds.**

\* \* \*

(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 5(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 5(e)~~ shall be refunded to the party paying the fee in accordance with the schedule below.

<b>Amount of Claim</b>	<b><u>Claimant Hearing Fee Refund</u></b>	<b><u>Service Respondent Hearing Fee Refund</u></b>
\$0.00 - \$50,000.00	<del>\$250.00</del> <u>350.00</u>	N/A
\$50,000.01 - \$250,000.00	<del>\$175.00</del> <u>212.50</u>	<del>\$175.00</del> <u>212.50</u>
\$250,000.01 - \$500,000.00	<del>\$1,375.00</del> <u>1,537.50</u>	<del>\$475.00</del> <u>512.50</u>
\$500,000.01 - \$1,000,000.00	<del>\$3,250.00</del> <u>3,587.50</u>	<del>\$475.00</del> <u>512.50</u>
More than \$1,000,000.00	<del>\$7,000.00</del> <u>7,687.50</u>	<del>\$475.00</del> <u>512.50</u>

**(c) Postponement Fees.**

(1) Each party causing an adjournment or postponement of any scheduled oral hearing shall pay to NFA a postponement fee of ~~\$250~~ 500 for the first postponement request by that party, ~~\$500~~ 1,000 for the second request by that party, and ~~\$1,000~~ 2,000 for any subsequent request by that party. This fee may be waived at the discretion of the arbitrators. The arbitrators also may assess reasonable and necessary expenses incurred by the parties and their witnesses, including reasonable attorneys' fees, as a result of a postponement. No fee shall be assessed when a party files a request for postponement in accordance with Section 9(e) with respect to a Member or Associate respondent withdrawing from membership within 60 days of the scheduled hearing or if an arbitrator becomes ineligible or otherwise unable to serve, or if a hearing extends over the expected time period.

(2) Each party causing the postponement of any scheduled oral hearing within 10 days of the first scheduled day of the hearing shall pay to NFA an additional postponement fee of \$600 per arbitrator. This fee may be waived at the discretion of the arbitrators. No fee shall be assessed when a party files a request for postponement in accordance with Section 9(e) with respect to a

Member or Associate respondent withdrawing from membership within 60 days of the scheduled hearing.

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## EXPLANATION OF PROPOSED AMENDMENTS

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As described more fully below, the Board has approved amendments to the Code and Member Rules designed to ensure that NFA is able to continue to offer a high-quality arbitration program, many of which are based on feedback from NFA arbitrators. Among other things, the changes increase the hearing fees and service fees NFA charges in order to increase the arbitrator honorariums paid to the chair of an arbitration panel or the sole arbitrator in a proceeding (hereafter referred to as the Chair honorarium) and reallocate how hearing fees are assessed among the parties for claims initiated by customers. The Board also approved several other minor technical amendments intended to update and modernize the Code and Member Rules.

Section 17(b)(10) of the CEA requires NFA, as a registered futures association, to provide customers with a fair, equitable and expeditious procedure for settling their disputes with Members. NFA's arbitration program administers customer claims under the Code. NFA also administers a Member arbitration program under the Member Rules, which addresses claims involving only Members and/or Associates. NFA adopted the Code in 1983 and the Member Rules in 1992.

Both the Code and the Member Rules require the person filing a claim to pay a filing fee and a hearing fee at the time the claim is filed, and the respondent in an arbitration is required to pay an arbitration service fee for claims meeting a certain amount threshold. The filing fees are used to cover a small portion of the cost associated with NFA administering the arbitration claim.<sup>1</sup> NFA provides the entire hearing fee to NFA's arbitrators as a small honorarium for their service. This includes an additional amount to the Chair to reflect the increased work performed during the proceeding. The amount of the hearing fee is based on the type of proceeding (*i.e.*, a summary proceeding which is decided on the filings, or an oral hearing), and the hearing fee increases as the dollar amount of the claim increases. A portion of the arbitration service fee assessed on the respondent is paid to the Panel chair as an honorarium for conducting the pre-hearing conference. NFA has not increased the Chair honorarium since 1999. Therefore, to ensure that NFA is able to continue to recruit and retain a roster of high-quality arbitrators, NFA's Board has amended Sections 6 and 11 of the Code and Sections 5 and 11 of the Member Rules to raise the current hearing fees and arbitration service fees in order to increase Chair honorariums.

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<sup>1</sup> NFA heavily subsidizes claims filed under the Code.

This increase will align NFA's honorarium schedule with arbitrator honorariums provided by FINRA, which is important because NFA and FINRA often utilize and recruit from the same pool of arbitrators.

When NFA instituted hearing fees in 1991, hearing fees were modest and based upon the claim amount. Over time, NFA's hearing fees have gradually increased to ensure the arbitration program continues to retain and attract qualified arbitrators. Under NFA's current fee structure, the claimant (who in 95% of all cases filed at NFA is a customer) pays nearly all fees NFA assesses during an arbitration proceeding. To continue to provide customers with a fair, efficient and affordable way to resolve disputes, NFA's Board has amended Sections 6 and 11 of the Code to evenly split the hearing fees between customers and Members for arbitration claims initiated by a customer. Equally dividing the hearing fees between the customer claimant and Member respondent is appropriate given that both parties' benefit from the cost-effective nature of arbitration. To disincentivize customers from filing frivolous or bad faith arbitration claims, customers will still be required to submit the entire arbitration filing fee. This modification to the allocation of hearing fees is limited to claims initiated by a customer. There is no change to the allocation of hearing fees under the Member Rules.

Additionally, the Board also approved amendments to the arbitration fee structure under Sections 11 of the Code and Member Rules to consolidate the claim amount tiers for claims under \$25,000 and claims between \$25,000.01 and \$50,000. This consolidation of lower claim amounts in the fee structures was approved after determining that there is no significant difference in the time involved or the type of administration required for claims under \$50,000 to warrant separate claim tiers.

Moreover, the Board has amended Section 11 of both the Code and Member Rules to increase the fees for postponement of a scheduled oral hearing. Postponement fees have not increased since first adopted in 1994. Any party requesting a postponement of a scheduled oral hearing is required to pay a fee for each postponement request. This fee is intended to deter frivolous postponement requests that delay the hearing and ultimately also delay final resolution of the dispute. Recently there has been an increase in parties filing postponement requests, and NFA's arbitrators have suggested that NFA charge higher fees to deter frivolous postponement requests. The arbitrators will continue to have the authority to waive a postponement fee.

For other motions filed under the Code or Member Rules, any party filing a motion after a certain period of time must include a specified fee with that motion. Under both the Code and Member Rules, arbitrators have the authority to waive motion fees. In practice, arbitrators routinely waive this fee which has encouraged the filing of repetitive and frivolous motions. Therefore, the Board has amended Section 8 of the Code and Section 7 of the Member Rules to eliminate an arbitrator's authority to waive a

motion fee. However, arbitrators would still have the ability to assess the motion fee against the party who caused the filing of the motion.

Furthermore, the Board has amended Sections 9 of the Code and Member Rules regarding the time, location and method of hearings to allow greater flexibility in determining when a hearing may be conducted virtually. The Code and Member Rules currently provide that, under extraordinary circumstances, the Panel (or sole arbitrator) shall have the authority to order that the hearing take place on a virtual basis. The proposed amendments would allow the Panel (or sole arbitrator) to order that the hearing take place on a virtual basis even absent extraordinary circumstances. Since the pandemic, virtual hearings have become mainstream and are an efficient and effective way to conduct hearings in a variety of legal settings. Parties and arbitrators realize the convenience and cost savings of virtual hearings and modern technology has become more reliable.

The amendments to NFA's arbitration fees impose a minimum burden on customers and Members and are designed to ensure that NFA can continue to offer a quality program for the resolution of disputes between both customers and Members and between Members and Associates. The technical amendments to the Code and Member Rules will modernize the Code and Member Rules by ensuring fair, equitable and expeditious arbitration proceedings. In addition to the Board, NFA's CPO/CTA, IB and FCM Advisory Committees, all fully supported the proposed amendments to the Code and Member Rules.

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 date for the proposed amendments to NFA's Code of Arbitration and Member Arbitration Rules 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,



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