

May 20, 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 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 disciplinary process and procedures and to make minor technical amendments throughout Part 3 of NFA's Compliance Rules. NFA's Board of Directors ("Board") unanimously approved the proposed amendments at its meeting on May 16, 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.

PROPOSED AMENDMENTS

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

COMPLIANCE RULES

PART 3 – COMPLIANCE PROCEDURES

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RULE 3-1. DEPARTMENT OF COMPLIANCE.

(a) Duties.

There is hereby established a Department of Futures Compliance and a Department of OTC Derivatives Compliance (references to the "Compliance Department" shall mean either or both the Department of Futures Compliance and/or Department of OTC Derivatives Compliance, as the context requires), which shall conduct ~~audits and~~ examinations, and shall investigate violations of NFA requirements, prepare reports and conduct prosecutions, as provided in this Part. The Compliance Department shall commence investigations ~~at the direction of~~ based on referrals from the Commission; or upon the discovery or receipt of information by NFA (such as Complaints from customers or Members) that, in the Compliance Department's opinion, indicates a possible basis for finding that a violation has occurred; or on the Compliance Department's own initiative. The Compliance Department shall have the authority to compel testimony, subpoena documents and require statements under oath from any Member, Associate or person connected therewith.

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RULE 3-2. INVESTIGATION.

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(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 eComplaint; or

* * *

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

* * *

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:

(i) mailed to the person charged ("the Respondent") by U.S. Mail, first-class postage pre-paid or an overnight delivery service, delivery fee prepaid mail, to the last address provided by the Respondent on record with NFA, or the address of a his duly authorized agent for service; or

(ii) sent using electronic mail (e-mail), provided the party has an ~~electronic mail~~ e-mail address on record with NFA. However, if service by ~~electronic mail~~ e-mail is not acknowledged by the ~~recipient Respondent~~, then NFA will serve the Complaint by mailing it to the Respondent as described in (i);

(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), U.S. Mail, first-class postage pre-paid (effective upon deposit), an overnight delivery service, delivery fee prepaid (effective upon deposit) or e-mail (effective upon receipt of a readable document):~~ provided, however, that service by e-mail shall only be permitted on 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~~ or sent by overnight delivery service to:

National Futures Association
320 South Canal
Suite 2400
Chicago, IL 60606
Attn: Legal Docketing Department

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

* * *

RULE 3-6. ANSWER.

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(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.

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 their ~~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.

RULE 3-8. PRE-HEARING PROCEDURES.

(a) The Respondent shall be entitled to a reasonable pre-hearing examination of all evidence in the Compliance Department's possession or under its control that is to be relied upon by the Compliance Department or that is relevant to the Complaint. Such pre-hearing examination:

(i) must be requested by the Respondent in writing;

(ii) ~~can be conducted either by the Respondent examining all such evidence at the offices of NFA, or by the Respondent requesting that all such evidence be copied and sent to him with any transportation and copying costs borne by the Respondent making the request will consist of copies of documents and information that NFA will provide in an electronic format and transmit by e-mail or through a secure file transfer protocol; and~~

(iii) is subject to the Compliance Department's right to withhold any privileged material (including, but not limited to, the investigation report), pursuant to all common law and statutory privileges it has available to it.

(b) Within 30 days after the Chairman of the Hearing Panel is appointed, the Chairman shall schedule and hold a pre-hearing conference with the parties. The order

scheduling the pre-hearing conference shall specify the issues to be covered in the pre-hearing conference, including setting discovery and motion deadlines and scheduling the hearing. Such conferences may be conducted by telephone. The Chairman of the Hearing Panel shall determine location of any in-person hearing.

(c) The Chairman of the Hearing Panel shall schedule pre-hearing conferences and hearing sessions and shall decide all pre-hearing motions concerning discovery, motion deadlines, location of any in-person hearing, continuances, and requests for telephonic or video testimony. All other motions shall be decided by the Hearing Panel.

* * *

RULE 3-11. SETTLEMENT.

(a) Offer.

- (i) A subject of an investigation in which the investigation report has been completed, or a Respondent in a disciplinary proceeding, shall submit any proposed settlement of the matter to the Business Conduct Committee ~~or its designated Panel ("BCC Panel")~~ at any time up until a Chairman of the Hearing Panel has been appointed an Answer is filed by any Respondent in a disciplinary proceeding. ~~A BCC Panel shall consist of no fewer than three members of the Business Conduct Committee, each of whom shall be appointed by the Chairman of the Business Conduct Committee.~~ After that date any Respondent files an Answer, any proposed settlement offer shall be submitted to the Hearing Panel. Settlement offers may also be submitted to the Appeals Committee if the matter is before it on appeal or review. The Business Conduct Committee, ~~BCC Panel~~, Hearing Panel or Appeals Committee may accept or reject the settlement offer as it deems appropriate. The Compliance Department shall be afforded an opportunity to express its views with respect to the proposed settlement;
- (ii) The Business Conduct Committee, ~~BCC Panel~~, Hearing Panel or Appeals Committee may in its discretion accept an offer in which the person neither admits nor denies violating NFA requirements; and

(iii) Every settlement offer:

* * *

(b) presented to the Business Conduct Committee ~~or BCC Panel~~ shall also contain the following language:

[Respondent] acknowledges that any settlement offer rejected by the Business Conduct Committee ~~or BCC Panel~~ will be forwarded to the Hearing Panel for its information in the event that [Respondent] subsequently submits a settlement offer to the Hearing Panel;

(c) presented to the Hearing Panel shall also contain the following language:

[Respondent] waives any objection to the Hearing Panel's participation in the Hearing in the event that [Respondent's] settlement offer is rejected; and

(d) presented to the Appeals Committee shall also contain the following language:

[Respondent] acknowledges that any settlement offer rejected by the Appeals Committee will be forwarded to the Business Conduct Committee, ~~BCC Panel~~ or Hearing Panel for its information in the event that [Respondent] subsequently submits a settlement offer to the Business Conduct Committee, ~~BCC Panel~~ or Hearing Panel. [Respondent] waives any objection to the Appeals Committee's participation in the review in the event that [Respondent's] settlement offer is rejected; and

(e) shall also contain the following language:

[Respondent] acknowledges that this settlement offer may not be withdrawn by the [Respondent] after it has been submitted to the Business Conduct Committee, ~~BCC Panel~~, Hearing Panel or Appeals Committee. In the event the settlement offer is rejected by the appropriate Committee or Panel, the settlement offer shall become null and void.

(b) Decision.

If the Business Conduct Committee, ~~BCC Panel~~, Hearing Panel or Appeals Committee accepts the offer, it shall issue a written decision specifying each NFA requirement it has reason to believe is being, has been or is about to be violated, any penalty imposed and whether the settling party has admitted or denied any violation.

A decision on settlement by the Business Conduct Committee, ~~BCC Panel~~ or Hearing Panel shall be promptly furnished to the President. A decision on settlement by the Business Conduct Committee, ~~BCC Panel~~ or Hearing Panel shall become final and binding 15 days after the date of the decision unless the President, with notice to all parties, refers the matter to the Appeals Committee for review. The Appeals Committee shall approve or disapprove the settlement within 30 days after the date of such referral. Its decision to approve or disapprove the settlement shall become final and binding 15 days after the date of that decision.

A decision on settlement by the Appeals Committee shall become final and binding 15 days after the date of the decision.

(c) Withdrawal of Settlement Offer Is Prohibited.

A settlement offer may not be withdrawn by a Respondent after it is submitted to the Business Conduct Committee, ~~BCC Panel~~, Hearing Panel or Appeals Committee. An offer that is rejected by the appropriate Committee or Panel shall be null and void and shall not be deemed to have been an admission of any matter.

RULE 3-12. NOTICE AND PUBLICATION OF ~~DECISION~~.

(a) NFA shall make the following available on BASIC, NFA's public database:

- (i) Complaints issued by the Business Conduct Committee under Rule 3-4;
- (ii) Respondent's Answer to a Complaint filed under Rule 3-6;
- (iii) Decisions issued under Rule 3-10 or 3-11; and
- (iv) Member and Associate Responsibility Actions and Decisions issued under Rule 3-15.

(b) NFA shall promptly serve ~~W~~written notice of any Complaint under Rule 3-4 and any ~~final~~ action taken under Rule 3-10 or Rule 3-11 that is adverse to the Respondent, including reasons, findings, and conclusions, shall be furnished to the Commission within 30 days after it becomes final.

* * *

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:

* * *

RULE 3-15. MEMBER OR ASSOCIATE RESPONSIBILITY ACTIONS.

(a) Summary Action.

A Member or Associate may be summarily suspended from membership, or association with a Member, may be required to restrict its operations (e.g., restrictions on accepting new accounts), or may otherwise be directed to take remedial action, (e.g., may be ordered to immediately infuse additional capital or to maintain its adjusted net capital at a level in excess of its current capital requirement), where the President, with the

concurrence of the NFA Board of Directors or Executive Committee, has reason to believe that the summary action is necessary to protect commodity interest markets, customers, counterparties, or other Members or Associates. No member of either the Board of Directors or the Executive Committee shall participate in a summary action if the member, or any person with whom the member is connected, has a financial, personal or other direct interest in the matter under consideration or is disqualified under Bylaw 516 or Bylaw 708(c). Notice of such summary action shall be given promptly to the Commission.

(b) Procedure.

The following procedures shall be observed in actions under this Rule:

(i) The subject of the action (the "Respondent") shall, whenever practicable, be served with a notice before the action is taken. If prior notice is not practicable, the Respondent shall be served with a notice at the earliest opportunity. This notice shall (A) state the action taken or to be taken; (B) briefly state the reasons for the action; (C) state the time and date when the action became or becomes effective and its duration; and (D) state that any person aggrieved by the action may petition the Commission for a stay of the effective date of the action pending a hearing pursuant to Commission Regulations, Part 171, within 10 days of service. Service may be made ~~by personal delivery (effective upon receipt), by telefax (effective upon transmission), or by mail~~ U.S. Mail, first-class postage prepaid (effective upon deposit), or an overnight delivery service, delivery fee prepaid (effective upon deposit), at the last address provided by the Respondent on record with NFA, or the address of a duly authorized agent for service. When service is effected by U.S. Mail, the time within which the person served may respond shall be increased by five days. Service may also be made by ~~electronic mail e-mail~~, provided the party has an ~~electronic mail e-mail~~ address on record with NFA. However, if service by ~~electronic mail e-mail~~ is not acknowledged by the Respondent, then NFA will serve the notice by ~~personal delivery, by telefax or by U.S. Mail or overnight delivery service, delivery fee prepaid (effective upon deposit) at the last address provided by the Respondent on record with NFA, or the address of a his~~ duly authorized agent for service.

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RULE 3-17. COMPOSITION OF COMMITTEES.

The Business Conduct Committee, Hearing Committee, Appeals Committee, Executive Committee, ~~BCC Panel~~ and Hearing Panel conducting a proceeding under these Part 3 rules shall include at least one member who is not an NFA Member or Associate or an employee of an NFA Member. If the proceeding involves ~~swaps or any a~~ Respondent that is an SD or MSP Member, at least one member of the Hearing Panel shall also be affiliated with an SD or MSP. When selecting Hearing Panels, the ~~Chairman~~ of the Hearing Committee or their his-designee shall endeavor to appoint panelists with diverse interests.

* * *

RULE 3-18. SANCTIONS FOR CONTUMACIOUS CONDUCT.

If a party, attorney for a party, or other representative of a party violates an order of the Business Conduct Committee, Hearing Panel, Chairman of the Business Conduct Committee or Hearing Panel, or Appeals Committee or engages in dilatory, disruptive, or contumacious conduct during a proceeding, the Business Conduct Committee, Hearing Panel, or Appeals Committee may impose those sanctions that are just under the circumstances. In particular, the Business Conduct Committee, Hearing Panel, or Appeals Committee may –

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EXPLANATION OF PROPOSED AMENDMENTS

Part 3 of NFA's Rulebook sets forth the compliance procedures that govern NFA's disciplinary process. As described more fully below, NFA's Board has approved amendments to Part 3 of NFA's Compliance Rules ("Rules") to better reflect NFA's current practices regarding pre-hearing discovery, the publication of Complaints and Decisions on NFA's BASIC System and the appointment of Hearing Panels and Business Conduct Committee ("BCC") sub-committees. Additionally, the Board also approved several other minor amendments to conform service of process requirements throughout the Rules, remove outdated references and clarify the composition of Hearing Panels for disputes involving swaps. The amendments include:

- Amended NFA Compliance Rule 3-8 to update pre-hearing procedures for pre-hearing discovery to provide that NFA will provide discovery documents in an electronic format and transmit by e-mail or through a secure file transfer protocol, which reflects NFA's current practice of providing its evidence to the Respondent electronically.
- Amended NFA Compliance Rule 3-12 to clearly specify that NFA will publish NFA regulatory actions (e.g., NFA's BCC matters) on NFA's BASIC system.
- Amended various Compliance Rule to remove all references to "BCC Panel" throughout the Rules. Although the Rules authorize the Chair of NFA's BCC to designate a sub-committee ("BCC Panel") for various administrative purposes, in practice it is unnecessary and has rarely occurred.
- Amended NFA Compliance Rule 3-11 to specify that the BCC will consider settlement offers up until the time an Answer is filed and that the designated Hearing Panel will consider settlement offers after the Answer

is filed. NFA believes the Answer filing date is the appropriate cutoff for the BCC to consider a settlement offer, and the amendment is designed to address the infrequent occurrence when an Answer is filed before the Hearing Panel Chair is appointed.

- Amended Compliance Rules 3-3 and 3-15, which set forth service requirements in BCC matters and Member/Associate Responsibility Actions respectively, to be consistent with one another and to remove references to personal service, which NFA has not used in several years.
- Amended Compliance Rule 3-17 to remove reference to swaps from the requirement that at least one member of an appointed Hearing Panel be affiliated with an SD Member if the disciplinary proceeding involves swaps or named an SD Member. NFA added this provision when SDs became NFA Members. However, NFA has determined that for disciplinary proceedings that only involve swaps transacted through an intermediary (e.g., an introducing broker and no SD Member), it is not appropriate that NFA be required to appoint a Hearing Panelist with an SD affiliation. Therefore, the Board amended NFA Compliance Rule 3-17 to limit that requirement to proceedings involving an SD Member.

NFA's FCM, IB, CPO/CTA and Swap Participant Advisory Committees and NFA's FDM Members all supported the proposed amendments. As stated earlier, NFA's Board unanimously approved the proposed amendments on May 16, 2024.

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 Compliance Rules 3-1, 3-2, 3-3, 3-6, 3-7, 3-8, 3-11, 3-12, 3-14, 3-15, 3-17, and 3-18 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, reading "Carol A. Wooding". The signature is written in a cursive, flowing style with a large, stylized 'C' and a long, sweeping tail.

Carol A. Wooding
Senior Vice President and
General Counsel