Business As Usual for Digital Asset Derivatives – CFTC Advisories Withdrawn

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Last Friday, March 27, 2025, the US Commodity Futures Trading Commission (CFTC) formally withdrew two crypto-related staff advisories, Staff Advisory No. 18-14 (advisory with respect to virtual currency derivative product listings) and Staff Advisory No. 23-07 (enhanced risks with expansion of digital asset clearing). The rescinded advisories previously imposed enhanced regulatory expectations on digital asset derivatives, including guidance on the listing of virtual currency derivative products on exchanges, *i.e.,* designated contract markets ("DCMs") and swap execution facilities ("SEFs") and the risks associated with a more robust digital asset clearing by derivatives clearing organizations ("DCOs"). The withdrawals highlight several regulatory shifts:

- Under Acting CFTC Chairman Caroline Pham's "back to basics initiative," the CFTC is simplifying its regulatory and enforcement frameworks by eliminating unnecessary staff advisories and consolidating enforcement teams. The truncating approach to CFTC operations aligns with the federal initiatives to shrink regulators, including the introduction of the Department of Government Efficiencies ("DOGE") and the Securities and Exchange Commission's ("SEC") recent efforts to downsize its cryptocurrency enforcement unit and scale back investigations into digital asset companies.
- The withdrawals reflect the growing maturity of the digital asset industry and the CFTC's confidence that exchanges and clearinghouses have developed the necessary expertise and risk management frameworks to effectively oversee crypto derivatives. As a result, the agency no longer needs the specialized guidance initially introduced to address the challenges posed by the emerging digital asset market.
- The CFTC emphasizes that digital asset derivatives should be subject to the same regulatory standards as traditional derivatives. By rescinding both documents, the CFTC takes back language that previously implied heightened regulatory concern tied to the digital nature of certain assets, bringing parity to review and risk protocols attached to virtual currency derivatives, oil futures and other commodities alike.
- This withdrawal gives a preview of what CFTC's likely future regulatory regime for digital asset derivatives will be – i.e., treat digital asset derivatives like any other CFTC jurisdictional asset. However, if the CFTC were to receive exclusive spot jurisdiction over digital asset commodities under legislation proposed in Congress, the CFTC would have to establish an entirely new regulatory regime for digital assets because currently the CFTC does not have exclusive regulatory jurisdiction over any commodity traded in spot markets (except, to a certain extent, retail forex).