

CFTC Staff Withdraws Advisory on Swap Execution Facility Registration Requirement

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On March 13, 2025, the Commodities Futures Trading Commission (“CFTC”) issued Letter 25-05, withdrawing controversial and much-criticized Staff Letter 21-19 (“SEF Registration Advisory”), which was issued September 29, 2021 by the CFTC’s Division of Market Oversight (“DMO”). The original staff letter reminded market participants of the swap execution facility (“SEF”) registration requirements under the Commodity Exchange Act (“CEA”) and the CFTC regulations.

The letter’s broad SEF registration requirements caused uncertainty, introducing a fact-specific approach to SEF registration and proposing far-reaching scenarios in which registration might be required beyond what market participants had understood since the enactment of CFTC’s SEF rules almost a decade prior, in 2013.

Furthermore, the CFTC was criticized for violating the Administrative Procedure Act (“APA”) because the SEF Registration Advisory essentially changed the law without the proper procedure outlined in the APA. Similar concepts to the SEF Registration Advisory were introduced in the 2018 CFTC proposed rulemaking on SEFs, which was subsequently withdrawn to comply with the APA.

Importantly, the SEF Registration Advisory was the basis for, and cited concurrent and, subsequent CFTC enforcement actions where market participants were found operating SEFs without proper registration. It is unclear to what extent these enforcement actions will remain as precedent in the absence of the SEF Registration Advisory.

In Letter 25-05, the CFTC’s DMO acknowledged that the SEF Registration Advisory caused confusion among market participants:

“DMO understands that the SEF Registration Advisory has created regulatory uncertainty regarding whether certain entities that operate in the swaps market are required to register as SEFs with respect to their particular functions within the swaps market, as well as the specific attributes of their business models. Therefore, DMO has determined to withdraw the SEF Registration Advisory in its entirety, effective immediately.”

Letter 25-05 alleviates the amassed regulatory uncertainty regarding the swaps market and reinforces the Trump Administration’s broader initiatives to descale financial regulation and prioritize business-oriented rollbacks of Biden-era mandates. As a result, the swaps market should be less nebulously regulated, with more predictable and efficient enforcement, aligning with the administration’s free-market principles.