2022 NFA Member Town Hall
May 12, 2022

Joe McCarthy:

Good morning, everyone, and welcome to the NFA's Town Hall Webinar. My name is Joe McCarthy and I'm a Communications Specialist here at NFA's External Affairs and Communications department. Before we kick off today's program, I have just a few housekeeping notes. With regard to format, we'll begin today's webinar with a brief update on recent initiatives here at NFA. Then we'll spend the remainder of our time today answering questions from you, our members, that you can submit through the Q&A function on your screen. To submit a question, locate the box label to ask a question on the left side of your webinar screen, type your question into the box and click send. We're able to see your questions as they are submitted, so feel free to submit your questions throughout the webinar. We will answer as many questions as we can in the time we have, but if we do not get to your question or if you ask a firm-specific question, an NFA staff member will reach out to you following today's webinar. Lastly, as a reminder, recording and transcript of today's webinar will be made available on NFA's website in the coming weeks. Now to start our agenda, I'll turn the floor over to NFA President and CEO, Tom Sexton.

Tom Sexton:

Thank you, Joe, and welcome to our sixth Member Town Hall. I am joined today by NFA's Board Chair Maureen Downs, Public Directors Ron Filler and Doug Harris, and all of NFA's officers. The Town Hall's purpose is to provide an opportunity for you to engage with NFA's leadership and members of our Board. We want to hear from you. I encourage you to submit questions that you may have about what's going on at NFA. Member input is critical to NFA's ability to effectively regulate the industry. 2022 marks NFA's 40th anniversary. The derivatives industry has evolved greatly over the past 40 years, and the pace of change continues to accelerate. NFA must continue to adapt to new technologies, new products, new risks, new opportunities, new participants, and new Members to ensure that we meet our regulatory responsibility. We welcome opportunities like today to engage with our Members and they will continue to help us address future challenges and meet our important regulatory mission for the next 40 years and beyond. Before I turn things over to Chair Maureen Downs, I want to provide you with a quick update on NFA's operations. First, I'm proud to say we are returning to onsite exams. Some of you may have already heard from our examiners about scheduling your exam. Our staff has been anxiously awaiting the opportunity to go back out into the field, and we're looking forward to resuming these exams and engaging with you, our members. Later in the program, I will turn it over to Regina Thoele, who runs our Futures Compliance department, and Mike Otten, who runs our OTC Derivatives department to discuss our agile and risk-based approach to onsite exams. Just like many of you, we are implementing a flexible work environment in our offices. We recognize that as you do the same, we have to adapt new ways to work as we emerge from the pandemic. Doing so, NFA's staff will be looking to better understand how these new work models impact NFA and our members. Lastly, for our swap dealer Members, NFA staff have begun swap dealer capital exams in light of the CFTC's capital rule compliance date last fall. Now I'd like to welcome Board Chair Maureen Downs to the program. Maureen.

Maureen Downs**:**

Well, thank you, Tom. I am proud of NFA's staff, collectively and individually, having achieved since we last held this Member Town Hall. Staff oversee and educate our Members, build critical technology, advanced innovation, and recruit diverse and inclusive individuals who support an important mission. Additionally, I'm always impressed with how effectively and pragmatically and NFA staff respond to regulatory challenges. Through it all, I'm pleased to report that NFA successfully navigated the evolving landscape, responded to regulatory challenges, and continued important efforts to educate our staff. Given NFA's important role and the US financial regulatory structure, it is essential that the CFTC closely review and monitor NFA's activities to ensure that NFA is fulfilling its regulatory responsibilities. I'm excited to see the continuation of the successful relationship with the addition of four new CFTC commissioners. Joining us today, as Tom mentioned, are Public Directors Ron Filler and Doug Harris. Both Ron and Doug have proven to be great champions of NFA and have provided invaluable insight to NFA over the years. Ron has been a Public Director on NFA's Board since 2010, a member of NFA's Membership Committee since 2013, and was a long-time member of NFA's Executive Committee. Doug has been a Public Director on the Board since 2006 and a member of our Executive Committee since 2011. He's also been a member of NFA's Audit Committee since 2008 and a member of the Compliance and Risk Committee since 2006. First, I'll welcome Ron Filler. Ron.

Ron Filler:

Thank you, Maureen. As Tom alluded to, Member input is critical to NFA's ability to effectively regulate our great industry. While events like this webinar are just one-way NFA engages with Members, NFA also has several advisory committees that offer guidance on rulemaking, and other initiatives are FCM, SD, Major Swap Participants, CPO/CTA, and IB Advisory Committees work to bring industry representatives together with NFA staff to establish effective, efficient, and most importantly, balanced regulation. NFA Members will also have an opportunity to interact with NFA staff at our next virtual Member Regulatory Workshop scheduled for June first and second, and I strongly encourage you to reach out to your colleagues at your firm to participate or join this workshop. You can go to the NFA's website for more information on this important educational opportunity. Now, I would like to turn the floor over to Doug Harris. Doug.

Doug Harris:

Thank you, Ron. I want to say just a few words about NFA's diversity and inclusion program, which continues to evolve with the very strong support of NFA's board and executive leadership. NFA has a very robust and comprehensive diversity program, and that's very important because the different perspectives from individuals of varying backgrounds, ethnicity, and gender on the foundation for NFA to evolve, and by doing so, to redefine regulation and enhance its mission. I'm very proud to see NFA working with great organizations like Breakthrough, New York, the Greenwood Project, and Cristo Rey, as well as recruiting from historically Black colleges and universities, but there are a couple of other aspects of NFA's diversity and inclusion program, which I'd really like to call out because I consider them state of the art. Most firms have mentorship programs. NFA has gone a step further and developed a sponsorship program, and a sponsor is an individual who is going to advocate for the sponsored individual either for opportunities within the firm, for compensation, or promotion and NFA developed the sponsorship program where senior officers designate two to three junior employees that they desire to sponsor and advocate for; they'll meet with these employees and advocate for them on their behalf. These sponsorship programs in the past have proved critical in the advancement of minority individuals into the senior ranks of organizations. A second aspect of the program that I'd like to call out is the fact that NFA Diversity Council members have diversity as part of their work responsibilities and there are other responsibilities adjusted to accommodate that work. I can't stress how important this is so many firms, individuals tasked with diversity responsibilities, are asked to do the diversity work in addition to all of the other obligations they have and that actually shows a lack of commitment on the part of the firm to diversity and can negatively impede the advancement opportunity to use the individuals who are actually asked to do their regular work, as well as the diversity work. I really want to applaud NFA for these two aspects of its program. Overall, the interface supports all employees to perform at the highest level, no matter the circumstances, and NFA is not finished with working on its diversity and inclusion program and I, along with other members of the Board, really look forward to supporting staff in their ongoing efforts. With that, I'll turn it back to you, Tom.

Tom Sexton:

Thank you. Doug and I also want to thank, obviously, Maureen and Ron for joining us today. Maureen, Ron, and Doug are also available to answer your questions later in the program. Before we begin answering questions, however, I'd like to ask a few of the officers to discuss some recent NFA initiatives. I think I'll begin with Regina and Mike, who will talk about NFA's exam approach as we emerge from the pandemic and also returning to onsite exams. I'll turn it over to Regina and Mike. Thank you.

Regina Thoele:

Thanks, Tom. Welcome, everyone. Glad to be taking part in this Town Hall meeting today. As Tom said, I think we would talk a little bit about -- Mike and I will talk a little bit about our approach to exams. I think as the Membership is well aware, over the past two years we've been doing remote exams. Over time, we've tweaked our process and we've been able to handle conducting these exams remotely, very efficiently; but as we started to think, what would the exam world look like starting in 2022, we wanted to think about the steps that we needed to take to address the process and how the process would change as we moved forward in this new environment. What we did was: we formed a team, so from Mike and his group, the swaps OTC derivatives area in my department, we looked at the process and how it's been working. We really knew that we could do the remote exams, but we also knew that over this time period we felt that there were certain areas of testing that were much better suited for being on-site, so when we began this process, we looked at a couple of different approaches and ultimately came up with three different approaches that we would use going forward. Initially, at the beginning of 2022, that didn't quite happen and as Tom said, we just recently started doing exams in April and the approaches that we're taking, we identified three. The first would be a hybrid approach, then there would be a completely remote approach, and finally an onsite exam approach. Let me explain what hybrid means. When we started looking at the various areas of testing that we perform during an exam, we decided that there were certain areas that we always felt were better to do in person. For example, you have your higher risk areas that lend your testing to be done in-person where you can interview the appropriate personnel face to face, you conduct your controls, testing where you would walk through various controls that are in place at the firm with regards to how they process customer funds, reconcile bank statements, things of that nature that were important to understand how the control worked.

Right now, we continue to use our risk models that we've developed over ten years ago to help us identify the firms that pose the greatest risk. Those models not only help us to identify the firms, but they also look at various areas within the firm that we think are the highest risk at that particular firm. Let me start with FCMs. Our FCM exam process will continue to have some portion of work done on-site for the most part. Again, we'll look at each of FCM and will determine the risk that exists for that FCM. Obviously one of the biggest risks that we've always known is customer funds.

There's financial reporting, capital testing, and we'll look to see if there's been any material changes in the FCM personnel, for example, maybe changes in systems that they're using to prepare various financial reports, and in that instance, we may decide that it's appropriate to go out and look at that area of testing, in addition, to obviously the customer funds area. Each FCM will be looked at individually, we will identify the risk at those FCM and then appropriately determine how long we should be in the field and what areas will be done in the field as opposed to areas that we could do remotely from our offices. Again, with our FCMs, there will always be some type of onsite approach with that FCM to test the higher risk areas and then there will be some portion of remote testing. As you can tell, that will mean that we don't necessarily need the same size of the exam team that we have had in the historical past. You may see fewer people that are in the field for less time. With regards to our other Member categories, the CPOs, CTAs, IBs, we will continue to use again our risk models to help us determine which of those firms pose the greatest risk, and also to look at a quantitative analysis that will go along with that risk assess where we look at other things that aren't necessarily impacts or not necessarily inputs to the risk model, and that work will be done by our risk group who will look at, not only the output from the risk models but like I said, we'll also look at other issues that aren't necessarily measured through the models. What we will ultimately do is look at those firms to determine whether or not we need to do a remote, onsite, or a hybrid exam. I think it's fair to point out that on the CPO Members, because of the fact that they do hold customer funds, we do have heightened risk there. We adopted an internal control notice several years ago with regards to the handling of customer funds and risk management at our CPO Members. so, it's very important for us to get out and look at the CPO Members and make sure that they have an adequate framework within their controls.

One of the things that we'll consider when a CPO Member identified to be visited, will determine whether or not risk, with regards to the controls, have been reviewed in the past; and if not, we will definitely do that on that upcoming CPO exam. If the testing of controls have previously done been performed, we will look to see if there are any areas that we identified during that prior testing that we should revisit this time to make sure that they're adequately being performed. Right now, we're looking at, as I said, several exams being done through this quarter. We look at our schedule and we perform or put out a schedule that runs each quarter: April, May, and June, right now, we've identified the firms that we're going out to visit. I will point out that we've been working very closely with the firms because we are very cognizant of the fact that some firms are working their own hybrid schedule, so we want to make sure that the people that we need to perform testing when we make a determination that we should be on site for whether it's a full onsite exam or a hybrid approach where we're just onsite for part of the time are available and can meet with us during those time periods. That's where the Futures department is and I'm going to turn it over to Mike now so he can talk about the Swaps department.

Mike Otten:

Great. Thank you, Regina. Good morning, everybody. Thank you for joining. Much of what we have thought through in the Swaps department is similar to what Regina described, but I'd like to point out a few key areas where we will differ. First, we do not consider swap dealer exams as appropriate at this time for being done fully remote, so there will always be an onsite component to a swap dealer exam, given the nature of the firms, given the nature of their businesses, and the breadth of their businesses, so there will always be an onsite component. Also, as Tom mentioned earlier, capital rules are now in effect for swap dealer. There are CFTC and NFA capital rules that apply to certain firms-- we've started examining firms that are subject to CFTC and NFA capital rules already and expect to examine every firm subject to those rules in the upcoming months. What you can expect if you are subject to NFA and CFTC capital rules. By that I mean the firm is not prudential regulated and it has not been granted substituted compliance for capital rules and it has not been granted substituted compliance.

Those firms that are subject to the rules, you can expect to have capital tested in every regularly scheduled exam that NFA conducts on your firm. Capital is a high-risk area. it's a very high focus area, it's a complicated area, so we will be doing capital testing on every exam of swap dealer. In terms of other areas that we test in our risk-based approach, each firm will have a different scope of the areas that are tested, but there are typically themes that cross firms, there are typically issues in external business conduct standards that firms have had deficiencies in areas and SDR reporting that firms have had deficiencies in so when we look to scope in exam of a firm, we look at the current state of the firm, we look at prior exams, we look at deficiencies from previous exams, we look at the remediation plans from previous exams and build out the areas that we plan on testing and other data points can also come into our analysis depending on what's going on at the firm and what's going on in the market at the time in terms of volatility in particular product areas, what types of clients the firm specializes in, what types of markets the firms are in.

There are a whole bunch of components that come into our analysis regarding what we are going to examine a swap dealer on. A couple of points I'd like to mention on the actual conduct of the exam at the outset, as we start going onsite, you can probably expect more staff to be onsite and overtime for the number of staff onsite to get smaller. The reason for that is we haven't been onsite for the last two years, so it's been a while. We have a lot of new staff who can really benefit from being onsite in your offices, meeting face to face with your staff, so at the outset of returning to onsite exams, there will be more people on site than over time, say hopefully a year from now, after we've gone through a cycle of exams, there may be fewer NFA staff coming onsite, but while we are onsite and while we are doing testing, our expectations are that sufficient resources will be applied by the firm to answer follow up questions to give the information that the examiners request in a quick time frame. We often ask for documents and information with a short turnaround time, and the goal for that is not to make the exam difficult for you, but we always seek to do a thorough and efficient exam. To do that, we look at getting into the firm, getting our information, getting our testing done, and then getting out of the firm and letting you all go about your business. The reason why we ask for things on a short turnaround time is to make it as quick and efficient for all of us, and we think we all benefit from that on the NFA side and the Member side. I will stop there and I'm happy to take any questions on that later on, but I'll turn it over back to Tom.

Tom Sexton:

Thank you, Regina, and thank you, Mike. I thought we'd just have spent a few minutes and have Carol Wooding, our Senior Vice President of General Counsel, talk about some recent changes that we made to our interpretive notice regarding branch offices. I'll turn it over to Carol for that.

Carol Wooding**:**

Okay. Thanks, Tom. NFA currently requires firms to list on their form-seven are each of its branch offices, which, prior to COVID and until this recent amendment was defined as any location other than the firm's main office, where the Member employed person engaged in activities that require AP registration. Being a branch office does carry some responsibilities-- with it among other things, the firm has to have a branch office manager at that location, that person has to have passed our branch manager exam, and then the firm must conduct an annual inspection of that office. As you can imagine, when COVID hit, our Member firms like every other firm, needed to permit their APs to work from their homes and we did not see any need to have each one of those APs homes listed as a branch office, so we quickly provided relief from the requirement or with the caveat that firms did, of course, have to implement alternative supervisory methods over those activities that were occurring at the AP's home and then adequately supervise that as well as all of the recordkeeping obligations that they had. As firms returned to their offices, we knew that, like the rest of the world, that our Member firms were also going to want to give their apps some flexibility and probably some opportunity to work remotely, at least part of the workweek. We thought about what that meant going forward, and we concluded that we really didn't think there was a regulatory need, even if this was going to be an ongoing arrangement for those to be listed as branch office and then impose the other branch office requirements. Last August, we amended our interpretive notice and the definition of branch office to exclude locations where one or more apps from the same household work or rent a location subject to a couple of requirements. One being the AP or APs at that location cannot hold it out to the public as a Member branch office. Secondly, the APs may not meet with customers at that location, and they may not handle customer funds from that location so you can't accept a check at your home. Then finally, any CFTC or NFA records that might be created at the AP's home have to be accessible to the firm's main office or the branch office that that AP is associated with, as required by CFTC regulation and NFA rules. We did permit firms to delist locations that would no longer be considered a branch office under our new definition of branch office, and we have seen some reduction in branch offices as a result of the change in that definition, and Tom, that's basically a summary of our recent amendment to that interpretive notice.

Tom Sexton:

Thank you, Carol. The last individual I would like to speak is Tim McHenry, who heads our IT area, and Tim's going to talk about cybersecurity, the importance of cybersecurity, as well as an item that will likely impact our firms in the next year or so: multi-factor authentication. I will turn it over to Tim for a few minutes and then we will get to your questions. Tim, do you want to talk about those issues?

Tim McHenry**:**

Sure. Thanks, Tom, and good morning, everyone. The security of our Member systems and data really continues to be a top priority for us. Our security program is constantly evolving. It's always under internal review in light of new developments, and as most of you are familiar, there are new developments just about every day. We invest in great security technology as well as the staff to support it, we also continue to place a great deal of emphasis on independent third-party reviews of our security program. We engage in several independent reviews each year, including a SOC two review. These reviews really help strengthen our posture and help us to stay on top of the latest threats that are occurring out in the real world. I think it's important to note that email phishing continues to be a highly effective attack vector for all businesses, but particularly those in the financial services sector. I'd especially like to remind our Members to carefully scrutinize emails purporting to be from NFA staff. Note the domain of the sender and make sure it coincides with NFA's official domains. We have previous notices to Members on our website that list out the valid NFA domains. I would encourage you to look at those if you get a message that appears to be from an NFA staff person. Also, note that under no circumstances will NFA ever ask you for a password so if someone purporting to be an NFA staff member asked you for a password, then that's really a clear indication that that's not a legitimate request. Finally, as Tom mentioned, system access and password security continue to be an important concern for us, so in order to better secure our Member systems, we are going to be implementing multi-factor authentication. In case you're not familiar with multi-factor authentication, that's where in addition to using a username and password to access a system, you also validate your identity through a secondary factor, like a code sent to a cell phone or via an email.

The exact method of multi-factor has not yet been determined, but we will undoubtedly be sure to provide forewarning and training prior to implementation so look for more information on that as we roll out that particular security control. As always, if you have any questions regarding security, please don't hesitate to contact the NFA Info Center and they will direct you to the right person to address your question. That's all I have for my update. Thanks.

Tom Sexton:

Tim. Thank you. We look forward to continued collaboration on these topics. They're all extremely important and we will keep you apprised of developments as they occur in these areas. Let's now get to your questions. I'm going to turn it back over to Joe to moderate as far as the questions that have come in. Joe, you want to take it away from here with regard to the questions.

Joe McCarthy:

Absolutely. Carol, I was hoping you could answer our first question here, it's related to rules and financial filings. The derivatives industry has continued to evolve over the years, especially relating to the use of innovative and new technology, aiding Members and their supervisory functions and interactions with customers. For example, technology tools can now be used as part of trade and AML surveillance and also to review communications with customers. To that end, does NFA conduct reviews of its rules as well as work with the CFTC as needed to determine if any rules in financial filings are potentially outdated and need to be modernized or streamlined?

Carol Wooding:

Yeah, we do, Joe. We continually review our rules and the commission rules as well to identify requirements that are outdated, maybe need to be changed and amended to really reflect what's going on in the industry now. Just prior to COVID, we actually had an organizational goal to review our entire rule book and update it as needed and there were a number of different rule changes that came out of that initiative. We take feedback from our Members in a number of different ways on rules that may not be working or areas where they think maybe we need to adapt a new rule, we get information on our exams, our staff works very closely with the firms at those times, and the firms are not shy to tell us when they don't think something is working properly and that information is brought back here to senior management. We also get inquiries made of staff just on a day-to-day basis and then our Advisory Committees as well.

They'll raise things with us at our Advisory Committee meetings that they may want us to look at. When we identify a commission requirement that we think is outdated, we clearly will discuss that with commission staff. We have an ongoing relationship with, particularly the MPD department when it comes to requirements and our intermediary and swap firms., and we often have conversations with them on rules that may need to be tweaked. I think a really recent example is the PQR rule, there was a lot of feedback that the form was much too long and requested way too much information and we worked very closely with the commission staff as they made changes to their PQR rule to provide some relief to firms on filling out that form. The short answer is yes, of course, we do and those are the types of things Members should reach out to us if they feel that there's a rule that is currently in place that really is no longer necessary or doesn't really reflect the way that business is currently being conducted.

Joe McCarthy:

Thank you, Carol. Speaking of working with the CFTC, Karen, I was hoping you could answer our next question so recently we had four new CFTC commissioners. Can you just go a little bit into how NFA plans to interact with these new commissioners?

Karen Wuertz:

Yes, Joe, thanks. This is a great question because as Joe mentioned and Chair Downs mentioned, we work very closely with the CFTC and because we play such an important role in the financial regulatory structure, it's really important that the CFTC actively reviews everything we do and make sure that we're fulfilling all of our regulatory responsibilities. We've been doing this for years, whenever there is a new Commissioner, the process typically is we put together an extensive briefing book. It's almost about 50 pages, and then we sit down with each of the new Commissioners, and I can say that we've met with each of the new Commissioners, and I can say that they're all just bright, engaging, they're great listeners, they ask lots of questions.

We're really looking forward to working with each of them. We did again, the briefing book, and then we had the initial meetings, and then we will ask each of them over time to attend one of our board meetings so that they can interact directly with our Board. Over the next year, we'll extend those invitations and look forward to having each of them attend one of our Board meetings. This is just a history of our close interaction with all of the commissioners after each one of our Board meetings, we do meet with each of the Commissioners and the Chairman and what we do in those meetings is, we typically summarize the issues that were talked about at the Board meeting and any rule changes that NFA will be submitting to the commission. This is just one way that we interact with the commissioners. We interact with all of the various departments. Carol mentioned our close interaction with MPD. We interact with enforcement in just about every division at the CFTC. Again, we've got a very good, close working relationship that really contributes to the effectiveness of us fulfilling our mission.

Joe McCarthy:

Awesome. Thank you, Karen. Regina, I was hoping you can answer our next question it's related to onsite components of exams. The question will swap dealers have an onsite component and we wanted to know if swap firms will also have something similar?

Regina Thoele**:**

Sure, Joe. I think as I said earlier each firm is assessed its risk and the risk that's involved with that firm so with regards to swap firms, not swap dealers, we will look at the risk that we believe that firm poses and do the same assessment that we would do for any other firm. If there are certain concerns we may have with that firm, we may decide to do part of the exam onsite. This is an area that we've really been focusing on is the firms that are engaged in swaps, we're looking also at the recording part of it, making sure there's record-keeping so I think those are some key areas that we will be focusing on those and probably doing several of those exams just to make sure that those are being those firms are in compliance with the rules and regulations in that area. There is a little aspect of that being an area of focus for us right now so you may see us on site for swap firms a little bit more so than the normal assessment of risk at various firms.

Joe McCarthy:

Thank you, Regina. I'm seeing a lot of questions coming in regarding branch offices, branch offices onsite annual inspection requirements and relief issued during COVID and Carol, I was hoping you could take that one. I don't know if you want to just give a general reminder on what's going on there and is there any thought on eliminating the onsite requirement permanently?

Carol Wooding:

Sure, Joe. So just prior to COVID, our branch office requirements were changed. We used to require firms to do an onsite annual inspection of every branch office every year. Just prior to COVID, we made a change to that requirement and allowed firms to use a risk-based analysis where they could identify branch offices, where they concluded based on the risk-based analysis, that they could go onsite every other year. One year they would do the onsite exam, the next year they would do an in-person exam. Obviously, when COVID hit, firms weren't in their offices, they didn't want to be traveling to branch offices if there were even employees in those offices to conduct onsite exams so in a series of relief letters, we have now allowed firms to do all of their exams of branch offices or their annual expense inspections remotely through the end of this year and in considering next year whether they need to do an onsite or if they can do a remote exam of a branch office, they don't have to automatically do it onsite because they did it remote the last three years, but that is a factor they should consider in determining whether they need to go to that firm onsite. One of the questions we've been getting is, is NFA considering whether they will just eliminate the onsite requirement just entirely so that firms can do their branch office inspections remotely every year? At this point, we are not ready to make that change. We'd like to see some data that would support making that change if it is appropriate. We want to look at how did the inspections go over the last two and a half, three years of branch offices that were all done remotely? How did those go? Then get a little bit of experience with this every other year using the risk-based analysis? Then based on what we learn from the way that has worked, I think we'll sit back down and take into consideration whether firms should be able to do the remote branch office inspection every year, but obviously, that would still be under the terms that the firm needed to do a risk-based analysis to see if they needed to go to a particular firm. So at this point, Joe, that question is still on hold. It is definitely something that we are going to take a look at, but we'd just like to get a little bit more experience with the rule change that we passed but never implemented prior to COVID.

Joe McCarthy:

Thank you, Carol. Ed, I was hoping you could answer our next question related to DCMS and assess. Has there been a pattern emerging recently regarding the DCMs last access that have approached NFA regarding surveillance services?

Ed Dasso**:**

Thanks, Joe. Yeah, that's a great question. I guess the pattern that we've seen is the products and market structure. What I mean by that is a lot of the potential DCMs, and SEFs for that matter, are looking at event contracts on such things as financial numbers such as unemployment, energy products, ESG, and of course crypto. What is not new about that is these are binary options, and binary options, as everyone knows, have been around for almost 20 years in the derivatives space here in the United States, but what is a little unique or different is the trend appears to be that, especially in the DCM and DCO space, the desire to disintermediate, that is to offer fully leveraged contracts without the traditional FCM structure or involvement. Again, obviously, NFA is agnostic in that regard, but as a service provider, but it will be curious to see, obviously with the FTC's proposal out there, what, if anything, the CFTC does. That's really the trend that we're seeing, Joe.

Joe McCarthy:

Awesome. Thank you for that. Our next question here, just taking a look at it, number 12, Regina, so you can answer this one related to cryptocurrency. How is that if handling the regulation of cryptocurrency and cryptocurrency derivatives?

Regina Thoele:

Sure, Joe. Let me back up and just first make sure that everyone realizes that we have made various we have issued various Interpretive Notices regarding cryptocurrencies and Member firms engaging in not only the spot, but also virtual currency derivatives that are traded on the contract markets. A few years back, we issued these notices and we wanted to make sure that we were aware of our Members who were engaging in these products so there was a requirement to go in and update your annual questionnaire or to provide this information. It was on a very limited basis at that time and since that time, we have now updated the annual questionnaire back this past November to include very specific questions regarding the engagement by firms in both spot currency and cryptocurrency derivatives. That's one way where we are now being made aware of firms that are engaging in these products so not only did the interpretive notice that we issued several years ago talk about giving us notification on your business models and products that you were dealing in, but it also required a very extensive disclosure that in particular the CPO, CTA Members, which I'm going to focus on, had to disclose in their disclosure documents about the various risks associated with these products.

There were other disclosure requirements and all of those are available on our website, but going forward from that time period, we've looked very closely at the Members that are engaging in the products to make sure that adequate disclosure. Not only the disclosures that are required by your interpretive notice, but depending on how the firm is actually engaging in those products, what disclosures are appropriate and again, in addition to the ones that we have already put out in our Interpretive Notices or our Notices to Members. Right now, I would say we've seen an uptick in commodity pool operators and trading advisors who are engaging in these products, we obviously have seen our FCM and IB Members introduce customers who are trading the cryptocurrency derivatives again trades in other contract markets. We do not see a lot of engagement at those two Membership types with regards to the trading of it for themselves or holding any virtual currency. So going back to CPOs and CTAs, while we have seen this increase, I still would tell you that it's a very small percentage of our population in the CPO and CTA area, but again, the key areas are looking at the products that they're trading, what type of pool it is. We see this almost completely in just exempt funds, funds that are operating pursuant to a 4.7 exemption or for CFTC 4.13 or 4.7 exemption, so you have highly sophisticated individuals that are investing in that fund. We have only seen a couple of pools that are not operating pursuant to an exemption that are engaging in these products. When we do our exams of these firms or are ongoing monitoring, we're looking at valuation issues, control issues, the concerns with potentially hacking, what controls do firms have to deal with those? We now are in a situation where you've got passwords that have to be maintained to get into your wallets and the concern that those passwords could be lost. There's a lot of different areas that we are focusing on and I think we continue to look at this and see if there are additional disclosures that we think should be made and we'll revisit our Interpretive Notice, but again, I think the key issues are, the disclosure, the participants, they understand what they're getting into, the controls the firm has in the investments, the due diligence they do, and what entity they are trading the cryptocurrency through, what are the controls there? Do they know if that entity does a stock to audit? What controls does that entity have? All of these different areas of interest that firms should be making sure that they're paying close attention to when they make those decisions to invest in that product. That's it, Joe.

Joe McCarthy:

Awesome. Thank you for that. Mike, I wanted to turn to you related back to exam. We have a question here just asking generally what the usual duration of an NFA Member exam would be.

Mike Otten:

Thanks, Joe. You know, on the swap dealer side, it does vary, but it's important to point out here that there are large components of an NFA exam where we're working in our offices and we're not engaging with the firm. We are doing planning and scoping before we engage the firm. Then after we finish our fieldwork, we are conducting analysis of the data we received, looking at whether or not there are findings, deficiencies, and discussing all of those issues. For the firm, as we approach the fieldwork aspect of an exam, harkening back to what I said earlier, our goal is to be as efficient and complete, and thorough as we can and emphasis on all of those, but the efficient means we don't want to waste time during the exam and we don't want to be in your offices longer than necessary. As we think through coming back on site, we would expect being onsite within a firm on average probably two weeks, give or take and it can be it could be lower than that for firms that pose less risk or have a less complex business model, it could be more than that for firms that have a more complex business model or larger firms that have multiple swap dealers within the same corporate family and we have a number of those that have up to ten or more swap dealers in one corporate family. The fieldwork component will really vary by firm, much of the fieldwork will happen in the context of likely follow-up questions that we have from the information we've obtained while we're in the firm and we try to be as efficient in that regard as we can. There's no really set rule, but that's how we frame an exam and that's how we approach the time that will actually be engaging the firm and requiring the firm to apply resources to the exam.

Joe McCarthy:

Mike. I was hoping to keep it here with you, just to ask you one other question related to swap dealer Member firm exams. Is there any common issues you're seeing when we're onsite for an exam or any insight you can supply there on FDA exams?

Mike Otten:

Sure. As we look at the risk of each firm, there are a couple of risks we look for. A general risk of non-compliance with regulatory obligations and that often can be driven by what have been the results of our previous exams. Have there been deficiencies across rule areas? Has the firm effectively remediated them? We look at the risk of non-compliance more generally and what those rural areas are. Are there non-compliance areas potentially in external business conduct standards where customers could potentially be harmed or not receive the information that they are required to receive prior to entering into a swap? Those are areas that we focus on a great deal and honestly, those are areas where we see across firms at times there have been deficiencies as well, data-driven areas like SDR reporting. Those rules are very complicated. We understand that they're very complicated.

There are many data fields, there's a lot of room for error, but transparency into the Swaps activity of Swap Dealers is critical for NFA and for the CFTC. That is typically a high-risk area where there's a high risk of non-compliance that we typically look at and typically find deficiencies. We also look generally at the financials of a firm, is their risk generally financially to the firm and that focus is on are they complying with their margin obligations, what's the strength of their risk management programs? Each firm has a different approach to risk management. Some are stronger than others, and over time we have gotten to learn which firms are stronger than others, both in risk management and their overall compliance programs. As we approach an exam, we think through what we know about a firm, what the risk areas are, and whether or not there are any new emerging risk areas across the market or with that firm in particular, so it does vary.

Joe McCarthy:

Thank you for that. Just a reminder to everyone on the webinar today, we do have a section on the upcoming Member Regulatory Workshop that covers common exam findings between swaps and futures. You can find more information on that upcoming workshop on NFA's website. Tom, I was going to go to you. We were talking a lot about branch offices, but so just kind of bring it in a little bit about NFA's stuff. If you could just give an update on what is NFA's current return to work structure, are staff coming into the office more regularly and what is NFA doing to address the culture around training as we return to the office?

Tom Sexton:

Joe, thanks for the question. The staff are coming into our offices more often, both in Chicago and New York than obviously when we had the issue with the variants over the winter. Staff development and training are essential here at NFA. We recognize that that has a significant impact on our staff when they perform their Member exams and as Mike indicated, we may be sending a few more examiners to Member firms, at least for the next several months, as we have headed quite a bit of hiring during the last two years or so, particularly during the last year or so. We want to make sure that they are familiar with our practices during onsite exams. They've been performing virtual exams for the better part of the last two years so that component of our training and development is very important.

Our culture here is extremely important also, and we are trying to, as we draw employees back to the office, it's great to obviously see them and to engage with them and to learn what they are working on and we are attempting to draw them back to the office for what the office should be used for and that's that type of collaboration, development and training advancement here at NFA that are critical to our success in the future. Over the next few weeks and months, I anticipate that we will continue to have individuals return to the office over time and as I said, it is nice to see people that we haven't seen for quite some time. The other thing I'd like to mention is this is just a follow up to our discussion on cryptocurrencies, where Regina talked about all the comprehensive approach that we're taking with regard to our crypto Members, Members engaging in cryptocurrencies, currently virtual assets, everything from disclosure to our examination approach to risk calculations. We also did file a comment letter with our Executive Committee's approval yesterday with the CFTC on the recent FTs proposal. This is an area that is getting quite a bit of attention on Capitol Hill as well as at the CFTC. Today, there's a House hearing and in two weeks there's a CFTC roundtable on the non-intermediated margin markets NFA will be participating on that, so as we continue to explore this particular area, as far as the regulatory structure, I encourage you all to continue to see what we post on our website in the areas of comment letters in those types of public announcements and if you have questions to call our staff with regard to this, we also on the swap dealer side have our first registered swap dealer that wants to engage in virtual asset type swaps. Certainly, this activity is within our doors now, we are exploring how best to regulate it, as Regina indicated, and we will continue to do so in the future. Joe, I'll turn it back over to you.

Joe McCarthy:

Thank you, Tom. We were talking a little bit about advisory committees earlier in the program so, Carol, I wanted to ask you if NFA would consider having an FDM advisory committee.

Carol Wooding**:**

Joe, we actually did have an FDM advisory committee several years ago when we had significantly more FTM in our Membership. We disbanded that committee. We're down now, I think, to about five FDM, but we certainly still want their input on any type of changes or regulatory proposals that we're considering. So, when we do look at changes to our FDM requirements, we reach out to each firm separately and we actually just recently did that, we have a proposal on our board agenda for next week's meeting that changes an FTM rule, and we spoke to each FTM separately to get their input and views on the rule and then we report that information to our executive committee and the board.

Joe McCarthy:

Awesome. Thank you for that, Carol. Again, another thing we've been talking about is our work with the CFTC in our regulatory effort too. Ron, I was going to ask you if you could just talk a little bit more about how NFA interacts with the CFTC.

Ron Filler:

Sure. Thanks, Joe. Tom mentioned a very important fact beginning of the Town Hall. This is NFA's 40th-anniversary and for someone not to age myself, it's been here a lot longer than 40 years. I've been able to witness firsthand the great relationship between the NFA and the commission over these past four years and it is just so important that our two most important regulators, the NFA and the CFTC, work very closely with each other regarding many of the activities. For example, the CFTC reviews all of NFA's proposed rules and as Karen mentioned earlier, staff is in daily contact with the commission to discuss ongoing investigations, registration, application issues, exams, rulemaking, and many other a myriad of other types of issues. Also, as she noted, they meet quarterly with all of the commissioners, we have four new commissioners and as Karen mentioned there to go to meet with all four and NFA to have interaction and so I just think the relationship between our two most important regulators is just excellent and I hope it continues.

Joe McCarthy:

Thank you for that, Ron. That's actually going to wrap up our Q&A session for today. Again, if we didn't get a chance to answer your question, an NFA staff member will be reaching out to you following today's event, I'll turn it back over to you, Tom, just for some closing remarks.

Tom Sexton:

Thanks, Joe. And as you indicated, we are coming to the close of our webinar and certainly want to again, thank you all for your participation and for joining us today. We hope that you found the information provided today to be helpful. The questions that you asked are especially helpful to us and will assist us in better tailoring our Member education programming going forward. As a reminder, you'll be able to find a recording and transcript of today's Townhall webinar on NFA's website in the coming weeks. In addition, if we don't get to your question, we will respond to you by email. I hope you all have an enjoyable day and thank you again for joining us.