

NFA to Require Swap Proficiency Examination for Swap Associated Persons

The NFA has implemented requirements that all swap associated persons take and pass a swap proficiency examination by January 31, 2021.

Key Points:

- As of January 31, 2021, all swap associated persons will need to take and pass the NFA's swap proficiency examination.
- There is no grandfathering provision for currently approved swap associated persons, who must also take and pass the NFA's swap proficiency examination by January 31, 2021 to remain approved swap associated persons.

The National Futures Association (NFA) has adopted an interpretive notice and amended its bylaws and compliance rules (Swap Proficiency Rules) requiring swap proficiency examinations for swap associated persons (Swap APs).¹ On March 25, 2019, the NFA published a notice to its members regarding the Swap Proficiency Rules, which will go into effect on January 31, 2020.² The Swap Proficiency Rules require that all Swap APs and their supervisors take and pass the NFA's swap proficiency examination (NFA Swaps Exam) by January 31, 2021 (Compliance Date). This NFA Swaps Exam will test an applicant's market knowledge and their understanding of regulatory requirements concerning swaps activities.

Requirements for Swap Associated Persons and Entities

The NFA now requires that any individual seeking approval as a futures commission merchant (FCM), introducing broker (IB), commodity pool operator (CPO), or commodity trading advisor (CTA) member swap firm (collectively, Swap Firm), or as a Swap AP of a Swap Firm provide satisfactory evidence that the applicant has taken and passed the NFA Swaps Exam. In addition, (i) the applicant must have taken and passed the NFA Swaps Exam no more than two years prior to their application date, and, (ii) since the applicant took and passed the exam, the applicant's approval as a Swap AP, Swap Firm, or employee of an NFA approved swap dealer (SD), must not have lapsed for more than two consecutive years.

The rules prohibit any person associated with member Swap Firms, SDs, and major swap participants (MSPs) from engaging in swaps activity if that person has not taken and passed the NFA Swaps Exam.

No grandfathering of previously approved Swap APs is available. As a result, currently approved Swap APs and related Swap Firms, SDs, and MSPs will be subject to these new requirements. In order to

remain approved as a Swap AP, all existing Swap APs must satisfy the applicable NFA Swaps Exam by the Compliance Date.

The Swap Proficiency Exam

The NFA Swaps Exam will provide a minimum proficiency standard and will test an applicant's market knowledge and understanding of regulatory requirements concerning swaps activities. The NFA Swaps Exam will be administered electronically through the internet and will cover a number of modules concerning market and regulatory areas, each of which includes a training and testing portion.

The NFA will offer two proficiency tracks for associated persons (APs) of SDs based on the activities they perform: a Long Track and a Short Track. SDs must ensure that their APs take and pass the appropriate track based on their responsibilities. APs will be required to take and pass the Long Track if they (i) are active in trading and sales, and also negotiate, price, and/or execute swaps with counterparties on a SD's behalf or manage the SD's swaps related risks, or (ii) supervise such APs. All other APs of a SD, and their supervisors, have the option of satisfying either the Short Track or the Long Track, with the caveat that, if any Short Track AP's duties expand into trading and sales, they must complete the remaining modules in the Long Track before they may engage in these new activities.

Intermediary Swap APs (*i.e.*, individuals seeking approval as a Swap AP at a Swap Firm) and those responsible for supervising them must satisfy the Short Track.

Requirements for Associated Persons at Swap Dealers

APs at SDs are not required to register with the CFTC and are not NFA associate members. As a result, SDs do not need to inform the NFA when an AP takes and passes the NFA Swaps Exam. However, the SD must keep records which show that the individuals have taken and passed the appropriate NFA Swaps Exam, such as (i) a log of individuals with the date each exam was completed or (ii) copies of each individual's certificate of completion. SDs must retain these records and provide them to the NFA in the event of a firm examination or upon request.

APs working for SDs located outside of the United States, which includes non-US branches of a US SD, who accept or solicit swaps only with non-US counterparties or non-US branches of US SD, are excluded from the NFA Swaps Exam requirement.

Conclusion

NFA members should start preparing their APs and their recordkeeping systems for this change in time for the Compliance Date. Member firms will need time (i) to decide which track APs should take, (ii) for APs to take and pass the appropriate track of the NFA Swaps Exam, and (iii) to collect appropriate records for their APs.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Yvette D. Valdez

yvette.valdez@lw.com
+1.212.906.1797
New York

J. Ashley Weeks

ashley.weeks@lw.com
+1.212.906.4630
New York

Jacqueline M. Rugart

jackie.rugart@lw.com
+1.212.906.2973
New York

You Might Also Be Interested In

[US-EU Margin Rules Reference Guide](#)

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <https://www.sites.lwcommunicate.com/5/178/forms-english/subscribe.asp> to subscribe to the firm's global client mailings program.

Endnotes

-
- ¹ Nat'l Futures Ass'n, 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 (March 5, 2019), <https://www.nfa.futures.org/news/PDF/CFTC/InterpNotcNFABylaw301CR2-24ProficiencyRequirementsSwapAPs.pdf>; Nat'l Futures Ass'n, Interpretive Notice 9075: NFA Bylaw 301 and Compliance Rule 2-24: Proficiency Requirements for Swap APs, <https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9075>; Nat'l Futures Ass'n, Bylaw 301: Requirements and Restrictions, <https://www.nfa.futures.org/rulebook/rules.aspx?Section=3&RuleID=BYLAW%20301>; Nat'l Futures Ass'n, Compliance Rule 2-24: Qualification Testing of Associated Persons, <https://www.nfa.futures.org/rulebook/rules.aspx?Section=4&RuleID=RULE%202-24>.
 - ² Nat'l Futures Ass'n, Notice I-19-09, NFA Amends Rules and Adopts Interpretive Notice Implementing Swaps Proficiency Requirements (March 25, 2019), <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5105>.