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CFTC and SEC Digital Asset Guidance: Key Takeaways from Navazio, Sung and Ivey's ICLG 2026 Chapter

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Haynes Boone Partners Michele (Miki) Navazio, Brian Y. Sung and Edward Ivey authored a chapter in the *ICLG Derivatives 2026* guide examining two regulatory developments concerning U.S. digital asset derivatives market participants: (1) the scope of what constitutes a “U.S. Person” for purposes of the CFTC’s evolving cross-border regulatory framework, and (2) the regulatory parameters that determine when technology and interface providers that facilitate digital asset trading may become subject to additional regulatory scrutiny or obligations related to regulated brokerage or intermediation activities.

Below is an overview of key topics discussed in the chapter.

Key Takeaways

- **CFTC Simplifies Cross-Border Framework**. The CFTC's 2025 Cross-Border Advisory Letters consolidate the definitions of “U.S. Person” and “guarantee” to follow those used under its 2020 Cross-Border Rule, streamlining the analysis of counterparty status. This development will be particularly relevant for digital asset liquidity providers, exchanges and trading firms navigating the swap dealer *de minimis* exemption amid increasing dealing volumes.
- **Unresolved Issues Remain.** Notwithstanding this consolidation, a unified cross-border threshold applicable across all derivatives products and intermediary types has not yet been established. Notable open questions include the absence of a formal definition for being “located in” or “located outside” the United States, ongoing uncertainty surrounding the status of novel products such as perpetual contracts and event contracts, and the extent to which the SEC and prudential banking regulators will adopt an approach consistent with that of the CFTC.
- **CFTC No-Action Relief for Crypto Wallet Providers**. CFTC Letter 26-09 provides no-action relief from introducing broker registration to noncustodial crypto wallet software providers that facilitate access to CFTC-regulated derivatives markets. The relief extends to providers that charge transaction-based fees, share revenue with collaborators and solicit users, subject to specified disclosure, compliance and recordkeeping conditions.
- **SEC Staff Statement on User Interfaces.** In April 2026, the SEC’s Division of Trading and Markets issued a staff statement providing that, for a five-year period, the SEC will not object to certain covered user interface providers operating without broker-dealer registration when assisting users in preparing self-directed crypto asset securities transactions. Such providers must satisfy certain specified conditions.
- **Interim Nature of the Guidance**. Both CFTC Letter 26-09 and the SEC's staff statement are expressly interim and conditional, pending future agency rulemaking. Market participants operating crypto wallet or front-end interface software should evaluate their activities against both sets of conditions and monitor ongoing regulatory developments.

For the full analysis, including a detailed discussion of the regulatory conditions, compliance requirements and practical considerations, **read the complete chapter [here]**.

If you have questions about how these developments may affect your business, please contact Michele (Miki) Navazio*,* Brian Y. Sung *or* Edward Ivey*.*

