



CFTC takes aim at risk management given broader financial market events

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What does this mean for the industry?

Risk management

Derivatives clearing organizations (DCOs) must now comply with new regulations that involve enhancements to DCO governance, including creating risk advisory working groups and risk management committees to raise risk management concerns to the DCO's board of directors. Refer to the proposed rule entitled "Governance Rules for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; New Standards Regarding the Reduction of Conflicts of Interest," published at 76 FR 722 on January 6, 2011.

The CFTC will soon publish an advance notice of proposed rulemaking and request for comments focusing on risk management programs for swap dealers, major swap participants, and futures commission merchants. The proposed rulemaking will focus on harmonizing the CFTC's risk management regime with that of other prudential regulators, including through defined terms within the risk management rules.

"The industry's increasing **reliance on third-party service providers** is creating a major source of risk," stated Chair Behnam. The Market Participants Division will issue guidance concerning the use of third-party service providers, including required oversight obligations to ensure risk management practices preserve the integrity, availability, and confidentiality of critical systems and information. The guidance will complement and is intended to harmonize CFTC expectations with the National Futures Association's (NFA) Interpretive Notice on Member's Use of Third-Party Service Providers², a cybersecurity rulemaking concerning the use of third-party service providers to satisfy compliance obligations.



Customer protection

The following efforts are also underway to help ensure protections to market participants.

- Updates to:
 - Certain regulatory exemptive provisions for commodity pool operator and commodity trading advisor registrants. This will provide enhanced transparency and ensure that retail market participants receive appropriate protections; and
 - Certain regulatory exemptive provisions for commodity pool operator and commodity trading advisor registrants. “Proposed amendments will raise the asset tests for status as a qualified eligible person (QEP) to reflect inflation since the early 1990s and define who is a retail pool participant or advisory client.”³
- The Commission will also consider “an amendment to establish minimum disclosure requirements for 4.7 exempt pool and trading program investments to ensure investors receive basic information on fees, conflicts of interest, description of investments, and other disclosures, regardless of their sophistication.”
- “Commission staff will also propose codification of exemptive letter relief for account statement reporting deadlines for certain commodity pool operators.”⁴
- Increased regulation of the crypto market for non-security tokens to help protect customers from failures that can affect global financial markets. Behnam stated, “This includes requiring cryptocurrency-based derivatives contracts, and/or are affiliated with cryptocurrency spot markets to implement policies and procedures to restrict employee trading in affiliated cryptocurrency spot markets or on affiliated Designated Contract Markets (DCMs).”⁵



Innovation

In the chair's view, encouraging innovation and adoption of new technologies adds efficiency to risk and regulatory obligations. The CFTC's aim—its expectation for the marketplace—is sufficient improvement of data reporting and policy. The CFTC utilizes tools such as machine learning, natural language processing, and artificial intelligence to help stay ahead of the curve and avoid revisiting obsolete policy ideas. CFTC member firms are encouraged to do the same and dedicate resources to innovation for added efficiencies.

In summary, the areas of focus highlighted in Behnam's speech reflect his goals for the agency, including updating financial market regulation, advancing transparency, and encouraging innovation through appropriate risk governance.



Endnotes

1. Rostin Behnam, [Keynote address at the ABA Business Law Section Derivatives & Futures Law Committee Winter meeting](#), Commodity Futures Trading Commission (CFTC), February 3, 2023.
2. NFA, [Interpretive Notice \(IN\) 9079 – NFA Compliance Rules 2-9 and 2-36: Members' Use of Third-Party Service Providers](#), effective September 30, 2021.
3. See 17 CFR 4.7
4. See, e.g., [CFTC Letter No. 21-16, Exemptive Relief Request Concerning Quarterly Account Statements Required by Regulation 4.7\(b\)\(2\) on Behalf of Morgan Stanley AIP GP LP \(July 27, 2021\)](#).
5. Behnam, [Keynote address at the ABA Business Law Section Derivatives & Futures Law Committee Winter meeting](#), CFTC, February 3, 2023.

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