

A.I., Digital Assets and Promotional Material Trends

Member Regulatory Workshop

A decorative graphic on the right side of the slide, featuring a series of overlapping, semi-transparent hexagons in various shades of blue, creating a 3D effect. The hexagons are arranged in a staggered, grid-like pattern that tapers off towards the top right.

Artificial Intelligence (AI)

A.I.

- What are we asking?
- What are we seeing?
- Where do we stand?

- Rules
 - NFA Compliance Rule 2-9 (Supervision)
 - NFA Interpretive Notice 9079 (Use of Third-Party Service Providers)
 - NFA Compliance Rule 2-29 (Promotional Material)
 - A.I. Generated Content
 - A.I. Claims

Q&A





Digital Assets

Current Requirements



- NFA Compliance Rule 2-51
 - Effective since May 2023
 - Modeled after existing anti-fraud rules
 - Applies to all membership categories engaging in digital asset commodities
 - Currently Bitcoin and Ether

Current Requirements



- NFA Interpretive Notice 9073
 - FCMs & IBs
 - Must provide written disclosures and CFTC/NFA Advisories
 - CPOs & CTAs
 - Disclosure required in disclosure document/offering memorandum, and/or promotional material
 - Must discuss unique features, price volatility, valuation & liquidity, cybersecurity, exchanges/intermediaries/custodians, opaque spot market, regulatory landscape, technology, and transaction fees
 - Requires verbatim disclosure

Member Questionnaire Updates



- Several updates made in 2024 related to digital assets.
 - Splits questions between digital asset derivatives versus spot digital asset products.
 - Most significant updates are within the CPO and CTA sections, as well as the CPO Pool-level questionnaire.
 - Updates also made in IB/FCM/RFED sections.

Member Questionnaire Updates



- CPO
 - Digital Asset Derivatives
 - Includes futures and options on digital assets, as well as perpetual futures/swaps.
 - Inquires about activity taking in any commodity pools operated by the firm.
 - Spot Digital Assets
 - Includes the actual coin/token (i.e., BTC, ETH, XRP, SOL, etc.)
 - Inquires about activity taking place in any pools operated by the firm.
 - Inquires about other activities engaged in by any pools operated by the firm, such as lending, borrowing, staking, and any other identified by the firm.

Member Questionnaire Updates



- CPO
 - Proprietary activities
 - Inquires about the location(s) where the firm's own digital assets are held, the types of activities the prop accounts are engaged in, and the types of digital assets that are held/invested in.
 - Pool-Level
 - Similar to the CPO-level questions.
 - Also inquires about percent of NAV that is directly invested and indirectly invested in other funds.

Member Questionnaire Updates



- CTA
 - Digital Asset Derivatives & Spot Digital Assets
 - Separately inquires about:
 - The number of managed accounts (including any third-party pool accounts) that have had open positions in digital asset derivatives & spot digital assets in the last 12 months;
 - AUM;
 - Exchanges, Custodians, Platforms;
 - Types of derivatives and spot coins/tokens being traded; and
 - Types of activities.

- ISSP should reflect increased risk of digital assets
- Due diligence on exchanges and custodians
 - Process for transferring assets
 - Use of two factor authentication
 - Whitelisting of addresses and accounts
- Information provided to the administrator
- Public and private keys
 - Storage
 - Back up plan for recovery

Digital Asset Exams



- Expect us to review/inquire about:
 - Custody and control of wallets
 - Walkthroughs outlining each step of the trading process
 - Detailed reviews of wallet activity
 - Trade reconstructions including how the activity flows into balances reported on financial statements
 - Promotional material and disclosure reviews
 - Performance calculations
 - Due diligence on customers and counterparties

Digital Asset Exams



- Helpful Tips:
 - Have flowcharts prepared, with applicable wallets identified, that document the trade process for trading strategies.
 - Prepare listings of counterparties that the firm/pool conducts business with, along with their associated digital asset wallets.
 - Know how digital asset activity flows into the income statement and balance sheet.
 - Do not just rely on the admin.

Common Issues & Concerns



- Commingling of assets
- Inadequate due diligence on customers, counterparties and third-party service providers
- Inadequate disclosures
- Misleading promotional material

Q&A



Promotional Material Trends

Recent Trends



- Mixed product offerings under different regulatory regimes
- The use of affiliates to offer different products
- Finfluencers and third-party advertising agencies
- Referral programs
- Application of NFA requirements on microblogging sites
- Claims regarding the interbank forex market

Q&A

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