

**MEMO# 31430**

October 11, 2018

## **October 16 Committee Call to Discuss NFA Draft Interpretive Guidance**

[31430]

October 11, 2018 TO: Registered Fund CPO Advisory Committee RE: October 16 Committee Call to Discuss NFA Draft Interpretive Guidance

The National Futures Association (NFA) has invited ICI to provide informal input on the attached draft interpretive notice. The notice is intended to provide guidance to NFA members that are commodity pool operators (CPOs) on meeting their supervisory obligations under NFA Compliance Rule 2-9 by maintaining an adequate system of internal controls.<sup>[1]</sup> The draft notice is attached and is summarized briefly below.

**Please note that this draft interpretive notice is not public. We received permission from NFA staff to share it with you for purposes of obtaining your feedback to inform ICI's response. Please do NOT share the contents of this memorandum and the draft notice (or its existence) outside of your firm.**

**ICI will hold a member call on Tuesday, October 16th, from 4-5 pm ET, to discuss the draft interpretive notice. If you would like to participate in the call, please contact Jennifer Odom at [jodom@ici.org](mailto:jodom@ici.org) and she will provide you with the dial-in information. We also encourage you to include on this call a representative from your treasurer's office familiar with your funds' system of internal controls. If your treasurer or another colleague will participate on the call, please ask him or her to also RSVP. Please RSVP for the call by Monday, October 15th. If you have written comments on the draft interpretive notice, please provide them to Sarah Bessin ([sarah.bessin@ici.org](mailto:sarah.bessin@ici.org)) by Monday, October 15th.**

According to NFA, Compliance Rule 2-9 places a continuing responsibility on every NFA Member to diligently supervise its employees and agents in all aspect of their commodity futures and swaps activities. For those Members that have control over customer funds, these supervisory obligations include developing a framework that deters errors and fraudulent activity by employees, management, and third parties in order to safeguard customer funds, produces financial reports that are timely, accurate and reliable, and maintains full compliance with all regulatory requirements addressing the control of those funds. NFA believes that it is essential for CPO Members, which handle customer funds, to have an adequate system of internal controls in order to meet their supervisory obligations under Compliance Rule 2-9. The draft interpretive notice is intended to ensure that each CPO Member implement an internal control system that is designed to deter fraudulent

activity by employees, management, and third parties in order to address the safety of customer funds and provide reasonable assurance that a CPO's commodity pool's financial reports are reliable and that the Member is in compliance with all CFTC and NFA requirements.

NFA explains that the purposes of its interpretation is to provide CPO Members with guidance on designing and implementing an adequate internal control system and the minimum components that must be included. It states, however, that each CPO Member must conduct its own review to identify any other areas that should be included in the CPO's internal control system based on the CPO's size, operations, and activities.

NFA states that to implement an adequate internal control system, the CPO must have a strong control environment. NFA's draft notice highlights several internal control procedures NFA believes are key to an adequate internal control system, including: (1) separation of duties, and (2) risk assessment, including with respect to: (i) pool subscriptions, redemptions, and transfers, (ii) risk management and investment and valuation of pool funds, and (iii) use of administrators. In addition to establishing an internal control system and developing written policies and procedures that describe it, NFA notes that a CPO must maintain records that support the implementation and effectiveness of its internal control system.

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Rachel H. Graham  
Associate General Counsel

Gregory M. Smith  
Senior Director, Fund Accounting and Compliance

[Attachment](#)

#### **endnotes**

[\[1\]](#) NFA Compliance Rule 2-9 requires, in relevant part, that each NFA Member diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties must diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.