

March 25, 2014

**Via Federal Express**

Ms. Melissa D. Jurgens  
Secretary  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

Re: National Futures Association: Governance Structure - Proposed  
Amendments to NFA's Articles of Incorporation\*

Dear Ms. Jurgens:

Pursuant to Section 17(j) of the Commodity Exchange Act, 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 regarding its governance structure. NFA’s Board of Directors (“Board”) approved the proposal on February 20, 2014, and the amendments have since been ratified by a majority of those Members actually voting in each of the Contract Market; FCM, LTM, and IB; CPO and CTA; and Swap Participant categories.

NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”) and will make these proposals effective ten days after receipt of this submission by the Commission unless the Commission notifies NFA that the Commission has determined to review the proposals for approval.

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**PROPOSED AMENDMENTS**

**(additions are underscoring 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.**

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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 Board.**

The Board of Directors shall be comprised as follows:

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

~~Ten (10)~~ Nine (9) elected representatives of registered Futures Commission Merchant Members, registered Leverage Transaction Merchant Members, ~~registered Retail Foreign Exchange Dealer 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.

~~(iv) One representative of RFEDs.~~

\* \* \*

**(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, ~~and 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 ~~such MSP representation requirement shall not apply~~ 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 ~~2014~~ 2016 annual meeting of the Board, ~~twelve (12)~~ individuals who are Public Representatives (see Article XVIII); shall constitute thirty-five percent (35%) of the Board's voting representatives.

~~(c) Effective as of the 2015 annual meeting of the Board, thirteen (13) Public Representatives (see Article XVIII); and~~

~~(d) Effective as of the 2016 annual meeting of the Board, fourteen (14) Public Representatives (see Article XVIII).~~

**(f)** An FCM, LTM, RFED, IB, CTA, CPO, 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 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, and 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, and 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, and 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) and (ii) 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.**

(i) If there is a contested election in any category (See (b)(i) and (ii) 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.

~~(ii) RFED Members shall elect by plurality vote the Director who is to represent the RFED category. The election shall be conducted in the manner provided in the Bylaws, which shall provide for an Annual Election.~~

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### **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

- (a) the Directors;
- (b) the combined SD, and MSP and RFED Directors and Public Representatives; and
- (c) the combined Contract Market, FCM, LTM, RFED, IB, CPO and CTA Directors and Public Representatives

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.

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## **ARTICLE VIII: EXECUTIVE COMMITTEE**

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

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The Executive Committee shall comprise the following:

(a) NFA's President, who shall be an *ex officio*, non-voting member;

(b) The Chairman of the Board, who shall be a non-voting member except in the case of tie votes; and

(bc) Thirteen (13) Twelve (12) Directors, including the Chairman of the Board of Directors, as follows:

(i) 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) Two (2) Directors representing FCMs, LTMs, ~~RFEDs~~ or IBs;

(iii) Two (2) Directors representing CPOs and CTAs;

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- (iv) Two (2) Directors representing SDs, ~~or~~ MSPs or RFEDs; and
- (v) Five (5) Directors who are Public Representatives (see Article XVIII).

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

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 (b)(i)(A) above; the Directors representing all other Contract Markets shall elect the Committee member in category (b)(i)(B) above; the Directors representing FCMs, LTMS, ~~RFEDs~~ and IBs shall elect the Committee members in category (b)(ii) above; the Directors representing CPOs and CTAs shall elect the Committee members in category (b)(iii) above; the Directors representing SDs, ~~and~~ MSPs and RFEDs shall elect the Committee members in category (b)(iv) above; and the Public Representative Directors shall be elected by the Board. 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.

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### **ARTICLE X: NOMINATING COMMITTEE**

#### **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 CTAs and (iv) SDs, ~~and~~ 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 representatives of the Subcommittee's category, except that:

(i) The FCM and LTM Subcommittee shall be composed of three representatives, including at least one representative of FCMs or LTMs 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);

(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, ~~and~~ MSP and RFED Subcommittee shall be composed of three representatives, including at least one representative of SDs described in Article VII, Section 2(d)(i); at least one representative of SDs described in Article VII, Section 2(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: *Provided, however*, that the initial members of the SD and MSP Subcommittee shall serve terms from the date of the Board meeting at which they are elected as follows: one member until the date of the Board's regular annual meeting in 2014; one member until the date of the Board's regular annual meeting in 2015; and one member until the date of the Board's regular annual meeting in 2016; and the Board shall determine which members of the SD and MSP Subcommittee shall serve such terms.

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## ARTICLE XI: BYLAWS

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### **Section 1: Adoption, Amendment and Repeal.**

Bylaws of NFA may be adopted, amended or repealed in accordance with Article ~~II~~ VII, Section 5, except that the Board shall not take the following actions unless a two-thirds majority of:

- (a) the Directors;
- (b) the combined SD, ~~and~~ MSP and RFED Directors and Public Representatives; and
- (c) the combined Contract Market, FCM, LTM, ~~RFED~~, IB, CPO and CTA Directors and Public Representatives

present and voting approves:

- (i) Delegating or otherwise granting authority to any NFA Committee, officer, employee or agent, or any other person, to adopt, amend or repeal any Bylaw;
- (ii) Adopting, amending or repealing any Bylaw regarding dues or assessments; and
- (iii) Adopting, amending or repealing any Bylaw regarding dues, assessments or similar charges imposed on Contract Market Members.

### **Section 2: Content of Bylaws.**

Except insofar as such matters are expressly contained in these Articles, the following shall be as provided from time to time in NFA's Bylaws: The conditions of, method of admission to, and qualifications for membership and Associate registration; the limitations, rights, powers and duties of Members and Associates; dues and assessments; the method of expulsion from and the termination of membership and Associate registration; the procedures for the settlement of claims and grievances; and

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all other matters pertaining to membership in, registration with, and the conduct, management and control of the business, property and affairs of NFA.

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#### **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 ratification of the proposal by two-thirds of:

- (a) the Directors;
- (b) the combined SD, ~~and~~ MSP and RFED Directors and Public Representatives; and
- (c) the combined Contract Market, FCM, LTM, ~~RFED~~, IB, CPO and CTA Directors and Public Representatives

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 ratification unless at least 60 days written notice of the proposed change has been given to each Contract Market Member. Upon such ratification, the proposal shall be submitted to a ballot vote of the Members and shall be adopted upon the affirmative vote of a majority of those Members in each of the categories set forth in Sections 2(a)-2(d) of Article VII who submit a proper ballot in a timely manner.

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

As used in these Articles-

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**(s) "Public Representative"**-refers to those members of the Board of Directors who are public directors as that term is defined in Section (b)(2) of Core Principle

15 16 in Appendix B to Part 38 of the Commission's Rules and is read in the context as applied to NFA.

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## EXPLANATION OF PROPOSED AMENDMENTS

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In August 2012, NFA's Board adopted significant changes to the composition of the Board and the Executive Committee to integrate Swap Dealers (SDs) and Major Swap Participants (MSPs) into NFA's governance structure. These changes were made at the recommendation of the Board-appointed Special Committee on NFA Governance (Special Committee).

The Special Committee recently reviewed the 2012 governance changes and recommended to the Board that additional changes be made. At its meeting on February 20, 2014, the Board accepted the Special Committee's recommendations and unanimously ratified changes to NFA's Articles of Incorporation (Articles) to provide that:

- The Executive Committee would have two representatives from each of the FCM/IB, CPO/CTA, Swap Participant/RFED and exchange categories. In addition, the Board's Chairperson would be a member of the Executive Committee by virtue of his/her role as Chairperson but would vote only in case of a tie vote;
- RFEDs would be combined with SDs and MSPs for the purposes of Board representation; and
- Public Representatives continue to comprise 35% of the Board but do not reflect an exact number (i.e. 14) of Public Representatives.

### **Changes to the Executive Committee**

In 2009, the Board made significant changes to the composition of the Executive Committee so that public representatives comprise at least 35% of the Committee. Specifically, NFA's President was made an *ex-officio* non-voting member of the Executive Committee, and the Board's Chairperson no longer sat on the Executive Committee by virtue of his/her position as Chairperson but would represent the membership category that he/she represented on the Board. This permitted the Executive Committee to remain a reasonable size while adding three public representatives to satisfy the 35% requirement.

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The 2012 governance changes adopted the same approach (i.e. the Chairperson represents his/her membership category) so that the Executive Committee had two representatives from each membership category and five public directors. The Board's decision in 2012 to recommend that the Chairperson represent his/her membership category rather than be a member of the Executive Committee by virtue of his/her position as Chairperson was based on keeping the Executive Committee a reasonable size and avoiding tie votes.

The Board recently approved a return to the Chairperson being a member of the Executive Committee by virtue of his/her position as Chairperson. The Board believed that over the past two years the position of the Chairperson has evolved and this change is warranted. The Board accomplished this change by maintaining a reasonable size for the Executive Committee and by avoiding the situation of tie votes.

The Board approved changes increase the Executive Committee's size by one member to fourteen with a composition as follows: the Chairperson, 2 FCM/IBs, 2 SD/MSPs/RFEDs, 2 CTA/CPOs, 2 contract markets, and 5 public representatives. In order to address the desire to avoid tie votes, the approved changes call for the Committee to have thirteen regular voting members, with the Chairperson being a non-voting member of the Executive Committee except in the case of tie votes.

### **RFED Director**

In 2012, the Board approved a change to the Board's composition so that the RFED category would have a separate Board seat. As of April 30, 2012, there were 18 Forex Dealer Members (FDMs) consisting of eleven RFED/FCMs, two RFEDs only, and five FCMs-only. Their total liability to customers was about \$870 million. Since then, the number of FDMs has dramatically dropped to ten—six RFED/FCMs, two RFEDs only and two FCMs-only, and their total liability to customers is about \$655 million. Three RFEDs and an affiliate of a fourth RFED are also provisionally registered SDs; and one of the FCM-only FDMs is an SD.

The Board approved this change in 2012 in part "to reflect the fact that the retail forex community may have interests not fairly and adequately represented by traditional FCMs." The Board has reconsidered this change in light of the drastic reduction in the number of RFED Members and the fact that these FDMs' business models and products more closely resemble SDs.

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This alignment of interests can be observed since as noted above three RFED Members and an affiliate of a fourth RFED are also provisionally registered SDs. Additionally, from a counterparty transactional perspective, combining RFEDs with SD/MSPs for the purpose of Board representation is a logical approach. The only significant difference between RFEDs and SDs appears to be that RFEDs act as counterparty to forex transactions (likely considered swaps without Section 1a(47)(B)(i) of the Commodity Exchange Act's exclusion) with non-ECPs, whereas SDs act as counterparty to forex swaps transactions with ECPs. The Board therefore approved a change to combine RFEDs with SDs and MSPs for the purposes of Board representation, thereby eliminating a separate RFED Board seat.

### **Public Representatives**

The 2012 Board restructuring to integrate Swap Participants required that the number of public representatives on the Board be increased over a four-year period from ten to fourteen so that 35% of NFA's Board will continue to be comprised of public representatives. Since the Board's size may increase or decrease over time, the Board approved a change that eliminates any reference to an exact numerical figure (i.e. 14) in the Articles for public representatives and merely indicates that by 2016 the Board will have 35% public representatives.

### **Miscellaneous Amendments**

In addition to the aforementioned changes, a number of other technical amendments to the Articles are necessary.

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NFA respectfully requests that the Commission review and approve the proposed amendments to NFA's Articles of Incorporation.

Respectfully submitted,

Thomas W. Sexton  
Senior Vice President and  
General Counsel

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\* The proposed amendments to NFA's Articles of Incorporation VII, VIII, X, XI, XVII and XVIII became effective May 19, 2014.