

**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE**

**FILED**  
  
JUN 29 2021  
  
NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of:

THE NORTHERN TRUST COMPANY  
(NFA ID #197429),

Respondent.

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NFA Case No. 21-BCC-009

**COMPLAINT**

Having reviewed the investigative report submitted by the OTC Derivatives Department of National Futures Association (NFA), and having found reason to believe that NFA Requirements are being, have been or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee (Committee) issues this Complaint against The Northern Trust Company (Northern Trust).

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, Northern Trust was a provisionally registered swap dealer (SD) Member of NFA. As such, Northern Trust was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

**BACKGROUND**

2. Northern Trust is located in Chicago, Illinois. The firm has been provisionally registered with the Commodity Futures Trading Commission (CFTC) as an SD since April 2013 and approved as an NFA Member since July 2013.

3. The firm's swap dealing business is primarily comprised of two end-user groups: custodial financial institutions that manage their exposure to fluctuating currency risk by entering into foreign exchange (FX) swaps; and commercial institutions that obtain loans from Northern Trust and use interest rate swaps to manage their interest rate exposure.
4. In September 2017, NFA commenced an examination of Northern Trust. At the conclusion of the exam in April 2018, NFA issued a written report detailing the exam findings that involved deficiencies covering several areas of Northern Trust's SD operations.
5. Following the issuance of the 2017 exam findings, NFA held monthly meetings with Northern Trust personnel, including with the firm's now-former CCO, to discuss the firm's progress in meeting its internal deadlines for remediating NFA's findings. From April 2018 through December 2018, Northern Trust provided progress updates to NFA concerning the status of its remediation efforts, though NFA did not conduct an examination during this period.
6. However, when NFA commenced an examination of Northern Trust in May 2019 to verify the firm's remediation efforts and to review other areas of its operations, NFA found that Northern Trust had not yet fully remediated certain findings from the 2017 exam.

#### **APPLICABLE RULES**

7. NFA Compliance Rule 2-49(a) provides, in pertinent part, that any SD Member that violates CFTC Regulation 3.3 or any requirement under Part 23 of the CFTC's Regulations shall be deemed to have violated an NFA Requirement.

8. CFTC Regulation 3.3 requires an SD to designate an individual to serve as the firm's CCO whose duties include, in pertinent part, taking reasonable steps to ensure the SD's compliance with the Act and Commission Regulations and taking reasonable steps to ensure the SD establishes written procedures reasonably designed for the handling, management response, remediation, retesting and resolution of non-compliance issues identified by the CCO.
9. CFTC Regulation 23.402 requires an SD to have written policies and procedures reasonably designed to ensure compliance with the requirements of Subpart H of Part 23 of the Regulations (*i.e.*, CFTC Regulations 23.400 through 23.451) and CFTC Regulation 23.402(g) requires an SD to create and retain a record of its compliance with the requirements of this subpart (*i.e.*, Subpart H).
10. CFTC Regulation 23.431(a) requires an SD, at a reasonably sufficient time prior to entering into a swap, to disclose to any counterparty to the swap certain material information concerning the swap in a manner reasonably designed to allow the counterparty to assess the material risks of the swap; the material characteristics of the swap; and the material incentives and conflicts of interest the SD may have in connection with a swap, which shall include with respect to disclosure of the price of the swap, the price of the swap and the mid-market mark of the swap, and any compensation or other incentive from any source other than the counterparty that the SD may receive in connection with the swap.
11. CFTC Regulation 23.451 provides, in pertinent part, that as a means to reasonably prevent fraud, an SD shall not offer to enter into or enter into a trading strategy involving a swap with a governmental special entity (GSE), or an

official of a GSE, within two years after any contribution to an official of such GSE was made by the SD or a covered associate. CFTC Regulation 23.451 defines a covered associate as: (a) any general partner, managing member, or executive officer (or other person with a similar status or function); (b) any employee who solicits a GSE for the SD and any person who supervises, directly or indirectly, such an employee; and (c) any political action committee controlled by an SD or by any person described above in sub-section (a) or (b), above. The Regulation further defines "solicit" as a direct or indirect communication by any person with a GSE for the purpose of obtaining or retaining an engagement related to a swap.

12. CFTC Regulation 23.504 provides, in pertinent part, that an SD must establish written policies and procedures reasonably designed to ensure that the SD executes written swap trading relationship documentation (STRD) with its counterparty prior to or contemporaneously with entering into a swap transaction with any counterparty; and further requires that the STRD include all terms governing the trading relationship between the SD and counterparty, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution.
13. CFTC Regulation 23.602 requires an SD to establish and maintain a system to diligently supervise all activities relating to its business and further requires that the supervisory system be reasonably designed to achieve compliance with the requirements of the Commodity Exchange Act and Commission Regulations.

## COUNT I

### **VIOLATIONS OF NFA COMPLIANCE RULE 2-49(a): FAILURE TO COMPLY WITH CFTC REGULATIONS 3.3, 23.402, 23.431 AND 23.504.**

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14. The allegations contained in paragraphs 1 through 12 are realleged in paragraph 14.
15. Under CFTC Regulation 23.504, Northern Trust is required to establish, maintain and follow written policies and procedures reasonably designed to ensure the firm executes written STRD with its counterparties prior to or contemporaneously with entering into a swap transaction.
16. NFA's 2017 exam revealed that during a seven-month period in 2017, Northern Trust entered into swaps transactions with 97 counterparties without executing the required STRD. Further, despite the existence of monitoring reports that identified the lack of required STRD for these counterparties, Northern Trust failed to recognize and remediate the issue, which resulted in continued trading with approximately 19 of these 97 counterparties for at least 50 days before executing the required documentation.
17. NFA's 2019 exam identified at least 45 transactions with 18 counterparties during a four-month period in 2019 where Northern Trust entered into a swap with a counterparty without executing the required STRD.
18. Based on the allegations in paragraphs 16-17, Northern Trust failed to establish adequate written procedures reasonably designed to ensure that the firm executes written STRD with its counterparties prior to or contemporaneously with entering into a swap transaction.

19. Under CFTC Regulation 23.431(a), Northern Trust is required to disclose to a counterparty the material risks, incentives and conflicts of interest (collectively referred to as "material disclosures") of a swap transaction prior to entering into the swap and is also required to provide a pre-trade mid-market mark (PTMM) to a counterparty prior to entering into a swap and to provide a counterparty with a daily mark for previously executed swaps transactions.
20. NFA's 2017 and 2019 exams revealed that Northern Trust either failed to provide certain material information or failed to create and maintain a record that it had provided certain material information to all five of the FX counterparties tested during the 2017 exam and to all 16 of the counterparties tested in the 2019 exam.
21. NFA's 2017 exam also found that due to a systems setting oversight, Northern Trust failed to provide PTMM to all five of the tested counterparties trading interest rate swaps and three out of the five tested counterparties trading FX swaps and, due to an undetected programming deficiency impacting daily marks for certain trades, the firm failed to provide 12 counterparties with the daily marks for approximately 400 trades during a one-year period.
22. NFA's 2019 exam found that Northern Trust failed to provide PTMM for 127 trades; failed to provide daily marks to 150 counterparties during an approximate five-month period in 2019, due to a system coding issue; and failed to provide evidence that certain counterparties had received sufficient instructions as to how they could access daily marks via Northern Trust's online portal.

23. Based on the allegations in paragraphs 20-22, Northern Trust failed to provide (or could not produce evidence that it had provided) swap counterparties with certain material disclosures prior to entering into a swap transaction and failed to provide required PTMM and daily marks to some counterparties.
24. Under CFTC Regulation 23.402, Northern Trust is required to establish policies and procedures reasonably designed to ensure that it is in compliance with the CFTC's business conduct standards, including those under CFTC Regulation 23.451, which, with very limited exceptions, prohibit an SD from offering to enter into or from entering into a swap or a trading strategy involving a swap with a GSE or an official of a GSE, within two years after the SD or a covered associate (e.g., a general partner, an executive officer, an employee who solicits a GSE for the SD and a political action committee (PAC) controlled by the SD) made any political contribution to an official of the GSE.
25. Northern Trust's procedures specified that the firm's PACs that were either controlled by the firm or designated officers of the firm were covered associates. The firm's procedures also indicated that any employee who solicited a GSE should be identified as a covered associate. The procedures also required the legal and compliance departments to identify individuals and entities that met the firm's definition of a covered associate, add them to a "Covered Associate/ Restricted Person List" and implement additional policies and procedures intended to restrict and monitor any political contributions and political fundraising activities of these covered associates.

26. NFA's 2017 exam revealed, however, that the firm did not notify its two PACs of their status as covered associates, did not add them to the "Covered Associate/Restricted Person List" and did not monitor for (and, if necessary, restrict) any political contributions or political fundraising activities of the covered associates.
27. Further, even though the firm's procedures also indicated that any employee who solicited GSEs should be identified as a covered associate, and Northern Trust knew that at least some of the firm's sales and relationship managers (RMs) at times engaged in conversations with GSEs, Northern Trust failed to conduct an analysis to determine whether those conversations constituted solicitations, such that those RMs should have been designated as covered associates.
28. NFA's 2019 exam revealed that although certain of Northern Trust's RMs interacted with GSEs and were compensated for generating referral business to the SD, Northern Trust failed to assess whether these RMs were engaged in solicitation and therefore should have been designated as covered associates and subject to the firm's procedures for monitoring (and, if necessary, restricting) any political contributions and political fundraising activity.
29. Based on the allegations in paragraphs 26-28, Northern Trust's policies and procedures related to CFTC Regulation 23.402 were not sufficiently implemented to ensure that the firm complied with CFTC Regulation 23.451.
30. Under CFTC Regulation 3.3, Northern Trust is required to designate an individual to serve as CCO and, as such, to take reasonable steps to ensure the firm's compliance with the Act and CFTC regulations and to take reasonable steps to



ensure that the firm establishes written procedures reasonably designed for the handling, management response, remediation, retesting and resolution of non-compliance issues.

31. NFA's 2017 exam revealed that the only report used by the firm's CCO in 2017 to identify non-compliance issues focused solely on identifying counterparties that traded swaps without executing the required STRD, and did not address any other areas that the CCO should have been monitoring including, but not limited to, recordkeeping requirements, business conduct standards, trade confirmations and swap data repository (SDR) reporting requirements. Furthermore, this report did not identify all instances of non-compliance regarding STRD because it only flagged FX transactions with a settlement date of greater than T+5 and, therefore, the firm failed to review swap transactions that Northern Trust entered into that had a settlement date of less than T+5.
32. Further, while the CCO of Northern Trust at the time of the 2017 exam told various business units to escalate all non-compliance issues to his attention, he failed to provide any guidance as to what constituted a non-compliance issue or how to identify and escalate these issues. Moreover, for the very few non-compliance issues identified, the CCO failed to take reasonable steps to ensure Northern Trust remediated, tested and resolved those issues.
33. The 2019 exam found that Northern Trust still had not implemented sufficient written procedures reasonably designed to handle and remediate non-compliance issues. For example, while the compliance department expanded its scope of non-compliance issues beyond STRD to include non-compliance issues

related to SDR, PTMM, and recordkeeping, it did not adequately determine the full scope of these non-compliance issues or remediate them. In addition, while the firm identified certain other non-compliance issues, it did not document these issues and, as a consequence, did not sufficiently monitor, track, or validate these items to ensure remediation.

34. Further, the firm's non-compliance issue log contained duplicate issues and issues still open well past the firm's target remediation dates, with insufficient clarity to explain why the firm had failed to remediate them. Specifically, NFA found 114 issues including, but not limited to, trade reporting, recordkeeping and business conduct standards that were open past the firm's remediation dates. The longest standing un-remediated issue was 643 days old and, on average, issues remained un-remediated for 323 days.
35. Based on the allegations in paragraphs 31-34, during the time period tested in the 2017 and 2019 exams, Northern Trust's procedures were not reasonably designed for handling, remediating, retesting and resolving non-compliance issues.
36. By reason of the foregoing acts and omissions, Northern Trust is charged with violating NFA Compliance Rule 2-49(a).

## COUNT II

### **VIOLATIONS OF NFA COMPLIANCE RULE 2-49(a): FAILURE TO SUPERVISE BY FAILING TO COMPLY WITH CFTC REGULATION 23.602.**

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37. The allegations contained in paragraphs 1 through 13 and 15 through 35 are realleged in paragraph 37.

38. Under CFTC Regulation 23.602, Northern Trust is required to establish and maintain a system to diligently supervise all activities relating to its business that is reasonably designed to achieve compliance with the requirements of the Commodity Exchange Act and Commission Regulations.
39. As alleged above, NFA's 2017 exam findings spanned several areas of Northern Trust's operations and mainly resulted from the firm's failure to adopt and implement effective policies and procedures. The firm failed to fully remediate certain 2017 exam findings in a timely manner and, thereby, permitted similar deficiencies to continue, as evidenced by the 2019 exam findings. These findings illustrate that Northern Trust failed to establish and implement an adequate system to diligently supervise its swap dealer activities.
40. By reason of the foregoing acts and omissions, Northern Trust is charged with further violations NFA Compliance Rule 2-49(a).

### **PROCEDURAL REQUIREMENTS**

#### **ANSWER**

You must file a written Answer to the Complaint with NFA within thirty (30) days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association  
300 S. Riverside Plaza  
Suite 1800  
Chicago, Illinois 60606  
Attn: Legal Department - Docketing  
E-Mail: Docketing@nfa.futures.org

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

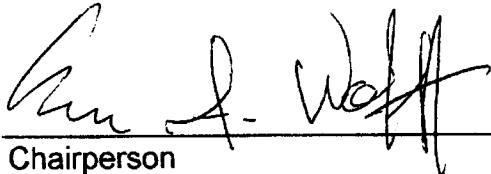
**POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY**

At the conclusion of the proceedings conducted in connection with this Complaint, the Committee may impose one or more of the following penalties:

- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$500,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

**NATIONAL FUTURES ASSOCIATION  
BUSINESS CONDUCT COMMITTEE**

Dated: 6/29/2021

By:   
Chairperson