

MEMO# 35631

February 27, 2024

NFA Provides Annual Requirements Reminder and Update on Common Exam Deficiencies for CPO and CTA Members

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TO: Registered Fund CPO Advisory Committee RE: NFA Provides Annual Requirements
Reminder and Update on Common Exam Deficiencies for CPO and CTA Members

On February 12, 2024, the National Futures Association (NFA) issued a Notice to Commodity Pool Operator (CPO) and Commodity Trading Adviser (CTA) Members providing an update on educational resources, common exam deficiencies, and links to recent amendments to NFA Rules and interpretive notices.[\[1\]](#)

Of particular interest to ICI Members is likely the section covering regulatory obligations related to common exam deficiencies. The Notice's "Regulatory Obligations Related to Common Deficiencies" section describes a number of regulatory obligations related to common deficiencies noted during NFA examinations of CPO and CTA Members. Each subsection is summarized below.

- Under the "Self-Examination Questionnaire" subsection, the Notice instructs NFA Members to annually review their operations using NFA's Self-Examination Questionnaire as failing to annually review the questionnaire was a common deficiency.
- Under the "Digital Assets" subsection, the Notice instructs Members engaging in activities related to digital assets or digital asset derivatives, which may be novel issues to members given the recent approval of certain digital asset ETFs, to comply with NFA Interpretive Notice 9073's customer disclosure requirements.
- Under the "Third Party Service Providers" subsection, the Notice instructs Members who outsource regulatory functions to adopt and implement a written supervisory framework over outsourced functions to mitigate outsourcing-related risks pursuant to Interpretive Notice 9079. The Notice further notes that Members' supervisory frameworks must address activities that firms will undertake with respect to initial risk assessment, onboarding due diligence, ongoing monitoring, termination, and recordkeeping. Lastly, the subsection instructs firms to maintain records demonstrating that they have addressed the items outlined in the Interpretive Notice 9079 and are following their procedures.

- Under the "Cybersecurity" subsection, the Notice instructs CPO and CTA Members to adopt a written information systems security program (ISSP) pursuant to Interpretive Notice 9070 to address and respond to the risk of unauthorized access to or attack of their information technology systems. The Notice also requires Members to notify NFA of certain cybersecurity incidents related to their commodity interest activities via NFA's Cyber Notice Filing System and highlights failure to provide initial and annual cybersecurity training to employees as a common deficiency.
- Under the "4.7 Exemption" subsection, the Notice instructs CPO Members who operate pools pursuant to Regulation 4.7 and claim relief under Regulation 4.7(b)(1) to file their notice of claim for exemption with NFA prior to the offer or sale of participation in the exempt pool. The Notice further provides, however, that if the relief claimed is limited to that provided under Regulation 4.7(b)(2), (3) and (4), the notice of claim for relief must be submitted to NFA before the pool first enters into a commodity interest transaction. Lastly, the Notice advises CTA Members seeking Regulation 4.7 relief to file their notice of claim for exemption before the Member enters into an agreement to direct or guide the customer's commodity interest account.
- Under the "Eligibility for Membership" subsection, the Notice warns that NFA shall deem a Member's failure to register at least one principal as an associated person to be a request to withdraw from NFA membership pursuant to NFA Bylaw 301.

Kevin Ercoline
Assistant General Counsel

Notes

[1] NFA Notice I-24-04, Educational Resources, Common Deficiencies and Other Important Regulatory Information for CPO and CTA Members (Feb. 12, 2024), available at <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5621>.

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