

CLIENT ALERT

NFA Proposes to Mandate New Annual Questionnaire Filing Procedures

March 20, 2024

AUTHORS

Rita M. Molesworth | Deborah A. Tuchman | Gabriel Acri | Stephanie M. Giralt

National Futures Association recently submitted to the Commodity Futures Trading Commission a proposed rule that would change certain aspects of the questionnaire filed annually by NFA members.¹ Proposed Rule 2-52 would require more frequent filings under certain circumstances. It would also generally require that the filing be *submitted* by a listed principal who is also a registered associated person (“AP”). The proposal highlights the importance NFA places on the information provided by members in these questionnaires.²

Filing and Update Requirements

For many years, NFA has required submission of an Annual Questionnaire (the “Questionnaire”) when a CFTC registrant becomes a member of NFA, and at least annually thereafter. The Questionnaire, which will be renamed, the “Member Questionnaire,” solicits information regarding a member’s business, including its commodity interest activities. NFA uses the information provided in the Questionnaire in connection with its risk monitoring systems and oversight responsibilities. The current filing obligations with respect to the Questionnaire, set forth in NFA Bylaw 301, require each member to submit the Questionnaire on an annual basis, and provide that a failure to make the filing will be deemed a request to withdraw from NFA membership.

¹ National Futures Association, *Proposed Amendments to NFA Bylaw 301 and Proposed Adoption of NFA Compliance Rule 2-52: NFA Member Questionnaire Requirements and the Interpretive Notice 9082 — NFA Compliance Rule 2-52: Requirements in Connection with NFA’s Member Questionnaire*, February 27, 2024, available [here](#).

² In submitting the proposal to the CFTC, NFA invoked the “ten day” provision of Section 17(j) of the Commodity Exchange Act which allows NFA to make a rule effective as soon as ten days after the CFTC receives the submission. We expect the new rule to take effect later this year.

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Under the proposed rule, NFA expects that most members would continue to be required to submit the Questionnaire only on an annual basis. Upon request from NFA, however, a member will be required to submit all or portions of the Questionnaire on a semi-annual basis. A member who is not currently conducting commodity interest business (“Inactive Member”) must indicate its inactive status on its Questionnaire. In the related Interpretive Notice, NFA states that each Inactive Member must complete and submit a Questionnaire semi-annually. In addition, if an Inactive Member begins engaging in business activities relating to commodity interest products, such member must promptly update its Questionnaire.

The rule would also require a member to promptly update its Questionnaire whenever there are material changes to the member’s business operations that would render previously provided information inaccurate or incomplete. The rule itself does not provide a list of changes that will be considered material. The Interpretive Notice provides a non-exhaustive list of common material changes, but also notes that each member is in the best position to determine what constitutes a material change in its operations based on the type, size and complexity of its business. The Interpretive Notice includes the following examples of changes that would require an update to a Questionnaire:

- engaging or disengaging in activities relating to: commodity interest products, micro-contracts, retail forex or digital assets, algorithmic trading activities or cloud computing;
- a significant increase or decrease in customer accounts;
- an introducing broker’s revenue exceeds the designated threshold that triggers recordkeeping requirements under CFTC Regulation 1.35; or
- the launch of a new commodity pool.

Submission Requirements — Who May File the Questionnaire?

Currently, Bylaw 301 provides that a member must complete and submit the Questionnaire, but does not require that such submission be effected by a particular employee or agent of the member. Rule 2-52 would require that for all member categories (other than swap dealers and major swap participants)³, an individual who is both a listed principal and registered as an associated person (“AP”) of the member is required to review, sign and submit the Questionnaire. This new requirement may require certain members to change their current submission processes. The submitter will also be required to certify that the answers and information provided in the Questionnaire are materially true, complete and accurate. In the proposal, NFA indicates that the new AP-filer requirement is to ensure that the individual responsible for reviewing, signing and submitting the Questionnaire is sufficiently knowledgeable about the member’s business operations.

³ Because swap dealers and major swap participants do not have registered APs, Rule 2-52 would require that a principal of such entity review, sign and submit the Questionnaire.

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

Rita M. Molesworth

212 728 8727

rmolesworth@willkie.com

Deborah A. Tuchman

212 728 8491

dtuchman@willkie.com

Gabriel Acri

212 728 8802

gacri@willkie.com

Stephanie M. Giralt

212 728 8207

sgiralt@willkie.com

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