

CFTC requires more swap market intermediaries to become NFA members

The U.S. Commodity Futures Trading Commission ("**CFTC**") has adopted a rule (available [here](#)) that will require each person registered with the CFTC as:

- an introducing broker ("**IB**"),
- a commodity pool operator ("**CPO**"), or
- a commodity trading advisor ("**CTA**") (subject to a limited exception)

to become and remain a member of at least one registered futures association ("**RFA**"). This new membership requirement has the effect of subjecting these CFTC-registered entities to the rules and oversight of the National Futures Association ("**NFA**").

All persons subject to this new rule must comply by no later than December 31, 2015.

Background

While the CFTC's new RFA membership requirement contemplates more than one RFA, the NFA is currently the only RFA. The NFA is a self-regulatory organization that is registered with the CFTC and to which the CFTC delegates oversight responsibility for market intermediaries pursuant to Section 17 of the Commodity Exchange Act. The NFA has front-line regulatory oversight of its members, while its members also remain subject to CFTC oversight. CFTC-registered futures commission merchants, swap dealers, and major swap participants are already required to be NFA members.

Membership requirements and costs

Except for the limited exception for CTAs described below, CFTC regulation 170.17 will require that all persons registered with the CFTC as IBs, CPOs, or CTAs become NFA members by December 31, 2015. The CFTC estimates that nearly 300 persons will need to apply for NFA membership. Application for NFA membership is incorporated in Form 7-R (for firms) and Form 8-R (for individuals). IBs, CPOs and CTAs will need to update their Form 7-R or 8-R, as applicable, by checking a box that indicates NFA membership. The CFTC has designated the NFA to receive submissions of these forms on its behalf.

NFA members will be required to pay initial and annual membership dues. Currently, the NFA's initial membership dues are \$750 for the first year, and its annual dues are \$750 per year. NFA members will also need to be prepared to be audited by the NFA. NFA audits have two major objectives:

- to determine whether the member is maintaining records in accordance with NFA rules and applicable CFTC regulations; and
- to ensure that the member is being operated in a professional manner and that customers are protected against unscrupulous activities and fraudulent or high-pressure sales practices.

Limited exception

The NFA's rules focus primarily on an intermediary's conduct with respect to clients and thus have little applicability to CTAs that do not direct client accounts or otherwise exercise discretion. CTAs that are exempt from CFTC registration requirements under CFTC regulation 4.14(a)(9) generally only provide advice to the general public, not to specific clients. Accordingly, the RFA membership requirement does not apply to CTAs who voluntarily registered with the CFTC but qualify for an exemption pursuant to CFTC regulation 4.14(a)(9).

Conclusion

To comply with the CFTC's new RFA membership requirement, each registered IB, CPO, and CTA – except certain exempted CTAs – will need to update their Form 7-R or 8-R, as applicable, to become members of the NFA by December 31, 2015. They will also need to pay initial and annual membership dues to the NFA and will become subject to NFA oversight (including audits). This rule change enables the CFTC to further ensure the fitness, and provide for direct NFA oversight, of these CFTC-registered market intermediaries.

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