

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 Technical Amendments to NFA Bylaw 517. Public Representatives and NFA Bylaw 705. Finance Committee

Dear Mr. Kirkpatrick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("CEA"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed technical amendments to NFA Bylaw 517 to clarify the requirements regarding the qualifications of a Public Representative and proposed technical amendments to NFA Bylaw 705 regarding the role of NFA's President on the Finance Committee. NFA's Board of Directors ("Board") unanimously approved the proposals on February 15, 2024. NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make the amendments to NFA Bylaw 517 and NFA Bylaw 705 as early as 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.

PROPOSED AMENDMENTS

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

NATIONAL FUTURES ASSOCIATION BYLAWS

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CHAPTER 5. BOARD OF DIRECTORS

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BYLAW 517. PUBLIC REPRESENTATIVES.

To qualify as a Public Representative of NFA, an individual must first be found by the Board, on the record, to have no material relationship with NFA that might reasonably affect the independent judgment or decision-making of the public representative. Any of the following relationships during the previous three years shall be considered a material relationship with NFA:

(a) The Director or member of the Director's immediate family (*i.e.*, spouse, parents, children and siblings) is an NFA Officer or employee;

(b) The Director is an NFA Member, Associate Member or a principal of an NFA Member or has an immediate family member (*i.e.*, spouse, parents, children and siblings) who is an NFA Member, Associate Member or principal of an NFA Member;

(c) The Director, or a member of the Director's immediate family, or a firm with which the Director or a member of the Director's immediate family, is an officer, director or partner receives more than \$100,000 in combined annual payments from NFA, ~~or the Director, or a firm with which the Director is an officer, director or partner receives more than \$100,000 annually from an NFA Member or Associate Member~~ for legal, accounting or consulting services ~~related to the NFA Member's or Associate Member's CFTC registered activities~~. Compensation for services as a Director of NFA does not count towards the annual \$100,000 payment limit, nor does deferred compensation for services prior to becoming a Director so long as compensation is in no way contingent, conditioned or revocable.

(d) The Director, or a firm with which the Director is an officer, director or partner receives more than \$100,000 annually from an NFA Member or Associate Member for legal, accounting or consulting services related to the NFA Member's or Associate Member's CFTC registered activities.

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CHAPTER 7. COMMITTEES

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BYLAW 705. FINANCE COMMITTEE.

There shall be a Finance Committee not having or exercising any authority of the Board, to advise the Executive Committee and Board on matters of NFA financial policy including the establishment of major plans and priorities regarding the commitment and expenditure of NFA funds and the establishment of dues, assessments, fees and other

charges upon Members and others. The Nominating and Governance Committee shall recommend Directors to serve on the Finance Committee. Upon consideration of the recommendation, the Board shall appoint members of the Finance Committee. The Finance Committee shall consist of seven members as follows:

- (a) NFA's President, who shall be an *ex officio*, non-voting member; and
- (b) Six (6) Directors as follows:
 - (i) One (1) Director representing contract markets;
 - (ii) One (1) Director representing FCMs, LTMs or IBs;
 - (iii) One (1) Director representing SDs, RFEDs or MSPs;
 - (iv) One (1) Director representing CPOs or CTAs; and
 - (v) Two (2) Directors who are Public Representatives (See Article XVIII).

The members of the Finance Committee described in paragraph (b) above shall serve for one year, which may be renewed by the Board, or until the member's successor is appointed and qualified, or until the member's death, resignation, ineligibility or removal. A vacancy in the Finance Committee shall be filled by the Board. A Finance Committee member may be removed by the Board whenever, in its judgment, the best interests of NFA will be served thereby.

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EXPLANATION OF PROPOSED AMENDMENTS

In November 2022, NFA's Board approved numerous changes to NFA's Articles of Incorporation and Bylaws to implement changes to NFA's governance structure. NFA submitted these amendments to the Commission for its review and approval, and the changes became fully effective at the February 15, 2024 Board meeting. At that February meeting, NFA's Board unanimously approved technical amendments to NFA Bylaw 517 to clarify the changes to the definition of Public Representative and also approved a technical amendment to NFA Bylaw 705 regarding NFA's President's role on the Finance Committee.

The requirements regarding qualification as an NFA Public Director previously were set forth in the Definition section of NFA's Articles of Incorporation and referred to the definition of Public Director set forth in Section (b)(2) of Core Principle 16 in Appendix B to Part 38 of the CFTC's Rules (Core Principle 16). As applied to NFA, this Core Principle provides that a person is not qualified to serve as a Public Director

due to having a material relationship with NFA if: (i) the Director is an NFA Officer or employee; (ii) the Director is an NFA Member, Associate member or a principal of an NFA Member; and (iii) the Director, or a firm with which the Director is an officer, director or partner receives more than \$100,000 in combined annual payments from NFA for legal, accounting or consulting services (NFA Compensation Prong). All of these disqualifications apply if it involves an immediate family member of the Director.

As part of the governance changes, the Board adopted Bylaw 517 to specifically identify the circumstances that are considered material relationships to NFA, which are based on the disqualifications contained in Core Principle 16. The disqualifying circumstances were moved from NFA's Articles of Incorporation to Bylaw 517. Additionally, at the recommendation of NFA's Special Committee on Governance, the Board added a prong that provides that a Director will also be considered to have a material relationship with NFA if the Director, or a firm with which the Director is an officer, director or partner, receives more than \$100,000 in annual payments from an NFA Member or Associate Member for legal, accounting or consulting services. The Board concluded, however, that this prong would not apply to a Director's immediate family members.

In finalizing Bylaw 517, NFA inadvertently did not specify that the NFA Compensation Prong applied to the Director's immediate family members. Since the Board did not intend to eliminate immediate family members from the NFA Compensation Prong, which would be inconsistent with Core Principle 16, the Board unanimously approved a technical amendment to NFA Bylaw 517 to specify that this compensation prong applies to a Director's immediate family. Further, NFA also inadvertently eliminated the phrase "decision making" in reference to specifying that the Director does not have a material relationship that affects independent judgment or *decision making*. Therefore, the Board unanimously approved an amendment to reinsert the term "decision making" in NFA Bylaw 517.

Moreover, NFA Bylaw 705. Finance Committee currently includes NFA's President as a full Committee member. In practice, over the years, NFA's President has served in an *ex officio*, non-voting capacity on this Committee. NFA's Board unanimously approved an amendment to Bylaw 705 to clarify that the President serves as an *ex officio*, non-voting member of the Finance Committee.

As stated earlier, on February 15, 2024, NFA's Board unanimously approved the proposed amendments to NFA Bylaw 517 to clarify the changes to the definition of Public Representative and the proposed amendment to NFA Bylaw 705 to designate NFA's President as an *ex officio* non-voting member of the Finance Committee. In addition, NFA's Transitional Nominating and Governance Committee fully supported the proposed amendments.

Furthermore, as mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA. NFA intends to make the amendments to NFA Bylaw 517 and NFA Bylaw 705 effective as early as 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,

A handwritten signature in black ink, appearing to read "Carol A. Wooding". The signature is fluid and cursive, with a large loop at the end.

Carol A. Wooding
Senior Vice President
and General Counsel