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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Fees for Reviews of the Rule Enforcement Programs of Designated Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of FY 2011 Schedule of Fees.

SUMMARY: The Commission charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization rule enforcement programs, specifically National Futures Association, a registered futures association, and the designated contract markets. The calculation of the fee amounts charged for FY 2011 by this notice is based upon an average of actual program costs incurred during FY 2008, 2009, and 2010.

EFFECTIVE DATE: Each SRO is required to remit electronically the fee applicable to it on or before [**INSERT DATE THAT IS 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Mark Carney, Chief Financial Officer, Commodity Futures Trading Commission, (202) 418-5477, Three Lafayette Centre, 1155 21st Street, NW. Washington, DC 20581. For information on electronic payment, contact Jennifer Fleming, Three Lafayette Centre, 1155 21st Street NW. Washington, DC 20581, (202) 418-5034.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations[1] and designated contract markets (DCM) each of which is a self-regulatory organization (SRO) regulated by the Commission. The Commission recalculates the fees charged each year to cover the costs of operating this Commission program.[2] All costs are accounted for by the Commission's Budget Program Activity Codes (BPAC) system, formerly the Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor. The Commission calculates actual costs, then calculates an alternate fee taking volume into account, then charges the lower of the two.[3]

B. <u>Overhead Rate</u>

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 144 percent for fiscal year 2008, 147 percent for fiscal year 2009, and 153 percent for fiscal year 2010.

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[1] NFA is the only registered futures association.

[2] <u>See</u> section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a, and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070, Dec. 4, 1987.

[3] 58 FR 42643, Aug. 11, 1993 and 17 CFR part 1, app. B

C. <u>Conduct of SRO Rule Enforcement Reviews</u>

Under the formula adopted by the Commission in 1993, the Commission calculates the fee to recover the costs of its rule enforcement reviews and examinations, based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs—a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year.

As noted above, adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs. The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation is made as follows: The fee required to be paid to the Commission by each DCM is equal to the lesser of actual costs based on the three-year historical average of costs for that DCM or one-half of average costs incurred by the Commission for each DCM for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all DCMs for the most recent three years. The formula for calculating the second factor is: $0.5a + 0.5\ vt$ = current fee. In this formula, "a" equals the average annual costs, "v" equals the percentage of total volume across

DCMs over the last three years, and "t" equals the average annual costs for all DCMs. NFA has no contracts traded; hence, its fee is based simply on costs for the most recent three fiscal years. This table summarizes the data used in the calculations of the resulting fee for each entity:

	Actual Total Costs			3-year average actual costs	3-year % of volume	volume adjusted costs	FY 2011 Assessed Fee
	FY 2008	FY 2009	FY 2010				
CBOE Futures	$ -	$ 519	$ -	$ 173	0.057%	$ 448	$ 173
Chicago Board of Trade	30,305	142,446	87,953	86,901	27.706%	218,442	86,901
Chicago Climate Exchange	23,590	2,129	-	8,573	0.025%	4,444	4,444
Chicago Mercantile Exchange	13,511	341,186	882,542	412,413	54.224%	548,690	412,413
ICE Futures U.S.	126,362	286,289	94,043	168,898	2.883%	102,659	102,659
Kansas City Board of Trade	78,321	2,888	227,296	102,835	0.139%	52,294	52,294
Minneapolis Grain Exchange	187,679	123,566	-	103,748	0.047%	52,172	52,172
New York Mercantile Exchange	497,654	15,948	596,767	370,123	14.214%	274,838	274,838
North American Derivatives Exchange ..	25,175	-	-	8,392	0.000%	4,196	4,196
OneChicago	3,471	-	-	1,157	0.134%	1,425	1,157
SUBTOTAL	**986,069**	**914,972**	**1,888,601**	**1,263,214**	**100%**	**1,259,607**	**991,247**
National Futures Association	1,054,392	109,639	1,206,393	790,141			790,141
TOTAL	**2,040,460**	**1,024,611**	**3,094,994**	**2,053,355**			**1,781,388**

An example of how the fee is calculated for one exchange, the Chicago Board of Trade, is set forth here:

a. Actual three-year average costs equal $86,901

b. The alternative computation is: (.5) ($86,901) + (.5) (.2771) ($1,263,214) = $218,442

c. The fee is the lesser of a or b; in this case $86,901

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years

2008 through 2010 was $790,141 (one-third of $2,370,423). The fee to be paid by the NFA for the current fiscal year is $790,141.

II. Schedule of Fees

Therefore, fees for the Commission's review of the rule enforcement programs at the registered futures associations and DCMs regulated by the Commission are as follows:

	2011 Fee Lesser of Actual or Calculated Fee
CBOE Futures	$173
Chicago Board of Trade	$86,901
Chicago Climate Exchange	$4,444
Chicago Mercantile Exchange	$412,413
ICE Futures U.S.	$102,659
Kansas City Board of Trade	$52,294
Minneapolis Grain Exchange	$52,172
New York Mercantile Exchange	$274,838
North American Derivatives Exchange	$4,196
OneChicago	$1,157
SUBTOTAL	$991,247
National Futures Association	$790,141
TOTAL	$1,781,388

III. Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds (See 31 USC 3720). For information about electronic payments, please contact Jennifer Fleming at (202) 418-5034 or jfleming@cftc.gov, or see the CFTC website at www.cftc.gov, specifically, www.cftc.gov/cftc/cftcelectronicpayments.htm.

Issued in Washington, DC on this 1st day of May, 2012, by the Commission.

David Stawick,

Secretary of the Commission.

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