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NFA NATIONAL FUTURES ASSOCIATION

April 25, 2007

Via E-Mail (secretary@cftc.gov)

Ms. Eileen A. Donovan
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Regulatory Governance

Dear Ms. Donovan:

NFA appreciates the opportunity to comment upon the Commission's proposed amendments to the Acceptable Practices for Section 5(d)(15) of the Commodity Exchange Act. These proposed amendments seek to clarify the definition of "public director" contained in the Acceptable Practices. As you are aware, the Acceptable Practices for Section 5(d)(15) do not apply to NFA's governance and NFA again applauds the Commission's decision not to include registered futures association's in the current Acceptable Practices.

As we have noted several times, NFA faces different challenges than SROs that operate a market and governance standards should be sufficiently flexible to account for those differences. NFA's Board is comprised of representatives from contract markets, FCMs, IBs, CPOs, CTAs, and the public. This diversity ensures that no one constituency can dominate NFA's Board actions. NFA's Board has always had public representatives, and their participation is an important protection for those market participants—primarily retail customers and end users—who are not otherwise represented on NFA's Board.

NFA believes that a self-regulatory organization's ("SROs") public representatives should be appropriately diverse and adequately represent the interests of non-Members. Over the years, NFA has been very fortunate to attract a diverse group of public directors, who have included bankers, academics, former Congressmen,

and end-users, among others. Many of our public representatives have been individuals with industry experience or affiliations and NFA has found that these individuals have brought unique perspectives to the Board and have made many positive contributions to NFA's success.

Unfortunately, if the CFTC's Public Director Acceptable Practice ("PDAP") applied to NFA, we are uncertain that our past success in attracting high-caliber public representatives would continue. For the reasons explained below, this uncertainty exists even with the Commission's March 26, 2007 proposal to clarify the definition of "public director" and is caused primarily by the inclusion of "firm" and "member" in the payment-providers provision.

The Commission, of course, recognizes the importance of attracting high-caliber public representatives to exchange Boards. In responding to comments on the PDAP, the Commission noted its belief that exchanges are fully capable of finding a sufficient number of qualified directors. The Commission further indicated that these directors may be drawn from a large pool of talented candidates with relevant and related industry experience, including retired futures industry insiders; scholars whose research focuses on the futures markets and related disciplines; officers and executives of many sophisticated corporate entities; persons with expertise in the securities industry which may translate well into futures; and other members of the legal, business, and regulatory communities. NFA strongly believes, however, that the payment-providers provision severely limits the number of talented candidates that can be drawn from these pools and places SROs in an unworkable position in determining if an individual is "public."

For example, if the proposed PDAP applied to NFA, then NFA's Board on the record must determine that an individual qualifies as a public director. Due to the payment-providers provision, this determination by necessity includes a review of whether any firm in which the potential public director is an employee, officer, director or partner has received more than $100,000 in combined annual payments for professional services—an undefined term—from NFA or NFA's 3,825 Members or from the countless number of those firms' officers or directors. Additionally, the Acceptable Practices require that this inquiry include a determination as to whether such payments were made to any firms in which the public director's "immediate family" members (i.e. spouse, parents, children, and siblings) are an employee, officer, director or partner. Neither NFA nor any individual seeking to serve as a public director can reasonably make these inquiries and, as a result, qualified high-caliber individuals—particularly those drawn from the legal, business, and regulatory communities—will be eliminated from the pool of individuals from which public directors can be drawn.

Due to the payment-providers provision, three of NFA's five current public directors would likely be disqualified due to professional service payments. Two of these individuals are employed by professional service firms—legal and financial consultancy—which likely receive payments in excess of $100,000 from NFA Members, and the third is also a director at an exchange that makes payments of over $100,000 to

NFA for professional regulatory services. All three of these public directors are high-caliber individuals with diverse interests and valuable prior industry experience. They have served on NFA's Board for terms ranging from one to seven years. From a practical standpoint, in NFA's twenty-five year history, only once have payments by NFA Members to a public director's firm raised a conflict of interest on an issue before the Board. This conflict was appropriately addressed pursuant to NFA's Board conflicts policy by this director identifying the conflict for the Board and abstaining from voting on the issue.

Due to the many problems associated with the proposed payment-providers provision, NFA believes that the Commission should eliminate from the provision any criteria based upon payments to "firms" by "members." The recently proposed changes do not appropriately clarify the definition of "public director." In NFA's view, a preferable change to the criteria would base this disqualification from service as a public director upon the individual alone receiving more than $100,000 in combined annual payments from the contract market, any affiliate of the contract market or from a member or an officer or director of a member. This test is essentially the one proposed by the Commission in July 2006. As demonstrated above, no SRO can reasonably make the inquiry posed by the recently proposed criteria and the inability to do so causes significant problems for SROs seeking to attract high-caliber individuals to serve as public directors.

Thank you again for the opportunity to comment upon the proposed amendments relating to regulatory governance. If you have any questions, please do not hesitate to contact me at (312) 781-1413.

Sincerely,

Thomas W. Sexton
General Counsel

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