

November 5, 2012

Via Federal Express

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

Re: National Futures Association: Integration of Swap Dealers and Major Swap Participants into NFA's Membership and Governance Structure – Proposed Amendments to Articles of Incorporation*

Dear Mr. Stawick:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended (“CEA”), National Futures Association (“NFA”) hereby submits to the Commodity Futures Trading Commission (“CFTC” or “Commission”) the proposed amendments to NFA's Articles of Incorporation (“Articles”) to integrate Swap Dealers (SD) and Major Swap Participants (MSP) (collectively, Swap Participants) into NFA's membership and governance structure. NFA’s Board of Directors (“Board”) approved the proposed amendments to the Articles on August 16, 2012, 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; and CPO and CTA categories.

PROPOSED AMENDMENTS

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

ARTICLES OF INCORPORATION OF NATIONAL FUTURES ASSOCIATION

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ARTICLE III: PURPOSES

Section 1: Fundamental Purposes.

Subject to the limitations in Section 2 of this Article, the fundamental purposes of NFA are to promote the improvement of business conditions and the common business interests of persons engaged in commodity futures and swaps or related activity by

- (i) undertaking the regulation of persons that are members of NFA (hereinafter "Members") as set forth in this Article;
- (ii) relieving the Commodity Futures Trading Commission (hereinafter "Commission") from the substantial burden of direct regulation in such matters; and
- (iii) providing such regulatory services to such markets as the Board may from time to time approve. Actions of NFA to effectuate these purposes may include:

(a) Public Interest.

The adoption, administration and enforcement as to the following persons of requirements regarding fair practice and designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect the public interest

- (i) Members that are registered with the Commission as Futures Commission Merchants, Commodity Pool Operators, Commodity Trading Advisors, Introducing Brokers, or Leverage Transaction Merchants, Retail Foreign Exchange Dealers, Swap Dealers or Major Swap Participants; and
- (ii) Associates (See Article XVIII).

(b) Financial Standards.

Notwithstanding the provisions of Section 2(a) of this Article, the adoption with respect to its Members that are Futures Commission Merchants, Introducing Brokers, or Leverage Transaction Merchants, Retail Foreign Exchange Dealers, Swap Dealers or Major Swap Participants of financial and related requirements designed to protect against insolvency, bankruptcy, or unsafe or unsound financial condition of such Members; the conduct, directly or through agents, of audits and reviews of the financial condition and related matters of such Members; and the adjudication and enforcement of compliance with NFA's financial and related requirements for all such Members, except as may otherwise be provided under Commission Regulations: *Provided, however,* it is expressly understood that ~~contract market~~ Contract Markets and clearing organizations shall have the right to adopt, administer and enforce financial and related requirements governing the eligibility of Members for membership privileges on such ~~contract market~~ Contract Markets or clearing organizations.

(c) Arbitration.

The adoption and administration of a fair and equitable procedure through arbitration or otherwise for the voluntary settlement of customers' claims or grievances against Members described in paragraph (a) above, their employees, and Associates, in accordance with Section 17(b)(10) of the Commodity Exchange Act (hereinafter "the Act"), or claims or grievances of such Members or Associates against customers, or claims or grievances between or among such Members or Associates: *Provided, however*, no such procedure shall apply to the settlement of a claim or grievance where the parties, by valid and binding agreement, have committed themselves to the resolution of such claim or grievance in a forum other than NFA, or where parties having claims or grievances between or among themselves are required by ~~contract market~~ Contract Market rules to submit the controversy to the settlement procedures of such ~~contract market~~ Contract Market.

(d) Qualifications Standards.

The adoption of appropriate standards with respect to such training, experience and other qualification requirements as NFA deems necessary and appropriate to insure the fitness of Members and Associates; the development and administration of written proficiency examinations of Members and Associates; and, with the approval of the Commission, the administration of the registration of Members, Associates and any other persons required to be registered with the Commission. Such requirements, examinations and registrations adopted by NFA with respect to Associates shall, with the consent of each ~~contract market~~ Contract Market Member conducting comparable activities, replace and supplant the requirements, examinations and related activities theretofore conducted with respect to Associates by the ~~contract market~~ Contract Market Member.

(e) Protection of Customers.

Notwithstanding the provisions of Section 2(a) of this Article, the adoption, administration and enforcement of uniform, industry-wide requirements regarding the dealings and relations between and among Members described in paragraph (a) above, Associates and the customers of such Members and Associates, including, without limitation, requirements governing the manner, method, and place of soliciting business, including the content of such solicitations and the form and manner of handling, recording, and accounting for customers' orders, transactions, and accounts.

(f) Doing Business With Non-Members.

The prohibition of Members from carrying accounts, accepting orders, or handling transactions, in commodity futures contracts, for or on behalf of any non-Member, or suspended Member, that is required to be registered with the Commission as a Futures Commission Merchant, Commodity Pool Operator, Commodity Trading Advisor, Introducing Broker or Leverage Transaction Merchant, and that is acting in respect to the account, order, or transaction for a customer, a commodity pool or participant therein, a client of a commodity trading advisor, or any other person, unless

- (i) such non-Member is a member of another futures association registered under Section 17 of the Act or is exempted from this prohibition by the Board or
- (ii) such suspended Member is exempted from this prohibition by the Board or a committee thereof.

The prohibition of Members from accepting orders in commodity futures contracts to cover leverage transactions, for or on behalf of any non-Member, or suspended Member that is required to be registered with the Commission as a Leverage Transaction Merchant, unless

- (i) such non-Member is a member of another futures association registered under Section 17 of the Act or is exempted from this prohibition by the Board or
- (ii) such suspended Member is exempted from this prohibition by the Board or a committee thereof.

(g) Corporate Powers.

The purchase or other acquisition, and the holding, owning, maintaining, working, developing, selling, leasing, exchanging, hiring, conveying, mortgaging or otherwise disposing of and dealing in, lands and leaseholds, and any interest, estate and rights in personal property, and any personal or mixed property, and any franchises, rights, licenses or privileges necessary, convenient or appropriate for any of the purposes herein expressed; the borrowing of funds for NFA's purposes and the pledging of real, personal or mixed property in connection therewith; the institution and defense of suits in NFA's name, and the settlement or compromising of any claim or controversy by or against it; and, subject to the delineation of purposes recited herein and the limitations set forth

in Section 2 of this Article, the carrying out of all and everything necessary, suitable or proper for the accomplishment of any of the purposes, or the attainment of any of the objects, or the furtherance of any of the powers hereinabove set forth, and the performance of every other act or acts incident or appurtenant to, or growing out of, or connected with the aforesaid business or powers, or any part or parts thereof, and the exercise of all or any of its corporate powers or rights in the State of Delaware and in the various other states, territories, and dependencies of the United States, in the District of Columbia and in all or any foreign countries.

Section 2: Contract Markets.

(a) Non-applicability of NFA Rules.

No NFA requirement shall purport to govern or otherwise regulate the specific conduct of a Member or Associate if such conduct is governed or regulated by the requirements of a ~~contract market~~ Contract Market and such Member or Associate is subject to the ~~contract market~~ Contract Market's disciplinary jurisdiction for such conduct.

(b) Prohibition Upon Adoption of Certain Rules.

NFA shall not adopt, administer or enforce upon any Member or Associate a rule, standard, requirement or procedure which purports to govern or otherwise regulate any of the following:

- (i) The minimum level of margin required for any futures or swaps contract or type of futures or swaps transaction, the method for calculation thereof, or compliance therewith, unless such rule, standard, requirement or procedure conforms and is not inconsistent with applicable ~~contract market~~ Contract Market requirements.
- (ii) Eligibility for membership in, clearing privileges on, or service on the governing board or committees of, a ~~contract market~~ Contract Market.
- (iii) The rights, privileges, duties or responsibilities of membership in any ~~contract market~~ Contract Market or clearing organization.
- (iv) The content, interpretation, administration or enforcement of any rule, standard, requirement or procedure of a ~~contract market~~ Contract Market or clearing organization.

(v) The conduct of business or other activities on the trading floor of a ~~contract market~~ Contract Market.

(vi) The terms or conditions of any futures contract.

(vii) The terms or conditions of any swaps contract; provided that such terms or conditions conform to and are not inconsistent with applicable Contract Market requirements.

Section 3: Communications With Legislative Bodies.

NFA shall not communicate any statement as its official position, view or opinion to a legislative body on any matter pending or contemplated to be pending before such body, except with the prior approval of the Board.

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ARTICLE VI: MEMBERS

Section 1: Membership Eligibility.

Persons eligible to become NFA Members shall include:

- (a) any person registered or provisionally registered with the Commission;
- (b) any ~~contract market~~ Contract Market; and
- (c) any person designated by Commission Rule as eligible for NFA membership.

Section 2: Membership Category.

Each Member which qualifies for membership status in one or more of the following categories-

- (a) FCMs;
- (b) CPOs;
- (c) CTAs;
- (d) IBs; ~~or~~
- (e) LTMs;
- (f) RFEDs;
- (g) SDs; or
- (h) MSPs

-shall be deemed to be a Member for the purposes of Articles VII, VIII, and X only in that single category to which its business activities primarily relate. Each Member shall have one vote on all matters on which the Member's category is entitled to vote. ~~except that a CPO, CTA, or IB Member shall not be entitled to vote in such category if:~~

- ~~(a) it is an employee of an FCM Member;~~
- ~~(b) an FCM Member or employee thereof holds a majority equity interest in the~~

Member; or

~~(c) the Member is otherwise directly or indirectly controlled by an FCM Member, except that an IB Member which has entered into a guarantee agreement with an FCM Member shall not be deemed for purposes of this Section to be directly or indirectly controlled by such FCM Member solely by reason of such agreement;~~

~~Provided, however, that such CPO, CTA, or IB Member shall be entitled to vote in any one of such other categories (e.g., FCM) in which it qualifies for membership status.~~

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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 Board.

The Board of Directors shall be comprised as follows:

(a) Contract Market Representatives.

(i) Four (4) elected representatives of ~~contract market~~ Contract Market Members. In the event that there are four (4) or less ~~contract market~~ 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~~ Contract Market Member.

(ii) In the event that there are more than four (4) ~~contract market~~ 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~~ Contract Market Member ranked in the top three (3) ~~contract market~~ Contract Market Members based on annual transaction volume during the prior calendar year.

(b) One (1) elected representative of ~~contract market~~ 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~~ 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~~ Contract Market's annual transaction volume shall be the number of commodity futures contracts and swaps contracts entered into on the ~~contract market~~ Contract Market during the calendar year. The number of contracts entered into on a ~~contract market~~ 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~~ Contract Market Member and all ~~contract market~~ 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~~ Contract Market Member shall be deemed to be affiliated with another ~~contract market~~ 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~~ Contract Market Member.

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

(†) Ten (10) elected representatives of registered Futures Commission Merchant (~~hereinafter "FCM"~~) Members, registered Leverage Transaction Merchant (~~hereinafter "LTM"~~) Members, registered Retail Foreign Exchange Dealer Members and registered Introducing Broker (~~hereinafter "IB"~~) Members, divided as follows:

(Ai) ~~Eight (8)~~ Seven (7) representatives of FCMs, including (A) at least ~~two (2)~~ three (3) representatives of FCMs ranked in the top ten FCMs and (B) at least ~~two (2)~~ three (3) representatives of FCMs and LTMs not ranked in the top ten FCMs~~S~~ based on the total of segregated funds and secured amounts, as those terms are defined in the applicable Commission regulations, held as of June 30 of the prior calendar year.

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

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

(iv) One representative of RFEDs.

~~(ii) No FCM, LTM or IB Member shall have more than one representative on the Board at any one time. For purposes of this limitation, a person shall be deemed a representative of an FCM, LTM or IB Member if the person is an officer, director, partner, employee or beneficial owner of more than 10 percent of the equity stock of the FCM, LTM or IB, and the person is not a contract market representative.~~

(c) Commodity Pool Operator and Commodity Trading Advisor Representatives.

~~(i)~~ Four (4) elected representatives of registered Commodity Pool Operators (hereinafter "CPOs") and registered Commodity Trading Addvisors (hereinafter "CTAs") that are NFA Members, including at least two (2) representatives of CPOs or CTAs that rank within the top 20 percent of CPOs or CTAs with funds under management allocated to futures and swaps (as defined in Article XVIII(k)).

~~(ii) No CPO or CTA may have more than one representative on the Board at any one time. For purposes of this limitation, a person shall be deemed a representative of a CPO or CTA if the person is an officer, director, partner, employee or beneficial owner of more than 10 percent of the equity stock of the CPO or CTA, and the person is not a contract market representative.~~

(d) Swap Dealer and Major Swap Participant Representatives.

Seven (7) elected representatives of registered or provisionally registered Swap Dealers and registered or provisionally registered Major Swap Participants, 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 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.*

~~(d)~~(e) Public Representatives.

(a) Effective as of the 2013 2010 annual meeting of the Board, eleven (11) seven (7) individuals who are Public Representatives (see Article XVIII(r));

(b) Effective as of the 2014 2011 annual meeting of the Board, twelve (12) ten (10) Public Representatives (see Article XVIII(r));

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

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

(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; ~~and CPO and CTA;~~ and SD and MSP 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; and CPO and CTA;~~ and SD and MSP 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; 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.

(d) Public Representatives.

The Public Representatives shall be chosen as follows: Before the Annual Election, the Board shall solicit from the Members 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, select from among such nominees the Public Representatives to serve on the Board.

(e) Contract Markets.

In the event of an election as described in Article VII, Section 2(a)(ii)(b), the ~~contract market~~ Contract Market representatives shall be elected as follows: Before the Annual Election, the Board shall solicit from ~~contract market~~ Contract Market Members eligible to have representatives pursuant to Article VII, Section 2(a)(ii)(b) the nomination of individuals to serve on the Board as representatives of such ~~contract market~~ Contract Market Members. If there is a contested election of such ~~contract market~~ Contract Market Members, the ~~contract market~~ 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 Directors

that will represent them. The election shall be conducted in the manner provided in the Bylaws, which shall provide for an Annual Election.

Section 4: Terms of Directors.

(a) Contract Market Directors.

Directors representing ~~contract market~~ Contract Market Members shall serve for one-year terms, from the date of the Board's regular annual meeting as set forth in Bylaw 506 until the date of the Board's regular annual meeting one year hence.

(b) Other Directors.

Directors other than ~~contract market~~ 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: Provided, however, the initial SD Directors and MSP Director, if any, elected in accordance with Section 8 by the Board shall serve from the date of the Board meeting at which they are elected until the date of the Board's regular annual meeting in 2014. SD Directors representing Large Financial Institutions and the SD Directors not representing Large Financial Institutions elected at the Annual Election in 2002 2014 shall be serve staggered terms. Except for Public Representatives, half of the Directors in each category elected at the Annual Election in 2002 shall serve two-year terms, and half shall serve one-year terms. The two (2) SD Directors representing Large Financial Institutions and the two (2) SD Directors not representing Large Financial Institutions who receive the highest number of votes in each category shall serve the two-year terms and the other three (3) SD or MSP Directors shall serve one-year terms. Ties shall be resolved by random draw. Three of the Public Representatives elected at the Board's regular annual meeting held in 2002 shall serve two year terms and two shall serve one year terms. The Public Representatives who serve two year terms shall be determined by random draw.

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 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.

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 shall serve for 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.

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~~ Contract Market Member, that ~~contract market~~ 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.

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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(a)(+); 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) 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 comprise the following:

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

~~(b)(i) Effective as of the 2010 annual meeting of the Board, Ten (10) Directors, as follows:~~

~~(A) The Chairman of the Board of Directors, and~~

~~(B) Nine (9) other Directors, as follows:~~

~~(1) Two (2) Directors representing contract market s:~~

~~(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 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 market s. 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 (1) above; *Provided, however,* if no contract market described in clause (1) above is represented on the Board, there shall be two Directors on the Committee from contract market s represented on the Board;~~

~~(2) Three (3) Directors representing FCMs, LTMs or IBs;~~

~~(3) Two (2) Directors representing CPOs and CTAs; and~~

~~(4) Two (2) Directors who are Public Representatives (see Article XVIII(r)).~~

~~(ii) Effective as of the 2011 annual meeting of the Board, Eleven (11)~~

(b) Thirteen (13) Directors, including the Chairman of the Board of Directors, as follows:

~~(A)~~(i) Two (2) Directors representing ~~contract market~~ Contract Markets:

~~(1)~~(A) One (1) representative of a ~~contract market~~ 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~~ Contract Market's transaction volume shall be the number of commodity futures contracts and swaps contracts entered into on the ~~contract market~~ 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~~ 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

~~(2)~~(B) One (1) representative of a ~~contract market~~ Contract Market other than a ~~contract market~~ Contract Market described in clause ~~(1A)~~ above: *Provided, however*, if no ~~contract market~~ Contract Market described in clause ~~(1A)~~ above is represented on the Board, there shall be two Directors on the Committee from ~~contract market~~ Contract Markets represented on the Board;

~~(B)~~(ii) ~~Two (2) Three (3)~~ Directors representing FCMs, LTMs, RFEDs or IBs;

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

(iv) Two (2) Directors representing SDs or MSPs; and

~~(D)~~(v) ~~Five (5) Four (4)~~ Directors who are Public Representatives (see Article XVIII(r)).

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 market~~ Contract Markets that had transaction volume of more than 20 percent of aggregate ~~contract~~

~~market~~ Contract Market transaction volume during the prior calendar year shall elect the Committee member in category ~~(b)(i)(B)(1)(a) above at the 2010 annual meeting and (b)(ii)(A)(1) above thereafter;~~ the Directors representing all other ~~contract market~~ Contract Markets shall elect the Committee member in category ~~(b)(i)(B)(1)(b) at the 2010 annual meeting and (b)(ii)(AB)(2) above thereafter;~~ the Directors representing FCMs, LTMS, RFEDs and IBs shall elect the Committee members in category ~~(b)(i)(B)(2) above at the 2010 annual meeting and (b)(ii)(B) above thereafter;~~ the Directors representing CPOs and CTAs shall elect the Committee members in category ~~(b)(i)(B)(3) above at the 2010 annual meeting and (b)(iii)(C) above thereafter;~~ the Directors representing SDs and MSPs 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.

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.

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ARTICLE X: NOMINATING COMMITTEE

Section 1: General.

There shall be a Nominating Committee, composed of four ~~three~~ Subcommittees, one for each of the following categories of Members: (i) FCMs and LTMs, (ii) IBs, and (iii) CPOs and CTAs and (iv) SDs and MSPs. 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); ~~and~~

(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 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.

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 XI: BYLAWS

Section 1: Adoption, Amendment and Repeal.

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

- (a) the Directors;
- (b) the combined SD and MSP 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~~ 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 all other matters pertaining to membership in, registration with, and the conduct, management and control of the business, property and affairs of NFA.

* * *

ARTICLE XV: FINANCING

Section 1: Costs.

The initial costs of organization of NFA shall be borne by the Organizers, except that the Board in its discretion may reimburse the Organizers for all or any part of such verified organizational expenses.

Section 2: Initial Working Capital.

The initial working capital of NFA shall consist of borrowings from ~~contract market~~ Contract Markets or other sources, to be evidenced by loan agreements, promissory notes or other evidences of indebtedness, which shall be repaid as promptly as practicable from dues, assessments or other revenue received by NFA.

Section 3: Revenue.

The operating income of NFA shall consist of dues, assessments, fees and other charges upon Members and others as prescribed from time to time in NFA's Bylaws, subject to Sections ~~1(a)(ii) and 1(b)~~ of Article XI. NFA schedules of such charges may prescribe different rates or amounts for different categories of Members, or sub-categories therein, endeavoring to reflect differences in the financial burden borne or expected to be borne by NFA in carrying out its duties and programs for each such category or sub-category.

Section 4: Loans and Other Receipts.

Nothing herein shall prohibit or inhibit the Board, in its discretion, from securing loans, accepting gifts, grants or contributions, or otherwise obtaining financing to meet NFA's initial or on-going needs in lieu of or in addition to the other methods of financing recited in this Article.

* * *

ARTICLE XVI: MISCELLANEOUS

Section 4: Dissolution.

Upon dissolution, the net assets of NFA, after payment of liabilities, shall be distributed to the then ~~m~~Members in proportion to the dues and assessments previously paid.

* * *

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: ~~the Directors~~

- (a) the Directors;
- (b) the combined SD and MSP 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~~ 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)~~, ~~2(b)~~ and ~~2(c)~~ of Article VII who submit a proper ballot in a timely manner.

* * *

ARTICLE XVIII: DEFINITIONS.

As used in these Articles-

(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. ~~a person controlled by, in control of, or under common control 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 ~~Commodity Exchange~~ Act or Commission Rules and who is required to be registered as an "associated person" with the ~~Commodity Futures Trading~~ 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) "Commission"-means the Commodity Futures Trading Commission.

(f) "Commodity Pool Operator" or "CPO"-means a commodity pool operator as that term is used in the ~~Commodity Exchange~~ 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.

(g) "Commodity Trading Advisor" or "CTA"-means a commodity trading advisor as that term is used in the ~~Commodity Exchange 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.

(h) "Contract Market"-means an exchange ~~designated by the Commission as a derivatives transaction execution facility or~~ registered by the Commission as a designated contract market.

(i) "Clearing Organization"-means an entity (whether a unit or division of the ~~contract market~~ Contract Market, or a separate organization) that clears commodity futures transactions or swaps transactions executed on a ~~contract market~~ 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~~ 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 ~~Commodity Exchange Act~~, and that is required to be registered as such under the Act and Commission Rules.

(m) "Industry Participant" ~~refers to those members of NFA's Board of Directors who represent CPOs and CTAs, as described in paragraph 2(c)(i) of Article VII.~~

(n)(m) "Introducing Broker" or "IB"-means an introducing broker as that term is used in the ~~Commodity Exchange 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 Commission Rules, 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.

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

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

(r)(s) "Public Representative"-refers to those members of NFA's the Board of Directors who are public directors as that term is defined in Section (b)(2) of Core Principle 15 in Appendix B to Part 38 of the CFTC's Regulations Commission's Rules.

(s)(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.

EXPLANATION OF PROPOSED AMENDMENTS

In January 2012, the Commission issued final rules that require each registered SD and MSP to become a Member of a registered futures association (RFA). NFA's Board had previously appointed a Special Committee on NFA Governance

(Special Committee) to review NFA's current governance structure; explore alternatives for structurally realigning NFA's Board, Executive Committee and other committees to include Swap Participants; and make formal recommendations on these governance issues to the Swap Dealer Advisory Committee (SDAC), the Executive Committee, and ultimately the Board.¹ In addition, the Board requested that the Special Committee consider adding a retail foreign exchange dealer (RFED) representative to NFA's Board.

Following the Commission's finalization of the entity definitional rules in May 2012, the Executive Committee and Special Committee formally recommended to the Board amendments to NFA's Articles to implement the necessary changes to integrate Swap Participants into NFA's membership and governance structure. NFA's SDAC also fully supported the Special Committee's recommendations. As stated above, NFA's Board approved the proposed amendments to the Articles on August 16, 2012 and the requisite number of Members ratified the proposed articles' amendments on September 28, 2012.

Overview of Proposed Governance Changes

In general, the Board decided that Swap Participants should be integrated into NFA's current Board structure (as opposed to a bifurcated governance structure). The Board recognized that this type of integration has certain advantages including familiarity to the Commission, certain operational and regulatory benefits, and it significantly diminishes the likelihood that a "silo" mentality would be created that would limit interaction between representatives of NFA's various membership categories in the decision-making process.

After deciding to maintain a single board structure, the Board further decided the following:

- Increase the Board's size from twenty-eight directors to thirty-nine directors by adding additional representatives to the Board to include seven Swap Participants, and four Public Representatives (Article VII);
- Within the Swap Participant category, allocate three seats to "large financial institution" SDs included in a well-defined, publicly available and independent list of financial institutions that the Board

¹ The Special Committee on NFA Governance is comprised of representatives from NFA's current Board and potential Swap Participants, and the Swap Dealer Advisory Committee is comprised of potential Swap Participants and swap end-users.

identifies by resolution from time to time; three seats to other SDs and one seat to an MSP; *provided, however*, that if no MSP is available or willing to serve, then this seat will be an at-large SD seat. The Board approved a resolution defining the term “large financial institution” to mean the over-the-counter (OTC) derivatives dealer signatories on the commitment letters executed with the OTC Derivatives Supervisors Group (Articles VII and XVIII);

- Substitute an RFED seat for an FCM seat on the Board thereby reducing the total number of FCM seats from eight to seven, and allocate three seats to top ten FCMs, three seats to non-top ten FCMs, and one at-large seat (Article VII);
- Adopt special category voting rules so that Board actions would require a majority vote by the Swap Participant Directors and the Public Directors as one voting category, a majority vote by the futures Directors and the Public Directors as another voting category and a majority vote by the Board as a whole (Article XVIII);
- Prohibit the Member affiliates of a single corporate group entity from having more than one Board representative. For these purposes, “affiliate” means a Member 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 Member (Articles VII and XVIII);
- Increase the current number (*i.e.*, ten) of Public Directors to fourteen Public Directors over a four-year Board election cycle by electing an additional Public Director each year so that Public Directors comprise 35% of the Board's overall composition at the conclusion of this four-year period (Article VII); and
- Enlarge the Executive Committee from eleven to thirteen members, with Public Directors continuing to comprise 35% (*i.e.*, 5 members) of the Committee's composition (Article VIII).

An explanation of each of the proposed changes to the Articles is set forth below.

I. Changes to Board Structure

A. Swap Participant Representatives

Since NFA's inception, a basic governance tenet has been that all of NFA's constituencies must be fairly represented on the Board – consistent with statutory and regulatory provisions. Section 17(b)(11) of the CEA and CFTC Regulation 170.3 require, in part, that NFA's Board must provide for meaningful representation of a diversity of membership interests. NFA has interpreted these provisions to recognize that diversity may exist among Member categories and also within Member categories. For example, the largest FCMs, based on amount of segregated funds held, must be represented on the Board, but other FCMs must also be represented; there must be at least one guaranteed and one independent IB; and the largest CPOs and CTAs, based on funds under management allocated to futures, must be represented, but other CPOs and CTAs must also be represented.

The Board continues to believe that these concepts have promoted fair and effective governance and are applicable to determining how many and what type of seats should be allocated to Swap Participants. NFA's Board has always recognized that representation of membership categories must be based on a variety of factors, including the number of Members in each category, the contribution the category's Members make to NFA and the industry, and the impact of NFA's regulation on the category's Members. Lastly, Board seats should be apportioned among categories consistent to the extent possible with the existing apportionment scheme.

Applying these governance principles, the Board decided that seven Swap Participants should be added to NFA's Board. Adding these seven seats is consistent with the current apportionment scheme and, as described, will create numerical parity with FCM Board representation. Moreover, the Board determined that similar to the FCM, IB and CPO/CTA categories, consideration be given to a possible diversity of interests within the Swap Participant category. Accordingly, the Board determined that three of the seven Swap Participant seats be designated for "large financial institution" SDs. Based upon input from the SDAC, the Board further decided that the definition should be reflective of the industry group comprising the largest financial derivatives dealers, which until recently was referred to as the G-14 and with the recent addition of two more firms is currently referred to as the G-16.

The Board decided that the term "large financial institution" should be defined by reference to an objective, independent and well-defined criterion. This approach is similar to how NFA currently defines "top ten" FCMs for purposes of

allocating seats within the FCM Board category.² Finally, the Board determined that a flexible approach is necessary to define “large financial institution” in order to address future changes in the swaps markets and permit changes to be made to the criterion. Specifically, the Board adopted a definition in the Articles of “large financial institution” to mean an SD that is included in a well-defined, publicly available and independent list of financial institutions that the Board identifies by resolution from time to time. Therefore, this definition may be changed in the future by Board resolution, without the need for changes to NFA's Articles each time.

At its August meeting, the Board adopted a resolution that defines “large financial institution” by reference to the major OTC dealer signatories to the commitment letters executed with the OTC Derivatives Supervisors Group (DSG).³ These letters (the latest of which is dated March 31, 2011) are issued periodically and are publicly available on the Federal Bank of New York's website on a designated webpage entitled “OTC Derivatives Supervisors Group.” Over the years, although the letters' signatories have remained relatively static, some slight changes in the signatories have occurred. NFA intends to provide public notice via our website as to the well-defined, publicly available and independent list of financial institutions used by the Board to define “large financial institutions,” and will provide further notice in the future if the Board elects by resolution to change this metric.

If “large financial institution” SDs are allocated three of the six SD seats, then the three remaining seats are designated for other types of SDs. The Board expects this sub-category to include SDs representing diverse asset classes, including energy and agriculture, and non-“large financial institution” SDs including smaller financial institutions.

Finally, the Board determined that one seat be designated for MSPs, but if no MSPs are available or willing to serve on the Board, then this seat would be an at-large SD seat.

² Article VII, Section 2(b) utilizes a ranking of top ten FCMs based on the total of segregated funds and secured amounts held as of June 30 of the prior calendar year.

³ The DSG is chaired by the Federal Reserve Bank of New York and meets annually with other supervisors and the commitment letters' signatories. Commitments made by the signatories to these letters signify their collective agreement to the supervisors to work with other signatories and their counterparties (whether signatories or not) to deliver structural improvements to the OTC derivatives market in the interest of financial stability.

B. FCM and RFED Representation

The Board determined that it is appropriate to formally add an RFED representative to the Board to reflect the fact that the retail forex community may have interests not entirely represented by other Member categories.⁴ Those Forex Dealer Members that are registered solely as FCMs would continue to be represented in the FCM category. To accomplish this result, the Articles' amendments do not increase the Board's overall size by the addition of an RFED but rather add this seat by eliminating a seat from the FCM category, thereby reducing the number of FCM representatives on the Board from eight to seven.

The Board also determined to harmonize the scheme for apportioning seats within the Swap Participant and FCM categories. Specifically, since the Articles' amendments provide that three "large financial institution" SDs be allocated seats within the Swap Participant category and that three seats be allocated to other SDs, the Board determined that the FCM category should be similarly structured. Accordingly, the Articles' amendments provide that seats within the FCM category be allocated as follows: three top ten FCM seats, three non-top ten FCM seats, and one at-large FCM seat. The method for determining what constitutes a top ten FCM—based upon total segregated and secured amount funds—remains unchanged.

C. Public Director Representation

Section 17(b)(11) of the Act states, in part, that an RFA's governing board must provide that no less than 20% of its regular voting members must be comprised of qualified non-members of or persons who are not regulated by such association. In February 2007, the CFTC issued Acceptable Practices (APs) for exchange governance and conflicts of interest. The APs offer exchanges a safe harbor by which they can minimize conflicts of interest and requires that at least 35% of an exchange's board and executive committee be "public directors," as defined in the APs.

To promote effective governance practices, NFA decided to voluntarily comply with the CFTC's board composition AP of 35% and, therefore, over a two-year Board election cycle recently completed in February 2011 NFA added five additional Public Directors to the Board and currently ten of NFA's twenty-eight Directors are Public Directors. The Board determined that proper governance practices and the desire to engender public confidence in the Board's composition mandate that NFA

⁴ Currently, RFEDs fall within the Forex Dealer Member category and for purposes of Board representation fall within the seats allocated under Article VII, Section 2(b) to non-top ten FCMs or the at-large FCMs.

continues to voluntarily maintain 35% public representation on the Board. Therefore, the Articles' amendments provide that four additional Public Directors be added to the Board bringing the overall size of the Board to thirty-nine Members. In order for NFA to find qualified individuals who are willing to serve as Public Directors, the Board determined that the four additional Public Directors be added over a four-year Board election cycle—adding one Public Director a year.

In sum, as amended, NFA's Articles provide for a Board consisting of:

- No more than four Contract Market representatives (currently, there are four);
- Seven FCM representatives—at least three of whom are drawn from FCMs ranked in the top ten FCMs based on the total amount of segregated funds and secured amounts, and at least three of whom are drawn from non-top ten FCMs;
- One RFED representative;
- Two IB representatives—one representative from an independent introducing broker and one from a guaranteed introducing broker;
- Four CPO/CTA representatives—at least two of whom are drawn from CPOs and CTAs that rank in the top 20% of CPOs and CTAs with funds under management allocated to futures;
- Seven Swap Participant representatives—at least three of whom are drawn from “large financial institution” SDs included in a well-defined, publicly available and independent list of financial institutions that the Board identifies by resolution from time to time, three of whom are drawn from other SDs and one of whom is drawn from an MSP; *provided, however*, that if no MSP is available or willing to serve, then this seat will be an at-large SD seat.
- Fourteen public representatives.

This results in a Board of thirty-nine Directors that meets NFA's regulatory obligation to provide fair and diverse representation of its Members, and provides for appropriate participation by non-Members.

II. Special Voting Rules

Over the years, NFA's principal method of managing Board conflicts of interest is through a system of appropriate checks and balances. In adding Swap Participants to NFA's Board, NFA needs to maintain the "self" in self-regulation and at the same time ensure that representatives of either the swaps or futures industry do not have unfettered discretion to write rules favorable to their constituents at the expense of sound public policy. In general, NFA's Articles currently require a simple majority vote on most matters, including amending the Bylaws of NFA. However, a voting supermajority of two-thirds is required for certain matters, including adopting, amending, or repealing the Articles or any Bylaw regarding dues and assessments, and delegating or otherwise granting authority to any NFA Committee, officer, employee or agent, or any other person, to adopt, amend, or repeal any Bylaw.

Prior to October 2001, however, the Articles required category votes for changes to dues and assessments and NFA's Articles. NFA adopted the category voting requirements at its inception to ensure that no one membership category could dictate changes to the Articles or dominate certain actions taken by the Board to the detriment of the other categories. Since Swap Participants will become NFA Members newly subject to NFA's regulation and are unfamiliar with the governance dynamics of NFA's Board, the Board determined to reinstitute a form of category voting. The category voting rules are designed to provide Swap Participants with confidence that the futures industry's representatives can not dominate the swaps industry's representatives. For purposes of governing Board structure symmetry, the same category voting structure is replicated with regard to futures industry participants.

To eliminate any uncertainty regarding what particular Board actions are subject to the special voting rules, the Articles' amendments require that all Board actions be subject to these special category voting requirements. Consequently, the Articles' amendments provide that all Board actions require the approval of the Swap Participant directors and Public Directors voting together as a group, the futures directors and Public Directors voting as a group, and then a majority of the Board as a whole. By including the Public Directors with each industry's Member Directors for category voting purposes, the Public Directors, who are disinterested from a business perspective, provide an important check on each industry's Member Directors by representing the public interest.

III. Corporate Entity Board Representation

Article VII, Sections 2(b)(ii) and 2(c)(ii) currently provide that no FCM, LTM, IB, CPO or CTA Member may have more than one representative on the Board at any one time. However, the Articles would not prohibit a Member and one of its Member affiliates from each having a representative on the Board so long as the representative of each complies with certain restrictions. The Board recognizes that many large financial institutions may have both a registered FCM Member and a separately registered SD Member. Consequently, under the current Articles, if a single entity is both registered as an SD and FCM, it cannot have both an SD and FCM Board representative. However, if instead the SD Member and the FCM Member are affiliates and separately registered entities, then both the FCM and SD could in certain circumstances have different Board representatives even though the representatives are from the same affiliated corporate entity group.

As noted above, the Articles' amendments provide that at least three SD seats (and the possible one at-large seat) will be allocated to "large financial institutions." This structure highlights the fact that the same large financial institutions and/or their affiliates may fall within the ranking of top-ten FCMs and "large financial institution" SDs. Specifically, each of the top-ten FCMs or one of their affiliates is a signatory to the latest DSG commitment letter dated March 31, 2011. Therefore, under NFA's current Articles and in the extreme case, affiliated SD and FCM Members could essentially hold all three top-ten FCM seats, the three "large financial institution" SD seats, and the one at-large FCM and SD seats. As a result, eight of the Board's thirty-nine seats could be held by four large financial firms. The Board believes that this potential voting and representation concentration is inconsistent with self-regulatory governance principles and lessens possible Board diversity since other top-ten FCMs and "large financial institution" SDs may be unable to participate in the governance process by having a representative on the Board.

Accordingly, the amendments to Article VII prohibit the Member affiliates of a single corporate group from having more than one Board representative. This type of prohibition avoids one or more corporate groups from having Member affiliates with a concentration of voting power on the Board, creates the optimal diversity of representation on the Board and engenders public confidence. The proposed Articles' amendments provide that a Member is deemed to be affiliated with another Member if it owns more than 50% of, is owned more than 50% by, or has more than 50% ownership in common with another Member.

IV. Executive Committee Composition

To complete the integration of Swap Participants into NFA's governance structure, the amendments to Article VIII change the size and composition of NFA's Executive Committee to ensure Swap Participant representation. Additionally, the amendments to Article VIII include RFEDs in the FCM/IB/LTM category for purposes of Executive Committee representation. The proposed Articles' amendments therefore specifically increase the Executive Committee from eleven to thirteen members and change its composition as follows:

- Two seats are designated for Swap Participants;
- Public Directors seats are increased from four to five to maintain 35% public representation;
- The number of FCM/IB/LTM/RFED seats are reduced from three to two;
- The two seats for CTA/CPO Members remain unchanged; and
- The two seats for Contract Markets Members remain unchanged.

Since the Board's size is proposed to be increased, a relatively small Executive Committee that is able to function efficiently takes on even greater importance. The Board believes that the small increase in size of the Committee should not adversely impact the Committee's decision-making and will continue to ensure that both the public interest and a breadth of industry experience are represented on the Committee.

V. Election of New Directors

Moreover, as part of these governance changes, a process for electing Swap Participant and RFED Directors to the Board must be implemented. The amendments to Article X create a Swap Participant subcommittee of the Nominating Committee, which shall include one "large financial institution" SD, one other type of SD, and one at-large Swap Participant. The amended Articles also provide that the RFED director will be elected annually by a plurality vote of the RFED Members (currently a total of fourteen) rather than through a nominating committee process.

The annual election process begins shortly before October 15th of each year and culminates with the Annual Election on the third Tuesday of January of the following year. Both Directors and Nominating Committee members are elected in this process. The elected Directors' and Nominating Committee members' terms begin on the date of the Board's regular annual meeting held during the following February.

Practically speaking, given the time schedule for implementing the governance changes, it will not be possible to elect the initial Swap Participant Directors, RFED Director and Swap Participant Nominating Committee members in this year's election process. To resolve this timing issue with this year's annual election process, the Board decided that the newly created Director positions should be treated as vacancies.

The Articles currently provide that if a vacancy on the Board is created before the end of a Director's term, the Directors from the membership category in which the vacancy occurs will elect a Director for the balance of the unexpired term. If there are no Directors on the Board in the affected membership category, then the Board may elect Directors to fill the vacancies. The Board therefore amended these provisions to expand the meaning of vacancy to include vacancies resulting from the addition of Directors in existing membership categories or the addition of Directors in new membership categories. The Board expects that that the newly created Swap Participant vacancies and the RFED vacancy will be elected based upon the recommendation of the SDAC and the FDM Advisory Committee, respectively.

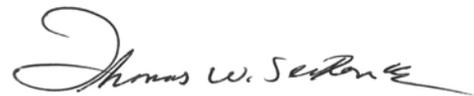
Assuming the Commission approves the Articles' amendments, the Board plans to elect the new Swap Participant Directors and RFED Director at a regularly scheduled Board meeting in 2013. Once elected, the Swap Participant Directors would elect two representatives to the Executive Committee. These initial Directors' terms will expire as of the Board's Annual Meeting in February 2014, by which time their successors will have been elected pursuant to NFA's standard election process that commences in the fall of 2013.

* * *

On August 16, 2012, NFA's Board unanimously approved the proposals to amend Articles III (Purposes), VI (Members), VII (Board of Directors), VIII (Executive Committee), X (Nominating Committee), XI (Bylaws), XV (Financing), XVI (Miscellaneous), XVII (Adoption, Amendment and Repeal of Articles) and XVIII (Definitions) to integrate Swap Participants into NFA's membership and governance structure. The Articles' amendments also add an RFED seat to the Board. In addition to the substantive Articles' amendments necessary to integrate Swap Participants into NFA's membership and governance structure, the Board also approved minor revisions to the Articles in order to accomplish this objective. NFA issued a Notice to Members on August 31, 2012 submitting the above changes for a vote by NFA's membership in accordance with Article XVII. As of September 28, 2012, the requisite number of Members ratified the Articles' amendments.

The Board will elect the Swap Participant representatives and RFED representative once it determines that a sufficient number of Swap Participants have become NFA Members to satisfy the CEA's fair and diverse representation requirements.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas W. Sexton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thomas W. Sexton
Senior Vice President and
General Counsel

* The proposed amendments to the Articles of Incorporation become effective April 1, 2013.