

Investment Management Alert

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NFA to Require Swap Proficiency Testing for Associated Persons of CPOs and CTAs Who Engage in Swaps Activity

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Key Points

- By January 31, 2021, all swap associated persons of registered CPOs and CTAs must take and pass the NFA's new swaps proficiency requirements.
- The swaps proficiency requirements mirror the proficiency testing long required for associated persons of CPOs and CTAs who engage in commodity futures or forex activity.

Absent objections from the Commodity Futures Trading Commission (CFTC), the National Futures Association (NFA) is adopting amendments to its Bylaws and Compliance Rules along with an explanatory Interpretive Notice¹ which will implement new "Swaps Proficiency Requirements" for associated persons of registered commodity pool operators (CPOs) and registered commodity trading advisors (CTAs), among others,² who engage in (or supervise those who engage in) soliciting customers or accepting their orders to trade CFTC-regulated swaps (Swap APs). Subject to certain exceptions, associated persons of CPOs and CTAs have long been required to pass the Series 3 or Series 34 proficiency exam if their activities involve commodity futures or forex activity, respectively. However, since the NFA created the Swap AP designation and approval requirement as a result of the Dodd-Frank reforms, no corollary proficiency testing component has existed. The NFA cited its statutory mandate and recent recommendation from the chairman of the CFTC as the rationale for moving ahead in adopting a training and testing program to raise the professional standards for all Swap APs.

Contact Information

If you have any questions regarding this alert, please contact the Akin Gump lawyer with whom you usually work or

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¹ See National Futures Association: Proposed Amendments to NFA Bylaw 301 and NFA Compliance Rule 2-24 and Proposed Interpretive Notice Entitled: NFA Bylaw 301 and Compliance Rule 2-24: Proficiency Requirements for Swap APs, available at <https://www.nfa.futures.org/news/PDF/CFTC/InterpNotcNFABylaw301CR2-24ProficiencyRequirementsSwapAPs.pdf>.

² This Investment Management Alert focuses on the Swaps Proficiency Requirements applicable to Swap APs of CPOs and CTAs. However, the Swaps Proficiency Requirements are also applicable to Swap APs of swap dealers, major swap participants, futures commission merchants and introducing brokers.

Effective January 31, 2021 (the “Effective Date”), in order to receive NFA approval (or maintain such approval) as a Swap AP of a registered CPO or CTA, individuals must have passed the “short track”³ version of an online swaps proficiency exam consisting of four modules: (i) swaps products and applications; (ii) regulation of the swaps market; (iii) supervision and intermediary compliance; and (iv) anti-fraud and other requirements. There is no grandfathering exception for Swap APs approved by the NFA prior to the Effective Date, meaning all current Swap APs must pass the Swaps Proficiency Requirements by no later than the Effective Date in order to continue serving in such capacity.

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³ A “long track” version of the Swaps Proficiency Requirements exists for certain Swap APs of swap dealers and major swap participants.