

March 27, 2025

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 NFA Compliance Rule 2-53

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") to permit a non-eligible contract participant ("ECP") customer to file an arbitration claim involving a fully collateralized cleared swaps transaction against an NFA Member. In addition, NFA submits proposed NFA Compliance Rule 2-53, which requires an NFA Member or Associate to ensure that, with respect to non-ECP customers, any pre-dispute arbitration agreement (PDA) it enters into or relies on complies with the provisions of CFTC Regulation 166.5. NFA's Board of Directors ("Board") unanimously approved the proposed amendments to NFA's Code and proposed NFA Compliance Rule 2-53 at its meeting on February 21, 2025.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make the proposed amendments to NFA's Code and the approval of NFA Compliance Rule 2-53 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.

PROPOSED AMENDMENTS AND PROPOSED RULE
(additions are underscored and deletions are ~~stricken through~~)

CODE OF ARBITRATION

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Section 1. Definitions

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(o) **"Futures"** - includes:

- (1) futures and options contracts traded on a Commission-licensed exchange;
- (2) options contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's Rules that it is qualified to grant such option contracts;
- (3) foreign futures and foreign options transactions made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's rules;
- (4) leverage transactions as that term is defined in the Commission's Rules;
- (5) security futures products, as that term is defined in Section 1a(45) of the Act; ~~and~~
- (6) forex transactions (for purposes of jurisdiction under this Code); and
- (7) fully collateralized cleared swaps transactions (for purposes of jurisdiction under this Code).

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(bb) **"Cleared Swap"** means any swap transaction between a customer (that is not an eligible contract participant as defined in Section 1a(18) of the Commodity Exchange Act) and an NFA Member that is directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.

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COMPLIANCE RULES

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Part 2 – Rules Governing the Business Conduct of Members Registered with the Commission

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Rule 2-53: NFA ARBITRATION PROCEEDINGS

- (a) If an NFA Member or Associate offers to enter into a pre-dispute arbitration agreement with a customer or intends to rely on a pre-dispute arbitration agreement between the customer and the Member's affiliate, the agreement may

not be a condition of using the Member or Associate's services and the agreement must otherwise comply with CFTC Regulation 166.5.

(b) For purposes of this Rule, a customer does not include an eligible contract participant as defined in Section 1a(18) of the Commodity Exchange Act.

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EXPLANATION OF PROPOSED AMENDMENTS AND PROPOSED RULE

Amendments to Code of Arbitration

Several NFA Member FCMs recently began offering non-ECP customers the ability to trade fully collateralized positions in swaps that are being offered on CFTC Designated Contract Markets and cleared through CFTC registered Derivatives Clearing Organizations. NFA's Code's mandatory arbitration provision does not apply to any swap contracts, including fully collateralized swap products offered to non-ECP customers. As a result, an NFA Member or Associate would not be required to arbitrate a customer dispute involving these products. Therefore, NFA's Board approved amendments to Section 1 of the Code to add "fully collateralized cleared swaps transactions" as one of the enumerated contracts that is subject to NFA's mandatory arbitration provision. The amendments also specify that for purposes of the Code, a fully collateralized cleared swap is limited to a cleared swap involving a non-ECP customer. These amendments will expand NFA's mandatory arbitration jurisdiction over NFA Members, Associates and employees to include an arbitration claim filed by a non-ECP customer for a transaction involving a fully collateralized cleared swap, as long as the arbitration claim meets NFA's other arbitrability requirements as set forth under Section 2(a)(1) of the Code (e.g., that the claim is timely-filed, and the customer is not an NFA Member or Associate).

NFA Compliance Rule 2-53

CFTC Regulation 166.5 prohibits a Commission registrant (e.g., FCM, IB) from entering into a PDA with a non-ECP customer unless the agreement complies with the specific provisions of Regulation 166.5. Recently, NFA staff has identified instances where an NFA Member's account opening agreements included a PDA that did not comply with CFTC Regulation 166.5. Some of these non-compliant PDAs were in the Member's affiliate's account opening forms, which the Member relies upon. However, an NFA Member is still required to comply with Regulation 166.5 even in instances where it is sharing account opening agreements with an affiliate. In most instances, NFA would only become aware of a non-compliant PDA if a Member invoked one in filing an NFA arbitration claim against a customer, and NFA would not be aware of

instances where a Member used a non-compliant PDA to force a customer into another forum without providing a customer with the protections provided in Regulation 166.5. Therefore, to ensure that Members fully understand their obligation under Regulation 166.5 and to provide NFA the clear ability to review for and enforce compliance with this requirement, NFA's Board adopted NFA Compliance Rule 2-53, which prohibits an NFA Member or Associate from offering to enter into a PDA with a non-ECP customer or relying on a PDA provision in an affiliate's account agreement that does not comply with Regulation 166.5. Given that the Commission already prohibits NFA Members from entering into a PDA with a customer that does not comply with Regulation 166.5, NFA does not believe the proposed rule poses any burden on NFA Members.

NFA's FCM, IB and CPO/CTA Advisory Committees supported the amendments to the Code and proposed NFA Compliance Rule 2-53, which NFA's Board unanimously approved. As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and intends to make the amendments to Sections 1 (o) and (bb) of the Code and NFA Compliance Rule 2-53 effective 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, reading "Carol A. Wooding". The signature is written in a cursive, flowing style with a large, stylized "C" and "W".

Carol A. Wooding
Senior Vice President and
General Counsel