

August 14, 2018

New Disclosure Requirements for NFA Members Engaging in Virtual Currency Activities—Action Required

On August 9, 2018, the National Futures Association (“NFA”) announced that, effective October 31, 2018, NFA members are required to make additional disclosures in connection with their virtual currency activities in accordance with recently adopted [Interpretive Notice 9073](#) (the “Interpretive Notice”).¹ The Interpretive Notice applies not only to asset managers that use virtual currency derivatives, but also to asset managers that use spot market virtual currencies. The disclosure requirements apply to promotional materials, disclosure documents and other offering documents.

Pursuant to the Interpretive Notice, commodity pool operators (“CPOs”) and commodity trading advisors (“CTAs”) that are NFA members and trade spot virtual currencies or virtual currency derivatives (for example, futures, options on futures, and cleared swaps) will be required to carefully consider the risks arising from these activities and to customize their disclosure documents, offering documents and promotional materials to explain the risks related to their specific activities. No specific text is mandated, but topics to be addressed include, at a minimum, the unique features of virtual currencies; price volatility; valuation and liquidity; cybersecurity; the opaque spot market; virtual currency exchanges, intermediaries and custodians; the regulatory landscape; technology; and transaction fees. Additional topics for virtual currency derivatives include the level of initial margin, additional restrictions imposed by brokers, and restrictions imposed by exchanges.

In addition, CPO and CTA NFA members operating a pool (including exempt pools such as those operated under CFTC Rule 4.13(a)(3)) or a managed account using spot virtual currencies are required to display a specific standardized disclaimer prominently in their promotional materials, disclosure documents, and other offering documents to the effect that NFA does not have regulatory oversight authority over these instruments or transactions, or over virtual currency exchanges, custodians or markets.

Promotional materials must satisfy the requirements of the Interpretive Notice if they are used on or after October 31, 2018. Updates to disclosure documents and offering documents that are not materially complete in light of the requirements of the Interpretive Notice must be provided to existing investors (and prospective investors prior to accepting an investment) by November 21, 2018. In light of the Interpretive Notice, all NFA members that trade in virtual currencies or virtual currency derivatives should review and update, as necessary, their disclosure documents and offering documents, and other private fund managers may also wish to consider the Interpretive Notice in determining appropriate risk disclosures relating to virtual currencies.

Please contact [Deborah A. Monson](#), [Jeremy A. Liabo](#), [Anne Fox](#) or the Ropes & Gray attorney who usually advises you for further information, or with any questions you may have.

¹ See [NFA Notice to Members I-18-13](#).