

March 3, 2011

Via Federal Express

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Failure to Pay an Arbitration Award or Settlement – Proposed Amendments to NFA's Code of Arbitration Section 10 and Member Arbitration Rules Section 10*

Dear Mr. Stawick:

Pursuant to Section 17(j) of the Commodity Exchange Act (“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 Section 10 and Member Arbitration Rules Section 10. NFA's Board of Directors (“Board”) approved the proposal on February 17, 2011. NFA respectfully requests Commission review and approval of the proposed amendments.

PROPOSED AMENDMENTS

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

CODE OF ARBITRATION

Section 10. Award, Settlement and Withdrawal

(g) Failure to Comply

- (1) The President may, on 30 days written notice, summarily suspend a Member or Associate when the Member, or employee thereof, or Associate:

- (i) Fails to comply with an award within 30 days from the date of the service of the award by NFA or such other period as specified in the award unless
 - A. A request to modify the award is pending under Section 10(c) or
 - B. The Member, or employee thereof, or Associate who failed to comply has a pending application to vacate, modify or correct the award in a court of competent jurisdiction and has posted a bond with NFA equal to 150% of the amount of the award against that person or such lesser amount as NFA shall require in a particular case, but not less than 110% unless a satisfactory bond has been posted with the court;
- (ii) Fails to comply with a settlement agreement within 30 days after NFA terminates the arbitration proceeding pursuant to Section 10(h) or such other period as specified in the settlement agreement, or
- (iii) ~~fails to comply with a settlement agreement executed in connection with an NFA-sponsored pre-arbitration mediation proceeding within 30 days after the time stated in the settlement agreement; or~~
- (iv) Fails to pay any fee assessed within the time so ordered by the Panel.

The suspension shall remain in effect until such award, settlement agreement, or order of the Panel has been satisfied.

(2) The President may, on 30 days written notice, summarily bar from Membership or Associate Membership a former Member or Associate when that former Member, or employee thereof, or former Associate:

- (i) Fails to comply with an award within 30 days from the date of the service of the award by NFA or such other period as specified in the award unless

- A. A request to modify the award is pending under Section 10(c) or
- B. The former Member or former Associate who failed to comply has a pending application to vacate, modify or correct the award in a court of competent jurisdiction and has posted a bond with NFA equal to 150% of the amount of the award against that person or such lesser amount as NFA shall require in a particular case, but not less than 110% unless a satisfactory bond has been posted with the court;
 - (ii) Fails to comply with a settlement agreement within 30 days after NFA terminates the arbitration proceeding pursuant to Section 10(h) or such other period as specified in the settlement agreement, or
 - (iii) Fails to pay any fee assessed within the time so ordered by the Panel.

The bar shall remain in effect until such award, settlement agreement, or order of the Panel has been satisfied.

(3) A Member which guaranteed an IB during the relevant time may, on 30 days written notice be summarily suspended by the President if the guarantor fails to pay an award issued against the IB under Section 10(c) or a settlement agreement entered into by the IB under Section 10(h) within 30 days after the guarantor has received actual notice that the IB has failed to comply with the award or settlement. The suspension shall be lifted if the award or settlement agreement is satisfied.

(4) The President may, on 30 days written notice, summarily bar a former Member which guaranteed an IB during the relevant time if the guarantor fails to pay an award issued against the IB under Section 10(c) or a settlement agreement entered into by the IB under Section 10(h) within 30 days after the guarantor has received actual notice that the IB has failed to

comply with the award or settlement agreement. The bar shall be lifted if the award or settlement agreement is satisfied.

- (5) In lieu of or in addition to suspending any Member or Associate for failing to comply with an award, settlement agreement or Panel order to pay a fee or monetary sanction, NFA may initiate disciplinary action under its Compliance Rules for the failure of any Member or employee thereof or Associate to comply with the award, settlement agreement or Panel's order.

MEMBER ARBITRATION RULES

Section 10. Award, Settlement and Withdrawal

(g) Failure to Comply

- (1) The President may, on 30 days written notice, summarily suspend a Member or Associate when the Member, or employee thereof, or Associate:
- (i) Fails to comply with an award within 30 days from the date of the service of the award by NFA or such other period as specified in the award unless
 - A. A request to modify the award is pending under Section 10(c) or
 - B. The Member, or employee thereof, or Associate who failed to comply has a pending application to vacate, modify or correct the award in a court of competent jurisdiction and has posted a bond with NFA equal to 150% of the amount of the award against that person or such lesser amount as NFA shall require

in a particular case, but not less than 110% unless a satisfactory bond has been posted with the court;

- (ii) Fails to comply with a settlement agreement within 30 days after NFA terminates the arbitration proceeding pursuant to Section 10(h) or such other period as specified in the settlement agreement, or
- (iii) ~~fails to comply with a settlement agreement executed in connection with an NFA sponsored pre-arbitration mediation proceeding within 30 days after the time stated in the settlement agreement; or~~
- (iv) Fails to pay any fee assessed within the time so ordered by the Panel.

The suspension shall remain in effect until such award, settlement agreement, or order of the Panel has been satisfied.

(2) The President may, on 30 days written notice, summarily bar from Membership or Associate Membership a former Member or Associate when that former Member, or employee thereof, or former Associate:

- (i) Fails to comply with an award within 30 days from the date of the service of the award by NFA or such other period as specified in the award unless
 - A. A request to modify the award is pending under Section 10(c) or
 - B. The former Member or former Associate who failed to comply has a pending application to vacate, modify or correct the award in a court of competent jurisdiction and has posted a bond with NFA equal to 150% of the amount of the award against that person or such lesser amount as NFA shall require in a particular case, but not less than 110% unless a satisfactory bond has been posted with the court;

- (ii) Fails to comply with a settlement agreement within 30 days after NFA terminates the arbitration proceeding pursuant to Section 10(h) or such other period as specified in the settlement agreement, or
- (iii) Fails to pay any fee assessed within the time so ordered by the Panel.

The bar shall remain in effect until such award, settlement agreement, or order of the Panel has been satisfied.

- (3) A Member which guaranteed an IB during the relevant time may, on 30 days written notice be summarily suspended by the President if the guarantor fails to pay an award issued against the IB under Section 10(c) or a settlement agreement entered into by the IB under Section 10(h) within 30 days after the guarantor has received actual notice that the IB has failed to comply with the award or settlement. The suspension shall be lifted if the award or settlement agreement is satisfied.
- (4) The President may, on 30 days written notice, summarily bar a former Member which guaranteed an IB during the relevant time if the guarantor fails to pay an award issued against the IB under Section 10(c) or a settlement agreement entered into by the IB under Section 10(h) within 30 days after the guarantor has received actual notice that the IB has failed to comply with the award or settlement agreement. The bar shall be lifted if the award or settlement agreement is satisfied.
- (5) In lieu of or in addition to suspending any Member or Associate for failing to comply with an award, settlement agreement or Panel order, NFA may initiate disciplinary action under its Compliance Rules for the failure of any Member or Associate to comply with the award, settlement agreement or Panel's order.

EXPLANATION OF PROPOSED AMENDMENTS

Section 10(g) of both the Code of Arbitration ("Code") and Member Arbitration Rules ("Rules") provide that the President of NFA may, on 30 days written notice, suspend a Member or Associate who either fails to pay an arbitration award or fails to comply with a settlement agreement. Section 10(g)(1)(i)(A) and (B) of the Code and Rules provide that NFA will not suspend a Member or Associate for failure to pay an arbitration award if there is a pending request to modify the award under Section 10(c), or the Member or Associate who has failed to comply with the award has a pending application to vacate, modify or correct the award in a court of competent jurisdiction and has posted a bond with NFA equal to 150% of the amount of the award against that person or such lesser amount as NFA shall require, but not less than 110% unless a satisfactory bond has been posted with the court. The suspension remains in effect until the Member or Associate satisfies the award or settlement. This process ensures that any Member or Associate that fails to pay an award or comply with a settlement agreement is not able to act as an NFA Member until the award is paid.

When the party that fails to pay an award or comply with a settlement agreement is not a Member or Associate at the time the obligation to pay or comply arises, NFA's only recourse is to update the former Member's or Associate's registration file to reflect this failure to pay or comply. However, this failure alone may not always constitute grounds to deny registration, and therefore membership, to the former Member or Associate if they subsequently reapply. Although NFA could take a registration action under 8(a)(3)(M) (other good cause) of the Act for failing to pay the award, NFA has the burden under Commission case law to prove that the failure to pay was willful (i.e., the individual had the financial resources to pay and did not). Therefore, in the few instances where this has occurred, NFA has been forced to resort to the cumbersome approach of granting the applicant registration and membership and then suspending that membership on 30 days written notice in accordance with the Code and the Rules.

As a means of resolving this problem, NFA's Board amended Section 10 of the Code and Rules to provide that NFA's President may summarily bar from membership a **former** Member or Associate if that former Member or Associate fails to comply with an award or a settlement agreement, unless the former Member or Associate has a pending request to modify the award or has a pending application to vacate, modify or correct the award in a court of competent jurisdiction and has filed a

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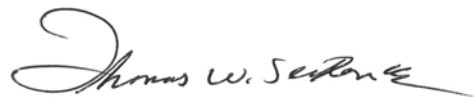
bond in accordance with the rule. The bar would remain in effect until the former Member or Associate paid the award or complied with the settlement agreement. If the former Member or Associate applied for registration without satisfying the award or settlement agreement, NFA could use the membership bar as a basis to deny registration under Section 8(a)(3)(J) of the Act. In a registration action for a disqualification under Section 8(a)(3)(J), NFA has a lower burden than under 8(a)(3)(M) since NFA merely has to prove that the bar is in effect and not that the failure to pay was willful.

NFA's Board also approved an amendment to eliminate Section 10(g)(1)(iii) from both the Code and the Rules. These sections both currently provide that NFA's President may suspend a Member or Associate for failure to comply with a settlement agreement executed in connection with an NFA-sponsored pre-arbitration mediation proceeding. Since NFA no longer offers a pre-arbitration mediation program, and has not offered such a program in several years, these sections of the Code and Rules are no longer necessary.

NFA's FCM, IB, CPO/CTA and FDM Advisory Committees fully supported amending the Code and the Rules as discussed above.

NFA respectfully requests that the Commission review and approve the proposed amendments to NFA's Code of Arbitration Section 10 and Member Arbitration Rules Section 10.

Respectfully submitted,



Thomas W. Sexton
Senior Vice President and
General Counsel

*The proposed amendments to NFA's Code of Arbitration Section 10 and Member Arbitration Rules Section 10 became effective July 7, 2011.