

# NFA Adopts Digital Asset Commodities Standards and Requirements

Mar 29, 2023

On March 29, 2023, the National Futures Association (NFA) announced that [NFA Compliance Rule 2-51: Requirements for Members and Associates Engaged in Activities Involving Digital Asset Commodities](#) will become effective on May 31, 2023.

The Rule defines “Digital Asset Commodities” solely as Bitcoin and Ether, which the NFA noted are the only two digital assets that have related commodity interests certified by a registered entity for listing under Part 40 of the Commodity Future Trading Commission’s Regulations. In addition, the NFA asserted they are the two digital assets that have been most widely treated as commodities. If other digital assets are identified as commodities in the future, the NFA anticipates that it can amend the Rule’s scope accordingly.

## Why It Matters

The Rule gives the NFA jurisdiction to require NFA members which engage in spot transactions in Digital Asset Commodities to adhere to specific business conduct standards in such dealings. Absent this new Rule, the NFA noted its concern that, if a NFA member were to commit fraud or similar misconduct with respect to Digital Commodity Assets, the NFA would lack jurisdiction to discipline that firm or otherwise protect the public – a position the NFA viewed as “untenable.”

## Six Prohibitions

Under the Rule, any NFA member or associate engaging in activities involving any Digital Asset Commodity is prohibited from:

1. Actually or attempting to cheat, defraud or deceive any other person involved in those activities;
2. Making 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 states that trading in Digital Asset Commodities is appropriate for all persons;
3. Willfully making or causing a false report or record in or in connection with any transaction involving a Digital Asset Commodity;
4. Disseminating or causing false or misleading information, or a knowingly inaccurate report, that affects the price of any Digital Asset Commodity;
5. Manipulating the price of any Digital Asset Commodity; or

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6. Stealing or knowingly converting 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.

### **Additional Rule Requirements**

In addition to the six prohibitions, the Rule requires NFA members and associates to observe high standards of commercial honor, along with just and equitable principles of trade, in the conduct of their business involving Digital Asset Commodities. Members would also be required to supervise their employees and agents in the conduct of their Digital Asset Commodity activities for or on behalf of the member, and associates that supervise a member's Digital Asset Commodity activities would need to diligently exercise those duties in the conduct of that Associate's Digital Asset Commodity Activities for or on behalf of the member.

Finally, the Rule also codifies the disclosure requirements relating to Digital Asset Commodities set forth in [NFA Interpretive Notice 9073](#).

*If you need assistance or have questions regarding this alert, please contact your Akin relationship attorney or one of the authors.*