September 2, 2011

<u>Via Federal Express</u>

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Proposed Amendments to NFA's Bylaws 1301 and 1302 Regarding Dues and Assessments and the Interpretive Notice Entitled "Forex Transactions"*

Dear Mr. Stawick:

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 Bylaws 1301 and 1302 regarding dues and assessments and the Interpretive Notice entitled "Forex Transactions." NFA's Board of Directors ("Board") approved the proposal on August 18, 2011. NFA respectfully requests Commission review and approval of the proposed amendments.

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

BYLAW 1301. SCHEDULE OF DUES AND ASSESSMENTS.

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(d) Other Members.

Annual dues for the other membership categories shall be as follows:

(i) Commodity Trading Advisor - $750

(ii) Commodity Pool Operator - $750

(iii) Introducing Broker - $750

Provided, however, that any commodity trading advisor, commodity pool operator, or introducing broker that has been approved as a forex firm pursuant to NFA Bylaw 301(j) shall pay $750 plus an additional surcharge of $1,750.

(e) Forex Dealer Members.

(i) Each Forex Dealer Member shall pay to NFA annual dues in the following amounts based on the FDM's gross annual revenue from its latest certified financial statement:

(a) FDMs with gross annual revenue of $5,000,000 or less shall pay annual dues of $125,000;

(b) FDMs with gross annual revenue of more than $5,000,000 but not more than $10,000,00 shall pay annual dues of $250,000;

(c) FDMs with gross annual revenue of more than $10,000,000 but not more than $25,000,000 shall pay annual dues of $500,000;

(d) FDMs with gross annual revenue of more than 25,000,000 but not more than $50,000,000 shall pay annual dues of $750,000; and

(e) FDMs with gross annual revenue exceeding $50,000,000 shall pay annual dues of $1,000,000. ~~under section (b)(ii) of this bylaw plus a surcharge of $44,375 if its gross annual revenue from the activities described in Bylaw 306(a) is $500,000 or less, a surcharge of $69,375 if its gross annual revenue from those activities is more than $500,000 but not more than $2,000,000, a surcharge of $94,375 if its gross annual revenue from those activities is more than $2,000,000 but not more than $5,000,000, and a surcharge of $119,375 if its gross annual revenue from~~

~~those activities is more than $5,000,000;~~ provided, however, that a Forex Dealer Member for which NFA does not serve as the DSRO, as defined in NFA Financial Requirements Section 1, shall pay annual dues in the amount under section (b)(ii) of this bylaw plus a surcharge of $23,500 ~~only a surcharge of $12,000~~ if the Forex Dealer Member's DSRO, or the entity to which the DSRO has delegated such responsibilities, agrees in writing to examine the Forex Dealer Member's forex activities to ensure compliance with all applicable NFA requirements as part of the annual examination of the Forex Dealer Member. These dues replace the dues that would otherwise be payable based on the Forex Dealer Member's registration category~~.~~

(ii)-Each Forex Dealer Member shall pay an assessment of $.002 ~~0001%~~ on ~~the notional value of each initiating (non-rollover) forex transaction (as forex is defined in Bylaw 1507(b)). For transactions with a notional value less than $10,000, the Forex Dealer Member may aggregate separate transactions and pay $.02 on each multiple of $10,000~~ each-order segment submitted by the Forex Dealer Member to NFA's Forex Transaction Reporting Execution Surveillance System. For purposes of this requirement, an order segment is a record of any line of data associated with an order, and includes when an order is added, modified, cancelled or filled. In addition, any unfilled open orders that are carried over by the system are considered a new order segment the next day.

BYLAW 1302. PAYMENT OF DUES AND ASSESSMENTS.

Unless otherwise provided, a~~A~~nnual dues and fees shall be payable in advance on the first day of January of each year, or at such other time or times as the Board shall determine. Members paying dues or fees after the date they are payable shall be subject to a late payment charge of $25 per month or portion thereof. Assessments based upon futures transactions or forex ~~transactions~~ order segments (as defined in Bylaw 1301) shall be payable to NFA within 30 days after the end of each month for transactions effected or order segments submitted during that month. In addition to such assessments each FCM, Forex Dealer Member, and LTM shall pay to NFA an amount equal to one month's interest at an annual rate of 10 percent (or such other rate of interest as the President, with the concurrence of the Executive Committee, may determine from time to time) on the amount of any such assessment payable by that Member for every month or fraction thereof such assessment payment is late. If a Member claims overpayment of its assessments based upon futures or forex transactions, the Member may request a refund in writing with supporting documentation at any time prior to the end of the 6th calendar month following the due date for payment of assessments for the month with respect to which such claimed overpayment was made. After that time, no refunds, adjustments or offsets will be made or allowed. Except as the Board may otherwise provide by resolution, each Member shall pay dues and assessments, as applicable, for each category in which the Member — or an affiliate thereof, unless such affiliate is a Member in its own right — is registered with the Commission and conducts business.

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INTERPRETIVE NOTICES

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FOREX TRANSACTIONS

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C. OTHER REQUIREMENTS

This section of the notice provides guidance on dues, capital requirements, and security deposits. These requirements apply only to Forex Dealer Members.

1. Bylaw 1301

NFA Bylaw 1301(e) requires Forex Dealer Members to pay annual dues that are graduated according to the firm's gross annual revenue from customers (e.g., commissions, mark-ups, mark-downs) for its forex activities. Profits and losses from proprietary trades are *not* to be included. ~~To calculate dues:~~

- ~~Start with the FCM dues imposed by NFA Bylaw 1301(b)(ii);~~
- ~~Add $44,375 if the Forex Dealer Member's gross annual revenue from forex transactions is $500,000 or less;~~
- ~~Add $69,375 if the Forex Dealer Member's gross annual revenue from forex transactions is more than $500,000, but not more than $2,000,000;~~
- ~~Add $94,375 if the Forex Dealer Member's gross annual revenue from forex transactions is more than $2,000,000, but not more than $5,000,000; or~~
- ~~Add $119,375 if the Forex Dealer Member's gross annual revenue from these activities is more than $5,000,000.~~

The following table shows the dues to be assessed for Forex Dealer Members:

~~Amount of annual Gross Revenue From Forex Transactions~~	~~Dues if NFA is the DSRO~~	~~Dues if NFA is not the DSRO~~
~~$500,000 or less~~	~~$50,000~~	~~$45,875~~
~~More than $500,000, but not more than $2 million~~	~~$75,000~~	~~$70,875~~
~~More than $2 million, but not more than $5 million~~	~~$100,000~~	~~$95,875~~
~~More than $5 million~~	~~$125,000~~	~~$120,875~~

Amount of Annual Gross Revenue From Forex Transactions	Dues if NFA is the DSRO	Dues if NFA is not the DSRO
$5 million or less	$125,000	$25,000
More than $5 million, but not more than $10 million	$250,000	$25,000
More than $10 million, but not more than $25 million	$500,000	$25,000
More than $25 million, but not more than $50 million	$750,000	$25,000
More than $50 million	$1,000,000	$25,000

These dues apply when ~~the~~ a firm first becomes approved as a Forex Dealer Member ~~offers to be a counterparty to a forex transaction~~ or accepts a forex trade (whichever is earlier)**.**~~, and~~ New Members' initial dues will be the minimum dues ($125,000), payable quarterly. If an existing Member becomes approved as a Forex Dealer Member, NFA will send the Member an invoice for the minimum dues (~~$50,000 or $45,875~~ $125,000) minus any amount already paid for that membership year. Thereafter, the dues will be assessed on the firm's membership renewal date, will be invoiced and paid quarterly, and will be based on the Forex Dealer Member's latest certified financial statement.

The only exception to the dues set forth above is a situation in which NFA does not serve as the DSRO for a Forex Dealer Member and the DSRO has agreed to examine the Forex Dealer Member's forex activities. In this case~~, the surcharge~~ the membership dues paid by the Forex Dealer Member, regardless of gross annual revenue, is ~~$12,000~~ $25,000. Accordingly, for such a Forex Dealer Member the dues to be assessed at the time it offers to be a counterparty to a forex transaction or accepts a forex trade (whichever is earlier), and on its membership renewal date thereafter, will be ~~$13,500~~ $25,000.

Each Forex Dealer Member is also required to pay an assessment of ~~.0001%~~ $.002 on ~~the notional value of each forex transaction (as forex is defined in Bylaw 1507(b)). This equates to $.01 for each $10,000. For transactions with a notional value less than $10,000, the firm may aggregate separate transactions and pay $.01 on each multiple of $10,000. For transactions of $10,000 or above, the firm should round to the nearest cent~~ each order segment submitted by the Forex Dealer Member to NFA's Forex Transaction Reporting Execution Surveillance System. For purposes of this requirement, an order segment is a record of any line of data associated with an order, and includes when an order is added, modified, cancelled or filled. In addition, any unfilled open orders that are carried over by the system are considered a new order segment the next day.

~~This assessment is due only on initiating transactions. There is no assessment on rollovers, offsetting transactions, option expirations, or option exercises that do not result in new positions.~~ NFA will invoice the Member monthly for the Forex Transaction Reporting Execution Surveillance System assessment amount and t~~T~~he Member must remit the assessment to NFA within 30 days after the date of the invoice ~~end of the month in which the transaction was initiated~~.

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EXPLANATION OF PROPOSED AMENDMENTS

Over the last few years, NFA has experienced a marked decrease in forex revenue, which creates a situation that is contrary to NFA's Board of Director's ("Board") longstanding directive that NFA should recover its forex-related regulatory costs without having on-exchange transactions subsidize regulating the off-exchange forex transactions. The Board's directive is entirely consistent with Section 3 of Article XV of NFA's Articles of Incorporation, which provides that NFA's schedule of dues, assessments, fees and other charges may prescribe different rates or amounts for different Member categories, and that NFA's schedule of charges should endeavor to reflect differences in the financial burden borne or expected to be borne by NFA in carrying out its duties and programs for each Member category.

The Board attempted to address this revenue shortfall by doubling the assessment fee paid by Forex Dealer Members (FDMs) on forex transactions from .0001% to .0002% effective January 1, 2011. At the time the Board approved this fee increase, NFA projected that by NFA's 2010 fiscal year end (June 30, 2010) there would be a gap between the amount of revenue received from Member forex activities and the cost of regulating forex of at least $3 million. Although the assessment fee increase was expected to fall slightly short of entirely closing this $3 million dollar gap (assuming FDM forex transaction volume remained flat), NFA's Board felt that it was appropriate to resist imposing a larger increase in the assessment fee recognizing that forex transactions might increase in fiscal year 2011.

However, forex transactions subject to the FDM assessment fee decreased in fiscal year 2011. Specifically, NFA's revenue from the FDM transaction fee declined approximately 30% from fiscal year 2010 ($2.7 million) to fiscal year 2011 ($1.9 million). This decline followed a drop in revenue from the FDM assessment fee of approximately 40% between fiscal year 2009 ($4.5 million) and fiscal year 2010 ($2.7 million). Therefore, NFA's revenue from the FDM assessment fee has decreased nearly 60% from fiscal year 2009 ($4.5 million) to fiscal year 2011 ($1.9 million). Over this same two-year time period, NFA also lost approximately $500,000 in forex revenue from membership dues and the additional surcharge based on unregistered solicitors, which NFA eliminated last Fall due to the CFTC's forex registration requirements. The revenue loss from the unregistered solicitor surcharge has only been partially offset by the revenue generated from the membership dues paid by those former unregistered entities that have now become Members.

Although the amount of forex-related revenue declined significantly over the past two fiscal years, NFA's resources devoted to regulating Members engaging in forex activities has remained relatively stable. Consistent with the past few fiscal years, NFA expends approximately $8 million dollars annually on forex regulatory activities. The fact that NFA's forex related resources has remained flat and has not increased is noteworthy in light of the fact that since January 2010 over 150 forex IBs, CTAs and CPOs have become NFA Members and subject to regulatory oversight. Moreover, the number of FDMs that NFA is required to examine annually has remained unchanged at seventeen since fiscal year 2009. Over the past three fiscal years, NFA's disciplinary experience with forex Members shows that NFA’s attention to these firms is not only justified but continues to be essential. Specifically, during these three fiscal years, just over 30% of NFA's disciplinary complaints have been issued against FDMs and these intermediary IB, CPO and CTA firms engaging in forex activities, and these firms comprise a small proportion on NFA's overall membership.

Given the decrease in forex revenue with no corresponding decrease in forex expenses, there is currently a significant gap of several million dollars between forex revenue and expenses for the past two fiscal years. This gap illustrates the significant extent to which on-exchange transactions are inappropriately subsidizing the regulatory costs associated with NFA Members' retail forex activities.

Despite NFA's efforts to generate sufficient revenue to cover the costs associated with Members' forex activities, the projections for fiscal year 2012 indicate there will be a revenue shortfall similar to fiscal year 2011 if no changes are made to Members' forex fees. In order to make the forex regulatory program a self-sustaining program and attempt over time to eliminate the current accumulated deficit associated with the program, NFA must generate significantly more forex-related revenue. Specifically, based on the projections, NFA must collect at least an additional $5.0 million in revenue in order to cover the costs associated with regulating Members' forex activities and begin to reduce the program's current deficit. Therefore, the aim is to add $5.0 million to the current $4 million revenue projection for a total revenue target of $9 million.

After consultation with all NFA's Advisory Committees and the Finance Committee, the Board determined to generate the additional revenue as follows: (1) increase the membership dues of non-FDM Forex Members because the current fee structure does not cover the costs NFA incurs completing an audit of one of these firms; (2) impose a fee on all order segments[1] that are processed through NFA's Forex Transaction Reporting Execution Surveillance System (FORTRESS) in order to recover the costs NFA incurs with respect to monitoring FDM trade practices; and (3) eliminate the current assessment fee on forex transactions but significantly increase FDM membership dues.

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[1] An "order segment" is a record of any line of data associated with an order. Each of these is a separate segment: (1) an order is added, (2) an order is modified (3) an order is cancelled or filled. In addition, any unfilled open orders that are carried over by the system are considered a new order segment the next day.

Membership Dues on Non-FDM Forex Members

Currently, there are approximately 200 non-FDM NFA Members (IBs, CPOs and CTAs) that are actively engaged in retail forex activities. Those Members currently pay annual membership dues of $750. Generally, NFA performs an audit of these firms on a three-year cycle, and the cost of an audit not resulting in a disciplinary action is approximately $15,000 (or $5,000 on an annual basis). These non-FDM Members engaging in retail forex activities should bear a greater share of the costs associated with regulating their forex business, particularly since unlike the assessment fee on futures transactions the vast majority of FDMs do not pass the FDM assessment fee on to the customers of these intermediaries. Therefore, the Board determined to increase the annual membership dues for these non-FDM Members to $2,500.

Currently, these firms generate revenue of approximately $150,000 ($750 × 200). With this fee increase, these firms should generate revenue of approximately $500,000 ($2,500 × 200), which is approximately $350,000 in additional revenue each year.

FORTRESS Processing Fee on Order Segments

Since February 2011, FDMs have been submitting daily trade information to NFA through FORTRESS. NFA projects that the annual cost of operating FORTRESS and monitoring FDM trade practices is approximately $1.2 million. Essentially, since FDMs act as counterparty to these retail forex transactions, NFA reviews their trading practices and regulates them, in part, as if they were exchanges. Like futures exchanges that charge a per contract execution fee that, in part, is used to cover the costs associated with the exchange's trade practice and market surveillance program, FDMs should pay a fee to cover NFA's costs of operating FORTRESS, and this fee should be in proportion to the amount of activity that the FDM processes through the system.[2]

[2] Exchanges have begun imposing separate fees for excessive messaging on their electronic platforms. For example, the CME has a messaging policy to encourage market participants to trade and quote appropriately without harming market liquidity or performance. As the CME explains, inefficient messaging slows system performance, negatively impacts other market participants and increases capacity requirements and costs.

Therefore, the Board determined to assess a fee of $.002 on all order segments processed through FORTRESS. Currently, FORTRESS processes approximately 60 million order segments each month, although the total amount of order segments has been declining as firms modify their systems to align with FORTRESS's requirements. NFA expects to collect approximately $100,000 per month from this fee to monitor the trading activity at its seventeen FDMs, which should generate annual revenue of at least $1.2 million.

Increase in FDM Membership Dues

The expected additional revenue from the increase in membership dues for non-FDM forex Members ($350,000) and the assessment on FORTRESS order segments ($1.2 million) will not generate sufficient revenue to meet NFA's $9 million annual revenue target. Therefore, the Board determined that the additional revenue should be collected through FDM membership dues.

Currently, FDMs pay NFA annual membership dues based on their gross annual revenue from forex activities and an assessment fee of .0002% on the notional value of each initiating (non-rollover) forex transaction. After consultation with NFA's FDM Advisory Committee, the Board determined to eliminate the forex assessment fee and significantly increase FDM membership dues to generate the additional revenue. Although the forex assessment fee currently generates about $2.1 million annually, it has proven difficult to administer. Additionally, since only one FDM directly passes the current assessment fee on to its customers, NFA and many FDMs view the current assessment fee as a *de-facto* extension of an FDM’s membership dues.

The Board therefore determined to impose the following graduated schedule of FDM Membership dues, which is projected to generate approximately $7.45 million in revenue:

FDM Annual Gross Revenue	Dues Amount
$5,000,000 or less	$ 125,000
More than $5,000,000 but not more than $10,000,000	$ 250,000
More than $10,000,000 but not more than $25,000,000	$ 500,000

More than $25,000,000 but not more than $50,000,000	$ 750,000
More than $50,000,000	$ 1,000,000

Under the current FDM dues structure, FDMs for which NFA is not the DSRO pay a significantly lower dues amount than the others since NFA does not examine these firms. The Board determined that these FDMs should continue to pay a lower dues amount, but also concluded that these firms should contribute additional revenue to recover the costs of NFA's overall forex regulatory program. Therefore, the Board determined to increase the annual dues for these FDMs from $13,500 to $25,000 annually. These FDMs also will pay the FORTRESS fee on order segments.

Each of NFA's Advisory Committees reviewed the proposed fee changes and generally supported the fee structure. While NFA's FDM Advisory Committee recognized that a significant shortfall existed over the past two fiscal years relating to the revenue generated from forex transactions, the Committee expressed displeasure with an increase in fees. NFA did, however, forward the proposed membership dues structure to the Committee's members, and only one responded afterwards by indicating, in part, that the proposed fees are "within the realm of reason." NFA's Finance Committee also discussed the forex revenue shortfall and agreed with the fee structure proposed to address this situation.

NFA respectfully requests that the Commission review and approve the proposed amendments to NFA's Bylaws 1301 and 1302 regarding dues and assessments and the Interpretive Notice entitled "Forex Transactions".

Respectfully submitted,

Thomas W. Sexton

Thomas W. Sexton
Senior Vice President and
General Counsel

* The proposed amendments to NFA's Bylaws 1301 and 1302 and the Interpretive Notice Entitled "Forex Transactions" become effective February 1, 2012.