NFA Issues New Reporting Requirements for Member CPOs and CTAs That Trade Virtual Currency Products

New Virtual Currency Reporting Requirements

On December 14, 2017, the National Futures Association ("NFA") issued a Notice to Members (the "Notice") requiring each registered commodity pool operator ("CPO") and commodity trading advisor ("CTA") to notify NFA immediately if it executes a transaction involving any virtual currency or virtual currency derivative on behalf of a commodity pool or managed account.[1] Until further notice, this obligation will apply on a continuous basis—any CPO or CTA that does not currently trade virtual currencies or related derivatives must notify NFA if it begins trading these products.

A CPO or CTA that executes such a transaction must notify NFA by amending the firm-level section of its annual questionnaire, which now includes the following new questions:

CPO Questions

- Does your firm operate a pool that has executed a transaction involving a virtual currency (*e.g.*, bitcoin)?
- Does your firm operate a pool that has executed a transaction involving a virtual currency derivative (*e.g.*, a bitcoin future, option or swap)?

CTA Questions

- Does your firm offer a trading program for managed account clients (other than a pool you reported under the CPO questions) that has engaged in any transaction involving a virtual currency (*e.g.*, bitcoin)?
- Does your firm manage an account (other than a pool you reported under the CPO questions) that has executed a transaction involving a virtual currency derivative (*e.g.*, a bitcoin future, option or swap)?

[1] Notice I-17-28 (Dec. 14, 2017), available here.

Copyright © 2018 Fried, Frank, Harris, Shriver & Jacobson LLP
A Delaware Limited Liability Partnership

Number of Pools or Managed Accounts

In addition, beginning with ***the first quarter of 2018***, CPOs and CTAs that have executed transactions involving virtual currencies or related derivatives will be required to report the number of their pools or managed accounts that executed one or more transactions involving a virtual currency as well as the number of their pools or managed accounts that executed one or more transactions involving a virtual currency derivative during each calendar quarter. This information must be submitted to NFA through the firm's questionnaire no later than 15 days after the end of a quarter. NFA stated it will issue a separate notice reminding members of this obligation.

Pool Financial Statements (for CPOs)

In a separate Notice to Members on January 18, 2018,[2] NFA notified CPOs specifically that it has added two additional yes/no questions regarding virtual currency activities to the annual pool financial statement cover page, which can be accessed through EasyFile (Annual Reports). These changes are effective for pool financial statements as of October 31, 2017 or later (*i.e.*, they are applicable to financial statements filed for pools whose fiscal year end was the end of 2017).

Conclusion:

CPOs and CTAs should review their trading practices with relevant personnel to evaluate whether there have been any trades in virtual currency or virtual currency derivatives as contemplated by the NFA reporting requirements and to ensure that they are aware of any such intended trading activity. Notably, the reporting requirements are not limited to virtual currency derivatives trades, but encompass trading of virtual currency itself and apply regardless of the status of a pool or a managed account client as an eligible contract participant.

* * *

Authors:

William J. Breslin Scott I. Golden

Darren A. Littlejohn Victoria T. Mazgalev

Robert M. McLaughlin Matthew S. Smith

David S. Mitchell

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this memorandum, please call your regular Fried Frank contact or an attorney listed below:

---

[2] Notice I-18-03 (Jan. 18, 2018), available here. These notices coincide with the publication by the Commodity Futures Trading Commission in the Federal Register of a proposed interpretation and request for comment regarding the term "actual delivery" in the context of retail commodity transactions in virtual currency. *See* Retail Commodity Transactions Involving Virtual Currency, 82 Fed. Reg. 60335 (Dec. 20, 2017) (the "Proposed Interpretation"). Comments on the Proposed Interpretation must be received on or before March 20, 2018.

Contacts:

London		
Gregg Beechey	+44.20.7972.9172	gregg.beechey@friedfrank.com
Kate Downey	+44.20.7972.6221	kate.downey@friedfrank.com
Mark Mifsud	+44.20.7972.9155	mark.mifsud@friedfrank.com
David W. Selden	+ 44.20.7972.6201	david.selden@friedfrank.com
New York		
Jonathan S. Adler	+1.212.859.8662	jonathan.adler@friedfrank.com
Lawrence N. Barshay	+1.212.859.8551	lawrence.barshay@friedfrank.com
Jeremy R. Berry	+1.212.859.8796	jeremy.berry@friedfrank.com
Gerald H. Brown, Jr.	+1.212.859.8825	gerald.brown@friedfrank.com
Jessica Forbes	+1.212.859.8558	jessica.forbes@friedfrank.com
Darren A. Littlejohn	+1.212.859.8933	darren.littlejohn@friedfrank.com
Robert M. McLaughlin	+1.212.859.8963	robert.mclaughlin@friedfrank.com
David S. Mitchell	+1.212.859.8292	david.mitchell@friedfrank.com
Kenneth I. Rosh	+1.212.859.8535	kenneth.rosh@friedfrank.com
Lisa M. Schneider	+1.212.859.8784	lisa.schneider@friedfrank.com
Washington, D.C.		
Richard I. Ansbacher	+1.202.639.7065	richard.ansbacher@friedfrank.com
William J. Breslin	+1.202.639.7051	william.breslin@friedfrank.com
Walid Khuri	+1.202.639.7013	walid.khuri@friedfrank.com
Bradford R. Lucas	+1.202.639.7483	brad.lucas@friedfrank.com
Andrew P. Varney	+1.202.639.7032	andrew.varney@friedfrank.com
Rebecca N. Zelenka	+1.202.639.7260	rebecca.zelenka@friedfrank.com