

requesters are limited to the cost of providing standard duplication services alone, without charge for the first 100 pages reproduced. To qualify for this category, requesters must show that the request made is authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(1) The term “educational institution” refers to preschools, public or private elementary or secondary schools, institutions of graduate or undergraduate higher education, institutions of professional education, and institutions of vocational education operating one or more programs of scholarly research.

(2) The term “non-commercial scientific institution” refers to an institution that is not operated on a “commercial” basis, and which is operated solely for the purpose of conducting scientific research.

(e) For requesters who are representatives of the news media, fees will also be limited to the cost of providing duplication services alone, without charge for the first 100 pages reproduced. No fee will be charged for providing search or review services.

(1) The term “representative of the news media” refers to a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(2) The term “news” means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public, and publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) Freelance journalists may be regarded as working for a news organization if they can demonstrate a sufficient basis for expecting publication through that organization, even though not actually employed by it.

(f) Fees for all other requesters who do not fit into any of the above categories will be assessed for the full reasonable direct cost of searching for and duplicating documents that are responsive to a request. No charge will be made to requesters in this category for the first 100 pages reproduced or for the first two hours of search time.

(g) CIGIE will assess fees for searches which fail to locate records or which locate records which are exempt from disclosure at the same rate as searches which result in disclosure of records.

(h) If a fee is incurred in connection with a request or an appeal in accordance with this section, CIGIE will inform the requester of the amount owed and the basis for the fee amount.

(i) Payment for outstanding fees incurred will be billed to the fullest extent possible at the time the requested records are forwarded to the requester. Payments must be made by requesters within 30 days of the date of the billing.

(j) In cases where the estimated fees to be charged exceed \$250.00, CIGIE may require payment of the entire fee or a portion of the fee before it provides any of the requested records.

(k) CIGIE shall require full payment of any delinquent fee owed by the requester plus any applicable interest prior to releasing records on a subsequent request or appeal. If a requester declines to remit payment in advance, CIGIE may refuse to process the request or appeal with written notice to that effect provided to the requester. The “date of receipt” appeal for which advance payment has been required shall be the date CIGIE receives payment.

#### § 9800.16 Interest charges.

For requests that result in fees assessed, CIGIE may begin levying interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed under 31 U.S.C. 3717, and will accrue from the date of the billing.

#### § 9800.17 Aggregating requests.

If CIGIE reasonably believes that a requester, or group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, CIGIE may aggregate any such requests and charge accordingly.

#### § 9800.18 Fee waivers and reductions.

(a) CIGIE may waive or reduce fees if disclosure of the information sought is deemed to be in the public interest. A request is made in the public interest if it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government, and is not primarily in the commercial interest of the requester.

(b) When determining fee waiver requests, CIGIE will consider the following six factors:

(1) The subject of the request: Whether the subject of the requested

records concerns the operations or activities of the Federal Government;

(2) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) The contribution to an understanding of the subject by the public likely to result from the disclosure: Whether the disclosure will contribute to the public understanding;

(4) The significance of the contribution to the public understanding: Whether the disclosure is likely to significantly contribute to the public understanding of Federal Government operations or activities;

(5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the disclosure of the requested records; and

(6) The primary interest in disclosure: Whether the magnitude of an identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(c) CIGIE may, in its discretion, waive or reduce fees associated with a records request, regardless of whether a waiver or reduction has been requested, if the agency determines that disclosure will primarily benefit the general public.

(d) CIGIE will waive fees without discretion in all circumstances where the amount of the fee is \$25.00 or less.

(e) CIGIE will notify the requester regarding whether the fee waiver has been granted. A requester may appeal a denial of a fee waiver request only after a final decision has been made on the initial FOIA request.

Dated: December 4, 2012.

**Phyllis K. Fong,**

*Chairperson of the Council of the Inspectors General on Integrity and Efficiency.*

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**BILLING CODE 6820-C9-M**

## 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 2012 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 2012 by this notice is based upon an average of actual program costs incurred during FY 2009, 2010, and 2011.

**DATES: *Effective Date:*** Each SRO is required to remit electronically the fee applicable to it on or before February 12, 2013.

**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<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 three years (rounded to the nearest whole percent): 147 percent for fiscal year 2009, 153 percent for fiscal year 2010, and 145 percent for fiscal year 2011.

*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:

<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.

	Actual Total Costs			3-year average actual costs	3-year % of volume	volume adjusted costs	FY 2012 Assessed Fee
	FY 2009	FY 2010	FY 2011				
CBOE Futures .....	\$ 519	\$ -	\$ 98,556	\$ 33,025	0.16%	\$ 17,611	\$ 17,611
Chicago Board of Trade .....	142,446	87,953	5,260	\$ 78,553	27.40%	222,868	\$ 78,553
Chicago Climate Exchange .....	2,129	-	-	\$ 710	0.02%	497	\$ 497
Chicago Mercantile Exchange ...	341,186	882,542	422,837	\$ 548,855	52.55%	626,531	\$ 548,855
ICE Futures U.S. ....	286,289	94,043	17,624	\$ 132,652	3.26%	88,143	\$ 88,143
Kansas City Board of Trade .....	2,888	227,296	30,976	\$ 87,053	0.17%	44,642	\$ 44,642
Minneapolis Grain Exchange .....	123,566	-	88,790	\$ 70,786	0.05%	35,730	\$ 35,730
New York Mercantile Exchange ..	15,948	596,767	136,565	\$ 249,760	15.34%	227,640	\$ 227,640
New York LIFFE .....	-	-	416,069	\$ 138,690	0.26%	71,111	\$ 71,111
<b>SUBTOTAL</b>	<b>914,972</b>	<b>1,888,601</b>	<b>1,216,678</b>	<b>1,340,083</b>	<b>100%</b>	<b>1,334,772</b>	<b>1,112,781</b>
National Futures Association ....	109,639	1,206,393	416,615	577,549			577,549
<b>TOTAL</b>	<b>1,024,611</b>	<b>3,094,994</b>	<b>1,633,293</b>	<b>1,917,632</b>			<b>1,690,330</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 \$78,553.

b. The alternative computation is: (.5) (\$78,553) + (.5) (.274) (\$1,340,083) = \$222,868.

c. The fee is the lesser of a or b; in this case \$78,553.

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 2009 through 2011 was \$577,549

(one-third of \$1,732,647). The fee to be paid by the NFA for the current fiscal year is \$577,549.

**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:

	2012 fee lesser of actual or calculated fee
CBOE Futures .....	\$17,611
Chicago Board of Trade .....	78,553
Chicago Climate Exchange .....	497
Chicago Mercantile Exchange .....	548,855
ICE Futures U.S. ....	88,143
Kansas City Board of Trade .....	44,642
Minneapolis Grain Exchange .....	35,730
New York Mercantile Exchange .....	227,640
New York LIFFE .....	71,111
Subtotal .....	1,112,781
National Futures Association .....	577,549
<b>Total</b> .....	<b>1,690,330</b>

**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 [jffleming@cftc.gov](mailto:jffleming@cftc.gov), or see the CFTC Web site at [www.cftc.gov](http://www.cftc.gov), specifically, [www.cftc.gov/cftc/cftcelectronicpayments.htm](http://www.cftc.gov/cftc/cftcelectronicpayments.htm).

Issued in Washington, DC on this 11th day of December 2012, by the Commission.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

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**BILLING CODE P**

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Part 4022**

**Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.