

New NFA Interpretation Requires Approval of Swap Marketing Materials

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On December 2, the National Futures Association (NFA) submitted a new Interpretive Notice to the Commodity Futures Trading Commission (CFTC) for approval. The notice, which is entitled “NFA Compliance Rule 2-9(d): Swap Dealer and Major Swap Participant Supervision of the Use of Marketing Materials,” requires that all marketing materials used by a swap dealer member must be reviewed and approved by appropriate supervisory personnel. For purposes of the notice, marketing materials “include standardized documents in the form of pitch books, reports, letters, circulars, memoranda, presentations, publications, or brochures or other similar standardized documents (delivered via either hard copy or electronically, e.g., by email, text, or instant message) used for the purpose of soliciting a counterparty to enter into swap transactions.”

The notice recognizes that swap dealers may use marketing materials that are general in nature, as well as marketing materials that are tailored to or focused on a particular type or group of counterparties (e.g., counterparties interested in a specific swap product). Although all marketing materials must be reviewed and approved, the timing of the review and approval may vary based on the type of material and/or the swap dealer’s relationship with the counterparty.

The notice could become effective as early as 10 days after submission to the CFTC unless the CFTC notifies the NFA that it wants to delay effectiveness, but the compliance date is likely to be later than the effective date.

The Interpretive Notice is available [here](#).

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