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6351-01-P

## COMMODITY FUTURES TRADING COMMISSION

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 2013 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 2013 by this notice is based upon an average of actual program costs incurred during FY 2010, 2011, and 2012.

DATES: Effective date: Each SRO is required to remit electronically the fee applicable to it on or before [INSERT DATE 60 DAYS AFTER DATE OF 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, (202) 418-5034, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

### 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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

## B. Overhead Rate

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

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<sup>1</sup> NFA is the only registered futures association.

<sup>2</sup> See 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.

<sup>3</sup> 58 FR 42643, Aug. 11, 1993, and 17 CFR part 1, app. B.

three years (rounded to the nearest whole percent): 153 percent for fiscal year 2010, 145 percent for fiscal year 2011, and 161 percent for fiscal year 2012.

C. Conduct of SRO Rule Enforcement Reviews

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:  $0.5a + 0.5vt$  = 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 <u>actual costs</u>	3-year % of <u>volume</u>	<u>volume adjusted costs</u>	FY 2013 <u>Assessed Fee</u>
	FY 2010	FY 2011	FY 2012				
CBOE Futures .....	\$ -	\$ 98,556	29,278	\$ 42,611	0.34%	\$ 23,914	\$ 23,914
Chicago Board of Trade .....	87,953	5,260	238,392	\$ 110,535	29.25%	280,868	\$ 110,535
Chicago Mercantile Exchange ...	882,542	422,837	757,347	\$ 687,575	50.14%	730,502	\$ 687,575
ELX Futures .....	-	-	34,593	\$ 11,531	0.341%	8,397	\$ 8,397
ICE Futures U.S. ....	94,043	17,624	221,813	\$ 111,160	3.20%	80,237	\$ 80,237
Kansas City Board of Trade .....	227,296	30,976	34,335	\$ 97,536	0.18%	50,133	\$ 50,133
Minneapolis Grain Exchange ....	-	88,790	60,897	\$ 49,896	0.05%	25,321	\$ 25,321
NADEX North American .....	-	-	11,293	\$ 3,764	0.000%	1,882	\$ 1,882
New York Mercantile Exchange ..	596,767	136,565	7,411	\$ 246,915	15.93%	246,340	\$ 246,340
New York LIFFE .....	-	416,069	71,317	\$ 162,462	0.42%	84,495	\$ 84,495
One Chicago .....	-	-	55,755	\$ 18,585	0.141%	10,382	\$ 10,382
SUBTOTAL	<b>1,888,601</b>	<b>1,216,678</b>	<b>1,522,431</b>	<b>1,542,570</b>	<b>100%</b>	<b>1,542,470</b>	<b>1,329,210</b>
National Futures Association .....	1,206,393	416,615	487,328	703,445			703,445
TOTAL	<b>3,094,994</b>	<b>1,633,293</b>	<b>2,009,759</b>	<b>2,246,015</b>			<b>2,032,655</b>

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 \$110,535.
- b. The alternative computation is:  $(.5)(\$110,535) + (.5)(.292)(\$1,542,570)$   
= \$280,868.
- c. The fee is the lesser of a or b; in this case \$110,535.

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 2010 through 2012 was \$708,424 (one-third of \$2,125,273). The fee to be paid by the NFA for the current fiscal year is \$708,424.

## **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:

	2013 Fee Lesser of Actual or Calculated Fee
CBOE Futures	\$23,914
Chicago Board of Trade	\$110,535
Chicago Mercantile Exchange	\$687,575
ELX Futures	\$8,397
ICE Futures U.S.	\$80,237
Kansas City Board of Trade	\$50,133
Minneapolis Grain Exchange	\$25,321
NADEX North American	\$1,882
New York Mercantile Exchange	\$246,340
New York LIFFE	\$84,495
One Chicago	\$10,382
SUBTOTAL	\$1,329,210
National Futures Association	\$703,445
TOTAL	\$2,032,655

## **III. Payment Method**

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds. See 31 U.S.C. 3720. For information

about electronic payments, please contact Jennifer Fleming at (202) 418-5034 or [jfleming@cftc.gov](mailto:jfleming@cftc.gov), or see the CFTC website at [www.cftc.gov](http://www.cftc.gov), specifically, [www.cftc.gov/cftc/cftcelectronicpayments.htm](http://www.cftc.gov/cftc/cftcelectronicpayments.htm).

(Authority: 7 U.S.C. 16a)

Issued in Washington, DC, on August 21, 2013, by the Commission.

Christopher J. Kirkpatrick,  
Deputy Secretary of the Commission.

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