

CLIENT ALERT

NFA Mandates New Filing Procedures for Member Questionnaire

Principal / AP (generally) must effect submission as of October 15, 2024

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National Futures Association's new filing procedures for its Member Questionnaire (formerly known as the "Annual Questionnaire") will take effect October 15, 2024.¹ Rule 2-52 will require more frequent filings under certain circumstances. In most cases, a listed principal who is also a registered associated person ("AP") will have to submit the filing.²

The new rule and associated interpretive notice and bylaw highlight the importance NFA places on the information provided by members in these questionnaires.³ Members should promptly review the rule and determine how it might affect their current filing activities.

Filing and Update Requirements

NFA requires submission of a Member Questionnaire (the "Questionnaire") when a CFTC registrant becomes a member of NFA, and at least annually thereafter. The 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.

¹ See NFA Notice to Members I-24-10, available [here](#).

² For a more in-depth discussion of Rule 2-52, please refer to our prior client alert [here](#).

³ See Compliance Rule 2-52, Interpretive Notice 9082 and NFA Bylaw 301.

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Under the new rule, NFA expects that most members will continue to be required to submit the Questionnaire only on an annual basis. Upon request from NFA, however, a member will have 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 commences business activities relating to commodity interest products, such member must promptly update its Questionnaire.

A member will also be required to *promptly* update its Questionnaire whenever a material change to the member’s business operations 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.⁴

Submission Requirements—Who May File the Questionnaire?

Rule 2-52 states that for all member categories (other than swap dealers and major swap participants),⁵ an individual who is both a listed principal and registered as an AP of the member is required to review, sign and submit the Questionnaire. This new requirement may require certain members to change their submission practices. The submitter will also be required to certify that the answers and information provided in the Questionnaire are materially true, complete and accurate. NFA has indicated that the AP-filer mandate is to ensure that the individual responsible for reviewing, signing and submitting the Questionnaire is sufficiently knowledgeable about the member’s business operations.

⁴ 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 record keeping requirements under CFTC Regulation 1.35; or the launch of a new commodity pool.

⁵ Because swap dealers and major swap participants do not have registered APs, Rule 2-52 would require a principal of such entity to review, sign and submit the Questionnaire.

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Willkie has a dedicated team of attorneys with extensive knowledge and experience in all aspects of the Commodity Exchange Act and the CFTC regulatory regime. We would be pleased to assist on your matters.

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