

Corporate & Financial Weekly Digest

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NFA Provides Guidance Regarding CPO/CTA Incentive Fee Conflicts Disclosures

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The National Futures Association (NFA) has published a Notice to Members which provides guidance to registered commodity pool operators (CPOs) and commodity trading advisors (CTAs) regarding their disclosure of conflicts of interest arising from the collection of incentive fees. The NFA guidance is based upon guidance that NFA received from the Commodity Futures Trading Commission's Division of Clearing and Intermediary Oversight (DCIO), which oversees NFA in its review of CPO and CTA Disclosure Documents.

In its letter, DCIO noted that typical incentive fee arrangements, in which a CPO or CTA receives a fee or other compensation based upon its trading performance, could be viewed as creating a conflict of interest between the CPO or CTA and its pool investors or clients by encouraging the CPO or CTA to take excessive risks and/or maximize short-term performance in order to earn outsized incentive fees. Accordingly, the DCIO letter prescribes that every CPO and CTA that charges an incentive fee of this type must include discussion in its Disclosure Document that such fees may encourage the CPO/CTA to take excessive risk and may place the interests of the CPO/CTA in conflict with those of its clients or investors. In its Notice to Members, NFA urges its CPO and CTA members to review their Disclosure Documents and include any additional disclosures prior to submitting any subsequent filings of the document. Although NFA's Notice to Members does not expressly discuss the status of registered CPOs and CTAs that rely upon the relief provided under CFTC Rule 4.7, or of CPOs and CTAs that are exempt from registration with NFA, because such CPOs and CTAs are not required to prepare and file Disclosure Documents with NFA, they are not directly affected by the NFA's Notice to Members.

The NFA Notice to Members is available [here](#).

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