Clients&FriendsMemo

CFTC Opens the Door to Digital Asset Collateral: Regulatory Guidance, No-Action Relief, and Practical Implications

December 23, 2025

I. Executive Summary

On December 8, 2025, the staff of the U.S. Commodity Futures Trading Commission ("***CFTC***") launched a "digital assets pilot program" (the "***Digital Assets Pilot Program***") providing greater certainty to commodity derivatives market participants who wish to accept collateral in the form of certain digital assets, including Bitcoin (BTC), Ether (ETH), and existing payment stablecoins such as USDC.[1] This broad guidance includes CFTC Letter No. 25-39, providing guidance on the "use of tokenized assets as collateral in the trading of futures and swaps" (the "***December 8 Guidance***"),[2] and CFTC Letter No. 25-40, providing no-action letter ("***NAL***") relief (the "***December 8 NAL Relief***")[3] concerning the use of digital assets as collateral by futures commission merchants ("***FCMs***") and derivatives clearing organizations ("***DCOs***"). These actions stand to unlock billions of dollars' worth of eligible digital collateral.

Also on December 8, 2025, the staff of the CFTC issued Letter No. 25-41 withdrawing its previous NAL on FCMs' acceptance of their customers' digital assets (the "***December 8 NAL Withdrawal***").[4] On December 11, 2025, the CFTC withdrew its previous guidance on what

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1 CFTC Release No. 9146-25, *Acting Chairman Pham Announces Launch of Digital Assets Pilot Program for Tokenized Collateral in Derivatives Markets* (Dec. 8, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9146-25.

2 Letter No. 25-39, *Tokenized Collateral Guidance* (December 8, 2025); *available at*: https://www.cftc.gov/csl/25-39/download. Letter No. 25-39 issues new guidance on the use of tokenized real-world assets as collateral in futures and swaps markets.

3 Letter No. 25-40, *Staff No-Action Position Regarding Digital Assets Accepted as Margin Collateral* (December 8, 2025); *available at*: https://www.cftc.gov/csl/25-40/download. Letter No. 25-40 provides no-action relief permitting FCMs to (i) treat certain digital assets as margin collateral for undermargined-account and segregation calculations and (ii) deposit payment stablecoins as residual interest.

4 Letter No. 25-41, *Withdrawal of CFTC Staff Advisory 20-34 on Accepting Virtual Currencies from Customers into Segregation*, (December 8, 2025); *available at*: https://www.cftc.gov/csl/25-41/download Letter No. 25-41 withdraws prior CFTC Staff Advisory No. 20-34, removing outdated 2020 guidance that constrained FCMs' acceptance of customer virtual currency into segregation.

constitutes actual delivery of digital assets (the "***December 11 Guidance Withdrawal***").[5] These actions represent the latest culmination of several steps taken by the CFTC this year[6] to advance the pro-crypto agenda embraced by the Trump Administration, the Securities and Exchange Commission ("***SEC***"), and the CFTC's former Acting Chairman, Caroline D. Pham.

These actions were necessary in light of market participants' increasing interest in using non-security digital assets to post collateral and margin their positions with FCMs, DCOs and swap dealers ("***SDs***"), the recommendations of the July 30, 2025 report released by the President's Working Group on Digital Asset Markets established by Executive Order 14178 (the "***PWG Report***"),[7] and the CFTC's previous rules and guidance, which prohibited the posting of these digital assets as margin. Below, we discuss each of these regulatory actions in detail and also provide our analysis of likely practical implications of this relief for the markets.

II. Discussion of CFTC Guidance and Relief.

These regulatory actions represent the first formal CFTC pathway toward digital-asset margining in U.S. futures and swaps markets and mark a significant step forward in the legitimization of digital assets as a mainstream form of regulated collateral in the U.S. derivatives ecosystem. These actions will have wide-ranging implications for trading firms, lenders, custodians, clearing intermediaries, and financial institutions, as discussed below.

A. The December 8 Guidance.

The December 8 Guidance provides new guidance on the use of real-world assets ("***RWAs***") that are tokenized as collateral in futures and swaps markets. The guidance reminds market participants that "[t]he use of digital ledger technology to tokenize an asset need not change the fundamental characteristics of that asset"[8] and that market participants must "analyze tokenized assets on an individual basis" to assess whether these assets would be acceptable as collateral. The guidance specifically recommends that "market participants focus their tokenized collateral efforts on those

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[5] CFTC Release No. 9152-25, *Acting Chairman Pham Announces Withdrawal of Outdated Digital Assets Guidance* (Dec. 11, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9152-25. 90 FR 58149 withdraws CFTC interpretive guidance on "actual delivery" in retail digital asset transactions, effective December 10, 2025, concluding that the guidance is outdated and may conflict with the implementation of the President's Working Group recommendations.

[6] *See* footnote 15 below.

[7] Executive Order 14178, *Strengthening American Leadership in Digital Financial Technology*. Available at: https://www.presidency.ucsb.edu/documents/executive-order-14178-strengthening-american-leadership-digital-financial-technology. On July 30, 2025, the President's Working Group on Digital Asset Markets released a report (the "***PWG Report***") containing numerous recommendations for the CFTC with regard to digital assets, including a recommendation that the CFTC provide guidance for market participants concerning digital-asset collateral. https://www.whitehouse.gov/crypto/.

[8] The December 8 Guidance, at 2.

assets [that] are currently eligible to serve as regulatory margin"[9] under the Commodity Exchange Act ("***CEA***")[10] and CFTC Regulations thereunder ("***CFTC Regulations***").[11]

Key considerations in this analysis include: (1) whether the RWAs underlying the tokens are sufficiently liquid; (2) whether the tokenized RWAs meet "legal enforceability requirements" regarding the netting arrangements, the DCO's interest in collateral, and settlement finality; (3) whether tokenized collateral is compatible with segregation and custody requirements and arrangements; (4) the application of appropriate haircuts; and (5) consideration of operational risks related to digital assets overall, including information security and technology risks.

Most importantly, the December 8 Guidance reminds market participants that merely digitizing an asset does not and cannot "change the fundamental characteristics of that asset"[12] or enhance the RWAs it represents. This means that it is still imperative to determine whether the underlying RWAs would constitute eligible collateral even when "[t]he tokenization process allows for digital ownership, fractional ownership, and potentially faster transfers compared to traditional methods of asset transfer."[13]

B. The December 8 NAL Relief.

The December 8 NAL states that the CFTC's Market Participants Division will not recommend enforcement against FCMs for factoring digital-asset collateral into undermargining and segregation calculations or for depositing its own payment stablecoins into segregated customer accounts as residual interest. This relief applies only to FCMs that meet specified requirements, including filing a notice of intent with the CFTC, limiting accepted collateral to BTC, ETH, and existing payment stablecoins during an initial onboarding period, applying DCO- or risk-based haircuts, submitting weekly digital-asset balance reports, and promptly reporting significant operational or cybersecurity events.

C. December 8 NAL Withdrawal.

The prior advisory, Advisory 20-34 (Letter No. 25-41), constrained FCMs from accepting customer digital assets due to capital charges, residual-interest restrictions, and heightened risk-program

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[9] The December 8 Guidance, at 2, citing *Recommendations to Expand Use of Non-Cash Collateral Through the Use of Distributed Ledger Technology*, Report to the CFTC's Global Markets Advisory Committee ("***GMAC***") by the Digital Assets Markets Subcommittee (Nov. 21, 2024) (the "***GMAC Tokenized Collateral Report***").

[10] 7 U.S.C. § 1a *et seq.*

[11] 17 C.F.R. § 1 *et seq.*

[12] The December 8 Guidance, at 2.

[13] The December 8 Guidance, at 1.

obligations. Withdrawal of this outdated advisory signals the advent of a new post-GENIUS Act framework and reflects the maturation of digital assets markets since 2020.

D. December 11 Guidance Withdrawal.

On December 11, 2025, the CFTC withdrew its June 24, 2020 interpretive guidance addressing when "actual delivery" occurs in retail commodity transactions involving certain digital assets. Under the previous guidance, retail transactions in "virtual currencies" only qualified for the "actual delivery" exception to CEA § 2(c)(2)(D) if the customer obtained meaningful possession and control of the virtual currency within 28 days, while the offeror, counterparty, and their affiliates retained no continuing interest, control, or lien over the asset.

The CFTC determined that the previous guidance has become outdated in light of developments in digital asset spot and derivatives markets over the past five years and that it may conflict with the CFTC's ongoing work to implement the recommendations of the PWG Report.

III. Background.

The CFTC's Digital Assets Pilot Program is a logical outgrowth of the GMAC Tokenized Collateral Report and the enactment of the GENIUS Act[14] on July 18, 2025, which established a regulatory framework for payment stablecoins. Even though Congress is actively working on broader digital assets market infrastructure legislation, the President's Working Group on Digital Asset Markets released its report on July 30, 2025, which recommended that the CFTC provide guidance regarding digital asset collateral and specifically called for "guidance to FCMs in calculating and administering segregation obligations when digital assets are held on behalf of customers."

Following other digital assets-related actions,[15] in August 2025, the CFTC announced a "Crypto Sprint" to begin implementation of the PWG Report's recommendations, and in September 2025,

[14] The Guiding and Establishing National Innovation for U.S. Stablecoins Act, 12 U.S.C. §§ 5901 – 5916.

[15] On March 6, 2025, the CFTC convened a Crypto CEO Forum, where leading crypto market participants discussed tokenized assets and the use of stablecoins as collateral in futures markets. *See* CFTC Release No. 9049-25, *CFTC Announces Crypto CEO Forum to Launch Digital Asset Markets Pilot* (Feb. 7, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9049-25. On March 28, the CFTC withdrew CFTC Letter No. 18-14, a 2018 advisory that recommended a heightened level of monitoring for the trading of digital-asset products on derivatives exchanges, and Letter No. 23-07, a 2023 advisory that warned of "heightened cyber and other operational risks" associated with DCOs. CFTC Release No. 9059-25, *CFTC Staff Withdraws Advisory on Virtual Currency Derivative Product Listings* (Mar. 28, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9059-25; CFTC Release No. 9060-25, *CFTC Staff Withdraws Advisory on Review of Risks Related to Clearing Digital Assets* (Mar. 28, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9060-25. In April of 2025, the CFTC solicited requests for comment on 24/7 trading and perpetual derivatives, two crypto market innovations. CFTC Release No. 9068-25, *CFTC Staff Seek Public Comment on 24/7 Trading* (Apr. 21, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9068-25; CFTC Release No. 9069-25, *CFTC Staff Seek Public Comment Regarding Perpetual Contracts in Derivatives Markets* (Apr. 21, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9069-25. Live trading of perpetual derivatives on

the CFTC launched a Tokenized Collateral and Stablecoins Initiative and requested public comment on the use of tokenized collateral, including stablecoins, in derivatives markets.

IV. Practical Use Cases and Issues to Consider.

CFTC's Digital Assets Pilot Program is limited to a set of specific transactional fact patterns within CFTC's jurisdictional grant.

A. Likely intended use cases of digital and tokenized assets.

First, one instance in which digital assets would be intended for use is in a traditional setting when a customer of the FCM posts the specified kinds of digital assets to the FCM to secure a customer's positions in § 4d, § 30.7, or § 22.1 accounts. Normally, it would take some period of time to have traditional cash collateral wired, deposited by check,[16] or transferred through an ACH service. In this case, the customer will not be able to start trading immediately upon the opening of its FCM account, and if the FCM is to deposit its own funds, the FCM will incur capital charges. The use of digital assets as collateral solves this time delay problem because digital assets, such as existing payment stablecoins, BTC or ETH, and other eligible collateral in the form of tokenized non-security RWAs, will be posted instantaneously (*i.e.*, "atomically"), meaning that the customer will be

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CFTC-registered designated contract markets ("***DCMs***") began that same month, and 24/7 trading went live in May 2025. *See* CFTC Release No. 9104-25 (Aug. 1, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9104-25. On August 1, 2025, in response to the PWG Report, the CFTC announced a "Crypto Sprint" to begin implementation of the report's recommendations. *Id.* The first initiative in the Crypto Sprint, announced on August 4, 2024, was a request for feedback and suggestions on listing spot crypto asset contracts on DCMs; market participants submitted 20 comment letters in response to this request. CFTC Release No. 9105-25, *Acting Chairman Pham Launches Listed Spot Crypto Trading Initiative* (Aug. 4, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9105-25. On September 2, 2025, the CFTC issued a joint statement with the SEC clarifying the view of the agencies' staff that registered exchanges are not prohibited from facilitating the trading of certain spot crypto asset products. CFTC Release No. 9112-25, *CFTC and SEC Staff Issue Joint Statement on Trading of Certain Spot Crypto Asset Products* (Sept. 2, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9112-25. On December 4, the CFTC announced that listed spot cryptocurrency products would begin trading on registered futures exchanges. CFTC Release No. 9145-25, *Acting Chairman Pham Announces First-Ever Listed Spot Crypto Trading on U.S. Regulated Exchanges* (Dec. 4, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9145-25. On August 21, 2025, the CFTC announced another Crypto Sprint initiative in response to the PWG report, this time requesting public comment on all the report's recommendations for the CFTC. CFTC Release No. 9109-25, *Acting Chairman Pham Announces Next Crypto Sprint Initiative* (Aug. 21, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9109-25. To date, 36 market participants and observers have submitted comments in response to this request. On September 23, 2025, as part of the Crypto Sprint, the CFTC announced an initiative for the use of tokenized collateral in derivatives markets and requested public comment; 42 market participants and observers submitted comments in response to this request. CFTC Release No. 9130-25, *Acting Chairman Pham Launches Tokenized Collateral and Stablecoins Initiative* (Sept. 23, 2025), *available at*: https://www.cftc.gov/PressRoom/PressReleases/9130-25.

[16] For example, CFTC Regulation § 1.57(c) still authorized introducing brokers ("***IBs***") to accept checks from customers for forwarding to an FCM, which would take days to clear.

able to start trading and establish its futures, foreign futures or cleared swaps positions immediately.

Second, as a variation on the first use case, the ability to post collateral atomically becomes critically important in the environment of 24/7/365 DCM trading. Within existing market infrastructure, it is impossible to post most eligible collateral to an FCM or a DCO over the weekend, while digital assets can be posted all the time and at any time, including over the weekend.

Third, to the extent that DCMs and DCOs disintermediate and allow direct market access to retail customers who can establish fully-collateralized and auto-liquidating accounts, the ability to quickly post (or, conversely, liquidate) collateral becomes critical.[17] It is likely that with the increase in utilization of these types of accounts, demand for digital assets eligible for posting to DCOs will also increase. To emphasize the importance of this workstream (and customer and FCM / DCO / DCM interest in this technology), on December 18, 2025, the staff of the CFTC published a request for comment on direct clearing by retail market participants seeking public comments on how "clearing services may be provided either through a fully-collateralized clearing model that has direct access for retail participants (non-intermediated clearing), or a hybrid model that includes both fully-collateralized direct clearing to retail participants and intermediated clearing by futures commission merchants to retail customers."[18]

Fourth, SDs facing other SDs or other financial end users[19] are required to collect (and post) collateral to secure their swap positions to each other. Even though initial margin is rarely posted, variation margin is routinely posted. Therefore, swap participants would be able to benefit from unlocking, and saving, additional capital if digital assets are added to eligible collateral for § 23.156 purposes.

The ability to post eligible collateral in the cross-border swap trading context even further demonstrates the need for speed and finality of collateral transfers.

Fifth, FCMs and DCOs typically invest customer funds in liquid instruments. Currently, the CFTC Regulations (*e.g.*, § 1.25, § 23.156, and § 23.157) do not allow investment of customer funds in digital and tokenized assets.

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[17] Several DCMs and DCOs already allow these types of self-clearing accounts (including KalshiEX, Nadex, ForecastEx, Railbird Exchange, Electron Exchange DCM, Polymarket US, Gemini Titan). This list is likely to grow.

[18] *See* CFTC Release No. 9158-25, CFTC Staff Seek Public Comment on Direct Clearing by Retail Participants (December 18, 2025).

[19] "Financial end user" is defined in § 23.151 of the CFTC Regulations. Note that "non-financial end users" are not required to post margin collateral to SDs, unless they agree to post collateral contractually.

B. General Considerations.

While tokenized RWAs and the RWAs themselves generally are regarded as carrying the same risks, FCMs and DCOs need to appreciate that tokenized RWAs may introduce additional risks. The use of blockchain technology, which includes smart contracts, increases cybersecurity risks and also increases the chance of hacks and exploits by bad actors. Tokenized RWAs also introduce smart contract risk, meaning the possibility that the smart contracts powering the tokenized RWAs could fail to behave as intended. FCMs need to be alert to these additional concerns.

Further, as discussed below, from a Uniform Commercial Code ("***UCC***") standpoint, FCMs would need to determine whether digital and tokenized collateral assets are to be credited to a customer's pledged securities account or held in a wallet outside such an account. In the former case, traditional rules for security interests likely apply; in the latter, new UCC rules may need to be adhered to. If a DCO takes tokenized deposits as part of the cash margin provided by an FCM, the DCO will need to look carefully at the UCC characterization of the asset. Such tokenized bank deposit products may vary from depository institution to depository institution. In addition, "tokenized deposits" are likely different from "deposit tokens," the former possibly being characterized as deposit accounts under the UCC, and the latter possibly comprised of two assets: a controllable electronic record ("***CER***") and some kind of interest in a deposit account. The structure of such products is often proprietary, however, and the DCO would need to work with the provider of such tokenized deposit assets to understand with precision their technological and legal structures.[20]

V. Discussion of Industry Implications.

A. Jurisdictional Matters.

The CFTC's Digital Assets Pilot Program focuses only on unlocking collateral that qualifies as non-security digital assets. Even though the exact boundaries between those digital assets that will be considered "securities" and those that will not are still somewhat unclear until Congress enacts the market infrastructure legislation,[21] it is generally safe to presume that BTC and ETH and most major cryptocurrencies will be qualified as "commodities" for purposes of § 1a(9) of the CEA. Likewise, payment stablecoins issued before the GENIUS Act becomes effective will most likely be

[20] *See* Noelle Acheson, "The Key Difference Between a 'Tokenized Deposit' and a 'Deposit Token,'" AMERICAN BANKER, Nov. 20, 2025 https://www.americanbanker.com/news/the-key-difference-between-a-tokenized-deposit-and-a-deposit-token#:~:text=Tokenized%20deposits%20are%20an%20on,representation%20of%20commercial%20bank%20money.

[21] Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. (2025); *see also* Memorandum from the Deputy Att'y Gen., *Ending Regulation by Prosecution* (Apr. 7, 2025), *available at* https://www.justice.gov/dag/media/1395781/dl?inline (stating that DOJ will not litigate whether a digital asset is a security or commodity).

considered "commodities," while the payment stablecoins issued after the GENIUS Act becomes effective will not be qualified as "commodities" (or "securities").[22]

It is less clear whether various tokens issued on RWAs that will be used as collateral under the CFTC Digital Assets Pilot Program will be qualified as "commodities" and as non-security collateral because these are subject to case-by-case analysis and, in fact, may switch from being commodities to becoming "investment contracts" (*i.e.*, securities) and *vice versa*.[23]

Having said this, the context within which the CFTC's Digital Assets Pilot Program will be operating is clearly within the CFTC's jurisdictional ambit, as it addresses posting collateral to FCMs, DCOs and SDs that are within CFTC's exclusive jurisdictional scope because these digital assets will be securing customer positions in § 4d, § 30.7, and § 22.1 accounts. Separately, as discussed below, the CFTC's jurisdictional reach will extend to spot cryptocurrency contracts traded on CFTC-registered designated contract markets ("***DCMs***").[24]

B. Eligible Tokenized Assets.

By issuing this relief, the CFTC has signaled a more permissive and pragmatic approach to the use of tokenized assets within the U.S. derivatives markets. Allowing eligible tokenized assets to be used as collateral (subject to specified conditions) provides greater regulatory certainty and reduces friction for firms that previously were required to convert digital assets into fiat or traditional instruments to meet margin requirements.

At the same time, the CFTC made clear that eligibility is grounded in risk management rather than asset class alone (*i.e.*, either digital assets or RWAs). Tokenized assets must be supported by robust custody, valuation, and control frameworks, and the relief does not extend to all digital assets indiscriminately. Firms will need to demonstrate that any tokenized collateral satisfies existing standards.

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[22] *See* Peter Malyshev, *GENIUS Act Creates 'Commodity' Uncertainty For Stablecoins*, LAW360 (July 17, 2025, at 7:13 PM EDT), https://www.law360.com/articles/2364611.

[23] *See Sec. & Exch. Comm'n v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308, 323 (S.D.N.Y. 2023) (discussing the possibility that sales of the same underlying commodity may constitute "investment contracts" in some contexts but not others under the Howey test); *see also* Paul S. Atkins, Chairman, Sec. & Exch. Comm'n, The SEC's Approach to Digital Assets: Inside "Project Crypto" (Nov. 12, 2025) (speech delivered at the Federal Reserve Bank of Philadelphia).

[24] We note that CFTC's exclusive jurisdictional reach over transactions involving retail and generally spot contracts on digital assets (*i.e.*, contracts not for future delivery on a commodity and digital commodity) will be likely addressed in the proposed legislation, such as the Clarity Act of 2025.

C. Legal enforceability.

Market participants will need to assess whether their contractual arrangements clearly establish enforceable interests in the underlying digital asset and, for tokenized RWAs, the RWA that is being digitized, including in stress or insolvency scenarios (as discussed below). This includes confirming that tokenization does not introduce uncertainty as to title, priority, or the ability to realize on collateral. We note that at this time it will be difficult for market participants to have assurance of meeting this condition given that there are not many court decisions addressing this specific matter (*e.g.*, whether a certain digital asset, such as a tokenized RWA, constitutes a legally enforceable contract).

D. Segregation, Custody, and Control Arrangements.

By issuing this relief, the CFTC has emphasized that existing segregation and custody requirements continue to apply to tokenized assets, even though the mechanics of holding and transferring such assets differ materially from traditional collateral. The December 8 Guidance and the December 8 NAL Relief contemplate that tokenized assets posted as collateral must be held at an eligible depository institution and be subject to custody arrangements that provide the FCM or DCO with the ability to demonstrate segregation, exclusive customer entitlement and effective control over such collateral. However, neither the guidance nor the no-action relief resolves the tension between traditional control concepts and the technological reality that many digital assets are held through private keys that do not readily support shared or conditional control.

In particular, the relief does not prescribe how an FCM can establish control where custody structures rely on omnibus wallets, third-party custodians, or key-management arrangements that limit the FCM's direct ability to block transfers or unilaterally access the asset. The December 8 Guidance also does not squarely address when a digital asset is deemed "posted" and "received" for regulatory purposes, an issue that is central to margin timing, segregation compliance and default management. As a result, firms will need to carefully assess whether their custody and control arrangements can credibly support a conclusion that tokenized collateral has been properly delivered to, and held by or for the benefit of, the FCM in a manner consistent with existing CFTC requirements.

E. Haircuts and Valuation.

By issuing this relief, the CFTC has reinforced that the use of tokenized assets as collateral does not alter the fundamental risk profile of the underlying RWA. Tokenization does not enhance the credit quality, liquidity, or market stability of the underlying instrument, and accordingly a tokenized asset cannot be treated as superior to the asset it represents for valuation or margin purposes. At a

minimum, valuation methodologies and haircuts applied to tokenized collateral should be no more favorable than those applied to the corresponding non-tokenized asset.

At the same time, the relief recognizes that tokenization may introduce additional risks that warrant more conservative treatment. These may include operational risks, custody and control considerations, settlement frictions, and reliance on technological infrastructure or third-party service providers. As a result, firms may determine that tokenized assets require deeper haircuts than their non-tokenized equivalents (*i.e.*, RWAs) to reflect these incremental risks. The absence of prescriptive standards places responsibility on market participants to develop documented, defensible valuation and haircut frameworks that appropriately capture both the characteristics of the underlying asset and the additional risks introduced by tokenization.

F. Operational Risks.

The CFTC has implicitly shifted greater responsibility to firms to manage the operational risks associated with tokenized collateral. These risks may include technology failures, cybersecurity vulnerabilities, management issues, and dependencies on blockchain infrastructure or third-party vendors. Market participants should expect that operational readiness and internal controls will be critical factors in determining whether the use of tokenized assets as collateral can be sustained within a regulated environment.

G. Practical Considerations for FCMs Accepting Digital Assets as Margin Collateral.

FCMs that intend to accept digital non-security collateral from their customers will be required to follow the following guidelines and requirements. The December 8 NAL Relief is very specific and narrow, and in practice only the most sophisticated FCMs (and DCOs) will be able to comply, given the detailed and very prescriptive nature of conditions. The following breakdown outlines the core pillars of the relief:

i. *Eligible Digitized Collateral*: Under the initial pilot framework, FCMs and DCOs may accept a specific tier of "readily marketable" digital assets from customers. During the onboarding phase, this is strictly limited to BTC, ETH, and qualified existing payment stablecoins, and within these, the types of digital assets that are accepted by the DCOs.

ii. *Margin Treatment and Capital Efficiency*: FCMs can now include these specific kinds of digital assets alongside traditional collateral (such as cash or U.S. Treasuries) to fulfill a customer's margin obligations. Crucially, if an account holds an appropriate amount of these digital assets (adjusted for haircuts), the account will not be considered undermargined. This allows such digital assets to be used as effective "functional"

collateral, preventing the need for customers to liquidate digital positions to meet margin calls in fiat.

iii. *Segregation and Custody*: Digital collateral must be segregated from the FCM's own funds and held at permitted depository institutions (*e.g.*, banks or depository trust companies) in a manner that ensures they are legally recognizable as "customer property" under the "statutory trust" framework of the CEA. This ensures that, in the event of an FCM's insolvency, the collateral represented by the digital assets remains protected and is not treated as part of the FCM's general estate and remains "customer property."

iv. *Stablecoins as Residual Interest*: The NAL provides a significant capital reprieve by allowing FCMs to deposit their own proprietary, self-issued payment stablecoins into segregated customer accounts as residual interest, but only when the stablecoins meet the strict "payment stablecoin" criteria established under the GENIUS Act in 2025.[25] The idea is that allowing this to happen will provide a "buffer" that will ensure accounts stay topped up. When GENIUS Act payment stablecoins (note that as of today, there are no payment stablecoins that have been recognized as meeting the requirements of the GENIUS Act) are used in this way, they will not trigger capital charges that would typically apply to non-cash or non-government securities.

To rely on the December 8 NAL, FCMs and DCOs must adhere to the following conditions:

- *Notice of Intent*: File a formal notification with the CFTC and National Futures Association ("***NFA***") prior to commencing the program.
- *Haircut Calibration*: Apply the higher of the DCO-mandated haircut or a conservative, risk-based haircut determined by the FCM's internal risk committee.
- *Reporting Requirements*: Submit weekly balance reports of digital asset holdings and provide prompt notification (within 24 hours) of any cybersecurity incidents or significant operational failures.
- *Legal Assurance*: Obtain written legal opinions confirming the enforceability of the FCM's security interest in the digital collateral across relevant jurisdictions.

Given the narrowness of the digital assets subject to the relief, and given the onerous nature of conditions for this relief, it is unlikely at this time that a large number of FCMs will be relying on this relief, and this relief will likely be mostly utilized by a smaller group of FCMs with significant digital assets business lines.

[25] 12 U.S.C. § 5903(a).

H. The UCC and Secured-Transactions Implications.

A customer's account at its FCM will carry the funds deposited for trading, the customer's futures and cleared swaps positions, and the margin the customer posts to the FCM (whether cash or securities). FCMs typically require their customers to grant a security interest in the customer's account to the FCM. Generally, under the UCC,[26] an account to which commodity contracts are credited will be a "commodity account," an account to which securities are credited will be a "securities account," and an account to which cash is deposited is a "deposit account." The UCC has different rules for perfecting a security interest in these different accounts, although in all three cases the typical perfection method is the applicable form of "control."[27] A customer account might consist of separate accounts or a single hybrid account partaking of all three different types of assets. In particular, the UCC permits the parties to agree to treat any asset as a so-called "financial asset" to be credited to a securities account—even assets that are not securities under the UCC or under federal law.[28]

These UCC rules give FCMs flexibility in taking advantage of the December 8 NAL Relief. BTC, ETH and USDC are not "securities" under Article 8 of the UCC.[29] Nonetheless, the FCM and customer can agree to treat those non-security crypto assets as financial assets and credit them to the securities account part of the customer's account. The customer would then hold a "security entitlement" to the crypto, just as it would for securities in the securities account, and the FCM could perfect its security interest in the crypto interest using its traditional method of perfection, such as a securities account control agreement. This "Article 8 Solution" would seem like business as usual to the FCM.

The bigger change for FCMs emerges in situations where the customer holds the crypto collateral directly. The customer and FCM may structure the customer's account so that the crypto is not credited to a securities account, but held outside the securities account. Further, the FCM, as securities intermediary holding "financial asset" crypto for its customers, may determine to hold the

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[26] In 2022 the Uniform Law Commission and American Law Institute promulgated proposed amendments (the "***2022 Amendments***") to the UCC directed at emerging technologies, including digital assets and distributed ledger technology. Unless otherwise indicated, references to the UCC are to the UCC as amended by the 2022 Amendments.

[27] For UCC definitions of "commodity contract," "commodity account," "securities account," and deposit account, see UCC §§9-102(a)(15), 9-102(a)(14), 8-501(a), and 9-102(a)(29), respectively. Control for such assets is defined in UCC §§9-106, 8-106 and 9-104.

[28] See UCC §8-102(a)(9)(iii), permitting the parties to treat "any property" held by the securities intermediary in a securities account for another person as financial assets if the securities intermediary and such person have agreed that such property will be treated as financial assets.

[29] Bitcoin, ether and USDC tokens, not being obligations of an issuer or shares, participations, or other interests in an issuer or in property or an enterprise of an issuer, would not fit within the UCC Article 8 definition of "security." See UCC §8-102(a)(15). Rather, those crypto assets would likely be characterized as "controllable electronic records" ("***CERs***"), a new asset class introduced by the 2022 Amendments.

crypto directly rather than through a third-party custodian.[30] In both such cases, the crypto would reside in a non-custodial digital wallet. In such case, the FCM's UCC perfection method for its security interest would change. If the UCC of the state whose law applies to the transaction has not been amended by the 2022 Amendments to the UCC,[31] the FCM would need to perfect its security interest by filing a financing statement rather than by control, as the crypto collateral would be treated as general intangibles under such a pre-amendment UCC. If, however, the applicable UCC has been amended by the 2022 Amendments, the FCM would want to perfect its security interest in the crypto collateral by a new test of "control"[32] set out in Article 12 of the UCC, which was added by the 2022 Amendments. The rules under such Article 12 control would require the FCM to understand the structure of the crypto asset to assess its "controllability."[33]

Further, Article 12 control defines rules for maintaining control through another person and for permissible sharing of control, without losing the exclusivity of powers over the asset needed for Article 12 control.[34] The FCM would, at the least, need to assess the technological design of its digital wallet against such Article 12 control definition, including common features such as multi-sig and multi-party computation arrangements and account abstraction technologies that might implicate such control sharing.

I. Bankruptcy and Insolvency Implications.

From a bankruptcy law and insolvency perspective, the Digital Assets Pilot Program raises limited new issues because over the years, the CEA, the CFTC and courts have already addressed what happens in the event of customer, custodian, FCM or DCO insolvency with either customer funds and customer collateral and customer derivatives positions.

The segregation regime for customer margin collateral stems from preexisting provisions of the CEA and Part 190 of CFTC Regulations, which require that customer funds be treated "as

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[30] Note that regulatory custody requirements would need to be adhered to in any case. See above, section V.D. *Segregation, Custody, and Control Arrangements*.

[31] As of the date of this alert, the 2022 Amendments have been enacted in 33 jurisdictions, including most recently the important jurisdiction of New York. https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac.

[32] UCC §12-105.

[33] Note that while the December 8 NAL Relief is limited to bitcoin, ether and USDC, the December 8 Guidance more broadly covers tokenized RWAs. While the structure of bitcoin, ether and USDC may be more familiar to market participants, the technological structure of tokenized RWAs may affect the UCC characterization and treatment of those assets, and should be diligenced if those assets are to be taken as collateral. A full discussion of this topic is beyond the scope of this alert.

[34] See UCC §12-105(b) – (e).

belonging to customers and not as the property of the FCM or DCO."[35] The Digital Assets Pilot Program reflects, through the NAL, that certain digital assets may be accepted as margin within "existing requirements and minimum standards in Commission regulations" that "will continue to apply."[36] This framework reflects the purpose of segregation: to "facilitate the return of the funds to customers in the event of the insolvency of the FCM or DCO," rather than treating such assets as property of the intermediary.[37] Confirming that the digital assets are customer property (rather than property of the FCM or DCO) will encourage courts to ensure that such digital assets are not subject to the claims of other creditors.

The GENIUS Act has addressed the unique circumstances in which payment stablecoins issued under the GENIUS Act would be subject to the payment stablecoin issuer's insolvency.[38] The GENIUS Act does not apply to stablecoins issued before the effectiveness of the GENIUS Act. At least one bankruptcy court has addressed insolvencies involving crypto currencies, such as BTC and ETH. In the most notable case, the court treated those assets as "legal or equitable interests of debtor in property" under § 541 of the Bankruptcy Code.[39] However, with respect to non-security digital assets, such as tokens on non-security RWAs that are eligible to be posted as collateral to an FCM, DCO or an SD, courts have yet to create any meaningful precedent. Therefore, it is not clear how these assets will be treated by bankruptcy courts.

J. Implications for the SEC.

The CFTC's Digital Assets Pilot Program places renewed pressure on the SEC to articulate a parallel framework for the use of digital and tokenized assets by SEC-regulated entities. The CFTC has moved decisively toward integrating digital assets into existing market infrastructure rather than treating them as categorically exceptional. This approach heightens expectations that the SEC will need to clarify how similar activities may be conducted by broker-dealers, clearing agencies and other market participants subject to the federal securities laws.

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[35] *See* the December 8 NAL Relief, at 2. We note, however, that Part 190 does not address bankruptcy treatment of novel instruments, such as non-security digital assets.

[36] *See* the December 8 NAL Relief, at 14.

[37] *See* the December 8 NAL Relief, at 2.

[38] 12 U.S.C. § 5910; *see also Use of Payment Stablecoins as Margin and Collateral under the GENIUS Act*, Cadwalader, Wickersham & Taft LLP (Aug. 5, 2025), https://www.cadwalader.com/resources/clients-friends-memos/use-of-payment-stablecoins-as-margin-and-collateral-under-the-genius-act.

[39] *See, e.g.*, *In re Celsius Network LLC*, 647 B.R. 631, 637 (Bankr. S.D.N.Y. 2023) ("the cryptocurrency assets became [the Debtors'] property; and the cryptocurrency assets remaining in the Earn Accounts on the Petition Date became property of the Debtors' bankruptcy estates.").

That pressure is already evident in the SEC staff's December 11, 2025 no-action relief for DTCC's tokenization pilot.[40] In that letter, the staff permitted DTC to issue tokens representing security entitlements in assets held at DTC, while preserving the existing legal and regulatory framework governing those securities. Similarly, on December 17, the SEC's Division of Trading and Markets issued a statement clarifying the conditions under which broker-dealers may deem themselves in possession of customers' tokenized securities. This statement can be read as a defensive, harmonizing move by the SEC, signaling regulatory relevance and pragmatic flexibility on crypto custody in light of the CFTC's recent actions.

K. Other Regulatory and State Considerations.

In addition to closely coordinating with the SEC, the CFTC will need to further closely cooperate with US Prudential Regulators,[41] for example with respect to CFTC-regulated entities that are affiliated with regulated banks and to what extent these entities will be further restricted in accepting non-security digital assets as customer collateral and margin.

Further, given that the CFTC's Digital Assets Pilot Program is a federal program designed under the CEA and the applicable CFTC Regulations, FCMs, DCOs and SDs accepting, custodying, transferring between institutions, and returning to customers digital assets may also trigger scrutiny by state regulators and may require appropriate state licensing. In particular, these entities should carefully evaluate, on a state-by-state basis whether a state-based crypto activities license is required (*e.g.*, the BitLicense in New York or the Digital Financial Assets Laws in California), or if a money transmission license is required. In terms of money transmission, existing analyses for whether a money transmission is required should still be valid. In other words, for FCMs and DCOs, it is unlikely that a state money transmission license would be required because entities registered with and supervised by the CFTC are typically exempt from needing such licenses. But SDs should examine whether they still require money transmission licenses.

L. Litigation, Enforcement and Relevant Judicial Decisions.

CFTC's December 8 Guidance requires that FCMs determine that the digital assets they intend to use as collateral are legally enforceable. Litigation and enforcement involving digital assets as collateral has been limited thus far. Current case law has typically focused on applying existing doctrines of contract, property, and secured transactions law to disputes involving digital assets, rather than redefining legal ownership simply by virtue of a token's existence.[42] Federal courts have

[40] *See* Re: No-Action Letter Request Related to The Depository Trust Company's Development of the DTCC Tokenized Service, SEC's Division of Trading and Markets, December 11, 2025.

[41] *See* § 1a(39) of the CEA defining "prudential regulators."

[42] *See Power Block Coin, L.L.C. v. Song*, 775 F. Supp. 3d 1293, 1305 (D. Utah 2023) ("Other types of secured transactions, such as those involving real property or stocks, are heavily regulated. . . . Here, there are no regulations of which the court is

held that cryptocurrency is intangible property for purposes of disputes over ownership, jurisdiction, and claims of conversion.[43]

Notably, when assessing damages for a party's failure to return digital assets, courts have held that the appropriate remedy is monetary damages, rather than specific recovery of the particular digital assets, unless the party bringing the claim pleads an equitable claim of replevin.[44] These damages have been calculated based on the value of the digital assets either at the time of investment or at the time of the complaint.[45]

At least one court has recently held that a party holding another party's digital assets as collateral has control over those digital assets.[46]

M. Customer Disclosures and Documentation.

The December 8 NAL Relief conditions its relief on FCMs providing a set of detailed disclosures to customers in relation to the use of non-security digital assets. The NFA several years ago adopted enhanced disclosures requirements for FCMs, IB, CPOs and CTAs involved in crypto and digital assets transactions.[47] However, NFA Interpretative Notice 9073 is now qualified as "reserved," and effective December 3, 2025, the NFA amended its Compliance Rule 2-51[48] to also cover

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aware that provide similar background rules for the treatment of cryptocurrency collateral. Instead, the court relies on the contract agreed upon by the parties and traditional tools of contract interpretation.").

[43] *See, e.g.*, *Ox Labs v. BitPay, Inc.*, 848 F. App'x 795, 796 (9th Cir. 2021) (holding that Bitcoin is intangible property not subject to specific recovery in a conversion action); *BDI Cap. LLC v. Bulbul Invs. LLC*, 446 F. Supp. 3d 1127, 1137 (N.D. Ga. 2020) ("bitcoins are specifically identifiable to be considered 'specific intangible property' subject to an action for conversion"); *In re Celsius Network LLC*, 647 B.R. 631, 657 (Bankr. S.D.N.Y. 2023) (agreeing that "cryptocurrency, NFTs and other digital assets are intangible" and that "a security interest [in digital assets] can be perfected only by the filing of a financing statement in the digital asset as a general intangible"); *Timoria LLC v. Anis*, 2025 WL 2827657, at *8 (Del. Ch. Oct. 6, 2025).

[44] *Ox Labs*, 848 F. App'x at 796 ("Because the converted property here, cryptocurrency, is intangible, Ox Labs cannot specifically recover its Bitcoins from BitPay."); *Shi v. Le*, 2022 WL 1085420, at *9 (E.D.N.Y. Mar. 2, 2022) (holding, in a case concerning a claim of conversion after a party failed to return deposited ETH, that "what [plaintiffs] truly seek is replevin, or the return of their 100 ETH tokens," but that in the absence of a claim of replevin, "an award of money would fairly compensate plaintiffs for their transfer").

[45] *See Shi v. Le*, 2022 WL 108540, at *9 for a brief discussion of digital-asset valuation timing.

[46] *Power Block Coin, L.L.C.*, 775 F. Supp. 3d at 1308.

[47] NFA Interpretive Notice 9073, Disclosure Requirements for NFA Members Engaging In Virtual Currency Activities (Aug. 9, 2018).

[48] *See* NFA Rule 2-51, Rules Governing the Business Conduct of Members Registered with the Commission, *available at*: https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=4&RuleID=RULE%202-51. Effective December 3, 2025, the NFA amended Rule 2-51 to remove outdated digital-asset disclosure requirements and to broaden the rule's scope so that its anti-fraud, just and equitable principles of trade, supervision, and disclosure obligations apply to any "digital asset commodity" with a related CFTC-listed commodity interest product, not just BTC and ETH.

transactions in digital assets. Separately from the NFA's requirements, under CFTC Regulation § 1.55, FCMs will be required to make additional disclosures to customers describing the CFTC's Digital Assets Pilot Program and all incidental risks associated with using digital assets (as well as amend applicable customer agreements).

Likewise, SDs that intend to accept digital assets as collateral and margin for uncleared swaps will need to provide adequate disclosures and transaction documentation (such as the ISDA schedule and the credit support annex).

N. Implications for Recently Authorized Spot Crypto Trades on DCMs.

As part of the CFTC's Crypto Sprint, the CFTC has created a path for DCMs to list retail spot crypto contracts for trading. It is not yet clear at this time how customer funds posted with FCMs with respect to this new class of contracts will be treated alongside § 4d, § 30.7, and § 22.1 segregated accounts. Likewise, it is not clear how and where non-security digital assets received by FCMs will be placed. These and many other issues are likely to be clarified in the CFTC's future guidance and rulemakings.

VI. Conclusion: What's Next?

As directed by the PWG's Report, the staff of the CFTC, under the leadership of former Acting Chair Caroline Pham, has done a tremendous amount of work to facilitate the adoption of digital assets within the CFTC's regulated space before the enactment of broad digital assets infrastructure legislation in Congress, which is expected to be passed in the beginning of 2026. As discussed in this article, the CFTC's Digital Assets Pilot Program sets the foundation and provides the immediate tools for participants to unlock significant resources in digital assets, but much additional work will be required on the part of the CFTC, working together with its fellow federal and state regulators.

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