

ALERTS

NFA Updates FAQs on Swaps Proficiency Requirements

September 20, 2019

On Sept. 12, 2019, the National Futures Association updated its Frequently Asked Questions on the upcoming new swaps proficiency requirements for “associated persons” of NFA members that engage in swaps-related activities.^[1]

Hedge fund managers registered as commodity pool operators that have not yet determined whether their associated persons will be subject to these new requirements should do so as soon as possible. (Associated persons of a commodity pool operator, generally, are individuals that have an active role in soliciting investors.) To be clear, the new requirements will not apply to personnel of investment managers exempt from NFA membership under a Rule 4.13 or other exemption.

As noted in a prior *Alert*,^[2] the NFA’s swaps proficiency requirements will be structured as a set of online course modules that may be completed one at a time, at any time, and from any up-to-date computer. They will be more “tutorial-like” than a conventional exam (although responsive questions to the course material will be administered) Associated persons of commodity pool operators will only be required to complete modules relating to assessing their familiarity with swaps products and their applications, swaps market regulation, supervision requirements, and other compliance, anti-fraud and miscellaneous issues. The compliance deadline for these new requirements is Jan. 31, 2021 and the target date for initial access to the online training modules is Jan. 31, 2020.

The NFA’s new FAQs provide information on several aspects of the new swaps proficiency requirements, notably:

- *How long will this take?* The NFA estimates that the “short track” (which is the option applicable for most commodity pool operators) may be completed in as few as four hours.
- *How much will this cost?* Nothing, for individuals already associated with a registered NFA member (the cost of enrollment is factored into annual NFA membership dues).
- *What are the computer system requirements?* System requirements to access the online coursework are very modest. Virtually any internet-connected desktop computer should suffice. Both Macs and PCs are supported.
- *What happens if an associated person fails a module?* A score of 70% will be a passing module grade. If an associated person fails a module, he or she may take it again after completing the remaining modules. There is no waiting period.
- *Can an associated person skip the tutorials and go right to the tests?* The learning components must be completed first.
- *What will happen if an associated person switches employers?* Swaps proficiency requirements will generally transfer with the associated person (subject, on a going-forward basis, to there being no two-year gap in the individual's registration history as a swaps associated person).
- *How can an employer check completion status?* NFA members can check whether their associated persons have successfully completed the NFA's swaps proficiency requirements through the Online Registration System portal.

Next Steps

The NFA's new swaps proficiency requirements are being provided with ample advance notice in a convenient format. The updated FAQs, which all NFA member managers should quickly review, reaffirm that members should find compliance straight-forward. To avert the possibility of a last minute rush, however, NFA member managers should (if they have not already):

- Identify personnel who will need to complete the swaps proficiency requirements; and

- Add Jan. 31, 2020 (the date of the swaps proficiency modules online availability) and Jan. 31, 2021 (the deadline for compliance) to their compliance calendars.

Authored by Brian T. Daly and Joshua B. Wright.

If you have any questions concerning advance notice bylaws, owning shares in record name or this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] See NFA Swaps Proficiency Requirements FAQs, available here.

[2] See New NFA Proficiency Requirements for Hedge Fund Managers (May 2, 2019), available here.

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Related People



**Joshua
Wright**

Associate
New York

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