

March 13, 2023

**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: Board Structure and Composition --  
Proposed Amendments to NFA's Articles of Incorporation and Bylaws

Dear Mr. Kirkpatrick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("CEA"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") the proposed amendments to NFA's Articles of Incorporation and Bylaws regarding NFA's Board Structure and Composition. NFA's Board of Directors (Board) unanimously approved the proposal on November 17, 2022. NFA respectfully requests Commission review and approval of the proposal, which NFA intends to make effective no later than the Board's annual meeting held in February 2024.

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**PROPOSED AMENDMENTS**

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

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**CERTIFICATE OF INCORPORATION OF NATIONAL FUTURES ASSOCIATION**

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**ARTICLE VII: BOARD OF DIRECTORS**

**Section 1: General.**

The duties of the Board of Directors shall include the management of NFA's business, the adoption of NFA's Bylaws, and the fulfillment of NFA's fundamental purposes.

**~~Section 2: Composition of the Board until the Annual Meeting of the Board of Directors Held in February 2016.~~**

~~Until the regular annual meeting of the Board of Directors as set forth in Bylaw 506 (hereinafter "regular annual meeting of the Board" or "Board's regular annual meeting") held in February 2016, the Board of Directors shall be comprised as follows:~~

**~~(a) Contract Market Representatives.~~**

~~(i) In the event that there are four (4) or less Contract Market Members having annual transaction volume during the prior calendar year of more than 1,000,000, then one representative of each such Contract Market Member.~~

~~(ii) In the event that there are more than four (4) Contract Market Members with annual transaction volume during the prior calendar year of more than 1,000,000:~~

~~(a) One representative of each Contract Market Member ranked in the top three (3) Contract Market Members based on annual transaction volume during the prior calendar year.~~

~~(b) One (1) elected representative of Contract Market Members with annual transaction volume during the prior calendar year of more than 1,000,000 that are not included in Section 2(a)(ii)(a) above. Only Contract Market Members not represented in accordance with Section 2(a)(ii)(a) shall be eligible to vote for the representatives elected in accordance with this Section 2(a)(ii)(b).~~

~~(iii) A specific Contract Market's annual transaction volume shall be the number of commodity futures contracts and swaps contracts entered into on the Contract Market during the calendar year. The number of contracts entered into on a Contract Market shall be adjusted where necessary because of differences in sizes of contracts (e.g., one 5,000 oz. contract for a particular commodity would equal five 1,000 oz. contracts for that commodity for purposes of the computation).~~

~~(iv) A Contract Market Member and all Contract Market Members with which it is affiliated shall have no more than one representative on the Board at any one time. For the purposes of this limitation, a Contract Market Member shall be deemed to be affiliated with another Contract Market Member if it directly or indirectly owns 100 percent of or is owned 100 percent by or has 100 percent ownership in common with such other Contract Market Member.~~

**~~(b) Futures Commission Merchant, Leverage Transaction Merchant and Introducing Broker Representatives.~~**

~~Nine (9) elected representatives of registered Futures Commission Merchant Members, registered Leverage Transaction Merchant Members and registered Introducing Broker Members, divided as follows:~~

~~(i) Seven (7) representatives of FCMs, including (A) at least three (3) representatives of FCMs ranked in the top ten FCMs and (B) at least three (3) representatives of FCMs and LTMs not ranked in the top ten FCMs based on the total of futures customer segregated funds and foreign futures or foreign options secured amounts, as those terms are defined in the applicable Commission regulations, held as of June 30 of the prior calendar year.~~

~~(ii) One representative of IBs required to maintain minimum adjusted net capital.~~

~~(iii) One representative of IBs not required to maintain minimum adjusted net capital.~~

**~~(c) Commodity Pool Operator and Commodity Trading Advisor Representatives~~**

~~Five (5) elected representatives of registered Commodity Pool Operators and registered Commodity Trading Advisors that are NFA Members, including at least three (3) representatives of CPOs or CTAs that rank within the top 20 percent, one (1) of which must rank within the top 5 percent of CPOs or CTAs reporting any funds under management allocated to futures and swaps (as defined in [Article XVIII](#)) on NFA Form PQR and NFA Form PR as of June 30 of the prior calendar year.~~

**~~(d) Swap Dealer and Major Swap Participant Representatives and Retail Foreign Exchange Dealer Members.~~**

~~Seven (7) elected representatives of registered or provisionally registered Swap Dealers, registered or provisionally registered Major Swap Participants and registered Retail Foreign Exchange Dealers, divided as follows:~~

~~(i) At least three (3) representatives of SDs that are Large Financial Institutions, as of June 30 of the prior calendar year.~~

~~(ii) At least three (3) representatives of SDs or RFEDs that are not included in paragraph (d)(i) above, as of June 30 of the prior calendar year.~~

~~(iii) One representative of MSPs: *Provided, however,* that if there are no persons willing and eligible to be a representative of MSPs, then one (1) representative of SDs and RFEDs.~~

**~~(e) Public Representatives.~~**

~~(a) Effective as of the 2013 annual meeting of the Board, eleven (11) individuals who are Public Representatives (see [Article XVIII](#)); and~~

~~(b) Effective as of the 2016 annual meeting of the Board, individuals who are Public Representatives (see [Article XVIII](#)) shall constitute thirty five percent (35%) of the Board's voting representatives.~~

~~(f) An FCM, LTM, RFED, IB, CTA, GPO, SD or MSP Member and all of its Affiliates (See [Article XVIII](#) (b)) shall have no more than one representative on the Board at any one time.~~

**Section 2A: Composition of the Board from and after the Annual Meeting of the Board of Directors Held in February ~~2016~~ 2024.**

Notwithstanding anything to the contrary contained herein, ~~the terms of office of all Directors in office shall expire at the regular annual meeting of the Board of Directors as set forth in Bylaw 506 (hereinafter "regular annual meeting of the Board" or "Board's regular annual meeting") held in February 2016~~ the terms of office of all Directors in office shall expire. From and after the regular annual meeting of the Board held in February 2024 ~~2016~~, the Board of Directors shall be comprised of no more than 23 Directors, the exact number and allocation in each Board category to be fixed by the Board of Directors from time to time pursuant to resolution adopted by the Board of Directors and shall include the following as follows:

**(a) Contract Market Representatives.**

No more than two (2) Contract Market Representatives as follows:

(i) In the event that there is only one (1) Contract Market Member of NFA having annual transaction volume during the prior calendar year of more than 1,000,000, then one (1) representative of that Contract Market Member.

(ii) In the event there are at least two (2) Contract Market Members having annual transaction volume during the prior calendar year of more than 1,000,000:

(a) one (1) representative of the Contract Market Member with the greatest annual transaction volume during the prior calendar year; and

(b) one (1) representative from a Contract Market Member not included in Section 2(a)(ii)(a) above. Only Contract Market Members not represented in accordance with Section 2(a)(ii)(a) above shall be eligible to vote for the representative elected in accordance with this Section 2(a)(ii)(b).

~~(i) In the event that there are three (3) or less Contract Market Members having annual transaction volume during the prior calendar year of more than 1,000,000, then one (1) representative of each such Contract Market Member.~~

~~(ii) In the event that there are more than three (3) Contract Market Members with annual transaction volume during the prior calendar year of more than 1,000,000:~~

~~(a) One (1) representative of each Contract Market Member ranked in the top two (2) Contract Market Members based on annual transaction volume during the prior calendar year; and~~

~~(b) One (1) elected representative of Contract Market Members with annual transaction volume during the prior calendar year of more than 1,000,000 that are not included in Section 2A(a)(ii)(a) above. Only Contract Market Members not represented in accordance with Section 2A(a)(ii)(a) shall be eligible to vote for the representatives elected in accordance with this Section 2A(a)(ii)(b).~~

(iii) A specific Contract Market's annual transaction volume shall be the number of commodity futures contracts and swaps contracts entered into on the Contract Market during the calendar year. The number of contracts entered into on a Contract Market shall be adjusted where necessary because of differences in sizes of contracts (e.g., one 5,000 oz. contract for a particular commodity would equal five 1,000 oz. contracts for that commodity for purposes of the computation).

(iv) A Contract Market Member and all Contract Market Members with which it is affiliated shall have no more than one (1) representative on the

Board at any one time. For the purposes of this limitation, a Contract Market Member shall be deemed to be affiliated with another Contract Market Member if it directly or indirectly owns 100 percent of or is owned 100 percent by or has 100 percent ownership in common with such other Contract Market Member.

**(b) Futures Commission Merchant, and Leverage Transaction Merchant and Introducing Broker Representatives.**

~~Seven (7) elected representatives of registered Futures Commission Merchant Members, registered Leverage Transaction Merchant Members and registered Introducing Broker Members, divided as follows:~~

No more than four (4) and no fewer than three (3) elected representatives of registered Futures Commission Merchants (FCMs) and registered Leverage Transaction Merchants (LTMs), divided as follows:

~~(i) Five (5) representatives of FCMs, including (A) at least two (2) representatives of FCMs ranked in the top ten FCMs and (B) at least two (2) representatives of FCMs and LTMs not ranked in the top ten FCMs based on the total of futures customer segregated funds and foreign futures or foreign options secured amounts, as those terms are defined in the applicable Commission regulations, held as of June 30 of the prior calendar year.~~

(i) If there are four (4) representatives, then two (2) representatives of FCMs ranked in the top ten FCMs and two (2) representatives of FCMs and LTMs not ranked in the top ten FCMs based on the total of futures customer segregated funds, cleared swaps customer collateral and foreign futures or foreign options secured amounts, as those terms are defined in the applicable Commission regulations, held as of June 30 of the prior calendar year; or

(ii) If there are three (3) representatives, then two (2) representatives of FCMs ranked in the top ten FCMs and one (1) representative of FCMs and LTMs not ranked in the top ten FCMs based on the total of futures customer segregated funds, cleared swaps customer collateral and foreign futures or foreign options secured amounts, as those terms are defined in the applicable Commission regulations, held as of June 30 of the prior calendar year.

~~(ii) One (1) representative of IBs required to maintain minimum adjusted net capital.~~

~~(iii) One (1) representative of IBs not required to maintain minimum adjusted net capital.~~

**(c) Introducing Broker Representatives.**

One (1) representative of registered Introducing Brokers.

**(de) Commodity Pool Operator and Commodity Trading Advisor Representatives.**

~~Three (3) (4) elected representatives of registered Commodity Pool Operators (CPOs) and registered Commodity Trading Advisors (CTAs) that are NFA Members reporting funds under management allocated to futures and swaps (as defined in Article XVIII) on NFA Form PQR and NFA Form PR as of June 30 the prior calendar year (Funds Under Management Allocated to Futures and Swaps) divided as follows: one (1) representative from CPOs or CTAs ranked within the top ten (10) percent based on Funds Under Management Allocated to Futures and Swaps; one (1) representative from CPOs or CTAs ranked within the top twenty (20) percent based on Funds Under Management Allocated to Futures and Swaps; and one at large representative from CPOs or CTAs with no restriction on its rank among CPOs and CTAs reporting Funds Under Management Allocated to Futures and Swaps. including (i) at least one (1) representative of CPOs or CTAs ranked within the top five (5) percent and (ii) at least one (1) representative of CPOs or CTAs ranked within the top ten (10) percent of CPOs or CTAs reporting any funds under management allocated to futures and swaps (as defined in Article XVIII) on NFA Form PQR and NFA Form PR as of June 30 of the prior calendar year.~~

**(ed) Swap Dealer and Major Swap Participant Representatives and Retail Foreign Exchange Dealer Members.**

~~No more than four (4) and no fewer than three (3) Five (5) elected representatives of registered or provisionally registered Swap Dealers (SDs), registered or provisionally registered Major Swap Participants (MSPs) and registered Retail Foreign Exchange Dealers (RFEDs), divided as follows:~~

~~(i) At least two (2) representatives of SDs that are Large Financial Institutions, as of June 30 of the prior calendar year; and~~

~~(ii) At least two (2) representatives of SDs, MSPs or RFEDs that are not included in paragraph (d)(i) above, as of June 30 of the prior calendar year.~~

(i) If there are four (4) representatives, then two (2) representatives of SDs that are Large Financial Institutions, as of June 30 of the prior calendar year and two (2) representatives of SDs, MSPs or RFEDs that are not Large Financial Institutions, as of June 30 of the prior calendar year; or

(ii) If there are three (3) representatives, then two (2) must be representatives of SDs that are Large Financial Institutions, as of June 30 of the prior calendar year and one (1) representative must be of SDs, MSPs or RFEDs that are not Large Financial Institutions, as of June 30 of the prior calendar year.

**(fe) Public Representatives.**

No more than nine (9) Ten (10) individuals who are Public Representatives (see [Article XVIII](#)).

**(gf)** An FCM, LTM, RFED, IB, CTA, CPO, SD or MSP Member and all of its Affiliates (See Article XVIII) shall have no more than one (1) representative on the Board at any one time.

**Section 3: Nominations; Election.**

~~The elected Directors shall be chosen as follows:~~

**~~(a) Nominating Committee.~~**

~~The Nominating Committee (see Article X) shall nominate at least one candidate for each elected FCM and LTM; IB; CPO and CTA; and SD, MSP and RFED Director position to be filled. These nominations shall be made in accordance with the eligibility requirements contained in this Article. The Nominating Committee shall nominate candidates whose election shall result in diverse segments of each category being represented on the Board based upon the size of the Member, the type of business conducted by the Member and the type of customer serviced by the Member.~~

**~~(b) Petition Procedure.~~**

~~Nominations may be made for elected FCM and LTM; IB; CPO and CTA; and SD, MSP and RFED Director positions by:~~



~~(i) Petition signed by 50 or more NFA Members in the category for which the nomination is made (i.e., FCM and LTM; SD, MSP and RFED; IB; and CPO and CTA); or~~

~~(ii) Petition submitted by any organization or association recognized by NFA as fairly representing the category (See (b)(i) above) for which the nomination is made.~~

~~Petitions shall be submitted in the manner specified in the Bylaws. No petition may nominate more than one candidate for the same position.~~

#### ~~(c) Election.~~

~~If there is a contested election in any category (See (b)(i) above) of NFA Members, the Members in that category shall thereafter elect by plurality vote from such nominees the Directors that are to represent that category. The election shall be conducted in the manner provided in the Bylaws, which shall provide for an Annual Election. If there is not a contested election in any category of NFA Members, the Directors that are to represent that category shall be elected to the Board by the members of the Executive Committee, other than the members who are Public Representatives (and solely for such purposes shall be deemed the sole voting members under the General Corporation Law of the State of Delaware).~~

#### ~~(d) Public Representatives.~~

~~The Public Representatives shall be chosen as follows: Before the Annual Election, the Board shall solicit the nomination of individuals to serve on the Board in the Public Representative category. At the Board's regular annual meeting, the Board shall, by majority vote, elect the Public Representatives to serve on the Board.~~

#### ~~(e) Contract Markets~~

~~At the Annual Election held in 2016 and at all Annual Elections held thereafter, in the event of an election as described in Article VII, Section 2A(a)(ii)(b), the Contract Market representatives shall be elected as follows: Before the Annual Election, the Board shall solicit from Contract Market Members eligible to have representatives pursuant to Article VII, Section 2A(a)(ii)(b) the nomination of individuals to serve on the Board as representatives of such Contract Market Members. If there is a contested election of such Contract Market Members, the Contract Market Members eligible to vote pursuant to Article VII, Section 2A(a)(ii)(b) shall thereafter elect by plurality vote from such nominees the Directors that will represent them. The election shall be conducted in the manner provided in the Bylaws, which shall provide for an Annual Election. If there is not~~

~~a contested election of such Contract Market Members, the Directors that are to represent that category shall be elected to the Board by the members of the Executive Committee, other than the members who are Public Representatives (and solely for such purposes shall be deemed the sole voting members under the General Corporation Law of the State of Delaware).~~

**(a) Member Category Representatives.**

Member Category Directors, other than Contract Markets, shall be nominated in accordance with the process established by the Nominating and Governance Committee (see Bylaw 706). If there is a contested election in an NFA Member category, the Members in that category shall thereafter elect by plurality vote from such nominees the Directors that are to represent that category (See Bylaw 406). The election shall be conducted in the manner provided in the Bylaws, which shall provide for an Annual Election. If there is not a contested election in a category of NFA Member, the Directors who represent that category and who are to be elected shall be elected to the Board by the Board of Directors (and solely for such purposes shall be deemed the sole voting members under the General Corporation Law of the State of Delaware).

**(b) Public Representatives.**

The Public Representatives shall be nominated by the Nominating and Governance Committee for election by the Board of Directors in accordance with the process established by the Nominating and Governance Committee. Before the Annual Election, the Board shall solicit the names of individuals for consideration to serve on the Board in the Public Representative category. At the Board's regular annual meeting, the Board shall, by majority vote, elect the Public Representatives to serve on the Board.

**(c) Contract Market Representatives.**

In the event of an election as described in Article VII, Section 2(a)(ii)(b), Contract Market representatives shall be elected as follows: Before the Annual Election, the Board shall solicit from Contract Market Members eligible to have a representative pursuant to [Article VII](#), Section 2(a)(ii)(b) the nomination of individuals to serve on the Board as a representative of such Contract Market Members. If there is a contested election of such Contract Market Members, the Contract Market Members eligible to vote pursuant to [Article VII](#), Section 2(a)(ii)(b) shall thereafter elect by plurality vote from such nominees the Director that will represent them. The election shall be conducted in the manner provided in the Bylaws, which shall provide for an Annual Election. Tie votes may be resolved by the Board by random lot. If there is not a contested election of such Contract Market Members, the Director that represents Contract Markets

described in Article VII, Section 2(a)(ii)(b) shall be elected to the Board by the Board of Directors (and solely for such purposes shall be deemed the sole voting members under the General Corporation Law of the State of Delaware). The Director that represents the Contract Market described in Article VII, Section 2(a)(ii)(a) shall be elected to the Board by the Board of Directors (and solely for such purposes shall be deemed the sole voting members under the General Corporation Law of the State of Delaware).

#### **Section 4: Terms of Directors.**

##### **(a) Contract Market Directors.**

~~Notwithstanding anything to the contrary contained herein, the terms of office of all Directors in office shall expire at the regular annual meeting of the Board held in February 2016. From and after the regular annual meeting of the Board held in February 2016, Directors representing Contract Market Members shall serve for one year terms, from the date of the Board's regular annual meeting until the date of the Board's regular annual meeting one year hence.~~

##### **(b) Other Directors.**

~~Notwithstanding anything to the contrary contained herein, the terms of office of all Directors in office shall expire at the regular annual meeting of the Board held in February 2016. The Board of Directors, pursuant to a resolution adopted by the Board, shall determine which Directors whose terms begin on the date of the regular annual meeting of the Board held in February 2016 shall serve one-year or two-year terms. The Nominating Committee shall determine which Directors, other than Contract Market Directors and Public Representatives, whose terms begin on the date of the regular annual meeting of the Board held in February 2016 shall serve two-year terms. as follows: three (3) representatives of FCMs and LTMs, at least one (1) of which is described in Section 2A(b)(i)(A) and at least one (1) of which is described in Section 2A(b)(i)(B); one (1) representative of IBs; two (2) representatives of CPOs or CTAs, at least one (1) of which is described in Sections 2A(c)(i) and 2A(c)(ii); and three (3) representatives of SDs, MSPs and RFEDs, at least one (1) of which is described in Section 2A(d)(i) and at least one (1) of which is described in Section 2A(d)(ii). The remainder of such Directors shall serve one-year terms. The Board shall determine which five (5) of the Public Representatives whose terms begin on the date of the regular annual meeting of the Board held in February 2016 shall serve two-year terms. The remainder of the Public Representatives shall serve one-year terms. Except as provided above, Directors other than Contract Market Member Directors shall serve for two-year terms, from the date of the Board's regular annual meeting following the Annual Election at which they are elected until the date of the Board's regular annual meeting two years hence.~~

**Section 5: Voting; Quorum.**

Each Director shall have one vote upon any matter coming before the Board for official action, and, except as otherwise provided in these Articles or NFA's Bylaws, the affirmative vote of a majority of the Directors present and voting at a meeting of the Board shall be NFA's official act if a quorum is present. A quorum of the Board shall consist of one-half of the Directors, except where NFA Bylaws specify a lesser number in emergency situations.

**Section 6: Establishment of Major Plans and Priorities.**

The Board shall establish ~~for observance by the Executive Committee (See Article VIII) and NFA staff~~ major plans and priorities, including those regarding the commitment and expenditure of NFA funds.

**Section 7: ~~Chairman and Vice Chairman~~**

There shall be a ~~Chairman and Vice Chairman~~ of the Board. They Chair shall serve for ~~a one-year terms~~ and shall be elected by the Board at its regular annual meeting, by majority vote. The ~~Chairman~~ shall be elected from among the Directors in office ~~and the Vice Chairman shall be elected from among Directors elected to serve on the Executive Committee.~~ No Director is eligible to serve as Chair without completing one (1) full two (2)-year term as a Director.

**Section 8: Vacancies.**

A vacancy that occurs on the Board before the expiration of a Director's term or because additional Directors in existing or new Member categories are required shall be filled (for the unexpired term) by an eligible individual elected by majority vote of the remaining Directors who represent the category of Members in which the vacancy occurred, except that if the vacancy involves a representative of a Contract Market Member, that Contract Market Member shall designate the successor. In the event there are no Directors remaining who represent the category of Members in which the vacancy occurred, the vacancy shall be filled by an eligible individual elected by the Board.

**Section 9: Removal.**

In accordance with Section 141(j) of the General Corporation Law of the State of Delaware, notwithstanding anything to the contrary set forth in the other provisions of the General Corporation Law of the State of Delaware, including the other provisions of Section 141, Directors may be removed from office as follows:

(a) Any Director representing a Contract Market Member, ~~described in Article VII and any FCM and LTM; SD, and MSP and RFED;~~ IB; or CPO and CTA Director may be removed by a majority of the Members eligible to elect the Director whenever, in their judgment, the best interests of NFA will be served thereby; or

(b) Upon recommendation of the Nominating and Governance Committee ~~Executive Committee~~, any Director may be removed by two-thirds of the Directors present and voting at a duly convened meeting of the Board whenever, in their judgment, the best interests of NFA will be served thereby.

### **Section 10: Director Qualifications.**

In addition to any other Director qualification set forth herein or in the Bylaws or any other policy of the Board or NFA, no Director who has been removed from office in accordance with Section 9 of Article VII hereof shall be qualified to be a Director at any time following such removal.

## **ARTICLE VIII: EXECUTIVE COMMITTEE**

### **Section 1: General.**

There shall be an Executive Committee of the Board, which may exercise all powers of the Board except as set forth in Section 2 below. The authorized actions of the Executive Committee shall be deemed actions of the Board.

### **Section 2: Board Powers Not Exercisable By Executive Committee.**

#### **(a) General Prohibitions.**

The Executive Committee shall not exercise any power of the Board when the Board is in session, and the Executive Committee shall at no time take any action with respect to any matter that is the subject of a notice of a pending Board meeting without the concurrence of the Board.

#### **(b) Specific Prohibitions.**

The Executive Committee shall at no time exercise any of the following powers of the Board:

- (i) The adoption, amendment or repeal of any Bylaw unless such power has been delegated by the Board in accordance with Article XI, Section 1; or the ratification of any proposal to adopt, amend or repeal these Articles.

- (ii) The establishment of major plans and priorities, including those regarding the commitment and expenditure of NFA funds, except that the Board may authorize the Executive Committee to make expenditures within specific monetary limits prescribed in the Bylaws or Board Resolutions.
- (iii) ~~Except as provided in Article VII, Section 3(c) and Section 3(e),~~ T the election, appointment or removal of any NFA Director, officer or committee member.
- (iv) The adoption of a plan of merger or consolidation with another entity.
- (v) The sale, lease, exchange or mortgage of all or substantially all of NFA property or assets.
- (vi) The voluntary dissolution of NFA or the revocation of proceedings therefor.
- (vii) The adoption of a plan for the distribution of NFA assets.
- (viii) The amendment or repeal of any Board Resolution that, by its terms, provides that it shall not be amended or repealed by the Executive Committee.

### **Section 3: Composition.**

The Executive Committee shall be comprised of the following:

- (a) NFA's President, who shall be an *ex officio*, non-voting member; and
- (b) The Chairman of the Board, who shall be a non-voting member except in the case of tie votes; and
- (c) Eight (8) ~~Thirteen (13)~~ Directors (including the Chair of the Board) drawn as follows from the following Board categories, with the Board Chair acting as a representative of their Board category (provided that, as noted in clause (b) above, the Chair of the Board shall be a non-voting member except in the case of tie votes), as follows:
  - (i) One (1) Director ~~Two (2) Directors~~ representing Contract Markets:
    - ~~(A) One (1) representative of a Contract Market that had transaction volume of more than 20 percent of aggregate contract market transaction volume during the prior calendar year. A~~

~~specific Contract Market's transaction volume shall be the number of commodity futures contracts and swaps contracts entered into on the Contract Market. The aggregate contract market transaction volume shall be the number of such contracts entered into on all U.S. contract markets. The number of contracts entered into on a Contract Market shall be adjusted where necessary because of differences in sizes of contracts (e.g., one 5,000 oz. contract for a particular commodity would equal five 1,000 oz. contracts for that commodity for purposes of the computation); and~~

~~(B) One (1) representative of a Contract Market other than a Contract Market described in clause (A) above: *Provided, however,* if no Contract Market described in clause (A) above is represented on the Board, there shall be two Directors on the Committee from Contract Markets represented on the Board;~~

(ii) ~~One (1) Two (2)~~ Directors representing FCMs ~~and~~, LTM~~s~~ or IB~~s~~;

(iii) ~~One (1) Director representing IBs;~~

(iviii) ~~One (1) Two (2)~~ Directors representing CPOs and CTAs;

(vii) ~~One (1) Two (2)~~ Directors representing SDs, MSPs or ~~and~~ RFEDs;  
and

(viii) ~~Three (3) Five (5)~~ Directors who are Public Representatives (see Article XVIII(s)).

#### **Section 4: Election of Members Board Appointment; Vacancies.**

~~The Nominating and Governance Committee shall recommend (other than the Chair of the Board) Directors to serve on the Executive Committee. Upon consideration of these recommendations, the Board shall appoint by majority vote members of the Executive Committee (other than the Chair of the Board and NFA's President) in accordance with Section 3 of this Article VIII. The elected members of the Executive Committee shall be chosen by the Board at the regular annual meeting, as follows: The Directors representing Contract Markets that had transaction volume of more than 20 percent of aggregate Contract Market transaction volume during the prior calendar year shall elect the Committee member in category (c)(i)(A) above; the Directors representing all other Contract Markets shall elect the Committee member in category (c)(i)(B) above; the Directors representing FCMs, LTM~~s~~ and IB~~s~~ shall elect the Committee members in category (c)(ii) above; the Directors representing CPOs and CTAs shall elect the Committee members in category (c)(iii) above; the Directors representing SDs, MSPs and RFEDs shall elect the Committee members in category (c)(iv) above; and the~~

~~Public Representative Directors shall elect the Committee members in category (c)(v) above.~~ A vacancy that occurs on the Executive Committee before the expiration of a Committee Member's term or because additional Committee Members in existing or new Member categories are required shall be filled in like manner. Tie votes may be resolved by the Board by random draw.

**Section 5: Voting; Quorum.**

Each member of the Executive Committee shall have one vote on Executive Committee matters. A majority of the Executive Committee members shall constitute a quorum.

\* \* \*

**ARTICLE X: NOMINATING COMMITTEE RESERVED**

**~~Section 1: General.~~**

~~There shall be a Nominating Committee, composed of four Subcommittees, one for each of the following categories of Members: (i) FCMs and LTMs, (ii) IBs, (iii) CPOs and GTAs and (iv) SDs, MSPs and RFEDs. Each Subcommittee shall nominate at least one candidate for each position to be filled on the Board in the Subcommittee's category, in accordance with the eligibility requirements of Article VII.~~

**~~Section 2: Composition; Term of Members.~~**

~~(a) Each Subcommittee of the Nominating Committee shall be composed of three representatives of the Subcommittee's category, except that:~~

~~(i) The FCM and LTM Subcommittee shall be composed of three representatives, including (A) until the regular annual meeting of the Board held in February 2016, at least one representative of FCMs described in Article VII, Section 2(b)(i)(A) and at least one representative of FCMs or LTMs described in Article VII, Section 2(b)(i)(B) and (B) from and after the regular annual meeting of the Board held in February 2016, at least one representative of FCMs described in Article VII, Section 2A(b)(i)(A) and at least one representative of FCMs or LTMs described in Article VII, Section 2A(b)(i)(B);~~

~~(ii) The IB Subcommittee shall be composed of three representatives, including at least one representative of IBs required to maintain minimum adjusted net capital and at least one representative of IBs not required to maintain minimum adjusted net capital;~~



~~(iii) The CPO and CTA Subcommittee shall include at least one representative that primarily acts as a CPO and at least one representative that primarily acts as a CTA; and~~

~~(iv) The SD, MSP and RFED Subcommittee shall be composed of three representatives, including (A) until the regular annual meeting of the Board held in February 2016, at least one representative of SDs described in Article VII, Section 2(d)(i) and at least one representative of SDs or RFEDs described in Article VII, Section 2(d)(ii) and (B) from and after the regular annual meeting of the Board held in February 2016, at least one representative of SDs described in Article VII, Section 2A(d)(i) and at least one representative of SDs, MSPs, or RFEDs described in Article VII, Section 2A(d)(ii).~~

~~(b) Members of the Nominating Committee shall serve staggered terms of three years from the date of the Board's regular annual meeting following the Annual Election at which they are elected until the date of the Board's regular annual meeting three years hence.~~

### ~~Section 3: Selection of Committee Members.~~

~~Each Subcommittee of the Nominating Committee shall nominate, for each position to be filled on the Nominating Committee, one eligible individual for election by the Members to that Subcommittee for the following term. Additional nominations may be made for each such position by petition in the manner set forth in Article VII, Section 3. The procedures for such election shall be the same as those prescribed in Article VII, Section 3. No person shall be nominated or elected to the Nominating Committee who has served on the Nominating Committee during the preceding term, and no person shall be nominated or elected to the Nominating Committee who, at the time of such nomination or election, is a Director. Any vacancy that occurs on the Nominating Committee shall be filled by the Board from among persons eligible under this Article to serve thereon.~~

\* \* \*

## **ARTICLE XVII: ADOPTION, AMENDMENT AND REPEAL OF ARTICLES**

No provision of these Articles may be adopted, amended or repealed except in the manner prescribed in this Article. Each such proposed change to the Articles shall be reviewed by the Board, and shall be submitted to the Members of NFA only upon approval of the proposal by the Board by two-thirds of the Directors present and voting. If any such proposed change relates to Article III, Section 2, such proposed change shall not be considered by the Board for approval unless at least 60 days written notice

of the proposed change has been given to each Contract Market Member. Upon such approval, the proposal shall be submitted to a vote of the Members and shall be adopted upon the affirmative vote of a majority of those Members that cast a vote in each of the categories set forth in Sections ~~2A(a)-2(e)~~A(d) of Article VII.

#### **ARTICLE XVIII: DEFINITIONS.**

As used in this Certificate of Incorporation-

- (a) **"Act"**-means the Commodity Exchange Act, as amended from time to time.
- (b) **"Affiliate"**-means, unless otherwise provided, any person that directly or indirectly owns more than 50% of or is owned more than 50% by or has more than 50% ownership in common with another person.
- (c) **"Associate"**-means a person who is associated with a Member within the meaning of the term "associated person" as used in the Act or Commission Rules and who is required to be registered as an "associated person" with the Commission; and any other person designated by the Board to be an Associate.
- (d) **"Board" or "Board of Directors"**-means the Board of Directors of NFA.
- (e) **"Clearing Organization"**-means an entity (whether a unit or division of the Contract Market, or a separate organization) that clears commodity futures transactions or swaps transactions executed on a Contract Market.
- (f) **"Commission"**-means the Commodity Futures Trading Commission.
- (g) **"Commodity Pool Operator" or "CPO"**-means a commodity pool operator as that term is used in the Act, and that is required to be registered as such under the Act and Commission Rules, except any CPO that the Board has designated to be an Associate.
- (h) **"Commodity Trading Advisor" or "CTA"**-means a commodity trading advisor as that term is used in the Act, and that is required to be registered as such under the Act and Commission Rules, except any CTA that the Board has designated to be an Associate.
- (i) **"Contract Market"**-means an exchange registered by the Commission as a designated contract market.
- (j) **"Fees"**-means charges for processing applications, administering qualifications examinations, conducting arbitrations, and other clerical and

administrative fees. The term "Fees" does not include dues, assessments or similar charges.

**(k) "Futures"**-includes options contracts traded on a Contract Market, and such other commodity-related instruments as the Board may from time to time declare by Bylaw to be properly a subject of NFA regulation and oversight.

**(l) "Futures Commission Merchant" or "FCM"**-means a futures commission merchant as that term is used in the Act, and that is required to be registered as such under the Act and Commission Rules.

**(m) "Introducing Broker" or "IB"**-means an introducing broker as that term is used in the Act, and that is required to be registered as such under the Act and Commission Rules.

**(n) "Large Financial Institution"**-means a Swap Dealer included in a well defined, publicly available and independent list of financial institutions that the Board of Directors identifies by resolution from time to time.

**(o) "Leverage Transaction Merchant" or "LTM"**-means a leverage transaction merchant as that term is used in the Act, and that is required to be registered as such under the Act and Commission Rules.

**(p) "Major Swap Participant" or "MSP"**-means a major swap participant as that term is used in the Act, and that is required to be registered as such under the Act and Commission Rules.

**(q) "Member"**-means a member of NFA.

**(r) "Person"**-includes individuals, corporations, partnerships, trusts, associations and other entities.

**(s) "Public Representative"**-refers to those members of the Board of Directors who are public directors and who meet the requirements of Bylaw 517. ~~as that term is defined in Section (b)(2) of Core Principle 16 in Appendix B to Part 38 of the Commission's Rules and is read in the context as applied to NFA.~~

**(t) "Requirements"**-includes any duty, restriction, procedure, or standard imposed by a charter, bylaw, rule, regulation, resolution or similar provision.

**(u) "Retail Foreign Exchange Dealer" or "RFED"**-means a retail foreign exchange dealer as that term is used in the Act, and that is required to be registered as such under the Act and Commission Rules.

**(v) "Swap Dealer" or "SD"**-means a swap dealer as that term is used in the Act, and that is required to be registered as such under the Act and Commission Rules.

**(w) "Swaps"**-means swaps as used and defined in the Act and in the Commission Rules, and such other swap-related agreement, contract or transaction as the Board may from time to time declare by Bylaw to be properly a subject of NFA regulation and oversight.

## **NATIONAL FUTURES ASSOCIATION BYLAWS**

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### **CHAPTER 3. MEMBERSHIP AND ASSOCIATION WITH A MEMBER**

#### **BYLAW 301. REQUIREMENTS AND RESTRICTIONS.**

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##### **(g) Denial and Revocation.**

(i) If the President has reason to believe that: (1) an applicant for membership or registration with NFA as an Associate does not meet the qualifications set forth in this Chapter for NFA membership or association with a Member, as the case may be; (2) a Member or registered Associate does not meet the qualifications set forth in this Chapter for continuation as a Member or Associate; or (3) the person has submitted an intentionally incomplete, inaccurate or otherwise false application to NFA for membership or registration as an Associate, the President shall promptly so notify the person in writing and furnish a copy of the notice to the Membership Committee, setting forth the specific grounds for the determination. The person shall be given an opportunity to show in writing to the President that the qualifications are met, or that the application is not intentionally incomplete, inaccurate or false. If the person requests, or if the Membership Committee orders, a hearing shall be held before the Membership Committee or its designated Subcommittee, and a record shall be kept. Such designated Subcommittee shall consist of one member of the Membership Committee and two members of NFA's Hearing Committee, unless the applicant or Member is an SD or MSP, in which case at least one of the members of the designated Subcommittee shall also be an employee of an SD or MSP Member. The member of the Membership Committee sitting on each designated Subcommittee shall serve as the Chairman of the Subcommittee. At least one of the members of the designated Subcommittee shall not be an NFA Member or Associate or an employee of an NFA Member. Each member of the designated Subcommittee shall be appointed by a majority of the Membership Committee. The person may be represented at the hearing, and submit evidence in the proceeding, call and

examine witnesses, examine the evidence upon which the President's determination was based, and, in the discretion of the Membership Committee or its designated Subcommittee, present written or oral argument. No member of the Membership Committee or a designated Subcommittee shall participate in a membership action if the member, or any person with whom the member is connected, has a financial, personal or other direct interest in the matter under consideration or is disqualified under Bylaw 708(c).

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## **CHAPTER 4. MEMBER MEETINGS AND ELECTIONS**

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### **BYLAW 403. SPECIAL MEETINGS.**

Special meetings of the Members may be called for any purpose or purposes by the Chairman, the President or the Board. Special meetings shall also be called by the President when requested in writing by at least 10 percent of the Members. This request must state the purpose or purposes for which the special meeting is to be called. The business transacted at the meeting shall be limited to the purpose stated in the notice. The Board or Executive Committee may postpone, reschedule or cancel any meeting of Members previously scheduled by the Chairman, the President or the Board.

### **BYLAW 404. NOTICE OF MEETINGS.**

A notice stating the place, day and hour of any meeting of Members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 40 days before the date of the meeting, ~~either personally, by U.S. mail or, subject to the requirements of applicable law, by electronic transmission, or any other lawful means, by or at the direction of the Secretary, to each Member entitled to vote at the meeting. If mailed, the notice shall be deemed delivered when deposited in the U.S. mail, addressed to the Member at his or her address as it appears on NFA records, with postage prepaid.~~ Attendance at a meeting by a Member shall constitute waiver of notice of such meeting, except when the Member attends a meeting for express purposes of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

\* \* \*

### **BYLAW 406. ELECTIONS.**

The Annual Election shall be held at the annual meeting of Members, at which the contested vacancies on the Board and Member Category Nominating ~~G-Subcommittees~~

(See Bylaw 709) shall be filled. Before the October 15 preceding the election, the Secretary shall:

(a) notify all Members in the FCM and LTM; SD, MSP and RFED; IB; CPO and CTA categories of the elected Directors and the members of the Member Category Nominating ~~C~~ Subcommittees whose terms will expire at the Annual Election, and

(b) request the submission to the Member Category Nominating ~~C~~ Subcommittees of the names of eligible persons to fill those positions.

Before the November 20 preceding the election, each the Member Category Nominating ~~C~~ Subcommittee of the Member Category Nominating Committee shall submit its list of nominees for the positions to the Nominating and Governance Committee, and to the Secretary, who shall promptly notify the Members of the nominations. Other nominations may be made by petition, as prescribed in the Articles follows:-

(i) Petition signed by 50 or more NFA Members in the category for which the nomination is made (i.e., FCM and LTM; SD, MSP and RFED; IB; and CPO and CTA); or

(ii) Petition submitted by any organization or association recognized by NFA as fairly representing the category (See)(i) above) for which the nomination is made.

Each petition must identify the position to which the nomination pertains, and no petition may nominate more than one candidate for the same position. Petitions must be received by the Secretary within 21 days of the issuance of the Secretary's notification of the candidates proposed by the Member Category Nominating ~~C~~ Subcommittees of the Member Category Nominating Committee. Promptly after the expiration of the period within which petitions may be submitted, the Secretary shall notify the Members of all of the candidates for Director and members of the Member Category Nominating Committee. In the event of a contested election in any of the FCM and LTM; SD, MSP and RFED; IB; or CPO and CTA categories, the Secretary shall cause notice of the meeting wherein such election shall be considered to be sent to all Members in that category by December 31.

Promptly after December 31 of the year immediately preceding the election, the Secretary shall notify the contract market Members that shall have representatives on the Board during the current calendar year. Provided, however, that if an election is held pursuant to Article VII, Section 2(a)(ii)(b) ~~or Section 2A(a)(ii)(b)~~, then the Secretary shall request the contract market Members eligible to have a representative in accordance with Article VII, Section 2(a)(ii)(b) ~~or Section 2A(a)(ii)(b)~~, respectively, to nominate eligible persons to represent such contract market Members. In the event of a contested election in the contract market category, the Secretary shall cause notice of

the meeting wherein such election shall be considered to be sent to all contract market Members eligible to vote in accordance with Article VII, Section 2(a)(ii)(b) ~~or Section 2A(a)(ii)(b)~~, respectively, by January 10.

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## CHAPTER 5. BOARD OF DIRECTORS

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### **BYLAW 503. RESERVED DIRECTOR AND BOARD CHAIR TERM LIMITS.**

(a) Except as set forth in Bylaw 504, no Director may serve more than a total of five (5) two-year terms regardless of whether the terms were consecutive or what Board category the Director represented; provided, however, if a Director is elected or appointed to fill a vacancy on the Board, the completion of the unexpired portion of the prior Director's term will not count toward such Director's term limit.

(b) A Director may serve no more than a total four (4) one-year terms as Board Chair regardless of whether the terms were consecutive or what category of Member the Director represented when serving as Board Chair; provided, however, if a Director fills a vacancy in the Chair position, the completion of the unexpired portion of the prior one-year term will not count toward such Director's term limit.

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### **BYLAW 504. RESERVED DIRECTOR TERM LIMITS BEGINNING AT THE ANNUAL MEETING OF THE BOARD OF DIRECTORS HELD IN FEBRUARY 2024.**

(a) As of the annual meeting of the Board held in February 2024 (the "2024 Annual Board Meeting"), a Director with 15 or more years of service on the Board as of the 2024 Annual Board Meeting will become subject to the term limits set forth in Bylaw 503 (which will apply to terms served prior to the 2024 Annual Board Meeting) as follows:

(i) If elected to a two-year term in 2024, upon expiration of that term in February 2026, a Director shall become subject to the term limits as set forth in Bylaw 503;

(ii) If elected to a one-year term in 2024, upon expiration of that term in February 2025, a Director is eligible for election to one additional two-year term and, thereafter, upon expiration of that term in February 2027 shall become subject to the term limits as set forth in Bylaw 503.

(b) As of the 2024 Annual Board Meeting, a Director with at least seven but less than fifteen years of service on the Board as of the 2024 Annual Board Meeting will become subject to the term limits set forth in Bylaw 503 (which will apply to terms served prior to the 2024 Annual Board Meeting) as follows:

(i) If elected to a two-year term in 2024, upon expiration of that term in February 2026, a Director is eligible for election to one additional two-year term and, thereafter, upon expiration of that term in February 2028 shall become subject to the term limit as set forth in Bylaw 503;

(ii) If elected to a one-year term in 2024, upon expiration of that term in February 2025, a Director is eligible for election to two additional two-year terms and, thereafter, upon expiration of that term in February 2029 shall become subject to the term limits as set forth in Bylaw 503.

(c) As of the 2024 Annual Board Meeting, a Director with less than seven years of service on the Board as of the 2024 Annual Board Meeting shall immediately become subject to the limit on terms as set forth in Bylaw 503 (which will apply to terms served prior to the 2024 Annual Board Meeting).

(d) Any individual who is not serving on the Board as of the 2024 Annual Board Meeting but who previously served on the Board and is elected to the Board beginning on or after the 2024 Annual Board Meeting shall immediately become subject to the term limits as set forth in Bylaw 503 (which will apply to terms served prior to the 2024 Annual Board Meeting).

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**BYLAW 505. RESIGNATIONS.**

Any Director may resign at any time by giving written notice, or notice by electronic transmission, to the Chairman, President or Secretary. The resignation shall take effect at the time set forth therein, and, unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

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**BYLAW 507. SPECIAL MEETINGS.**

**(a) General.**



Special meetings of the Board shall be held at the request of the Chairman, the President, or any 10 Directors. The date and place of the meeting shall be determined by the Chairman and specified in the notice of the meeting.

**(b) Notice of Emergencies.**

Except in the event of an emergency (as defined below), the Chairman shall cause notice of any special meeting of the Board to be given at least ~~48~~ 24 hours before the time at which the meeting is to be held.

Notices to Directors may be given by electronic transmission or other lawful means. ~~in writing and delivered personally or mailed to the Directors at their addresses appearing on the books of NFA or may be given by telephone or other means of electronic transmission.~~

Attendance of a Director at the meeting shall constitute a waiver of notice of the meeting, except where a Director attends a meeting exclusively for the limited purpose of objecting, at the beginning of the meeting, to the transaction of any business thereat on the ground that the meeting is not lawfully called or convened.

In the event of an emergency (as defined herein), the Chairman or President may call a meeting on one-hour notice to all Directors. Such notice may be given by telephone, electronic transmission or other lawful means. The business of the meeting shall be limited to the emergency. A quorum shall consist of 1/3 of the Directors, provided there is present at least one contract market Director, one FCM, LTM or IB Director; one SD, MSP or RFED Director; one CPO or CTA Director; and one Public Representative Director. For purposes of this Bylaw, an emergency shall exist when the Chairman or President determines that, because of an unusual, unforeseeable and adverse circumstance, it is necessary to hold a meeting on one hour notice.

\* \* \*

**BYLAW 517. PUBLIC REPRESENTATIVES.**

To qualify as a Public Representative of NFA, an individual must first be found by the Board, on the record, to have no material relationship with NFA that might reasonably affect the independent judgment of the public representative. Any of the following relationships during the previous three years shall be considered a material relationship with NFA:

(a) The Director or member of the Director's immediate family (i.e., spouse, parents, children and siblings) is an NFA Officer or employee;

(b) The Director is an NFA Member, Associate member or a principal of an NFA Member or has an immediate family member (i.e., spouse, parents,

children and siblings) who is an NFA Member, Associate Member or principal of an NFA Member;

(c) The Director, or a firm with which the Director is an officer, director or partner receives more than \$100,000 in combined annual payments from NFA, or the Director, or a firm with which the Director is an officer, director or partner receives more than \$100,000 annually from an NFA Member or Associate Member for legal, accounting or consulting services related to the NFA Member's or Associate Member's CFTC registered activities. Compensation for services as a Director of NFA does not count towards the annual \$100,000 payment limit, nor does deferred compensation for services prior to becoming a Director so long as compensation is in no way contingent, conditioned or revocable.

## **CHAPTER 6. OFFICERS**

### **BYLAW 601. OFFICERS.**

The officers of NFA shall consist of a Chairman of the Board, ~~a Vice Chairman of the Board~~, a President, a Secretary, and a Treasurer. The Chairman ~~and Vice Chairman~~ shall be elected by the Board at its regular annual meeting in each year, to hold office until the next regular annual meeting of the Board or until ~~a their respective~~ successors ~~are~~ is elected and qualified. The Board shall appoint a President, a Secretary, and a Treasurer. Vacancies occurring in any office by death, resignation, removal or otherwise shall be filled by the Board, and such replacement officers shall serve, in the case of the Chairman ~~and Vice Chairman~~, until ~~a their~~ successors ~~are~~ is elected, or, in the case of other officers, until their successors are appointed. No single individual may hold any two of the following positions concurrently: Chairman, ~~Vice Chairman~~, President and Secretary. The Board may provide for such other offices and may appoint incumbents thereto, and assign their respective duties to them, from time to time, as the Board may deem advisable. In its discretion, the Board may execute, on behalf of NFA, contracts of employment with appointed officers.

### **BYLAW 602. CHAIRMAN OF THE BOARD AND VICE CHAIRMAN OF THE NOMINATING AND GOVERNANCE COMMITTEE.**

The ~~Chairman~~ of the Board, and in the ~~Chairman's~~ absence the ~~Vice Chairman of the Nominating and Governance Committee~~, shall preside at all meetings of the Members and of the Board. In the absence of both, the Board shall elect a presiding officer for the meeting and, in the absence of such election, the Members shall elect a presiding officer for the meeting.

\* \* \*

**BYLAW 607. REMOVAL.**

The ~~Chairman of the Board, Vice Chairman,~~ President, Secretary, and Treasurer may be removed by the Board whenever in its judgment the best interests of NFA will be served thereby. Removal of the ~~Chairman of the Board and Vice Chairman~~ shall be by the vote of a majority of the total number of Directors then in office. Removal of the President shall be by the vote of not less than two-thirds of the total number of Directors then in office. Removal of the Secretary and Treasurer shall be by a majority vote of the Directors present and voting at any meeting where a quorum is present. Other officers may be removed in the same manner as the Secretary or Treasurer, or by any superior officer upon whom such removal power has been conferred by Board resolution.

**CHAPTER 7. COMMITTEES****BYLAW 701. MEMBERSHIP COMMITTEE.**

There shall be a Membership Committee, consisting of five Directors, and at least one shall be a Public Representative (See Article XVIII). A majority of the Committee members shall constitute a quorum, except that in the case of a Subcommittee, a quorum shall consist of a majority of such Subcommittee members. ~~The Committee members shall be nominated by the President and appointed by the Board. The Nominating and Governance Committee shall recommend Directors to serve on the Membership Committee. Upon consideration of the recommendation, the Board shall appoint members of the Membership Committee.~~ The Nominating and Governance Committee and the Board shall endeavor to nominate and appoint Directors and persons who reflect the various categories of Members described in the Articles. The Committee or its designated Subcommittee shall review actions taken by the President pursuant to the President's authority under Chapter 3 to make the initial determination regarding: (a) applicants for membership in NFA or registration as Associates, and (b) continued eligibility for such membership or registration and shall conduct adverse registration actions as provided in Part 500 of the Registration Rules.

Each Committee member shall serve for ~~two~~ one years, which may be renewed by the Board, or until the member's successor is appointed and qualified, or until the member's death, resignation, ineligibility or removal. A Committee vacancy shall be filled by the Board. A Committee member may be removed by the Board whenever, in its judgment, the best interests of NFA will be served thereby.

**BYLAW 702. APPEALS COMMITTEE.**

There shall be an Appeals Committee, consisting of five Directors as follows: ~~one Contract Market Director~~; one FCM, LTM, or IB Director; one CPO/CTA Director; one SD, RFED or MSP Director; and ~~two~~ one Public Representative Directors (See Article XVIII). A majority of the Committee members shall constitute a quorum. The

Nominating and Governance Committee shall recommend Directors to serve on the Appeals Committee. Upon consideration of the recommendation, the Board shall appoint members of the Appeals Committee. ~~The Committee members shall be nominated by the President and appointed by the Board. The President and the Board shall endeavor to nominate and appoint Directors who reflect the various categories of Members described in the Articles.~~

The Committee shall hear and decide appeals from and reviews of decisions in disciplinary cases by the Business Conduct Committee or the Hearing Committee under the Compliance Rules and decisions by the Membership Committee or its designated Subcommittee in membership cases under Bylaw 301(g).

Each Committee member shall serve for ~~two~~ one years, which may be renewed by the Board, or until the member's successor is appointed and qualified, or until the member's death, resignation, ineligibility or removal. A Committee vacancy shall be filled by the Board. A Committee member may be removed by the Board whenever, in its judgment, the best interests of NFA will be served thereby.

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#### **BYLAW 705. FINANCE COMMITTEE.**

There shall be a Finance Committee not having or exercising any authority of the Board, to advise the Executive Committee and Board on matters of NFA financial policy including the establishment of major plans and priorities regarding the commitment and expenditure of NFA funds and the establishment of dues, assessments, fees and other charges upon Members and others. The Nominating and Governance Committee shall recommend Directors to serve on the Finance Committee. Upon consideration of the recommendation, the Board shall appoint members of the Finance Committee. The Finance Committee shall consist of ~~eight~~ seven members as follows:

- (a) NFA's President; and
- ~~(b) NFA's Vice Chairman (who shall act as Chairman of the Finance Committee); and~~
- ~~(c) Six (6) other Directors as follows who shall not also be members of the Executive Committee and who shall be nominated by the Executive Committee and appointed by the Board at the first Board meeting in each fiscal year:~~
  - (i) One (1) Director representing contract markets;
  - (ii) One (1) Director representing FCMs, LTM's or IBs;
  - (iii) One (1) Director representing SDs, RFEDs or MSPs;

- (iv) One (1) Director representing CPOs or CTAs; and
- (v) Two (2) Directors who are Public Representatives (See Article XVIII).

The members of the Finance Committee described in paragraph (e b) above shall serve for one year, which may be renewed by the Board, or until the member's successor is appointed and qualified, or until the member's death, resignation, ineligibility or removal. A vacancy in the Finance Committee shall be filled by the Board. A Finance Committee member may be removed by the Board whenever, in its judgment, the best interests of NFA will be served thereby.

#### **BYLAW 706. RESERVED NOMINATING AND GOVERNANCE COMMITTEE.**

There shall be a Nominating and Governance Committee to advise the Board on corporate governance matters and practices. The Nominating and Governance Committee shall adopt a process to nominate individuals to the Board of Directors for the election of Public Representatives and may provide direction to the various Member Category Nominating Subcommittees relating to their nomination of Member Category Directors for election to the Board of Directors (See Bylaw 709). The Nominating and Governance Committee shall have the duties and may exercise the authority as may be prescribed in the Committee's Charter as adopted by resolution of the Board of Directors or as otherwise provided by resolution of the Board of Directors.

The Nominating and Governance Committee shall consist of no more than eight Directors all of whom shall be recommended by the Nominating and Governance Committee. Upon consideration of the recommendation, the Board shall appoint members of the Nominating and Governance Committee. At a minimum, the Nominating and Governance Committee shall consist of the following: three (3) Directors who are Public Representatives; one (1) Director representing CPOs and CTAs; one (1) Director representing SDs, RFEDs and MSPs; and one (1) Director representing FCMs, LTMs and IBs.

Each member of the Nominating and Governance Committee shall serve a one-year term, which may be renewed by the Board, or until the member's successor is appointed and qualified, or until the member's death, resignation, ineligibility or removal. A vacancy in the Committee shall be filled by the Board. A Nominating and Governance Committee member may be removed by the Board whenever, in its judgment, the best interests of NFA will be served thereby.

To effectuate the nomination of Member Category Directors to the Board of Directors, other than Contract Market Members, NFA shall have a Member Category Nominating Committee, with four Member Category Nominating Subcommittees, one for each of the following categories of Members (i) FCMs and LTMs; (ii) IBs; (iii) CPOs and CTAs; and (iv) SDs, MSPs and RFEDs (See Bylaw 709).

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**BYLAW 709. MEMBER CATEGORY NOMINATING COMMITTEE.**

There shall be a Member Category Nominating Committee with four Member Category Nominating Subcommittees, one for each of the following categories of Members (i) FCMs and LTM; (ii) IBs; (iii) CPOs and CTAs; and (iv) SDs, MSPs and RFEDs. Each Member Category Nominating Subcommittee shall be solely responsible for nominating at least one candidate for each position to be filled on the Board in the Subcommittee's category, in accordance with the eligibility requirements of Article VII of the Articles.

**(a) Composition of Subcommittees**

Each Member Category Nominating Subcommittee shall be composed of three representatives of the Subcommittee's category as follows:

(i) The FCM and LTM Subcommittee shall be composed of three representatives, including at least one (1) representative of FCMs ranked in the top ten FCMs and at least one (1) representative of FCMs or LTMs not ranked in the top ten FCMs based on the total of futures customer segregated funds, cleared swaps customer collateral and foreign futures or foreign options secured amounts, as those terms are defined in the applicable Commission regulations, held as of June 30 of the prior calendar year;

(ii) The IB Subcommittee shall be composed of three representatives, including at least one (1) representative of IBs required to maintain minimum adjusted net capital and at least one (1) representative of IBs not required to maintain minimum adjusted net capital;

(iii) The CPO and CTA Subcommittee shall be composed of three representatives that are NFA Members reporting funds under management allocated to futures and swaps (as defined in Article XVIII) on NFA Form PQR and NFA Form PR as of June 30 the prior calendar year (Funds Under Management Allocated to Futures and Swaps) including one (1) representative from CPOs or CTAs ranked within the top ten (10) percent based on Funds Under Management Allocated to Futures and Swaps; one (1) representative from CPOs or CTAs ranked within the top twenty (20) percent based on Funds Under Management Allocated to Futures and Swaps; and one at large representative from CPOs or CTAs with no restriction on its rank among CPOs and CTAs reporting Funds Under Management Allocated to Futures and Swaps; and

(iv) The SD, MSP and RFED Subcommittee shall be composed of three representatives, including at least one (1) representative of SDs that are Large Financial Institutions, as of June 30 of the prior calendar year and at least one (1) representative of SDs, MSPs or RFEDs that are not Large Financial Institutions, as of June 30 of the prior calendar year.

(b) Term of Subcommittee Members

Members of the Member Category Nominating Subcommittees shall serve staggered three-year terms from the date of the Board's regular annual meeting following the Annual Election at which they are elected until the date of the Board's regular annual meeting three years hence.

(c) Election of Subcommittee Members

Each Subcommittee shall nominate, for each position to be filled on its respective Subcommittee, one eligible individual for election by the Members to that Subcommittee. Additional nominations may be made for each position by petition in the manner set forth in Bylaw 406. The procedures for election shall be the same as those prescribed in Bylaw 406. If there is not a contested election in any Member Category Nominating Subcommittee, then the Subcommittee member who is to represent that category shall be elected to the Subcommittee by the Board. No person shall be nominated or elected to a Member Category Nominating Subcommittee who has served on the Member Category Nominating Subcommittee during the preceding term, and no person shall be nominated or elected to a Member Category Nominating Subcommittee who, at the time of such nomination or election, is a Director. Any vacancy that occurs on any Member Category Nominating Committee shall be filled by the Board from among persons eligible under this Bylaw to serve thereon.

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## **EXPLANATION OF PROPOSED AMENDMENTS**

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On November 17, 2022, NFA's Board unanimously approved amendments to NFA's Articles and Bylaws to implement the recommendations of a Board-appointed Special Committee on NFA Governance (Special Committee). The proposed amendments reduce the size of the Board and modify its composition; adopt Director and Board Chair term limits; require that a Director must complete one full two-year term before being eligible to serve as Chair of the Board; eliminate the position of Vice Chair of the Board; reduce the size of the Executive Committee and modify its composition and the process for electing Directors to the Executive Committee; create a Nominating and Governance Committee to advise the Board on corporate governance matters, nominate individuals for election by the Board as Public Representatives and

make recommendations to the Board regarding Directors to serve on various Board Committees; amend the Public Representative definition; modify the composition of the CPO/CTA Nominating Committee to mirror the composition of the CPO/CTA Board category's seats; move the Member Nominating Committee provisions currently in NFA's Articles to NFA's Bylaws; move the eligibility requirements for Public Representatives currently in NFA's Articles to NFA's Bylaws; and make other technical amendments.

### **Board Size and Composition**

NFA's Board currently consists of 29 Directors. The Board approved amendments to Article VII, Section 2, effective at the Board's annual meeting held in February 2024, to decrease its size from 29 to no more than 23 Directors. The Board further amended Article VII to provide that the exact number and allocation in each Board category will be fixed by the Board from time to time pursuant to Board resolution within the following parameters:

- No more than two Contract Market representatives with one representative being the Contract Market Member with the highest annual transaction volume during the prior calendar year;
- No more than four and no less than three FCM/LTM representatives. If there are four representatives, there must be two representatives of top ten FCMs and two representatives of non-top ten FCMs or LTMs based on the total amount of segregated funds, cleared swaps customer collateral<sup>1</sup> and secured amounts held as of June 30 of the prior calendar year. If there are three representatives, there must be two representatives of top ten FCMs and one representative of a non-top ten FCM or LTM;
- No more than four and no less than three SD/MSP/RFED representatives. If there are four representatives, there must be two representatives of SDs that are Large Financial Institutions and two representatives of SDs, MSPs or RFEDs that are not Large Financial Institutions as of June 30 of the prior calendar year. If there are three representatives, there must be two representatives of SDs that are Large Financial Institutions and one representative of an SD, MSP or RFED that is not a Large Financial Institution as of June 30 of the prior calendar year;

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<sup>1</sup> NFA adopted the calculation for determining a top-ten FCM prior to the adoption of the Dodd-Frank Act and the related requirements regarding FCMs and cleared swaps customer collateral. Therefore, cleared swaps customer collateral is currently not considered for determining whether an FCM is a top ten or non-top ten firm. The Board determined that the calculation should be updated to include cleared swap customer collateral.



- One IB representative (which may be either a guaranteed or independent IB);
- Three CPO/CTA representatives that are NFA Members reporting funds under management allocated to futures and swaps on NFA Form PQR and NFA Form PR as of June 30 of the prior calendar year (Funds Under Management) as follows: one representative from CPOs or CTAs ranked within the top 10 percent based on Funds Under Management; one representative from CPOs or CTAs ranked within the top 20 percent based on Funds Under Management and one at-large representative from CPOs or CTAs with no restriction on its rank among CPOs or CTAs reporting Funds Under Management; and
- No more than nine Public Representatives.

Although the amendments to NFA's Articles permit a Board size of 23 Directors, the Board resolved at its November 2022 meeting to set the Board size at 21 beginning at its February 2024 annual meeting. Although the restructured Board permits a maximum of nine Public Representatives, the Board resolved to elect in February 2024 seven Public Representatives, which meets NFA's objective of having its Board consist of approximately 35% Public Representatives. The potential to elect one or two additional Public Directors in the future allows the Board the flexibility to elect an individual with a specific skillset or expertise without replacing an incumbent Public Director who is talented and skilled.

Importantly, the Board did not make any changes to the Board's responsibilities or powers. The Board will continue to have broad powers over the management of NFA, including for example approving the adoption of or change to any NFA Requirements, establishing major plans and priorities and approving NFA's annual budget.

The following chart compares NFA's Board in February 2023 to the restructured Board by category to be implemented in February 2024.

	<b>FCM/LTM</b>	<b>SD/MSP/RFED</b>	<b>CPO/CTA</b>	<b>IB</b>	<b>Contract Market</b>	<b>Public</b>	<b>Total</b>
<b>Current Board</b>	5	5	4	2	3	10	29
<b>Restructured Board</b>	4	4	3	1	2	7	21

To implement the new Board structure, NFA's Board approved amendments to Article VII, Section 4 to specify that in February 2024 all incumbent Directors' terms will expire. Incumbent Directors are eligible for reelection. As a result,

individuals will be elected to fill all vacant Director positions and incumbent Directors, if reelected, will have their terms initially staggered by Board resolution for either a one-or two-year term. Directors elected after February 2024 will serve two-year terms.

The Board also amended Article VII, Section 7 to provide that a Director must complete one full two-year term as a Director before being eligible to serve as Chair. Moreover, the Board approved amendments to Article VII, Section 7 to eliminate the position of Vice Chair of the Board. In the past, NFA's Vice Chair has generally served four one-year terms and succeeded to the Chair position. Given the reduction in the size of the Board, adoption of ten-year term limits (discussed below), and after noting that many organizations' Boards no longer have a Vice Chair, the Board determined that the Vice Chair position was unnecessary within the new Board structure and its elimination would allow a broader pool of Directors to be eligible to serve as Chair. The Board also amended Bylaw 602 to provide that in the temporary absence of the Chair of the Board, the Chair of the Nominating and Governance Committee (discussed below) will preside at all meetings of the Board and Members. The Vice Chair currently fills that role.

### **Implementation of Director and Board Chair Term Limits**

NFA's Board approved amendments to NFA Bylaw 503 to adopt a ten-year cumulative term limit for Directors by providing that no Director may serve more than five two-year terms. Bylaw 503 specifically provides that a Director who is appointed to fill a vacancy will serve the remainder of the unexpired term, which will not count towards the Director's ten-year term limit. The Board also amended Bylaw 504 to adopt an extended term limit phase-in schedule for current Directors, beginning in February 2024, to provide for a smooth transition that does not adversely impact the Board's operations in the short term.

Additionally, the Board amended Bylaw 503 to establish a Board Chair term limit of no more than four one-year terms. However, if a Director fills a vacancy in the Chair position, the unexpired portion of that term will not count towards the Director's term limit as Chair. The Board noted that past Board Chairs have informally served no more than four one-year terms, which worked well and has balanced the need for continuity in Board leadership while recognizing that this leadership should change over time.

### **Modification to the Size of the Executive Committee**

Given the reduction in NFA's Board size, the Board concluded that NFA's Executive Committee's size should also be decreased. NFA's Board approved amendments to Article VIII to decrease the size of the Executive Committee from 14 to eight Directors, with the Board Chair filling the seat on the Committee of their respective Board category. The Board Chair will continue to be elected by the majority vote of the

Board and will continue to be a non-voting member of the Executive Committee, except in the case of a tie vote. The following chart compares NFA's Executive Committee in February 2023 to the restructured Executive Committee by category.

	FCM/IB/LTM	SD	CPO/CTA	FCM/LTM	IB	Contract Market	Public	Total
<b>Current Executive Committee</b>	2	2	2	0	0	2	5	13 <sup>2</sup>
<b>Restructured Executive Committee</b>	0	1	1	1	1	1	3	8

### **Formation of Nominating and Governance Committee**

NFA's Board amended Bylaw 706 to create a Nominating and Governance Committee to advise the Board on corporate and governance matters and practices, to nominate individuals to the Board for election as Public Representatives and provide guidance to the various Member Category Nominating Subcommittees relating to their nomination of Member Category Directors for election to the Board. Bylaw 706 provides that the Nominating and Governance Committee will be comprised of no more than eight Directors, who will also be recommended by the Nominating and Governance Committee and appointed by the Board. The Nominating and Governance Committee must include three Public Representatives, one CPO/CTA representative, one SD/MSP/RFED representative and one FCM/IB representative.

The Board amended Article VII, Section 3(b) to specify the Nominating and Governance Committee's role in the election of Public Representatives and amended Article VIII, Section 4 to specify that the Nominating and Governance Committee will recommend Directors to the Board to serve on the Executive Committee (other than the Chair), with the Executive Committee's members appointed by the Board by majority vote. Similarly, the Board amended Bylaws 701, 702 and 705 to specify the Nominating and Governance Committee's responsibility to recommend specific Directors to serve on NFA's Membership, Appeals and Finance Committees, respectively. Although Bylaw 706 provides the Nominating and Governance Committee may provide broad guidance annually to the Member Category Nominating Subcommittees about the skills, qualifications and attributes that should be considered as part of the nomination process, each Member Category Nominating Subcommittee will continue to be solely responsible for nominating individuals for its respective Member category and the nominating process for these Member category subcommittees remains unchanged. The Board moved the Member Category Nominating Committee provisions from the Articles to newly adopted Bylaw 709.

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<sup>2</sup> The current Executive Committee consists of 14 elected Directors, with the Chair of the Board not representing a particular category.

### **Amendments to the Definition of Public Representative**

NFA Article XVIII defines the term "Public Representative" by referencing the Commission's definition of public director for contract markets contained in Core Principle 16 in Appendix B to Part 38 in the context as applied to NFA. This requires that NFA's Board find on the record that an individual has no material relationship (*i.e.*, one that reasonably could affect the independent judgment or decision making of the director) with NFA to be eligible to be a Public Representative. Certain relationships by their very nature are deemed material and include the following: (i) a director is an officer or employee of NFA; (ii) a director is a Member of NFA, or an officer or director of an NFA Member; (iii) a director, or a firm with which the director is an officer, director, or partner, receives more than \$100,000 in combined annual payments from NFA for legal, accounting or consulting services. Compensation for services as a director of NFA does not count towards the \$100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned or revocable; and (iv) any of the relationships above apply to a member of the director's "immediate family," (*i.e.*, spouse, parents, children and siblings). All of the disqualifying circumstances described above are subject to a one-year look back.

Recognizing that the perceived and actual independence of NFA's Public Representatives from NFA's Members' interests is extremely important, the Board amended the definition of a "Public Representative" to lengthen the look back period for disqualifying relationships from one year to three years and to slightly narrow the compensation arrangement provision to include not only the receipt of noteworthy compensation from NFA but also NFA's Members. The compensation test from NFA Members is limited to compensation for legal, accounting and consulting services related to the Members CFTC regulated activities.

### **Modify Composition of the CPO/CTA Nominating Subcommittee**

Moreover, the Board amended Bylaw 709 to change the composition of CPO/CTA representatives on the CPO/CTA Member Nominating Subcommittee. Previously, Article X, Section 2 required that the CPO/CTA Subcommittee of the Nominating Committee be composed of at least one representative that primarily acts as a CPO and at least one who primarily acts as a CTA. The Board modified the CPO/CTA Member Category Nominating Subcommittee to mirror the composition of the CPO/CTA Board category seats as follows: one (1) CPO or CTA representative in the top 10 percent, one (1) CPO or CTA representative in the top 20 percent, and one (1) at-large CPO or CTA representative with no restriction on its rank among CPOs and CTAs reporting funds under management allocated to futures and swaps on NFA Form PQR and NFA Form PR as of June 30 of the prior calendar year.

**Miscellaneous Amendments**

The Board also made a number of other technical amendments to the Articles and Bylaws necessary to implement the changes discussed above.

Upon the Board's approval of the above changes, the proposed amendments to the Articles were submitted to a ballot vote of NFA's Members pursuant to Article XVII. All ballots had to be returned to NFA's external tabulation service, Corporate Election Services, by Friday, February 10, 2023. On February 14, 2023, Corporate Election Services reported that Members in the Contract Market; FCM and IB; CPO and CTA; and SD, MSP, and RFED categories each affirmatively voted in favor of the amendments.

NFA respectfully requests that the Commission review and approve the proposed amendments to NFA's Articles of Incorporation and Bylaws. NFA intends to make the amendments related to the Board's and Executive Committee's size and composition, as well as term limits, effective in February 2024 at the Board's regular annual meeting. All other amendments will be effective June 30, 2023 to allow NFA to fully implement the changes prior to the Board's February 2024 annual meeting.

Respectfully submitted,

A handwritten signature in black ink that reads "Carol A. Wooding". The signature is written in a cursive, flowing style.

Carol A. Wooding  
Senior Vice President and  
General Counsel