May 24, 2021

<u>Via Email (secretary@cftc.gov)</u>
Mr. Christopher J. Kirkpatrick
Secretary
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Amendments to NFA Member Dues for Swap Dealer and Major Swap Participant Members – NFA Bylaw 1301 regarding Schedule of Dues and Assessments

Dear Mr. Kirkpatrick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("CEA"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") the proposed amendments to NFA Bylaw 1301 regarding the schedule of dues and assessments. NFA's Board of Directors ("Board") unanimously approved these amendments on May 20, 2021.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make the amendments to NFA Bylaw 1301 effective on January 1, 2022 unless the Commission notifies NFA that the Commission has determined to review the proposal for approval.

PROPOSED AMENDMENTS
(additions are <u>underscored</u> and deletions are ~~stricken through~~)

BYLAWS OF NATIONAL FUTURES ASSOCIATION

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CHAPTER 13
DUES AND ASSESSMENTS

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BYLAW 1301. SCHEDULE OF DUES AND ASSESSMENTS.

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Subject to the provisions of Article XII, dues and assessments of Members shall be as follows:

* * *

(f) Swap Dealer and Major Swap Participant Members

(i) Each Swap Dealer Member that meets the definition of a Large Financial Institution pursuant to Article XVIII of the Articles shall pay to NFA annual dues in the amount of $~~1,000,000~~ 1,300,000;

(ii) Each Swap Dealer Member that does not meet the definition of a Large Financial Institution pursuant to Article XVIII of the Articles shall pay to NFA annual dues in the amount of $~~250,000~~ 325,000;

(iii) Each Major Swap Participant Member shall pay to NFA annual dues in the amount of $~~150,000~~ 200,000; and

(iv) Any Swap Dealer Member or Major Swap Participant Member that is an affiliate as defined in Article XVIII of the Articles of a Swap Dealer Member that pays annual dues in the amount described in subsections (i) or (ii) above or a Major Swap Participant Member that pays annual dues in the amount described in subsection (iii) above shall pay annual dues in the amount of $~~150,000~~ 200,000.

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EXPLANATION OF PROPOSED AMENDMENTS

NFA Bylaw 1301(f) imposes annual dues on NFA Member swap dealers (SDs) and major swap participants (MSP). Currently, SD Members that meet the definition of Large Financial Institution (LFI) as defined by NFA's Articles of Incorporation (Articles) pay annual dues in the amount of $1,000,000; SD Members that are not an LFI pay annual dues in the amount of $250,000; MSP Members[1] pay annual dues in the amount of $150,000; and SDs and MSP that are affiliates (as defined by the Articles) of SD and MSP Members paying dues in another category pay annual dues in the amount of $150,000.

These annual dues amounts have remained unchanged, except for a reduction in MSP annual dues, since NFA adopted the annual dues in 2013 when NFA began the SD Regulatory Program (SRP or Program). For the reasons

[1] Currently, there are no NFA MSP Members.

described fully below, NFA's Board amended Bylaw 1301(f) to increase these annual dues amounts. NFA projects that this increase may provide sufficient revenue to the SRP through fiscal year (FY) 2026 (June 30, 2026), and this increase is equivalent to increasing the Program's dues less than 2.5% annually since we began collecting dues in 2013.

In establishing the SRP's initial revenue structure, NFA's Board received input from potential SD and MSP Members and adhered to several longstanding guiding principles relating to NFA's revenue structure and the collection of dues and fees. First, any structure should be fair and equitable. Second, the structure must provide sufficient revenue to cover NFA's Member regulatory oversight costs. Third, the structure should be simple and easy to administer for both NFA Members and NFA staff. Finally, the revenue from one regulatory program[2] (*e.g.*, Futures) should not subsidize another Member regulatory program (*e.g.*, Swaps). Over time, NFA's Board has informally adopted a policy, known as reserve equilibrium, to maintain reserves between 10 to 14 months of operating expenses for each regulatory program and has formally adopted this policy for NFA at the entity level.

When the Board adopted the initial dues structure, it purposely established a projected revenue amount from SD and MSP dues above the costs that NFA initially projected for operating the SD Regulatory Program in order to both recover funds "loaned" from the Futures Regulatory Program's reserves to cover the SRP's start-up costs and to build the SRP's reserves. The initial dues structure has served the Program well and allowed it to cover its operating expenses and build-up reserves in line with NFA's Board's 10 to 14 months reserve policy.

Since 2014, the number of NFA SD Members has remained relatively flat—between 100 and 109 entities. However, the Program has materially evolved since SDs first became Members in early 2013 due to NFA's increased responsibilities as the CFTC finalized SD rulemakings. Specifically, since NFA began the SRP and focused on reviewing SD and MSP 4s Submissions, the SRP has expanded and evolved as follows:

- In 2015, SRP staff began examinations of U.S. based SD Members focusing on single rule areas and began receiving and reviewing SD Member Risk Exposure Reports and Annual Chief Compliance Office Reports.

- In 2016 and 2017, NFA expanded its exam program to cover SDs located outside the U.S. NFA also expanded its oversight responsibilities to include an initial margin (IM) model approval and ongoing monitoring

[2] NFA currently operates four separate regulatory programs: Futures Regulatory Program (applies to FCMs, IBs, CPOs and CTAs), the Swap Regulatory Program (applies to SDs and MSPs), the Forex Regulatory Program (applies to FDMs and forex related activities of FCMs, IBs, CPOs and CTAs) and the Market Regulation Program (applies to NFA's market regulation services for DCMs and SEFs).

program, which required the addition of staff with quantitative backgrounds. NFA also began receiving and reviewing swap valuation disputes.

- Since 2018, NFA has continued to evolve its SD examination program by covering numerous additional CFTC rule areas and increasingly focus on substantive testing of firms' compliance (rather than policy and procedure reviews), which resulted in longer exams. NFA also began receiving and analyzing monthly financial, operational and risk management information from all SD Members, which is used to identify SDs that may pose a heightened risk and allocate NFA resources accordingly.

- In 2020, NFA established and developed proficiency requirements for individuals acting as associated persons at SDs. The total cost of developing these requirements was approximately $1.5 million, which NFA elected to have absorbed by the SRP rather than charge each individual who took and passed the requirements.

Most recently, NFA is making changes to the SRP to incorporate the final CFTC SD Rulemaking area—SD capital. The changes needed to implement the CFTC's SD capital rules will have significant implications for the SRP going forward. In particular, NFA is in the process of incorporating the following into the SRP:

- Reviewing and approving market and credit risk models prior to the October 6, 2021 compliance date for SDs intending to use models that have not been approved for use by the SEC, a U.S. prudential regulator, or a qualifying foreign regulator (estimated to be no more than 3 Covered SDs[3]).

- Reviewing and approving (as part of NFA's SD capital examination process) market and credit risk models for SDs using models that have been previously approved by one of the above noted regulators (estimated to be at least 23 Covered SDs).

- Implementing a capital oversight program, which will include capital compliance testing during scheduled exams and targeted capital focused-scope exams driven by information received in financial filings, event driven notices and other relevant information (applies to all Covered SDs).

- Enhancing current systems to receive SD financial filings and event driven notifications (applies to all SDs).

[3] Covered SDs refers to those SDs that are not subject to the rules of a prudential regulator.

Given the expansion of the SRP's oversight coverage over the past eight years (Program staff increased from 20 in 2013 to 120 in 2021), the SRP's current revenue and operating expense levels will not allow it to maintain reserve equilibrium in NFA's FY 2022, which begins on July 1, 2021. Specifically, without either an increase in revenue or a significant drop in operating expenses, the SD Program's reserves are expected to fall below 10 months of operating expenses—the level NFA's Board finds acceptable—by the end of FY 2022. While recent costs associated with preparations for SD capital oversight are a factor in the anticipated drop in reserves in FY 2022, NFA would have to increase the SRP's revenue in FY 2022 even without these additional costs for the Program's reserves to remain above ten months of operating expense.

Based on current projections regarding the SRP's operating expenses, NFA's Board approved the following increase to annual dues, which will be effective January 1, 2022:

- SD Members that are LFIs annual dues will be increased from $1,000,000 to $1,300,000;
- SD Members that are not LFIs annual dues will be increased from $250,000 to $325,000;
- MSP Member annual dues will be increased from $150,000 to $200,000; and
- SD and MSP Members that are affiliates of SD or MSP Members paying dues in one of the above categories annual dues will be increased from $150,000 to $200,000.

Provided the current number of SD Members remains relatively the same (*e.g.,*109), the SRP's current revenue and cost projections indicate that NFA may be able to operate the SRP under the Board's annual dues structure through FY 2026.

As stated earlier, NFA's Board unanimously approved the proposed amendments on May 20, 2021. In addition, NFA's Finance Committee and Executive Committee fully supported the proposed increases.

NFA will issue a Notice to Members (NTM) on May 24, 2020 notifying SD Members that NFA's Board has approved an increase in the annual Member dues, which will become effective on January 1, 2022 for all dues payable after that date. The NTM will indicate that the increase to SD and MSP dues is pending CFTC review.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA. NFA intends to establish a January 1, 2022 effective date for the proposed amendments to NFA Bylaw 1301, unless the Commission notifies NFA that the Commission has determined to review the proposal for approval.

Respectfully submitted,

Carol A. Wooding

Carol A. Wooding
Senior Vice President and
General Counsel