

NFA adopts disclosure requirements for members engaging in virtual currency activities

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Introduction

The National Futures Association (NFA) has adopted an interpretive notice that requires futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisers to disclose to customers certain potential risks involved when dealing with virtual currencies and virtual currency derivatives.⁽¹⁾ The notice, titled "Disclosure Requirements for NFA Members Engaging in Virtual Currency Activities", reflects the NFA's concern that customers may not fully understand the nature of these products, the potentially significant losses that could be sustained or the limitations of the NFA's oversight of virtual currency activities.

The notice is effective from 31 October 2018. It also requires disclosures for virtual currency activities that took place prior to the effective date.

Futures commission merchant and introducing broker requirements

When engaging in transactions with customers in virtual currency derivatives, futures commission merchants and introducing brokers must provide customers with the advisories published by the NFA⁽²⁾ and the Commodity Futures Trading Commission (CFTC)⁽³⁾ outlining the potential risks of virtual currency trading. For virtual currency derivatives transactions entered into prior to the effective date of the notice, futures commission merchants and introducing brokers must provide customers with the advisories no later than 30 November 2018.

The notice also requires futures commission merchants and introducing brokers to provide customers in underlying or spot virtual currency transactions with specific disclosures indicating that the NFA does not maintain regulatory oversight authority over virtual currency spot markets, exchanges or custodians.

The notice also specifies the means through which required disclosures must be provided.

Commodity pool operator and commodity trading adviser requirements

In disclosure documents, offering documents and promotional materials relating to spot market virtual currencies and virtual currency derivatives in a commodity pool (including an exempt pool) or managed account programme, commodity pool operators and commodity trading advisers must address a number of factors that could put customers at risk or affect the products' value. These include, among other things:

- the unique features of virtual currencies;
- price volatility;
- valuation and liquidity;

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- the regulatory landscape; and
- cybersecurity.

More generally, commodity pool operators and commodity trading advisers must disclose the potential risks associated with virtual currency derivatives and explain the impact that these risks may have on a pool's or managed account programme's performance.

Commodity pool operators and commodity trading advisers must also provide specific disclosures notifying customers of the limitations to the NFA's oversight of virtual currency spot markets and the fact that there are currently no means for the NFA to verify the ownership or valuation attributed to a virtual currency.

Any disclosure or offering documents distributed before the effective date that are materially incomplete in light of the notice must be updated and (if required) submitted to the NFA (and approved before being used) by 21 November 2018.

Comment

The notice, along with the Financial Industry Regulatory Authority's request that firms disclose digital asset activity,⁽⁴⁾ reflects the fact that self-regulatory organisations (SROs) may start to play a more prominent role in this space, but also illustrates their limited authority in the area. It also bears monitoring whether their involvement may affect proposals to create a virtual currency SRO,⁽⁵⁾ which has garnered some support from members of the CFTC.⁽⁶⁾

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Endnotes

(1) NFA, Disclosure Requirements for NFA Members Engaging in Virtual Currency Activities (17 May 2018), available [here](#). Also see NFA, Effective Date of Interpretive Notice Establishing Disclosure Requirements for NFA Members Engaging in Virtual Currency Activities (9 August 2018), available [here](#).

(2) NFA, NFA Investor Advisory—Futures on Virtual Currencies Including Bitcoin (1 December 2017), available [here](#).

(3) CFTC, Customer Advisory: Understand the Risks of Virtual Currency Trading (15 December 2017), available [here](#).

(4) FINRA, Notice to Members 18-20 (6 July 2018), available [here](#). For more information, please refer to our earlier update, which is available [here](#).

(5) Cameron Winklevoss, A Proposal for a Self-Regulatory Organization for the U.S. Virtual Currency Industry (13 March 2018), available [here](#). For more information, please refer to our earlier update, which is available [here](#).

(6) CFTC, Commissioner Brian Quintenz, Statement of CFTC Commissioner Brian Quintenz Regarding the Virtual Commodity Association (20 August 2018), available [here](#).

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