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National Futures Association Takes Step Toward Developing Proficiency Requirements for Swap APs

by Ruth S. Epstein, Peter M. Hong and Nicole Simon

On June 5, the National Futures Association (NFA) announced that it will begin developing a proficiency requirement program to be launched in early 2020 for all associated persons (APs) engaging in swaps activities, including those who are designated as swap APs at futures commission merchants (FCMs), introducing brokers (IBs), commodity pool operators (CPOs) and commodity trading advisors (CTAs), and individuals who act as APs at swap dealers (collectively, Swap APs).¹ Upon the launch of the program, Swap APs will, for the first time, be required to satisfy a proficiency requirement relating to swaps, which the NFA has so far described as an online learning program with an embedded examination. It is not yet clear whether this program will be more analogous to the Series 3 examination currently required for futures, options on futures and retail forex transactions or the online training program currently required for APs engaged in security futures activities (or, potentially, a hybrid of those two formats).

The Current State of Play

In the wake of the 2012 amendments to Commodity Futures Trading Commission (CFTC) regulations, the NFA amended Bylaw 301 to require NFA member firms – including FCMs, IBs, CPOs and CTAs – and their APs that engage in swaps activities subject to CFTC jurisdiction to be approved by the NFA as Swap Firms or Swap APs. At that time, the NFA also amended Registration Rules 401 and 402 to provide relief from the proficiency requirements for Swap APs of those member firms.²

As a result of the 2012 amendments, the registration form for firms (Form 7-R) asks FCMs, IBs, CPOs and CTAs to answer the following question:

Will the firm's commodity interest activities involve swaps transactions subject to the jurisdiction of the Commodity Futures Trading Commission? (Yes/No)

Similarly, the registration form for APs (Form 8-R) asks applicants to answer the following question:

Will your activities involve the solicitation of customers for swaps transactions subject to the jurisdiction of the Commodity Futures Trading Commission or the supervision of persons involved in such solicitation activities? (Yes/No)

Answering “Yes” to these questions will cause a firm to be designated as a Swap Firm and will cause an AP to be designated as a Swap AP. To date, however, these designations have not imposed any additional proficiency or other requirements.

As it currently stands, APs who engage in activities involving futures, options on futures

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or retail forex transactions, or who supervise other persons engaged in those activities, are required to take and pass the Series 3 proficiency examination, which tests both market knowledge and knowledge of regulatory requirements relevant to those instruments.³ APs who engage only in activities involving swaps, or who supervise other persons engaged only in activities involving swaps, are exempt from the Series 3 requirement.⁴ There is not yet any proficiency examination analogous to the Series 3 that covers swaps activities.

Looking Ahead

In its June 5 release, the NFA announced that it will be moving forward with developing a Swap AP proficiency requirement program. The process will involve developing the content and questions for the examination, implementing a testing distribution system, drafting appropriate rules and educating NFA member firms. The NFA expects to launch the program in early 2020.

How to Participate in the Development Process

To begin this project, the NFA's Board approved the formation of a Swaps Proficiency Requirements Advisory Committee (the Advisory Committee) composed of industry experts from the various registration categories that will be impacted by these requirements (FCMs, IBs, CPOs, CTAs and swap dealers) and chaired by NFA Board Member Don Thompson.

The Advisory Committee will consult with and assist staff regarding the development and implementation of the requirements. Throughout the process of developing these proficiency requirements, the NFA staff will also be working closely with the CFTC, the NFA's Board, NFA members and relevant trade associations.

The NFA has directed members who have questions or who would like to provide input or suggestions to contact Kristen Scaletta, the NFA's Associate Director of Communications (312-781-7860 or kscaletta@nfa.futures.org). ■

¹ NFA News Release (June 5, 2018), <https://www.nfa.futures.org/news/newsRel.asp?ArticleID=5014>.

² See NFA Bylaw 301 and NFA Registration Rules 401 and 402. See also NFA Notice to Members I-12-24 (Oct. 3, 2012), <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4119>.

³ The Series 3 examination subject areas are available at <https://www.nfa.futures.org/registration-membership/study-outlines/SO-Series3.pdf>.

⁴ See NFA Registration Rules 401(e) and 402.



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