

CLIENT ALERT

NFA Mandates Digital Asset Disclosure and Supervision

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National Futures Association's new digital assets rule will take effect on May 31, 2023. Members should promptly review their activities to determine whether the rule applies to them. Rule 2-51 imposes new disclosure and supervision requirements on Members that engage in digital asset commodity activities.¹ For purposes of Rule 2-51, the term "digital asset commodity" is defined as Bitcoin and Ether.²

Given the growth in business activities related to digital assets, NFA determined to promulgate a rule to address these developments. Rule 2-51 expands upon NFA Interpretive Notice 9073, which was adopted in 2018 and sets forth disclosure requirements for Members engaged in activities related to virtual currencies or virtual currency derivatives.³

¹ NFA submitted Rule 2-51 to the CFTC for approval on February 28, 2023: National Futures Association, *Proposed NFA Compliance Rule 2-51: Requirements for Members and Associates Engaged in Activities Involving Digital Asset Commodities*.

² For a more in-depth discussion of Rule 2-51, please refer to our prior client alert [here](#).

³ For more information regarding NFA's disclosure requirements for Members engaged in virtual currency transactions, please see our prior client alert [here](#).

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NFA was concerned that it may not have authority to discipline Members regarding their digital asset activities in the spot market. Rule 2-51 addresses that gap.⁴

Rule 2-51 extends NFA's traditional supervision and anti-fraud rules to digital asset commodities. The rule imposes anti-fraud, just and equitable principles of trade, disclosure and supervision requirements on Members that engage in digital asset activities, including in the spot or cash market, as follows:⁵

Fraud and Related Matters. No Member or associate engaged in activities involving any digital asset commodity shall:

- i. cheat, defraud, or deceive, or attempt to cheat, defraud or deceive any other person involved in those activities;
- ii. make a communication related to a digital asset commodity that operates as a fraud or deceit; employs or is part of a high-pressure approach; or makes any statement that trading in digital asset commodities is appropriate for all persons;
- iii. willfully make or cause to be made a false report, or willfully enter or cause to be entered a false record in, or in connection with, any transaction involving a digital asset commodity;
- iv. disseminate, or cause to be disseminated, false or misleading information, or a knowingly inaccurate report, that affects or tends to affect the price of any digital asset commodity;
- v. engage in manipulative acts or practices regarding the price of any digital asset commodity; or
- vi. embezzle, steal, or purloin or knowingly convert to its own use or the use of another, any money, securities, digital assets or other property received from or accruing to any person in connection with a transaction involving a digital asset commodity.

Just and Equitable Principles of Trade. Members and their associates are required to observe high standards of commercial honor and just and equitable principles of trade related to the conduct of their business involving any digital asset commodity.

Disclosure and Related Matters. Members engaged in activities involving digital asset commodities are required to comply with the applicable requirements set forth in NFA's Interpretive Notice 9073.

⁴ In a statement, CFTC Commissioner Caroline D. Pham praised Rule 2-51, noting that the rule aligns with her longstanding position on the regulation of digital asset markets. Commissioner Pham's full statement is available [here](#).

⁵ See NFA Rules 2-2, 2-4, 2-9 and 2-36.

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Supervision. Each Member engaged in digital asset commodity activities must diligently supervise its employees and agents in the conduct of their digital asset commodity activities for or on behalf of the Member. Moreover, each associate that has supervisory duties over a Member's digital asset commodity activities must diligently exercise such duties in the conduct of that associate's digital asset commodity activities for or on behalf of the Member.

In limiting the applicability of Rule 2-51 to Bitcoin and Ether, NFA observed that these two digital assets align with prevailing CFTC jurisdiction. Should additional digital assets be identified as commodities in the future, NFA likely would amend Rule 2-51 to cover them.

If you have any questions regarding this client alert or the compliance requirements prescribed by Rule 2-51, please contact one of the authors, any member of our CFTC team listed below, the Willkie Digital Works team or the Willkie attorney with whom you regularly work.

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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