

September 22, 2020

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: AMENDED SUBMISSION—National Futures Association: Proposed
Amendments to Part 3 of NFA's Compliance Rules regarding
Virtual Hearings

Dear Mr. Kirkpatrick:

On August 27, 2020, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed amendments to NFA's Part 3 Compliance Rules to specify that a Hearing Panel in an NFA Business Conduct Committee ("BCC") matter has the authority to order a virtual hearing in extraordinary circumstances. NFA's Board of Directors ("Board") unanimously approved the proposed amendments at its meeting on August 20, 2020.

NFA is amending the August 27, 2020 rule submission letter to include additional information on NFA's reasons for adopting the amendment and provide a description of the procedures NFA has adopted to ensure that BCC hearings conducted virtually will continue to provide a fair process for the parties.

NFA is submitting the amended rule submission to the Commission pursuant to Section 17(j) of the Commodity Exchange Act ("CEA" or "Act") as amended, and NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to establish 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

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Part 3 – COMPLIANCE PROCEDURES

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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 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. ~~The hearing shall be held at such location as the Chairman of the Hearing Panel shall determine.~~

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:

* * *

(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 ~~the~~ any in-person hearing, continuances, and requests for telephonic or video testimony. All other motions shall be decided by the Hearing Panel.

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RULE 3-9. HEARING.

If a hearing is held:

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(f) In extraordinary circumstances, the Hearing Panel 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.

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EXPLANATION OF PROPOSED AMENDMENTS

Part 3 of NFA's Rulebook sets forth the compliance procedures that control NFA's disciplinary process. As described more fully below, NFA's Board has approved amendments to Part 3 of NFA's Compliance Rules to specify that a Hearing Panel in a BCC matter has the authority to order a virtual hearing in extraordinary circumstances.

Due to the impact of the COVID-19 pandemic and the guidelines surrounding social distancing and limiting the size of gatherings, NFA is concerned that there may be unacceptable delays in resolving complaints issued by NFA's BCC because it may not be feasible to conduct an in-person hearing. Although NFA Compliance Rules 3-7 and 3-8 provide flexibility surrounding hearings by giving the Chair of the Hearing Panel the authority to determine the location of the hearing and to permit telephonic or video testimony, NFA is amending Compliance Rule 3-9 to specify that the Hearing Panel has the authority to order a virtual hearing in extraordinary circumstances. The Board determined not to specifically define extraordinary circumstances because it is not possible to foresee all instances where a virtual hearing might be necessary. The Board acknowledged that an extraordinary circumstance would generally involve situations where an in-person hearing is not feasible.

NFA has adopted detailed procedures to ensure that hearings conducted virtually will continue to provide a fair process for the parties. Among other things, those procedures require NFA to use a well-known secure video-conferencing service and require that all parties participate in a demo of the video-conferencing system prior to the hearing. The demo will ensure that all participants are able to test the videoconference software to ensure they can appropriately use the system, including share exhibits and use breakout rooms. The procedures also require that the hearing panel reschedule the hearing or find other acceptable methods for conducting the hearing if the video-conferencing system fails or is not working properly for any of the participants during the scheduled hearing. Additionally, the procedures outline the methods NFA has adopted to ensure the security of exhibits. NFA will monitor the effectiveness of these procedures and make any necessary changes.

NFA adopted this amendment to further its ability to enforce NFA requirements, promote just and equitable principles of trade and protect the public interest. NFA cannot effectively enforce these requirements if it is unable to timely conduct hearings in connection with alleged violations.

NFA's FCM, IB, CPO/CTA and Swap Participant Advisory Committees supported the proposed amendments. As stated earlier, NFA's Board unanimously approved the proposed amendments on August 20, 2020.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make the proposal 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 cursive script, appearing to read "Carol A. Wooding".

Carol A. Wooding
Senior Vice President and
General Counsel