

CLIENT ALERT

NFA Mandates Virtual Currency Disclosures

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National Futures Association member firms engaging with customers or counterparties in activities related to virtual currencies or virtual currency derivatives will be subject to new disclosure requirements. NFA's Interpretive Notice adopting these requirements takes effect on October 31, 2018 (the "Notice").¹

Disclosure Obligations of CPO and CTA Members

Commodity pool operators and commodity trading advisors that offer pools or trading programs that employ virtual currencies or virtual currency derivatives must include language in offering documents and promotional materials that address the risks related to such activity. NFA has provided guidelines and model disclosure, but noted that each member must assess for itself whether the language provided by NFA is sufficient given the member's particular use of these instruments. NFA further noted that the risks related to virtual currency transactions may evolve. Thus, members should periodically review their disclosure for completeness. At a minimum, the disclosure should discuss the impact that the risks associated with engaging in virtual currency transactions may have on the performance of a pool or a managed account program. The discussion should include the unique features of virtual currency, price volatility, valuation and liquidity, cybersecurity, the opaque spot market, the structure and risks of virtual currency exchanges, intermediaries and

¹ Disclosure Requirements for NFA Members Engaging in Virtual Currency Activities, NFA Interpretive Notice 9073, effective Oct. 31, 2018.

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custodians, the regulatory landscape, the risk of the new and evolving technology, and transaction fees and their impact on performance.

CPO and CTA members also must notify investors that NFA does not regulate activities involving the underlying virtual currency market.

Updated disclosures addressing the virtual currency requirements should be provided to existing investors and to any prospective investors prior to accepting an investment. If a CPO or CTA is required to update its previously filed disclosure document with NFA, the updated document must be accepted by NFA before it is used.

Disclosure Obligations of FCM and IB Members

Futures commission merchants and introducing brokers will be required to provide both NFA and CFTC disclosures to any customer that engages in a virtual currency derivative transaction with or through the FCM or IB. The NFA and CFTC disclosures inform investors of some of the risks of investing in virtual currency, encourage investors to perform due diligence and caution investors to be vigilant for fraud. We note that virtual currencies have been determined to be commodities under the Commodity Exchange Act and that the CFTC maintains general anti-fraud and manipulation enforcement authority over virtual currency cash markets.

For introduced accounts, either the FCM or IB may provide the disclosures. Such disclosures also must be provided to any customer who has traded or trades virtual currency derivatives with or through the FCM or IB prior to the effective date of the Notice. Any FCM or IB member engaging in activities with customers or counterparties involving underlying or spot virtual currencies must also notify the customer or counterparty that NFA does not regulate activities involving the underlying virtual currency market.

FCMs and IBs may provide the disclosures via their websites to eligible contract participants. Disclosure to non-ECP retail customers must be made in writing or electronically, such as through email, in a manner designed to ensure that the customer is aware of the disclosures.

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