

# EXCHANGE | ANALYTICS

Regulatory Compliance Solutions

Stay Informed | Stay Compliant

## Client Bulletin:

# NFA Interpretive Notice 9083: NFA Member Firm Enhanced Supervision & Training Requirements

May 2025



# Overview

The National Futures Association (NFA) recently issued [Interpretive Notice 9083](#) (Notice), and it became effective in May 2025.

The Notice outlines new supervisory obligations for all Member firms that employ Associated Persons (APs). This includes extensive new training obligations for all APs.

These changes aim to enhance the supervision of APs in various commodity interest activities, including digital asset commodities.



# Who is Impacted?

**The NFA's new supervisory guidance and obligations apply to ALL Member firms that employ APs:**

- Futures Commission Merchants (FCM)
- Commodity Trading Advisors (CTA)
- Commodity Pool Operators (CPO)
- Introducing Broker (IB)
- Swap Dealer (SD)
- Forex Dealer Members (FDM)





# What is Changing?

The NFA has long imposed supervisory obligations on Member firms – covering their employees' and agents' activities, particularly APs. The obligation to “diligently supervise” via a written supervisory program has been the cornerstone of Members' supervisory obligations.

The Notice states that, even though Members will continue to have flexibility in how they implement and execute supervisory programs, it is necessary to provide specific guidance and impose “minimum standards,” including enhanced training obligations.

**In particular, Member firms will now have to provide training to all APs and supervisors at least annually.**

This represents a significant increase in AP training requirements compared to the NFA's ethics training requirement, which is once every 3 years.



# NFA's Overriding Principles for Supervisory Programs

EXCHANGE | ANALYTICS

**The Notice states that Members have ongoing responsibilities as part of designing, implementing and executing their respective supervisory program:**

- ensure they are appropriately supervising each AP
- ensure the program's measures and practices are routinely assessed and appropriately tailored to mitigate the firm's risks
- ensure that APs' commodity-related activities comply with applicable NFA, CFTC and internal requirements
- ensure program requirements are adhered to regardless whether the AP works from a main office, branch or non-firm location
- consider whether there is a need to modify how it supervises an AP's activity whenever the firm identifies a concerning issue



# Supervisory Minimum Standards

**In addition to affirming its overriding principles for Members' supervisory programs, the Notice identifies the following minimum standards that firms must now adhere to. The minimum standards cover these areas:**

1. written supervisory program
2. training
3. qualified AP supervisory personnel
4. AP qualification due diligence
5. pre-trade communications with customers and counterparties, and related internal communications
6. order handling and trading activities



# Minimum Standard #1 Written Supervisory Programs

**Members must adopt and implement written policies and procedures (P&P) to ensure compliance with NFA, CFTC and internal requirements for commodity-related activities. In particular, for each AP activity, the firm's P&P must:**

- identify specific supervisory procedures the firm will use to detect potential non-compliance
- explain how the firm will escalate and resolve instances of non-compliance
- specify the frequency of tasks in supervisory procedures
- members may use third-parties to assist in supervision but remain responsible for compliance
- detail the usage of third-parties in written supervisory policies to mitigate outsourcing risks
- maintain records to demonstrate implementation and assessment of supervisory measures





## Minimum Standard #2 Training

EXCHANGE | ANALYTICS

**At a minimum, Member firms must provide training to APs on applicable NFA, CFTC and internal requirements:**

1. before permitting the AP to interact with customers or counterparties
  - the timing of this requirement is significant because many firms have used an AP's first six months to complete required training, such as ethics, cybersecurity, etc.
2. “at least annually” thereafter
  - this is an even bigger change than #1 when considered relative to the expectations for ethics training, which must be taken at least every 3 years
  - the “at least annually” requirement places it on par with NFA’s other annual training obligations, such as cybersecurity and AML
3. on a supplemental basis, and as soon as practicable, when there are material changes to requirements
4. on a further supplemental basis if a Member firm becomes aware of behavior that indicates an AP is not following requirements
5. when it hires an AP from another firm(s) that was a Disciplined Firm as defined in NFA [Interpretive Notice 9021](#)



# Minimum Standard #2 (cont.)

## Exchange Analytics' Solutions

EXCHANGE | ANALYTICS

**Exchange Analytics already offers an array of courses that cover requirements for the NFA, CFTC and Exchanges.**

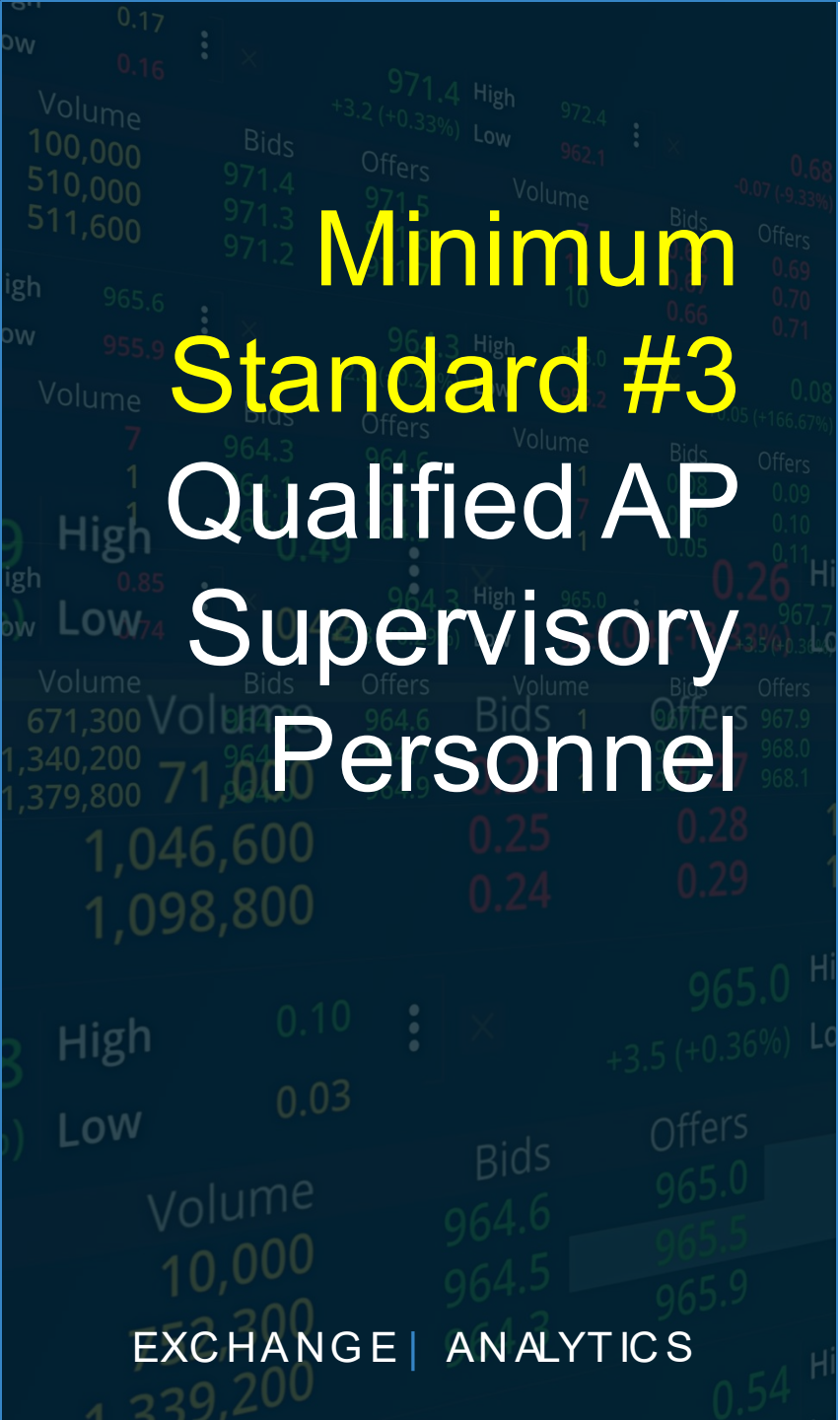
**Our current Futures Ethics, Swaps Ethics, and Introduction to Swap Dealer Requirements courses have always provided extensive coverage of NFA, CFTC and Exchange requirements – so continuing to use them to meet your annual requirements is as easy as placing another order with us.**

- Here are some additional courses that we already offer, which provide extensive coverage of NFA, CFTC and Exchange requirements:
  - Derivatives Market Conduct – comprehensive coverage of trade practice issues like wash trading, spoofing, trading ahead, banging the close, etc.
  - Noncompetitive Trading – comprehensive coverage of noncompetitive trading topics such as block trades, cross-trades, pre-arranged trading restrictions, exchanges for related positions (EFRPs)

**We also provide you with an array of options for easily incorporating your internal requirements in our training courses:**

1. Embedding links to your P&P in our course materials – easiest option to implement, and also keeps your content secure behind your network firewall (Exchange Analytics never has access)!
2. Appending P&P documents to our course materials – also easy to implement and provides greater certainty that your users actually review the materials before completing the course and obtaining the course completion certificate.
3. Incorporating your requirements into the actual pages and text of our courses so individual topics are discussed comprehensively at once across NFA, CFTC and internal requirements.

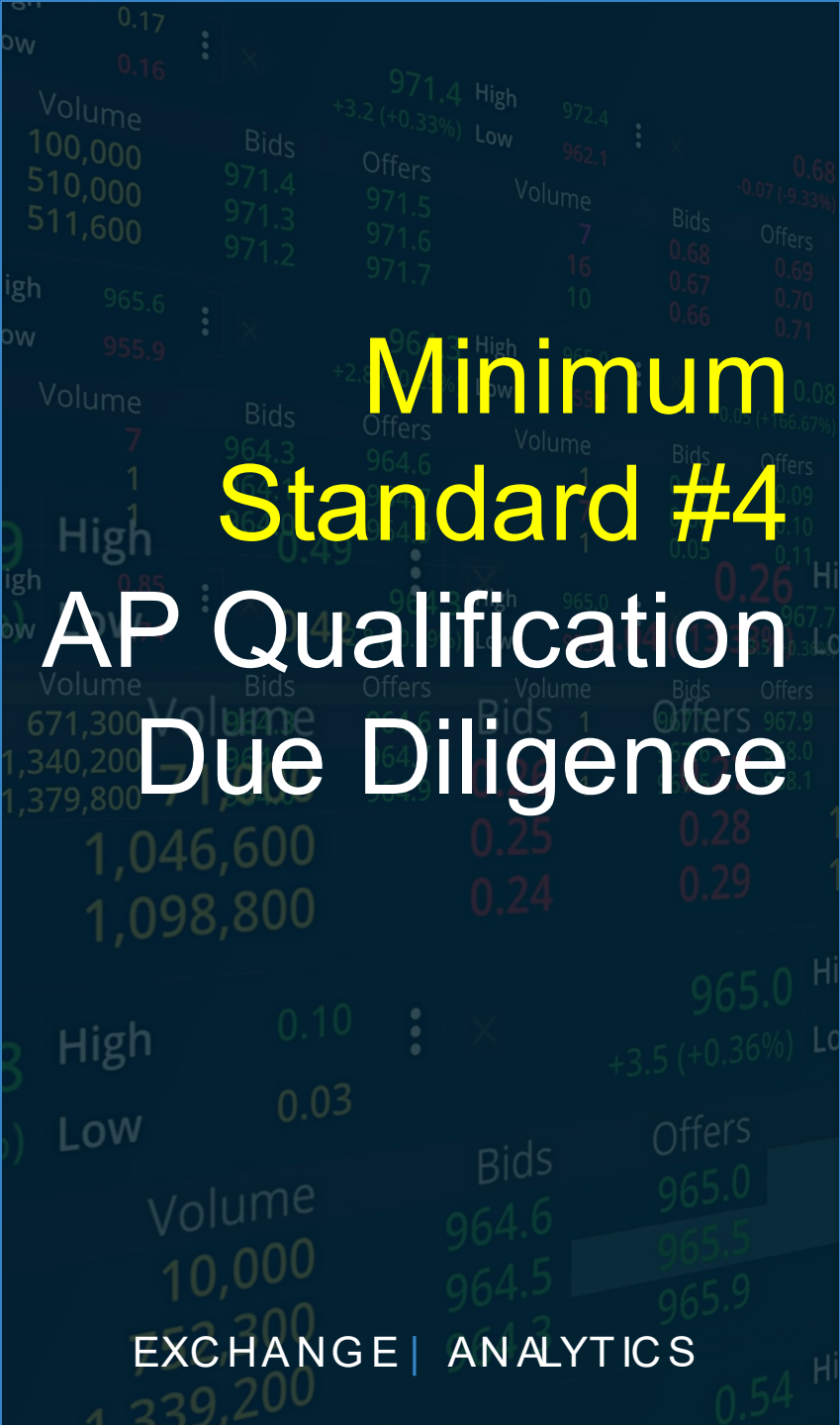
**Finally, we are also available to assist with your P&P – just ask!**



# Minimum Standard #3 Qualified AP Supervisory Personnel

**Members must ensure that its supervisory personnel are appropriately qualified to carry out their AP supervisory functions.**

- personnel in various firm operational areas (e.g., compliance, risk management, operations, sales) may carry out some or all of the identified AP supervisory functions, or assist in doing so
- the NFA acknowledges that the mere fact that others may take on some aspect of AP supervisory functions does not, in and of itself, make that person an AP
- nevertheless, the firm must ensure those individuals are properly qualified to take on those tasks
- the firm's P&P should identify the areas of the firm that are responsible for each AP supervisory function and identify by title and position the person(s) ultimately responsible for performing each function



# Minimum Standard #4 AP Qualification Due Diligence

Before allowing an individual to engage in AP activities, a Member must conduct due diligence to ensure the individual is qualified and eligible, considering factors like experience and disciplinary history. To the extent possible, due diligence procedures should include:

1. **Background check:** conduct a background check or similar screening process that complies with local laws and regulations, including record-keeping requirements for personal information
2. **Educational and employment:** verify the prospective AP's educational and employment information according to the Member's hiring policy
3. **Disciplinary matters inquiry:** investigate any prior or pending disciplinary matters involving derivatives or other regulators, and review relevant information if the AP was previously registered
4. **CFTC Form 8-R review:** for APs required to complete CFTC Form 8-R, ensure the form is complete, obtain documentation for any "yes" answers to disciplinary questions, and review for potential disqualifying conduct
5. **Statutory disqualification screening:** screen prospective APs of SDs for statutory disqualifications
6. **Swaps proficiency requirements:** for SD Members, independently confirm that an AP's representation that the AP completed the NFA's swaps proficiency requirements at a prior employer
7. **AP Updates:** require APs to notify the Member of any new disciplinary, criminal or other matter requiring disclosure





# Minimum Standard #5 Pre-Trade Communications with Clients and Counterparties

EXCHANGE | ANALYTICS

Firms' supervisory P&P must detail how they comply with the recordkeeping requirements set forth in NFA Compliance Rules [2-10\(a\)](#) (FCMs, IBs, FDMs, CPOs & CTAs) and [2-49](#) (SDs).

These Rules relate to oral and written communications that lead to the execution of a commodity interest or related cash forward transaction.

Members must review such communications to identify instances of non-compliance with NFA, CFTC or internal requirements.

# Minimum Standard #5 (cont) Pre-Trade Communications with Clients and Counterparties

## Capturing & Retaining Required Communications

- Members' P&P must require APs to conduct oral "Required Communications" (i.e., those subject to NFA and CFTC recordkeeping requirements) solely using approved equipment and applications that are capable of retaining the communications
- Members' P&P must require the same for written required communications
- If a Member permits an AP to use a personal device to engage in required communications, the Member must ensure it is able to capture and retain those communications – screen shots will not suffice
- Members should prohibit use of unapproved communication methods other than in emergency situations, and should consider having APs complete annual attestations regarding their compliance
- Members must ensure that approved communication methods and systems are operating properly and that they can identify system outages

# Minimum Standard #5 (cont)

## Pre-Trade Communications with Clients and Counterparties

### Review of Required Communications

- **Supervisory measures:** Members must have measures to surveil APs' Required Communications to identify potential violations of NFA, CFTC and internal requirements
- **Review methodology:** Supervisory P&P should outline a risk-based methodology for periodic review of APs' communications, considering factors like trading volume, communication methods, and specific risks (e.g., those associated with a particular trading desk or markets)
- **Multi-language surveillance:** Members must adopt a risk-based methodology for surveillance in multiple languages, using fluent supervisors or translation technology
- **Responsibility and documentation:** Policies should identify responsible areas of operation at the firm for reviewing communications and require documentation of review details and results
- **Review tools:** Members may use manual reviews or automated tools (e.g., e-Discovery) to identify non-compliant communications
- **Completeness and compliance:** Members should ensure communications are complete and comply with NFA, CFTC and internal requirements, considering trade reconstruction, if necessary
- **Manipulative behavior:** If potential manipulative behavior is identified, Members should review associated trading activity, consider reconstructing it, and possibly expand testing scope



# Minimum Standard #5 (cont) Pre-Trade Communications with Clients and Counterparties

**At a minimum, Required Communications should be reviewed for activity that:**

- operates as a fraud or deceit, is not fair or balanced, or is otherwise violative of [NFA Compliance Rule 2-29](#), as applicable
- indicates potential manipulative behavior or market abuse (e.g., spoofing, front-running, flying prices, wash trades or cross-product manipulation)
- discloses a customer or counterparty's identity or information without consent or fail to disclose that a Member or its affiliate is acting as counterparty
- displays instances of non-compliance with applicable disclosure requirements or a Member's internal P&P
- discusses unreported customer or counterparty complaints

# Minimum Standard #5 (cont)

## Pre-Trade Communications with Clients and Counterparties

### Further requirements:

- **Document review and investigation:** Members must document their review of Required Communications, investigations of potential violations and resolutions
- **Investigation parameters:** P&P must outline how flagged communications are investigated, escalated and resolved
- **Prompt production:** Members must promptly produce Required Communications and review results upon request during inquiries or investigations
- **Off-Channel Communication Methods:** Review may indicate APs using unapproved methods if communications are missing or there's a decrease in approved application usage
- **Escalation process:** P&P should include an escalation process for material use of Off-Channel Communication Methods or other alleged misconduct to senior management
- **Periodic review:** Members should periodically review the effectiveness of supervisory measures and assess automated tools to ensure they identify potential violations



# Minimum Standard #6 Order Handling and Trading Activities

**Members must have supervisory measures for reviewing APs' order handling and trading activities. The measures must be reasonably designed to identify potential trading misconduct and market abuses.**

**This includes ensuring the measures are:**

- subject to a manual or automated review
- properly tailored to the firm's risks
- subject to a methodology (e.g., frequency and scope) for reviewing order handling and trading activities
- documented
- subject to escalation for an AP's material misconduct
- subject to notification to compliance or other appropriate supervisory personnel of potential violations, which are then appropriately resolved



# Minimum Standard #6 (cont)

## Order Handling and Trading Activities

To identify trading anomalies and market abuses, the supervisory framework “may” include measures concerning:

- **Error and suspense accounts:** review accounts, daily profit and loss reports and mark-to-market positions to identify problematic behavior
- **Post-trade activities:** monitor activities like bunched order allocations, position transfers and suspense accounts to detect problematic activity
- **Trade discrepancies:** review trade data for evidence of market abuse, such as frontrunning, spoofing, off-market trades, cross-product manipulation or excessive mark-ups/mark-downs
- **Risk limits:** monitor firm and trading desk risk limits for potential violations
- **Complaints:** Review counterparty and customer complaints for misconduct
- **Discretionary accounts:** review APs’ discretionary accounts for red flags indicating improper or abusive trading
- **Commission to equity ratios:** review these calculations to identify potential excessive trading or churning
- **Customer trading results:** compare trading results among an AP’s customers to identify red flags, such as improper allocation schemes
- **Proprietary accounts:** compare trading results of APs’ or firm proprietary accounts with customer accounts to identify potential red flags
- **Significant losses and charges:** review accounts with significant losses, commission charges, or high trade volumes to determine if an AP’s strategy is not in the customers’ best interests

# EXCHANGE | ANALYTICS

Regulatory Compliance Solutions | Stay Informed | Stay Compliant

# XA TRAINING

Joe Adamczyk

[jadamczyk@xanalytics.com](mailto:jadamczyk@xanalytics.com)

[ExchangeAnalytics.com](https://ExchangeAnalytics.com)

847.266.7602