

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 Code of Arbitration and Member Arbitration Rules

Dear Mr. Kirkpatrick:

On September 3, 2020, pursuant to Section 17(j) of the Commodity Exchange Act ("CEA" or "Act"), as amended, National Futures Association ("NFA") submitted to the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed amendments to NFA's Code of Arbitration ("Code") and Member Arbitration Rules ("Member Rules") to increase the fees NFA charges in connection with administering arbitration claims as well as restructure the claim tiers to reflect the fact that claim amounts have substantially increased over the years. In addition, NFA submitted several other proposed amendments related to claims involving Members and Associates who withdraw their membership during the course of an arbitration proceeding, the rules regarding service of process and the rules that govern the time and place of hearings. NFA's Board of Directors ("Board") unanimously approved the proposed amendments at its meeting on August 20, 2020.

NFA is amending the September 3, 2020 rule submission to include additional information on the reasons NFA amended the Code and Member Rules to provide the arbitration panel with the authority to order a virtual hearing in extraordinary circumstances and to provide a description of the procedures NFA has adopted to ensure that arbitration hearings conducted virtually will continue to provide a fair process for the parties.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make the effective date of 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 4. ARBITRATION PANEL.

#### (a) Appointment of Panel.

NFA shall conduct all arbitration proceedings under this Code before an arbitration Panel consisting of the following:

(1) Where the aggregate claim amount does not exceed ~~\$100,000~~ 150,000, NFA shall appoint one arbitrator. However, if the aggregate amount of the claim exceeds \$50,000 but is not more than ~~\$400,000~~ 150,000, NFA shall appoint three arbitrators if all parties serve a written request on NFA for three arbitrators by no later than 30 days after the last pleading is due and remit the appropriate fee as set forth in 11(a)(3)(iii) or the sole arbitrator asks NFA to appoint two additional arbitrators.

(2) Where the aggregate claim amount exceeds ~~\$400,000~~150,000, NFA shall appoint three arbitrators.

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### SECTION 6. INITIATION OF ARBITRATION.

\* \* \*

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

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) 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) Claims of more than \$50,000 through ~~\$400,000~~ 150,000. Where the Arbitration Claim amount exceeds \$50,000 but is not more than ~~\$400,000~~ 150,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. An arbitration service fee of ~~\$275.00~~ 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 ~~\$400,000~~ 150,000. Where the Arbitration Claim amount exceeds ~~\$400,000~~ 150,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. An arbitration service fee of ~~\$675.00~~ 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.

\* \* \*

#### **(k) Amendments to Claims.**

After the appointment of a Panel, no new or different claim may be filed except with the Panel's consent, unless the Member or Associate party withdraws its membership during the arbitration proceeding, then a party may amend a claim, counter-claim, cross-claim or third-party claim against the withdrawing Member or Associate within 60 days of notification of the Member or Associate's withdrawal without the Panel's consent.

\* \* \*

#### **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 ~~\$425~~ 200 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 \$425 ~~650~~ 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.**

Except as provided in Section 6(n), Section 8(g) 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. 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 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.

\* \* \*

### **(e) Extensions and Postponements.**

Extensions of time or postponements of the hearing may be granted by the Panel when the interests of justice so require, but a hearing in progress shall not be adjourned or interrupted except in compelling circumstances. If a Member or Associate respondent withdraws from NFA membership during the course of an arbitration proceeding within 60 days of the scheduled hearing, then the Panel shall grant a postponement of the hearing when requested by a customer who asserted a claim against the withdrawing Member or Associate.

\* \* \*

**(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 ~~\$25,000~~ 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 ~~the Secretary or the Panel directs otherwise or one of the parties to the proceeding~~ a customer serves a written request for an oral hearing on NFA, accompanied by an additional filing fee of \$1250 and an additional hearing fee of \$675.00 500, 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 10. AWARD, SETTLEMENT AND WITHDRAWAL.**

\* \* \*

**(j) Withdrawal of Claim.**

(1) At any time during the course of the arbitration, a party may withdraw a claim against any Respondent who has not filed an Answer. A written notice of withdrawal must be filed with NFA. The withdrawal will be without prejudice unless the notice states otherwise.

(2) After a party has filed a pleading, a party may not withdraw a claim against that party unless without the party's consents, unless a Member or Associate respondent withdraws its membership during an arbitration proceeding, then a party who has asserted a claim against that Member or Associate may withdraw the claim without that Member or Associate's consent. The notice and the consent must be in writing and filed with NFA. The withdrawal will be without prejudice unless the notice or the consent states otherwise.

\* \* \*

**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>Hearing Fee</b>
<del>\$0.00 - \$2,500.00</del> <u>\$25,000.00</u>	<del>\$50.00</del> <u>125.00</u>	<del>\$125.00</del> <u>250.00</u>
<del>\$2,500.01 - \$5,000.00</del>	<del>\$100.00</del>	<del>\$125.00</del>
<del>\$5,000.01 - \$10,000.00</del>	<del>\$150.00</del>	<del>\$125.00</del>
<del>\$10,000.01 - \$15,000.00</del>	<del>\$175.00</del>	<del>\$125.00</del>
<del>\$15,000.01 - \$25,000.00</del>	<del>\$200.00</del>	<del>\$125.00</del>
<del>\$25,000.01 - \$50,000.00</del>	<del>\$300.00</del> <u>250.00</u>	<del>\$125.00</del> <u>250.00</u>
<u>\$25,000.01 - \$50,000.00</u> (if an oral hearing is requested by customer)	<u>\$1250</u> (in addition to any filing fee paid when claim was first filed)	<u>\$500</u> (in addition to any hearing fee paid when claim was first filed)
<del>\$50,000.01 - \$100,000.00</del>	<del>\$550.00 plus 1% of excess over \$50,000</del>	<del>\$275.00</del>
<del>\$100,000.01</del> <u>50,000.01</u> - \$150,000.00	<del>\$1050.00 plus 1% of excess over \$100,000</del> <u>1500.00</u>	<del>\$1275.00</del> <u>375.00</u>
<del>\$150,000.01 - \$500,000.00</del>	<del>\$1,550.00</del> <u>2,000.00</u>	<del>\$2,550.00</del> <u>1,875.00</u>
<del>More than \$500,000.00</del> <u>.01</u> - \$1,000,000.00	<del>\$1,550.00</del> <u>3,000.00</u>	<del>\$5,100.00</del> <u>3,750.00</u>
<u>More than \$1,000,000.00</u>	<u>\$4,500.00</u>	<u>\$7,500.00</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 fees 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.

(3) NFA shall also collect additional hearing fees when:

(i) a party requests a preliminary hearing under Section 9(a); or

(ii) ~~a party requests an oral hearing under Section 9(i)(2);~~ or

(iii ii) all the parties make a written request for three arbitrators under Section 4(a)(1). However, where the sole arbitrator asks NFA to appoint two additional arbitrators, NFA shall assess the additional fees equally against the parties.

\* \* \*

**(b) Refunds.**

\* \* \*

(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>Hearing Fee Refund</b>	<b>Service Fee Refund</b>
\$0.00-\$25,000.00	<del>\$425</del> <u>250.00</u>	N/A
\$25,000 - \$50,000.00	<del>\$425</del> <u>250.00</u>	N/A
<u>\$25,000 - \$50,000.00 (if an oral hearing is requested by a customer)</u>	<u>\$375</u>	<u>\$0</u>
<del>\$50,000.01-\$100,000.00 - \$150,000.00</del>	<del>\$425.00</del> <u>175.00</u>	<del>N/A</del> <u>\$175.00</u>
<del>\$50,000.01-\$100,000.00</del>	<del>\$125.00</del>	<del>\$125.00</del>
<del>\$100,000.01-\$150,000.00</del>	<del>\$925.00</del>	<del>\$325.00</del>
<del>\$150,000.01-\$500,000.00</del>	<del>\$2,200.00</del> <u>1,375.00</u>	<del>\$325.00</del> <u>475.00</u>
<del>More than 500,000.00.01-\$1,000,000.00</del>	<del>\$4,750.00</del> <u>3,250.00</u>	<del>\$325.00</del> <u>475.00</u>
<u>More than \$1,000,000.00</u>	<u>\$7,000.00</u>	<u>\$475.00</u>

**(c) Postponement Fees.**

Each party causing an adjournment or postponement of any scheduled oral hearing shall pay to NFA a postponement fee of \$250 for the first postponement request by that party, \$500 for the second request by that party, and \$1,000 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.

\* \* \*

**SECTION 16. MISCELLANEOUS.**

\* \* \*

**(b) Service of Process.**

Unless otherwise indicated, service may be accomplished by electronic mail, provided the party has an electronic mail address on record with NFA. However, if service by electronic mail is not acknowledged by the recipient, then NFA will serve documents using hand delivery, or by first class or certified mail, or by use of a generally recognized overnight delivery service to the party's last known business or home address on record with NFA until the party consents to service by electronic mail. ~~Documents may also be served by facsimile or electronic mail on NFA and any party who has consented to service by that method.~~ All documents which are served on NFA shall be concurrently served on each party who has filed a pleading using methods designed to ensure that NFA and all parties will receive the documents on the same day. Service on a party's representative shall be service on the party.

\* \* \*

**SECTION 18. APPLICABILITY OF MEMBER ARBITRATION RULES.**

This Code shall govern any cross-claim or third-party claim filed by a Member or Associate against another Member or Associate under this Code, except that Sections 2(a) and (b) of the Member Arbitration Rules shall apply to cross-claims or third-party claims and Section 11(a) of the Member Arbitration Rules shall apply to claims, counter-claims, cross-claims and third-party claims filed by Members or Associates against Members, Associates and customers.

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**MEMBER ARBITRATION RULES**

\* \* \*

**SECTION 2. ARBITRABLE DISPUTES.**

**(a) Claims between Members.**

Except as provided in Sections 4 and 5 of these Rules with respect to timeliness



requirements, disputes between and among Members shall be arbitrated under these Rules unless:

- (1) the parties, by valid and binding agreement, have committed themselves to the resolution of such dispute in a forum other than NFA;
- (2) the parties to such dispute are all required by the rules of another self-regulatory organization to submit the controversy to the settlement procedures of that self-regulatory organization;
- (3) all parties to the dispute are members of a contract market which has jurisdiction over the dispute; ~~or~~
- (4) one of the parties to the dispute is a party to a dispute pending in another forum and files a cross-claim or third-party claim in that forum. The cross-claim or third-party claim must arise out of an act or transaction that is the subject of the claim pending in that forum; or
- (5) at the election of the Member with the claim, the Member respondent is no longer an NFA Member.

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### **SECTION 3. ARBITRATION PANEL.**

#### **(a) Appointment of Panel.**

Except as provided under Section 7(e) of the Rules, NFA shall conduct all arbitration proceedings under these Rules before an arbitration Panel consisting of the following:

1. Where the aggregate claim amount does not exceed ~~\$100,000~~ 250,000, NFA shall appoint one arbitrator. However, if the aggregate amount of the claim exceeds \$50,000 but is not more than ~~\$100,000~~ 250,000, NFA shall appoint three arbitrators if all parties serve a written request on NFA for three arbitrators by no later than 30 days after the last pleading is due and remit the appropriate fee as set forth under 11(a)(3)(iii) or the sole arbitrator asks NFA to appoint two additional arbitrators.
2. Where the aggregate claim amount exceeds ~~\$100,000~~ 250,000, NFA shall appoint three arbitrators.

All arbitration Panels shall be appointed by the Secretary and consist of individuals who are NFA Members or individuals connected therewith (one such Member or individual designated as Panel Chairperson).

**SECTION 5. INITIATION OF ARBITRATION.**

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

\* \* \*

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

\* \* \*

(2) Claims of more than \$50,000 through ~~\$400,000~~ 250,000. Where the Arbitration Claim amount exceeds \$50,000 but is not more than ~~\$400,000~~ 250,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. An arbitration service fee of ~~\$275.00~~ 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 ~~\$400,000~~ 250,000. Where the Arbitration Claim amount exceeds ~~\$400,000~~ 250,000, the Answer shall be served within 45 days following service of the Arbitration Claim by NFA. An arbitration service fee of ~~\$675.00~~ 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.

\* \* \*

**(k) Amendments to Claims.**

After the appointment of a Panel, no new or different claim may be filed except with the Panel's consent, unless a Member or Associate withdraws its membership during the arbitration proceeding, then any other party may amend a claim, counter-claim, cross-claim or third-party claim against the withdrawing Member or Associate within 60 days of notification of the Member or Associate's withdrawal without the Panel's consent.

\* \* \*

**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 \$~~150~~ 675 when filing the motion.

\* \* \*

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

(i) In cases involving one arbitrator, a party filing a motion shall include a \$~~425~~ 200 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 \$~~425~~ 650 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.**

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. 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 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.

\* \* \*

**(e) Extensions and Postponements.**

Extensions of time or postponements of the hearing may be granted by the Panel when the interests of justice so require, but a hearing in progress shall not be adjourned or interrupted except in compelling circumstances. If a Member or Associate party withdraws from NFA membership during the course of an arbitration proceeding within 60 days of the scheduled hearing, then the Panel shall grant a postponement of the hearing when requested by another party in the proceeding that has a claim against the withdrawing Member or Associate.

\* \* \*

**(i) Summary Proceeding.**

The proceedings shall be conducted entirely through written submissions when:

(1) the aggregate amount of the claims (exclusive of interest and costs) does not exceed ~~\$25,000~~ 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 the Secretary or the Panel directs otherwise or one of the parties to the proceeding serves a written request for an oral hearing on NFA, accompanied by a fee of \$675.00, no later than 30 days after the last pleading is due; or~~

~~(3)~~ (2) 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 that has waived its right to an oral hearing under any other provision of these Rules.

\* \* \*

**SECTION 10. AWARD, SETTLEMENT AND WITHDRAWAL.**

\* \* \*

**(j) Withdrawal of Claim.**

(1) At any time during the course of the arbitration, a party may withdraw a claim against any Respondent who has not filed an Answer. A written notice of withdrawal must be

filed with NFA. The withdrawal will be without prejudice unless the notice states otherwise.

(2) After a party has filed a pleading, another party may not withdraw a claim against that party unless without the party's consents, except that if a Member or Associate party withdraws its membership during an arbitration proceeding, then a party who has asserted a claim against that Member or Associate does not need that Member or Associate's consent. The notice and the consent must be in writing and filed with NFA. The withdrawal will be without prejudice unless the notice or the consent states otherwise.

## 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, as follows:

Amount of Claim	Filing Fee	Hearing Fee
<del>\$0.00 - \$10,000.00</del> <u>\$25,000.00</u>	<del>\$750.00</del> <u>975.00</u>	<del>\$125.00</del> <u>250.00</u>
<del>\$10,000.01 - \$20,000.00</del>	<del>\$1900.00</del>	<del>\$125.00</del>
<del>\$20,000.01 - \$50,000.00</del> <u>25,000.01 -</u>	<del>\$1,900.00</del> <u>2,500.00</u>	<del>\$125.00</del> <u>250.00</u>
<del>\$50,000.01 - \$100,000.00</del> <u>250,000.00</u>	<del>\$3,000.00</del> <u>4,500.00</u>	<del>\$275.00</del> <u>375.00</u>
<del>\$100,000.01 - \$150,000.00</del>	<del>\$4,400.00</del>	<del>\$1,275.00</del>
<del>\$150,000.01 - \$500,000.00</del> <u>250,000.01 -</u>	<del>\$4,400.00</del> <u>6,600.00</u>	<del>\$2,550.00</del> <u>1,875.00</u>
<del>More than \$500,000.00</del> <u>.01</u> <del>- \$1,000,000.00</del>	<del>\$4,400.00</del> <u>8,250.00</u>	<del>\$5,100.00</del> <u>3,750.00</u>
<u>More than \$1,000,000.00</u>	<u>\$10,000.00</u>	<u>\$7,500.00</u>

\* \* \*

### (b) Refunds.

\* \* \*

(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>Hearing Fee Refund</b>	<b>Service Fee Refund</b>
\$0.00-\$50,000.00	<del>\$125</del> <u>250.00</u>	N/A
\$50,000.01-\$100,000.00 <del>\$250,000.00</del>	<del>\$125.00</del> <u>175.00</u>	N/A <u>\$175.00</u>
<del>\$100,000.01-\$150,000.00</del>	<del>\$125.00</del>	<del>\$125.00</del>
\$150,000.01 <del>250,000.01-</del> \$500,000.00	<del>\$2,200.00</del> <u>1,375.00</u>	<del>\$325.00</del> <u>475.00</u>
<del>More than 500,000.00.01-</del> \$1,000,000.00	<del>\$4,750.00</del> <u>3,250.00</u>	<del>\$325.00</del> <u>475.00</u>
More than \$1,000,000.00	<u>\$7,000.00</u>	<u>\$475.00</u>

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

Each party causing an adjournment or postponement of any scheduled oral hearing shall pay to NFA a postponement fee of \$300 for the first postponement request by that party, \$500 for the second request by that party, and \$1,000 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 shall be assessed if an arbitrator becomes ineligible or otherwise unable to serve, or if a hearing extends over the expected time period.

\* \* \*

### **SECTION 15. MISCELLANEOUS.**

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### **(b) Service of Process.**

Unless otherwise indicated, service may be accomplished by electronic mail, provided the party has an electronic mail address on record with NFA. However, if service by electronic mail is not acknowledged by the recipient, then NFA will serve documents using hand delivery, or by first class or certified mail, or by use of a generally recognized overnight delivery service to the party's last known business or home address on record with NFA until the party consents to service by electronic mail. Documents may also be served by facsimile or electronic mail on NFA and any party who has consented to service by that method. All documents which are served on NFA

shall be concurrently served on each party who has filed a pleading using methods designed to ensure that NFA and all parties will receive the documents on the same day. Service on a party's representative shall be service on the party.

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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 to increase the fees NFA charges in connection with administering arbitration claims and to restructure the claim amount tiers to reflect that claim amounts have increased substantially over the years. This proposal also includes several other amendments related to claims involving Members and Associates who withdraw their membership during the course of an arbitration proceeding, the rules regarding service of process and, finally, the rules that govern the time and place of hearings.

NFA's arbitration program administers claims under two sets of rules—the Code for claims involving a customer and the Member Rules for 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.

For claims filed under the Code, the filing fee offsets a small portion of the costs associated with NFA administering the claim.<sup>1</sup> The filing fee increases as the dollar amount of the claim increases due to the increased administration costs associated with higher claim amounts. 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). For those claims that involve hearings, the hearing fee increases as the dollar amount of the claim increases since those claims involve more hearing days.

The filing fee amounts have remained virtually unchanged since the program's inception, and there have been minimal changes to fee structure to account for the increases in claim amounts that have risen substantially since the structure was adopted. Therefore, the Board has amended Sections 4, 6, and 11 of the Code to implement reasonable fee increases for filing fees and hearing fees and to amend the fee structure to reflect increased claim amounts. The approved amendments to the fee structure for filing and hearing fees consolidate the claim amount tiers on the low and mid-levels while expanding those at the highest end to address the increases to claim amounts that have occurred over the years.

In addition, the Board amended Sections 3, 5 and 11 of the Member Rules to implement the same percentage level increase to the Code filing fees, as well as

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

similar modifications to the tiered fee structure. The fee structure and claim tiers under the Member Rules also have not been increased since inception. The fee structure increases are more significant on a dollar basis since the filing fees are purposely much higher under the Member Rules in order to reduce NFA's subsidization of these claims.

Moreover, the Board has amended Section 18 of the Code to require Members and Associates to pay the higher filing fees set forth under the Member Rules when filing a claim, counterclaim, cross-claim or third-party claim against customers in proceedings filed under the Code. NFA implemented higher fees in the Member Rules to ensure that NFA does not provide a significant subsidy to claims filed by Members and Associates, and the Board determined that those higher fees were appropriate when a Member or Associate files claims against customers.

Additionally, the Board has amended Sections 6 and 11 of the Code and Sections 5, 7, and 11 of the Member Rules to increase the fees used to provide a honorarium to the arbitrators—service fee, motion fee, and hearing fee, respectively. NFA has not increased these fees since 1999. These fee increases will not only help NFA continue to attract high quality arbitrators, but they will also more closely align NFA's honorariums with FINRA's, which is important since NFA and FINRA both recruit from the same pool of arbitrators.

Further, the Board also approved amendments to Section 10(j) of both the Code and Member Rules to clarify that a party does not need consent to withdraw a claim filed against an NFA Member or Associate that ceases being a Member or Associate during the pendency of an arbitration proceeding. The Board's amendments to Section 10(j) of the Code and Member Rules make it easier for customers to withdraw or amend their claims against Members or Associates who have withdrawn their membership during the course of an arbitration proceeding. This provides customers flexibility in deciding whether they should continue to pursue or amend their claims at NFA, pursue them in court or take no further action at all. The Board also approved amendments to Section 6(k) of the Code to clarify that an arbitration panel's consent is not required to amend a claim, provided that a party amends the claim within 60 days of notification that a Member or Associate has withdrawn. Additionally, the Board amended Section 9 of the Code to clarify that the panel will automatically grant a postponement request made by a customer and waive the required fee in the event a Member or Associate withdraws from membership within 60 days of the scheduled hearing or summary date.

The Board also amended the mandatory arbitration provision of Section 2 of the Member Rules to no longer require that all disputes between Members be arbitrated at NFA because this mandatory arbitration provision applied in instances where the Member has withdrawn their membership, provided that they were a Member at the time period relevant to the dispute. Given that NFA would have no ability to enforce an award or settlement against a withdrawn Member, the Board approved an



amendment to make claims involving former Members voluntary, rather than mandatory.

To update the Code and Member Rules to reflect the widely accepted use of electronic mail ("e-mail"), the Board amended Section 16(b) of the Code and Section 15(b) of the Member Rules, which govern service of process during the administration of an arbitration claim. Currently, these provisions of the Code and Member Rules provide that NFA must use hand-delivery, first class or certified mail or overnight delivery service when serving documents on a party, and that NFA may only use e-mail if the party being served expressly consents to e-mail. At the time NFA amended these provisions to provide for electronic service in 2002, use of e-mail was not as common as now. Given the widely accepted use of e-mail, as well as the fact that e-mail is substantially more efficient than other methods of service, the Board amended these provisions to permit service by e-mail without the need for express consent.<sup>2</sup> The amendment requires acknowledgment of the e-mail and use other service methods if no acknowledgment is received.

Furthermore, given that the COVID-19 pandemic may restrict the ability to hold in-person hearings and prevent travel to attend hearings for an unknown period of time, NFA's Board has amended Section 9 of the Code and Member Rules regarding the time, location and method of hearings. Although these provisions of the Code and Member Rules give NFA's Secretary the sole discretion regarding the time and place of a hearing, they do not address whether the Secretary could order a hearing to take place virtually (*e.g.*, via WebEx, Zoom, etc.). The amendments to Section 9 of the Code and Member Rules provide that, under extraordinary circumstances, such as an in-person hearing is not feasible, the Arbitration Panel may order the parties to conduct hearing sessions on a virtual basis.

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.

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<sup>2</sup> Members are required to provide NFA with an e-mail address when completing registration Form 7-R. However, an Associate is not required to provide NFA with an e-mail address when completing registration Form 8-R. Therefore, with respect to Associates, NFA will only serve documents on them using e-mail if they have provided a valid e-mail address to NFA.

NFA adopted this amendment to ensure that during times where an in-person hearing is not feasible, it is still able to meet its obligation under Section 17 of the Act to provide a fair, equitable and *expeditious* procedure for settling customer claims and grievances against Members. Although NFA is not subject to the same requirement with respect to Member/Member claims, NFA believes that it is important to resolve all disputes expeditiously and in all circumstances, the arbitration panel, a neutral third-party, will have the responsibility to weigh the importance of resolving the dispute over any potential procedural concerns.

In addition to the Board, NFA's FCM, IB, and CPO/CTA Advisory Committees also fully supported the proposed amendments. In particular, the Advisory Committees expressed overwhelming support for the increases to the arbitration fees and viewed them as reasonable in light of the fact that the filing fees have remained virtually unchanged since each program's inception.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA. NFA intends to make the proposed amendments to NFA's Code of Arbitration and Member Arbitration Rules effective 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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General Counsel