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CLIENT ALERT

Digital Asset Disclosure Requirements Updated by NFA

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As the regulatory landscape and product offerings in the digital asset arena continue to evolve, National Futures Association has decided to pause enforcement of certain disclosure requirements that it deems outdated. NFA has proposed to repeal Interpretive Notice 9073,[1] and to amend Compliance Rule 2-51[2] to broaden its scope and account for the aforementioned repeal of Interpretive Notice 9073. Importantly, while the prescriptive disclaimers in Interpretive Notice 9073 are no longer specifically required, NFA Members must still include relevant disclosures describing the material risks related to their offerings, including risks associated with digital asset commodities.

NFA issued Interpretive Notice 9073 in 2018, which set forth disclaimer and disclosure requirements for NFA Members engaging in activities related to digital asset commodity transactions (formerly, "virtual currency" transactions). In 2023, NFA promulgated Compliance Rule 2-51, which expanded Interpretive Notice 9073 and

1 *See* NFA Interpretive Notice 9073 – Disclosure Requirements for NFA Members Engaging in Virtual Currency Activities (https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9073).

2 *See* NFA Compliance Rule 2-51 (https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=4&RuleID=RULE%202-51).

extended NFA's traditional supervision and anti-fraud rules to digital asset commodities, including in the cash and spot market.[3] The applicability of NFA Compliance Rule 2-51 was limited, originally, to Bitcoin and Ether.

NFA recently submitted to the Commodity Futures Trading Commission a proposal to repeal Interpretive Notice 9073 and to amend Compliance Rule 2-51 (the "Proposal").[4] Among other things, the Proposal would remove NFA Member obligations to include the prescribed verbatim disclaimers included in Interpretive Notice 9073. The Proposal also indicates that, while Interpretive Notice 9073 has become outdated, NFA will likely propose new disclosure requirements related to digital assets in the future. Additionally, reference to Interpretive Notice 9073 will be removed from Compliance Rule 2-51, and the applicability of Compliance Rule 2-51 will no longer be limited to Bitcoin and Ether. The amended rule will cover any digital asset commodity that has a related commodity interest product certified by a registered entity or approved by the CFTC for listing under Part 40 of CFTC Regulations.

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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.

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3 *See* Willkie Farr & Gallagher, Client Alert, NFA Mandates Digital Asset Disclosure and Supervision (https://www.willkie.com/-/media/files/publications/2023/nfa_mandates_digital_asset_disclosure_and_supervision.pdf) (April 4, 2023).

4 *See* National Futures Association: Repeal NFA Interpretive Notice 9073 entitled: Disclosure Requirements for NFA Members Engaging in Virtual Currency Activities and Proposed Amendments to NFA Compliance Rule 2-51 (October 1, 2025) (https://www.nfa.futures.org/news/PDF/CFTC/2020-2029/20251001-Repeal-interp-9073-virtual-curr-2-51.pdf). Notably, the U.S. Federal Government shutdown began on October 1, 2025, presumably delaying the technical repeal of Interpretive Notice 9073, and the amendment to Rule 2-51.

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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