

The Reparations Program of the Commodity Futures Trading Commission



Information Booklet

Office of Proceedings
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW
Washington, DC 20581
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E-mail – proceedings@cftc.gov
Website – www.cftc.gov

About the CFTC's Reparation Program

The CFTC's Reparations Program provides an inexpensive, expeditious, and fair forum to resolve disputes between futures and option customers and registered trading professionals. If you are a futures or options customer, or a leverage contract customer, and you have a dispute with your broker or brokerage firm that you cannot resolve, you may be able to file a complaint with the Commission's Reparations Program.

Benefits of the Reparations Program

The Reparations Program offers you a number of benefits. First, your complaint, if it meets the filing requirements, will be decided by a CFTC Judgment Officer who specializes in commodity law. Second, the cost of and time involved in litigating your complaint may be less than in other forums. Lastly, while CFTC staff cannot represent you in a complaint or offer you legal advice, they can explain the procedures to you, which may be helpful if you are not represented by an attorney.

Common Reparations Claims

In your complaint, you must describe how the actions of the individuals or firms you name were illegal under the Commodity Exchange Act or the Commission's rules. You should specifically describe the illegal activity that you believe was committed and provide evidence to support your claim. Illegal activities include, but are not limited to:

- **Fraud:** Cheating or attempting to cheat you through false claims about the likelihood of profit or loss from trading; false or misleading statements about trading or about your salesperson, advisor, or the trading program you use to trade; or false or misleading statements about any other material fact that you relied on in making a decision about futures or option trading.
- **Breach of fiduciary duty:** A failure by a broker or salesperson to handle your account with the degree of care required by the Commodity Exchange Act or CFTC rules.
- **Unauthorized trading:** Trades made by a broker without your prior specific authorization or without a written grant of authority to make trades without your specific authorization.
- **Misappropriation:** A broker's unauthorized use or diversion of some or all of the money that you deposited for the purpose of trading futures or options.
- **Churning:** Excessive trading of your account for the purpose of producing commissions and without regard for your financial interests.
- **Wrongful liquidation:** The unauthorized closing of your position.

- **Failure to supervise:** Failure by a supervisor to diligently oversee the handling of your account by the supervisor's partners, officers, employees, or agents.
- **Nondisclosure:** Failure to inform you of the risks associated with futures and option trading, and the failure to disclose any other material fact you need to make decisions about futures or option trading.

Requirements for Filing a Reparations Complaint

You can file a reparations complaint if:

- **Registration.** Your complaint names an individual or firm who was registered with the National Futures Association (NFA) at the time of the alleged wrongdoing or at the time the complaint is filed. You can find this information in the NFA BASIC System at www.nfa.futures.org/basicnet/ or by calling the NFA Information Center (1-800-612-3570) or the CFTC Complaints Section (202-418-5506).
- **Violations.** You provide a detailed statement that describes how you believe your broker or brokerage firm violated the Commodity Exchange Act or CFTC rules, resulting in losses to your account. You should provide as much evidence of your alleged violations as possible by providing any and all documents that support your claim, such as account opening forms, account statements, and trading records.
- **Two-Year Limitation.** You file your complaint within two years of the date the violation occurred or within two years of the date you should have known of the violation.
- **Other Actions.** You are not involved in an arbitration forum or civil court action involving the same claim.
- **Bankruptcy.** The individuals or firms you name are not involved in a bankruptcy or receivership proceeding.
- **Filing Fee.** You submit a filing fee by check or money order payable to the CFTC for the procedure you choose:
 - Voluntary (\$50)
 - Summary (\$125)
 - Formal (\$250)
- **Non-Resident Bond:** If you are not a citizen of the United States, you may need to file a bond or waiver of bond before we can accept your complaint. See Section 12.13(b)(4) of the reparations rules.

Selecting a Reparations Procedure

There are three types of reparations proceedings. When you file your claim, you must choose one of these three procedures.

- **Voluntary Procedure.** You can select the voluntary procedure for a claim of any amount; the individuals or firms you name must also agree to use the voluntary procedure. It is typically the quickest proceeding since it does not involve a hearing or allow for appeals. A Judgment Officer decides voluntary cases solely on the basis of written submissions and exhibits provided by the parties. Voluntary procedure decisions are final; you may **not** appeal a decision in the voluntary procedure to the Commission or the U.S. Court of Appeals.
- **Summary Procedure.** If you do not select the voluntary procedure and you claim \$30,000 or less in damages, you must select the summary procedure. In a summary procedure, you submit your evidence in writing and the Judgment Officer may, if needed, hold an oral hearing by telephone. You can appeal the decision to the Commission and, ultimately, to the U.S. Court of Appeals.
- **Formal Procedure.** If you claim more than \$30,000 in damages and you do not select the voluntary procedure, you must select the formal procedure. In a formal procedure, you must submit your evidence in writing and the Judgment Officer may, if needed, hold an in person hearing in a location that is, to the extent possible, convenient to all the parties. You can appeal the decision to the Commission and, ultimately, to the U.S. Court of Appeals.

Filing a Reparations Complaint

If you meet the requirements for filing a claim and you have selected the type of reparations procedure, you can complete the Reparations Complaint Form (Form 30). The Form 30 is available on the CFTC website (www.cftc.gov) or by request from the Office of Proceedings. Before you send your complaint, you should review the Complainant's Checklist.

You should send your form, any documentation you have to support your claim and damage calculations, and the appropriate filing fee by mail (first class, registered or certified) to:

**Proceedings Clerk, Office of Proceedings
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW
Washington, DC 20581**

Frequently Asked Questions

1. What happens to my complaint after I submit it?

The Complaints Section of the Office of Proceedings will review your complaint to determine whether it meets the criteria for a valid claim. If it meets the claim requirements, the Complaints Section will send a copy of your complaint to the individuals and firms you named as respondents and will notify you that it has done so. If your complaint does not meet the claim requirements, the Complaints Section will contact you to discuss the deficiencies in your filing.

The individuals and firms you name in your complaint (“the respondents”) may do one of the following: they may file an answer denying any liability; they may seek to negotiate a settlement with you; they may not respond at all; and, in some limited situations, generally where a complainant has a debit balance with the respondent, they may include a counterclaim against you with their answer. If the respondents fail to respond, your case may be forwarded to a Judgment Officer for review as a default proceeding.

If the Complaints Section receives an answer, it will review the answer and forward the case to the Proceedings Clerk for assignment to a Judgment Officer.

2. Can I withdraw my complaint after it is filed?

Yes. Before the Complaints Section sends the complaint to the respondents, you may notify the CFTC in writing that you are withdrawing your complaint (“Notice of Withdrawal”). If you withdraw your complaint at this stage, you may re-file your complaint with the CFTC if the two-year deadline has not expired or you may file your claim in another forum. The filing fee will not be refunded.

After the Complaints Section forwards your complaint to the respondents, you may not withdraw the complaint without the respondents’ consent. If you obtain the respondents’ consent, the Complaint Section will issue an “Order of Voluntary Dismissal.” If your complaint is dismissed through an Order of Voluntary Dismissal, you cannot re-file.

3. What is the minimum or maximum amount that I can claim?

You are not limited by a minimum or maximum amount of damages in your claim. However, you must explain how you calculated the damages you claim and provide evidence to support your claim. Under the law, you are allowed to recover actual damages, which usually means your out-of-pocket trading losses and, if your account was churned, a refund of all commissions earned through churning.

The Judgment Officer can only grant punitive damages in cases involving intentional violations occurring in the execution of an order on an exchange floor.

4. *Can the respondent file a counterclaim against me?*

Yes, but the counterclaim must stem from the same set of facts that are the subject of your claim. If filed, a counterclaim usually would seek to recover a debit balance in your account.

5. *What happens once my case is forwarded to a Judgment Officer?*

You will receive a notice of the assignment of your case to a Judgment Officer. After you receive this notice, you can gather additional evidence, beyond what you already provided, in support of your claim. You can provide evidence in many forms including: affidavits (sworn statements); account forms; trading statements and other records; tape recordings; order tickets; etc.

To obtain evidence that is in the hands of the respondents or held by third parties, each side may formally request information during the discovery process. All parties are required to respond to relevant discovery requests from the other side. You can request that the Judgment Officer issue a subpoena to obtain information from non-parties.

6. *Do I need an attorney?*

In many cases, the facts and issues are simple enough that one or both sides may be able to present their cases satisfactorily without the assistance of an attorney. Sometimes the amount of money at stake is small enough that hiring an attorney would not be cost-effective. However, if the facts are complicated or present technical legal questions, or if your claim involves a substantial amount of money, you may wish to consult an attorney. It is important to remember that the CFTC will not provide you with any legal advice or help you prove your claim.

7. *How long does the reparations process take?*

The length of time it takes to receive a decision after you file a complaint can vary substantially. The time depends on a variety of factors, including the facts and complexity of your case; whether the parties are cooperative in discovery and submit their evidence quickly; whether an oral hearing is required and, if so, when it can be scheduled.

Although every case is different, typically a Voluntary Proceeding will be decided within six or eight months. At that point, the proceeding is over because the decision cannot be appealed. Summary and Formal Proceedings typically require about a year, longer if appeals are filed.

8. *Can the initial decision be appealed or reviewed?*

If you and the respondents agree to use the Voluntary Procedure, neither you nor the respondents may appeal the decision to any higher level.

If your claim was considered in a Summary or Formal Procedure, you or one or more of the respondents may appeal an adverse decision on any point in dispute (even if you have won other parts of your case) to the Commission. There is a \$50.00 filing fee for an appeal to the Commission. The Commission may reverse, modify or affirm the initial decision. A decision by the Commission may be appealed to a U.S. Court of Appeals.

9. If I win my case, when will I get my money?

Under the law, the respondents must pay within 45 days unless one of the respondents appeals the decision. If no respondent appeals and there is no proof that the award has been paid, the license and trading privileges of that respondent will be automatically suspended by the Commission until payment is made.

10. If the respondent fails to pay me, will the CFTC collect my money for me?

The Commission can suspend the registration and trading privileges of the respondent, but the Commission cannot help you collect your award. If the respondent does not pay the award, you can ask the U.S. District Court where the respondent lives or has a principal place of business to enforce the award. The Proceedings Clerk will send additional information on how to enforce an unpaid reparations award when the decision becomes final.

If the District Court enforces the award, the court normally will require the respondent to pay all court costs and any legal fees you have incurred in connection with enforcing the award. The judgment is directly enforceable in District Court three years from the date of the decision, and post and pre-judgment interest can be awarded.

11. How do I check the status of my case?

If your case has not been assigned to a Judgment Officer, you can check on the status of your complaint by calling the Complaints Section at (202) 418-5506. After you receive notice that your case has been assigned to a Judgment Officer, you should make call the staff of the Judgment Officer to whom the case is assigned (the telephone number will be given to you in the assignment notice.) After the Judgment Officer issues a decision, any further inquiries should be directed to the Proceedings Clerk at (202) 418-5508.

12. Are there any restrictions regarding my contacts with the Office of Proceedings?

You may make inquiries and ask for procedural information at any time. However, after you receive notice that your case has been assigned to a Judgment Officer, you may not discuss the facts of your case with the Judgment Officer or any member of the Judgment Officer's staff without the other parties being present or, in the case of written communications, without simultaneously sending a copy of your letter to the other parties. The same prohibition applies to respondents. (An exception can be made where the parties wish to have the judge help in settlement discussions.)

Additional Resources

CFTC Information: All the information contained in this reparations package as well as more detailed information about the Reparations Program and the CFTC, can be found on our website at www.cftc.gov.

Other actions: The Complaints Section of the CFTC Office of Proceedings (202-418-5506) can provide information about whether other reparations complaints have been filed against particular individuals and firms. The NFA's BASIC system (www.nfa.futures.org/basicnet/) contains a registrant's complete history including any regulatory actions taken by the CFTC, NFA or an exchange, reparations cases, and NFA arbitration awards.

Bankruptcy or receivership: If the respondents are in bankruptcy or receivership, you should contact the respondents or their lawyers for the names of the bankruptcy trustee or receiver to determine if you can file a claim.

Arbitration and civil cases: NFA – www.nfa.futures.org (312-781-1410) and the American Arbitration Association www.adr.org (212-484-4000) can provide information about arbitration as a method of resolving commodity futures-related disputes. In addition, each exchange offers arbitration programs for disputes involving one or more exchange members.

Information on filing a civil court case in the U.S. District Court is available from the clerk of court in your district. To find your local federal court you can use the court locator at http://www.uscourts.gov/Court_Locator.aspx or check your local library for the court's address and telephone number.

NOTICE TO CUSTOMERS MAKING PAYMENT BY CHECK

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

Privacy Act – A Privacy Act Statement required by 5 U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (PCCOTC.GOV), or call toll free at (1-800-624-1373) to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.