

CLIENT ALERT

NFA Adopts CPO Reporting Requirement for Distress Events: Compliance Rule 2-50 in effect as of June 30, 2021

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National Futures Association recently adopted a rule to require its commodity pool operator members to notify NFA upon the occurrence of certain events indicating that a pool may be in distress. Pursuant to NFA Compliance Rule 2-50, a CPO experiencing any of several “reportable events” must notify NFA by 5:00 p.m. (U.S.) Central Time on the following business day.

The new requirement is designed to assist NFA in identifying CPOs and commodity pools that may be faced with adverse financial situations, and thus potentially unable to meet their obligations.

Summary of NFA Compliance Rule 2-50

Under Compliance Rule 2-50, any of the following events would be reportable by the CPO of the relevant commodity pool:

- The pool is unable to meet a margin call;
- The pool is unable to satisfy redemption requests in accordance with the pool’s operative agreements;
- The CPO suspends investor withdrawals or redemptions; or
- A swap counterparty of the pool asserts that the pool is in default.

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Compliance Rule 2-50 is accompanied by an interpretive notice that clarifies that the new rule applies with respect to commodity pools for which the CPO has a reporting requirement to NFA (e.g., Rule 4.7 pools).¹ CPOs should review their current compliance policies and procedures and ensure they would be able to make timely filings under Rule 2-50, should a notice filing become necessary.

Reportable Events

Inability to Meet a Margin Call

A CPO would be required to report to the NFA if its pool is unable to meet a margin call within the time period specified by the pool's futures commission merchant or broker. Notably, if the CPO is not able to meet a margin call on the day of the call, but reasonably expects to meet the margin call by the deadline prescribed by the FCM or broker, Rule 2-50 would not be triggered.

Inability to Satisfy an Investor's Request to Redeem

A CPO must report to the NFA if its pool is unable to satisfy an investor redemption request that would be permitted by the terms of the pool's governing documents. In determining whether a pool will be unable to satisfy redemption requests, the CPO may take into consideration any applicable grace period or other provisions that may affect the timing of a redemption payment. For example, a pool may be able to offer in-kind payments in lieu of cash payments. If the CPO ultimately determines that a pool will not be able to meet a redemption request, however, the CPO must report to NFA, even if the applicable grace period has not yet passed.

Redemption Halts

If a pool unexpectedly suspends or otherwise halts redemptions (either temporarily or permanently), due to market events or other exigencies that impact the pool's ability to pay redemption proceeds, the CPO must notify NFA. This aspect of Rule 2-50 does not extend to any delays in satisfying redemption requests that are based on a predetermined gate or lockup established by the pool's operative agreements.

Swap Default

In the event a pool's swap counterparty declares that a pool is in default and the CPO does not reasonably believe that the pool can cure such default within the period permitted by the relevant swap agreement, the CPO would be required to

¹ See National Futures Association: NFA Compliance Rule 2-50 and related Interpretive Notice entitled NFA Compliance Rule 2-50: CPO Notice Filing Requirements, available [here](#).

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report to the NFA. Rule 2-50 mandates reporting even if (i) the CPO disputes the counterparty's assertion of a default; or (ii) the CPO is engaged in discussions with the counterparty to liquidate positions.

Reporting Mechanics

Notice filings required by Rule 2-50 must be made by the CPO by means of NFA's EasyFile system, which can be accessed via NFA's website. The filing made pursuant to Rule 2-50 must include a summary of the event as well as all relevant subsection(s) of Rule 2-50 and the names of the impacted pool(s). As noted above, each CPO must ensure that it is capable of filing timely notification to the NFA upon the occurrence of the above-listed events.

If you have any questions regarding this client alert, please contact one of the authors, any member of our CFTC team listed below, or the Willkie attorney with whom you regularly work.²

Willkie has a dedicated team of attorneys with extensive knowledge and experience in all aspects of the Commodity Exchange Act and the CFTC regulatory regime. We would be pleased to assist on your matters.

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² For more information on additional CFTC and NFA regulatory reminders, see our client memorandum entitled "CFTC and NFA Regulatory Reminders" (January 6, 2021), available [here](#).

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