

Common Exam Findings and How to Prepare for an NFA Exam: Futures

Member Regulatory Workshop

A decorative graphic on the right side of the slide features a series of overlapping, semi-transparent cubes. The cubes are arranged in a staggered, ascending pattern from the bottom left towards the top right. Each cube is composed of smaller, darker blue triangles, creating a complex, three-dimensional geometric effect.

Exam Process

Exam Process and Common Exam Findings: Futures

A decorative background pattern of overlapping, semi-transparent hexagons in various shades of blue, creating a 3D effect. The pattern is most prominent on the right side of the slide and extends towards the bottom.

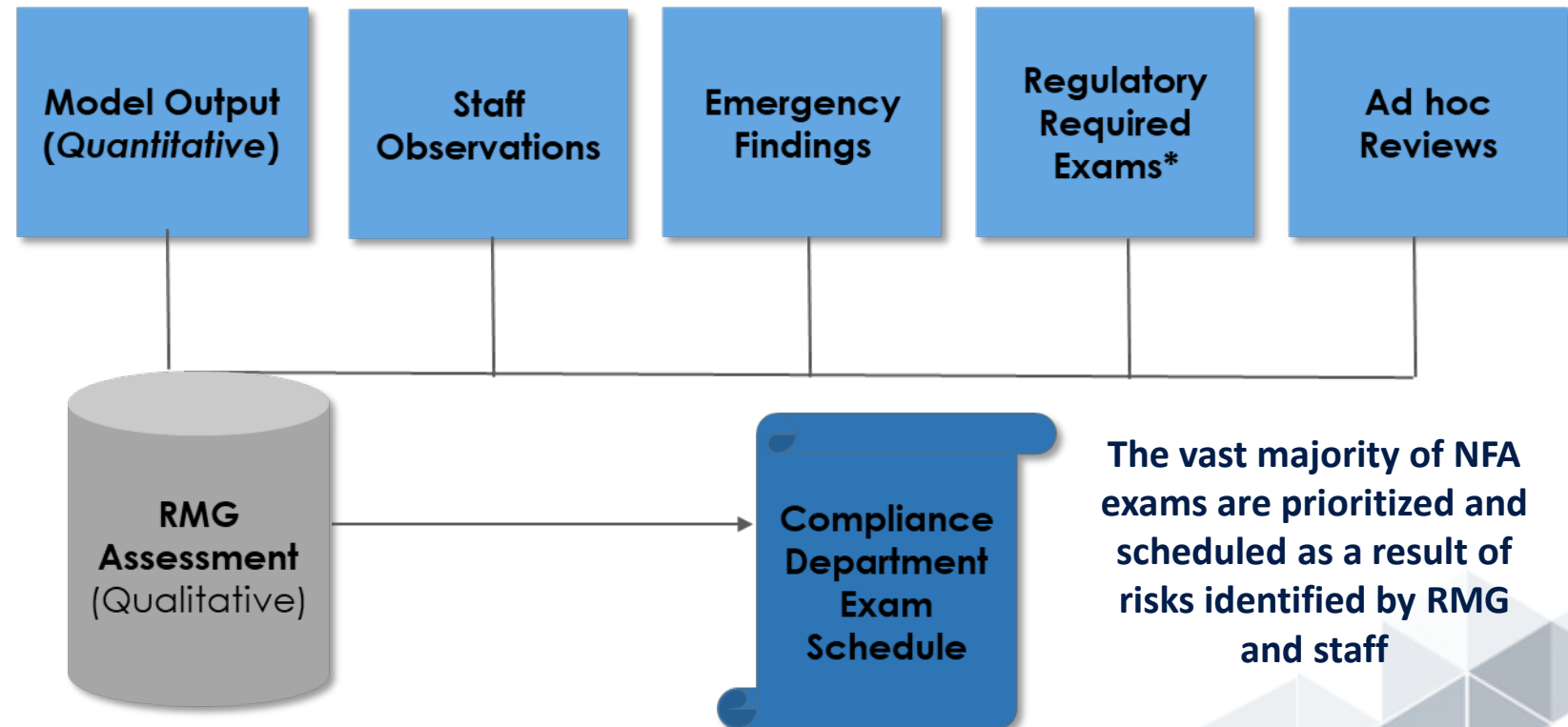


Risk-Based Examination Approach



1. Prioritize list of candidate firms
2. Schedule based on prioritized firms, available resources, and logistical constraints
3. Relay pertinent risk information to exam teams

Approach to scheduling is influenced by the following sources:



Pre-Exam Work



- Exam announced
 - Pre-exam questionnaire
 - Internal controls questionnaire
- Operations call
 - Document request list
- Regulatory filing system (RFS)
 - Secure file-sharing site
 - Tracking requests and due dates

Hybrid Exam Approach



- Initial exam meetings
 - Virtually via Teams
- On-site fieldwork
 - Interviewing key personnel
 - Observing internal control processes
 - Reviewing firm records
 - Observing supervisory processes



Remote Exams



- All exam meetings held virtually via Teams
- Fieldwork
 - Interviewing key personnel
 - Internal control walkthroughs
 - Reviewing firm records
 - Inspecting records demonstrating supervisory processes
- Use of screen sharing and email

End of Exam Process



- Exit interview
 - Summarize exam findings
 - Discuss status of corrective action
- Exam report
- Firm response
 - Circumstances that led to each finding
 - Corrective action implemented
 - Changes to internal controls

Common Exam Findings

Exam Process and Common Exam Findings: Futures

A decorative background pattern of overlapping, semi-transparent hexagons in various shades of blue, creating a 3D effect. The pattern is more dense on the right side of the slide and fades towards the left.

Procedures Commonly Reviewed

- Cybersecurity/ISSP
- Promotional material
- Broker communications
- Registration of APs
- Bylaw 1101
- Supervision of remote operations
- Customer complaints
- Third-party service providers
- Orders related to:
 - Trade communications
 - Order placement
 - Trade transfers



Developing an Effective Program

- Tailor supervisory procedures for your operations
- Update supervisory procedures and processes as necessary—in other words be prepared to pivot for changes
 - New systems or lines of business
 - New branches or employees
 - Remote/hybrid operations
 - Turnover
 - What you can actually accomplish

Written Supervisory Procedures

- Supervisory reviews
 - How frequently is the review conducted?
 - How is the review documented?
 - Is the firm following its procedures?
 - What is the escalation process?

Supervision - Recordkeeping

Maintain records to demonstrate supervision

- Logs
- Emails
- Spreadsheets
- Correspondence relating to any inquiry



Third-Party Service Providers

- All registration categories must have written procedures
- Effective for all third parties onboarded since September 2021
- Ongoing due diligence
- Recordkeeping includes documentation to evidence the process



Registration

- Associated persons: individuals who supervise APs must also be registered as APs
- Branch office: any location, other than the main business address that employs one or more persons engaged in activities requiring registration as an AP

Promotional Material

- Balanced discussion between possibility of profit and risk of loss
- Misstatements or omissions of fact should not be included on promotional material
- Disclaimers regarding past performance

Promotional Material

- Requirements related to hypothetical performance
 - Clearly identify hypothetical
 - Disclose of material assumptions
 - Include hypothetical disclaimers
 - Calculate performance net of fees
 - Include support for performance calculations

CPO and CTA Financial Ratios

- 12-month time period for revenues and expenses
- Ratios based on firm itself
- Accrual accounting
- Ratio support

Notice Filing Requirements of CPOs

Member Filings

Rule 2-50 notice filings **must be filed by 5:00 p.m. following business day** when:

- Pool cannot meet its margin call(s)
- Pool that is unable to satisfy redemption requests in accordance with its subscription agreements
- Pool has halted redemptions (not related to existing gates or lockups)
- CPO receives notice from a swap counterparty that a pool it operates is in default

Exemptions

Maintain support to demonstrate compliance with the criteria for any pool exemption

- Qualifications of investors
- Trading limitations

Pool Financial Reporting

- Account statement requirements
 - Pool in its entirety
 - Series/class information
- Incomplete or missing oath/affirmation
 - Signature of someone duly authorized to bind the CPO
 - Signatory's name and capacity
 - CPO's name
 - Pool name
- Liabilities not properly accrued

Internal Controls

- Written procedures describing the firm's internal controls framework
- Effectively designed controls
 - Segregation of duties
 - Knowledgeable employees
 - Effective use of IT
 - Consistent application
 - Criteria for investigation

Non-U.S. CPOs and Pools

- Listing pools with NFA
 - Pools with U.S. customers
 - Pools with no U.S. customers – to list or not to list
- Requirements of listed pools
 - Umbrella-series pools
 - Account statements
- NFA Bylaw 1101
- Privacy law issues

Net Capital

- Current vs non-current assets
 - Secured receivables
 - Commissions received from FCMs
 - Aging receivables re-classified from a current asset to a non-current
 - Prepaid assets
- Liabilities not properly accrued
- Proper charges

Common Overdue Items

- Cybersecurity training
- ISSP annual review
- Ethics training
- Annual AML training
- Annual independent AML audit
- Annual branch office audits
- Financial statement filings
- Self-examination checklist

How to Avoid Common Deficiencies

Completing the Self-Examination Questionnaire annually will assist with:

- AML
- BCDR
- Ethics
- Privacy policy
- Third-party service providers

Digital Assets

Exam Process and Common Deficiencies



Current Member Requirements

Interpretive Notice 9073

Firms engaging in spot digital assets

- FCMs & IBs must provide written disclosures and CFTC/NFA Advisories
- CPOs/CTAs – disclosure required in Disclosure Document, offering memorandum and/or promotional material
- Must discuss unique features, price volatility, valuation, cyber security, opaque spot market, regulatory landscape, technology, transaction fees
- Required verbatim disclosure



NFA Compliance Rule 2-51

- Modeled after NFA's other anti-fraud rules
 - Compliance Rule 2-2
 - Compliance Rule 2-36
- Applies to all membership categories, including swap dealers
- Extends to digital assets that are commodities (currently Bitcoin and Ether)



Exam Observations

- Confirmations
- Valuation
- Third-party admin
- Cybersecurity
- Promotional material
- Registration
- Bylaw 1101
- Risk management and controls