

MEMO# 31685

March 28, 2019

Updates on NFA Requirements and Guidance for CPOs and CTAs

[31685]

March 28, 2019 TO: ICI Members
Investment Company Directors
Accounting/Treasurers Committee
Registered Fund CPO Advisory Committee SUBJECTS: Compliance
Cybersecurity
Derivatives
Fund Accounting & Financial Reporting
Investment Advisers
Operations
Risk Oversight RE: Updates on NFA Requirements and Guidance for CPOs and CTAs

The National Futures Association (NFA) recently issued several Notices to Members detailing compliance obligations applicable to commodity pool operators (CPOs) and commodity trading advisors (CTAs). This memorandum provides a brief summary of these Notices to Members and includes links to helpful NFA resources on these topics.

NFA Interpretive Notice on CPO Internal Controls

In January, NFA issued a Notice to Members announcing its adoption of an Interpretive Notice on CPO internal controls systems.^[1] NFA issued a Notice to Members this week reminding Members that the Interpretive Notice will become effective on April 1, 2019.^[2] The Notice to Members explains that the Interpretive Notice takes a principles-based approach to allow firms some degree of flexibility in determining how to implement an internal controls framework. The Notice to Members emphasizes, however, that the Interpretive Notice requires each CPO member to adopt and enforce an internal controls framework appropriate to its circumstances.

The Notice to Members includes links to several NFA resources that may be helpful regarding compliance with the Interpretive Notice, including:

- An [appendix to NFA's Self-Examination Questionnaire on CPO Internal Controls](#), which is designed to help NFA Members develop, implement, and maintain an internal controls framework.
- Information about a free [webinar](#) NFA will hold on Thursday, April 11, 2019 at 12:00 p.m. ET/11:00 a.m. CT that will discuss Members' obligations with respect to the

Interpretive Notice.[\[3\]](#)

- A link to [workshop materials](#) from NFA's February Member workshops, at which the Interpretive Notice was discussed.[\[4\]](#)

New NFA Swaps Proficiency Requirements

NFA recently amended NFA Bylaw 301 and NFA Compliance Rule 2-24 and adopted a new Interpretive Notice regarding proficiency requirements for registered associated persons (APs) of NFA Members, including CPOs and CTAs, whose activities involve CFTC-regulated swaps.[\[5\]](#) These Members and their APs currently must be approved by NFA as, respectively, swap firms or swap APs. NFA now will also require that swap APs satisfy new NFA Swaps Proficiency Requirements and will prohibit NFA Members from having APs engaged in swaps activity unless they have satisfied the Swaps Proficiency Requirements.

Swap APs will be required to pass an NFA proficiency exam that tests both their market knowledge and their knowledge of regulatory requirements involving swap activities. NFA's Interpretive Notice establishes two different proficiency tracks for the testing. The "Long Track" is designed for APs of swap dealers (SDs), while the "Short Track" is designed for APs of CPOs, CTAs, futures commission merchants (FCMs), and introducing brokers (IBs). APs will be able to satisfy the proficiency requirements online through a number of individual modules covering specific topic areas, each of which contains both a training and testing component. NFA will publish an outline on its website regarding the topics covered by the Swaps Proficiency Requirements.

The compliance date for swap APs to complete NFA's Swaps Proficiency Requirements is January 31, 2021. This means that individuals who are swap APs of a CPO, CTA, FCM, or IB, or acting as an AP of an SD, on January 31, 2021 must have satisfied the Swaps Proficiency Requirements by that date. Swap APs will have from January 31, 2020, the effective date of the Swaps Proficiency Requirements, until January 31, 2021 to satisfy the new requirements. After January 31, 2021, an individual who wants to engage in swaps activity will need to satisfy the Swaps Proficiency Requirements before being approved as a swap AP of a CPO, CTA, FCM, IB, or acting as an AP of an SD.

NFA has provided various resources regarding the Swaps Proficiency Requirements, including [Frequently Asked Questions](#) (FAQs) regarding the implementation of the new requirements, and [materials](#) from workshops NFA held in February for Members at which the Swaps Proficiency Requirements were discussed.

Amendments to NFA Interpretive Notice on Information Systems Security Programs

In January, NFA issued a Notice to Members regarding amendments to its interpretive notice on requirements for Information Systems Security Programs (ISSPs).[\[6\]](#) The amendments, which will become effective on April 1, 2019, are intended to provide clarification on common questions related to training obligations and ISSP approval and impose a narrowly drawn notification requirement in the event of cybersecurity incidents.

NFA Members will now be required to notify NFA of cybersecurity incidents related to their commodity interest business that either: (i) result in a loss of customer or counterparty funds or loss of a Member firm's capital; or (ii) if a Member notifies its customer or counterparties of an incident pursuant to state or federal law. NFA issued a Notice to Members earlier this month[\[7\]](#) reminding NFA Members about the April 1st compliance date for the amendments and describing how Members should notify NFA of applicable cybersecurity incidents through NFA's Cyber Notice Filing System on NFA's website.

NFA's March Notice to Members explains that NFA has updated the Cybersecurity section of its [Self-Examination Questionnaire](#) and the [cybersecurity FAQs](#) on NFA's website to reflect the amendments. NFA also provides a link to the [workshop materials](#) from Member workshops it held in February at which the ISSP amendments were discussed.

NFA Compliance Resources for CPOs and CTAs

NFA issued a Notice to Members earlier this month reminding CPO and CTA Members that information is available on NFA's website regarding annual and ongoing regulatory requirements.^[8] The Notice to Members provides links to information about annual requirements and ongoing reporting requirements for CPO and CTA Members. It also reminds CPO and CTA Members about their annual requirements to complete NFA's annual update process and review their operations using NFA's Self-Examination Questionnaire. The Notice to Members discusses ongoing updating obligations, including updating the Annual Questionnaire in the event of a material change to operations and keeping Form 7-R^[9] up to date, and includes additional reminders for CPO and CTA Members regarding key NFA regulatory obligations.

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endnotes

[1] For a summary of the Interpretive Notice, please see ICI Memorandum No. 31590 (Feb. 1, 2019), *available at* https://www.ici.org/my_ici/memorandum/memo31590.

[2] See NFA Notice to Members I-19-10 (March 26, 2019), *available at* <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5106>.

[3] NFA notes that an archived version of the webinar and a transcript will be available on NFA's website in late April.

[4] These materials also include useful information about other regulatory topics relevant to CPO and CTA Members.

[5] See NFA Notice to Members I-19-09 (Mar. 25, 2019), *available at* <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5105>; NFA Interpretive Notice 9075 (March 5, 2019), *available at* <https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9075>.

[6] NFA Notice to Members I-19-01 (Jan. 7, 2019), *available at* <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5085>.

[7] NFA Notice to Members I-19-07 (March 11, 2019), *available at* <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5097>.

[8] NFA Notice to Members I-19-05 (March 1, 2019), *available at* <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5091>.

[9] Form 7-R is the application form CPOs, CTAs, and certain other entities use to register with the CFTC. The CFTC recently issued a notice regarding revisions to Form 7-R. See

Notice of Revised Form, 84 Fed.Reg. 8671 (Mar. 11, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-03-11/pdf/2019-04297.pdf>.

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