

October 20, 2011

Via Regular Mail and E-Mail (gbarnett@cftc.gov)

Mr. Gary Barnett  
Director  
Commodity Futures Trading Commission  
Division of Swap Dealer and Intermediary Oversight  
1155 21st Street, N.W.  
Washington, DC 20581

Re: Swap Dealer and Major Swap Participant Estimated Costs Associated  
With Registration and NFA Membership

Dear Mr. Barnett:

This letter confirms our recent discussions with Commission staff regarding the estimated cost impact to swap dealers (SDs) and major swap participants (MSPs) of the CFTC's delegation to NFA of the registration function for SDs and MSPs and the estimated cost impact associated with NFA's ongoing monitoring of SDs and MSPs due to the fact that these registrants will be NFA Member firms. NFA provides the estimated cost information contained in this letter based upon the assumption that the Commission will delegate to NFA the registration process for SDs and MSPs and the responsibility to review these entities' submissions for their ability to comply with the Section 4s requirements. We have also derived these cost estimates based upon the material assumption that there will be approximately 125 SD and MSP NFA Member firms.

We recognize that the CFTC's November 23, 2010 Federal Register release proposing the CFTC's SD and MSP registration rules and that these registrants be members of a registered futures association contained the following fee estimates—(1) \$500 registration application fee for SDs and MSPs; (2) \$85 to process fingerprints and background information for each principal; and (3) \$7,500 and \$5,600 membership dues for SDs and MSPs, respectively.

Over the course of the last year, NFA has evaluated these fee estimates. While the principal processing fee remains unchanged, NFA has significantly altered the SD and MSP registration application fee due to NFA's expected review of SD and MSP submissions demonstrating these entities' ability to comply with the Section 4s requirements. We have also consulted with NFA's Finance Committee and NFA's Swap



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Dealer Advisory Committee<sup>1</sup> on this issue. As to the estimated registration application fee, NFA plans to modify this fee from \$500 to \$15,000. This increase is due to the fact that SDs and MSPs will obtain a provisional registration pending NFA's review and confirmation of their ability to comply with each Section 4s implementing requirement prior to obtaining full registration. In order to review the SDs' and MSPs' written submissions demonstrating their ability to comply with the Section 4s requirements, NFA will incur direct and indirect costs associated with employing staff to perform this review and the proposed \$15,000 registration fee is designed to defray a portion of NFA's costs for performing this review.

As we additionally explained, NFA will also incur costs associated with SDs and MSPs once they become Members of NFA. NFA will incur these costs for examining these Members for compliance with NFA's rules implementing the Section 4s requirements, reviewing their financial statements, and monitoring their activities in general. When we initially stated that membership dues may be \$7,500 and \$5,600 for SDs and MSPs, respectively, we expected to also impose some type of assessment fee on swap transactions modeled after the fee that NFA imposes on futures transactions, which provides the vast majority of NFA's revenue. For example, for NFA fiscal year 2012, assessment fee revenue represents approximately 80% of NFA's operating expenses and 75% of NFA's operating revenue.

However, based upon more recent discussions with NFA's Finance Committee and NFA's Swap Dealer Advisory Committee, we have tentatively decided to recover our costs for SD Member oversight primarily via a membership dues structure. The Finance Committee and Swap Dealer Advisory Committee rejected an assessment fee as a revenue component given the uncertainty regarding the number of swap transactions, the fact that swap data repositories are not yet fully operational to tabulate these transactions, and the cost burden that would be imposed on SDs and MSPs to implement the necessary programming to compute an assessment fee.

Therefore, based upon the material assumption that there will be approximately 125 SD and MSP NFA Member firms, NFA estimates that the annual cost of our OTC derivatives regulatory program when it is fully staffed and operational in

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<sup>1</sup> In May 2010, NFA's Board of Directors formed the Swap Dealer Advisory Committee to advise NFA's Executive and Board on swaps related matters. The Swap Dealer Advisory Committee is comprised of potential swap dealers drawn from large financial institutions and commodity related firms. Additionally, the Committee has representatives from swap end users.





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approximately three years will be \$35-\$45 million. If NFA's assumption regarding the number of SDs and MSPs is low, then the annual cost of the OTC derivatives regulatory program will increase. The primary determinant in calculating NFA's regulatory costs is not the number of swaps transactions or their notional value but rather the total number of SD and MSP registrants, which will be unknown until the Commission's entity and product definitional rulemakings become effective. For example, if the number of registrants was closer to the CFTC's estimates—250 SDs and 50 MSPs—then NFA's total annual cost may increase to \$50-\$60 million. Under either scenario, NFA's current operating budget would likely double over the next three years.

In order to generate at least \$35 million in revenue, we have preliminarily calculated that membership dues for SDs and MSPs could range between \$125,000-\$1 million per Member firm based upon the size and complexity of the firm's swaps business. For example, there may be three tiers of membership dues—\$1 million for each large financial institution SD or MSP, \$250,000 for each SD or MSP not in either Tiers one or three, and \$125,000 for each SD or MSP whose swaps activity solely consists of engaging in transactions on a contract market, swap execution facility, and exempt commercial market and the transactions are subject to the rules of a designated clearing organization. Under this structure, we believe that the tier three SDs and MSPs should have lower dues because NFA may not expend as many regulatory resources on these firms since the Commission has proposed that several of the external business conduct rules will be inapplicable to these firms provided their transactions are executed on a designated contract market or swap execution facility and their counterparty's identity is unknown.

Again, NFA wishes to stress that the aforementioned regulatory costs and proposed membership dues are estimates at this time. We certainly will revisit these calculations as the total number of SD and MSP registrants becomes clear over the next few years. As we also indicated to Commission staff, the proposed registration fee and membership dues will be reviewed and approved by NFA's Swap Dealer Advisory Committee, NFA's Executive Committee, and NFA's Board of Directors. Afterwards, the proposed initial registration fee and membership dues will be submitted to the Commission for full review and approval pursuant to Section 17(j) of the Commodity Exchange Act. Any subsequent changes to these fees and dues will be submitted to



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the Commission for approval in a manner consistent with how NFA has submitted changes to its other fees and dues throughout NFA's twenty-nine year history.

Sincerely,

A handwritten signature in blue ink, which appears to be "Tom Sexton", is written over a blue circular stamp or seal.

Thomas W. Sexton  
Senior Vice President and  
General Counsel

cc: David Stawick

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