

# **New Regulatory Requirements and Other Updates from NFA**

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## **Current Regulatory Issues**

### ***Cyber Security***

- NFA's Interpretive Notice on Cybersecurity became effective in 2016. The Notice requires Members to adopt and enforce written procedures to secure customer data and access to their electronic systems. Firms were required to document their policies and procedures in an Information Systems Security Program (ISSP).
- For the first few years that the Notice went into effect, NFA worked with Members to ensure that their ISSPs were tailored to address issues at their firms. We were also able to gather information related to each Member's ISSP, which enabled us to determine if any changes needed to be made to the Interpretive Notice.
- Following our reviews of numerous ISSPs and discussions with personnel at Member firms, several changes to the Interpretive Notice went into effect on April 1, 2019. These include the following:
  - Training – NFA clarified the training requirement in the Notice, and it now indicates that training should be done annually, rather than periodically. Training should be provided more frequently if circumstances warrant it.
  - Event Reporting – The Notice now specifies that a Member should promptly notify NFA if there is a cybersecurity incident that results in: 1) any loss of customer or counterparty funds; 2) any loss of the Member's own capital; or 3) the Member providing notice to customers or counterparties under state or federal law. The Notice was updated to indicate that firms should be familiar with notice requirements in applicable US and non-US data security and privacy statutes and regulations, and should obtain contact information for applicable regulatory bodies, self-regulatory organizations, and law enforcement in advance of an event or incident. FCMs and IBs should consider whether it is appropriate to file a suspicious activity report in the event of a cybersecurity incident.
  - ISSP Approval – Can be done by the firm's CEO, CTO, CISO, or other senior official who is a listed principal and has the authority to supervise a Member's execution of its ISSP. If the ISSP is approved at the parent company level, the firm's CEO, CTO, CISO, or person with similar responsibility must approve in writing that the program is appropriate for the Member's information security risks.

- We have compiled this information and more cybersecurity-related questions from Members in a Frequently Asked Questions section of NFA's website.

### ***CPO Internal Controls***

- Effective April 1, 2019, NFA adopted an Interpretive Notice requiring CPOs to implement an internal controls framework designed to:
  - Protect customer funds; and
  - Provide reasonable assurance that the books and records of a CPO's commodity pools are accurate and reliable and that the CPO is in compliance with all CFTC and NFA requirements.
- CPOs are required to adopt and implement written policies and procedures that fully explain the CPO's internal controls system and maintain records that support the implementation and effectiveness of this system.
- We recognize that CPOs vary with respect to size and complexity of operations, but all internal control systems should include certain key components, including:
  - Separation of duties, when possible, to decrease the ability for employees to carry out or conceal errors or fraud; and
  - Completion of a risk assessment to identify the CPO's most critical risks, with controls that address those risks.
- The three areas of risk generally applicable to most CPO's operations include pool subscriptions, redemptions, and transfers; risk management and investment and valuation of pool funds; and use of administrators.

### ***Swaps Proficiency Requirements***

- All associated persons of FCMs, IBs, CPOs, and CTAs who are designated as Swap APs, or any individual who seeks to become a Swap AP of a firm must take and pass NFA's Swaps Proficiency Requirements.
- Swap Dealers are prohibited from having any individual associated with one of those firms act as an AP unless that individual has passed NFA's Swaps Proficiency Requirements. Certain non-US APs of SDs are excluded from this requirement.
- These new requirements will be effective January 31, 2020, and have a compliance date of January 31, 2021, meaning that all swap APs will have a year from the effective date to take the training and pass the test. APs who begin engaging in swaps activity after January 31, 2021 will need to satisfy the requirement before engaging in that activity.
- The training is web-based and will be accessed through NFA's systems. The training consists of a series of modules, and each module is followed by a short test, to determine the AP's understanding of the materials.
- There are two tracks to the training, depending on the type of business being conducted by the AP:

- The Long Track, which consists of eight modules and is designed for APs of Swap Dealers; and
- The Short Track, which consists of four modules and is designed for APs of intermediaries and certain APs at Swap Dealers that perform more limited functions.
- The AP must obtain a passing grade on each module in order to meet the proficiency requirements.
- NFA developed a Frequently Asked Questions section on our website to address commonly asked questions relating to the new requirements.

### ***Annual Dues for Swap Firms***

- Effective January 1, 2020, firms designated as swap firms will be subject to an annual dues surcharge of \$1,750. This includes all swap intermediaries, including FCMs that NFA is the DSRO for, IBs, CPOs, and CTAs. This charge is necessary as NFA does not currently assess any fees related to NFA's oversight of swap activities for these firms.
- Based on examinations of certain Members designated as swap firms, NFA is aware that there are a number of firms that are designated as swap firms but do not conduct any swaps business. For those firms that wish to avoid the surcharge, we encourage them to withdraw their swap designation by January 1, 2020. However, any firm that withdraws its swaps approval prior to its 2020 renewal date will not be required to remit the additional surcharge.

### ***Addition of Swaps to Supervision Requirements and Other Compliance Rules***

- NFA adopted NFA Compliance Rule 2-9(d) and its related Interpretive Notice, which require Swap Dealers to diligently supervise the swaps activities of their employees and agents. The Interpretive Notice clarifies that NFA retains examination and enforcement authority over Swap Dealers, even if they are relying on substituted compliance. This rule and related Interpretive Notice became effective on September 30, 2019.
- On July 1, 2019, amendments to a number of NFA rules became effective. These amendments clarify that the affected rules apply to all commodity interests, as well as certain rules that apply only to certain registration categories.

### **Proposed Amendments**

#### ***Supervision of Branch Offices and Guaranteed IBs***

- NFA has revised its Interpretive Notice on the supervision of branch offices and GIBs, which reflects that advances in electronic trading, electronic

communications, and other technologies have impacted how Members conduct business and the methods that they use to supervise their operations.

- The Notice also gives greater flexibility to firms regarding the on-site inspections of their branch offices and GIBs.
- A separate section regarding due diligence has been added and expanded to apply to branch offices. Due diligence requirements include reviewing the business and disciplinary history of the potential branch office or GIB, as well as the background of its personnel.
- The second section of the Notice requires firms to have certain policies and procedures relating to the supervision of their branches and GIBs. The Notice gives flexibility in the timing and method of on-going monitoring of the off-site location.
- Members are required to perform an on-site annual inspection of each branch office and GIB; however, firms may employ a risk-based approach to determine the scope of this review. Additionally, the Notice discusses certain circumstances in which an on-site inspection may be performed every other year, as long as an inspection from a remote location is performed in the off-year.
- The amendments were recently approved by the Commission, and we are determining an effective date.

### ***Other Amendments***

- NFA recently proposed additional amendments to our rules on break-even analysis, CTA performance reporting and disclosures, and promotional material.
- These amendments are deemed necessary to clarify certain information that should be included or excluded from promotional material and other documents provided to customers and potential customers by Members, including that performance should be disclosed net of commissions and fees, how hypothetical performance should be reflected, and what should be included in a break-even analysis.
- These proposed amendments were recently submitted to the Commission and no effective date has been determined.

### **Recent Enforcement Actions**

#### ***Business Conduct Committee Complaints/Member Responsibility Actions***

- NFA's Business Conduct Committee issued a number of complaints this past year, including against several firms that failed to cooperate with NFA exams.
- Other cases included CPOs that took improper loans or advances from pools that they operated, misleading promotional material and sales solicitations, and recordkeeping issues.



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## **Rule Changes/Notices to Members**

### ***Cybersecurity:***

NFA Amends Interpretive Notice Regarding Information Systems Security Programs --  
Cybersecurity

<https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5085>

<https://www.nfa.futures.org/news/PDF/CFTC/Interp-Notc-NFA-CR-2-9-2-36-and-2-49-Information-Systems-Security-Programs.pdf>

Cybersecurity FAQs

<https://www.nfa.futures.org/faqs/members/cybersecurity.html>

### ***CPO Internal Controls:***

NFA Adopts Interpretive Notice entitled *NFA Compliance Rule 2-9: CPO Internal Controls System*

<https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5088>

<https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9074>

### ***Swaps Proficiency Requirements:***

NFA Amends Rules and Adopts Interpretive Notice Implementing Swaps Proficiency Requirements

<https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5105>

<https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9075>

Swaps Proficiency Requirements FAQs

<https://www.nfa.futures.org/faqs/registrants-membership-app/swap-proficiency.html>

### ***Change in Annual Dues for Swaps Firms:***

NFA's Board of Directors Approves Dues Surcharge for Certain Member Firms Engaged in Swaps Activities

<https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5120>

### ***Incorporation of Swaps into NFA Rules:***

Effective Date for Amendments to Incorporate Swaps into Certain Compliance Rules and Interpretive Notices

<https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5119>

Effective Date for Amendments to Incorporate Swaps Supervision Requirements and Make Technical Changes to Certain NFA Rules and Interpretive Notices

<https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5133>

<https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9076>

## **Proposed Amendments**

Proposed Amendments to NFA Interpretive Notice Compliance Rule 2-9: *Supervision of Branch Offices and Guaranteed IBs*

<https://www.nfa.futures.org/news/PDF/CFTC/Interp-Notice-CR%202-9-Supervision-Branch-Offices-GIBs-052119.pdf>

Proposed Amendments to NFA Interpretive Notice Entitled: *Compliance Rule 2-13: Break-Even Analysis*, NFA Compliance Rule 2-34 and the Interpretive Notice Entitled: *Compliance Rule 2-34: Performance Reporting and Disclosures*

<https://www.nfa.futures.org/news/PDF/CFTC/08292019-Amendments-CPO-CTA-Disclosure-Performance-Reporting-Requirements.pdf>

Proposed Amendments to NFA Compliance Rule 2-29: Communications with the Public and Promotional Material, NFA Compliance Rule 2-36: Requirements for Forex Transactions, Related Interpretive Notices and other Technical Amendments to NFA Requirements

<https://www.nfa.futures.org/news/PDF/CFTC/08292019-CR-2-29-CR-2-36-Interp-Notices-Use-of-Promotional-Material.pdf>

## **Enforcement Actions**

Beverstone Fund Management (19-BCC-002)

<https://www.nfa.futures.org/BasicNet/regulatory-actions-detail-doc.aspx?docid=4668>

Cillian Holdings LLC (19-BCC-003)

<https://www.nfa.futures.org/BasicNet/regulatory-actions-detail-doc.aspx?docid=4670>

Express Wealth Group LLC (19-BCC-004)

<https://www.nfa.futures.org/BasicNet/regulatory-actions-detail-doc.aspx?docid=4672>

Plutus Capital Management LLC (19-BCC-006)

<https://www.nfa.futures.org/BasicNet/regulatory-actions-detail-doc.aspx?docid=4703>

IVG Energy Ltd. (18-BCC-18)

<https://www.nfa.futures.org/BasicNet/regulatory-actions-detail-doc.aspx?docid=4639>

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