

CLIENT ALERT

NFA Implements Swaps Proficiency Requirements

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The National Futures Association has adopted new swaps proficiency requirements applicable to associated persons of commodity pool operators, commodity trading advisors and certain other financial intermediaries who are engaged in swaps related activities as well as associated persons of swap dealers and major swap participants. In connection with the new requirements, NFA has also released interpretive guidance and a set of FAQs to assist members with their compliance obligations. The compliance date for the new proficiency requirements is January 31, 2021.

Individuals who are approved (or seeking approval) by NFA as swap associated persons (“APs”) of CPOs, CTAs, futures commission merchants and introducing brokers will be required to satisfy the proficiency requirements, which will be administered online through a series of modules containing both a training and testing component. The online system is expected to be operational beginning in January 2020. The modules are intended to test an AP’s market knowledge and knowledge of regulatory requirements applicable to swaps activities. Similarly, swap dealers will have an obligation to ensure that their APs satisfy these requirements, subject to certain exclusions for swap dealers located outside of the United States.

An AP will be required to complete either long track or short track proficiency requirements, consisting of different numbers of modules, depending on whether the AP is employed by a swap dealer or other type of intermediary and the scope of the AP’s swaps related activities.

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- Swap dealer APs involved in sales and trading who negotiate, price and/or execute swaps with counterparties on behalf of the swap dealer or manage the swap dealer's swaps related risks, as well as their supervisors, will have to satisfy the long track.
- An AP of a swap dealer who performs more limited functions not involving sales or trading (and his or her respective supervisor) may satisfy either the long track or the short track proficiency requirement, at the election of the swap dealer.
- Swap APs of other intermediaries, such as CPOs and CTAs, along with their supervisors, will be required to satisfy the short track.

Because individuals acting as swap dealer APs are not NFA Associate Members subject to NFA's jurisdiction, swap dealers will be required to maintain records demonstrating that an AP has satisfied the requirements applicable to such AP in light of his or her activities, and will be required to provide those records to NFA during an examination or upon request.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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