

# Ivey, Sung and Navazio in Futures & Derivatives Law Report: U.S. CFTC's Cross-Border Regulation of Derivatives

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March 11, 2026 Edward Ivey, Brian Sung, Michele Navazio

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**PRACTICES** Finance, Derivatives, Financial Regulatory

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Haynes Boone Partners [Ed Ivey](#), [Brian Sung](#) and [Miki Navazio](#) authored an article for the *Futures & Derivatives Law Report* from Thomson Reuters examining the current state of the U.S. Commodity Futures Trading Commission's cross-border regulatory framework across its swaps and futures regulations, and related intermediary registration regimes.

Read an excerpt below.

Since the passage of the Dodd-Frank Act in 2010, the Commodity Futures Trading Commission (the "CFTC") has devoted significant focus and energy in the application of its expanded regulatory authority over derivatives products and market participants to the treatment and categorization of cross-border activities. For example, Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (the "CEA") to provide that the swaps provisions of the CEA (together with applicable CEA rules and regulations) will apply to cross-border activities when certain conditions are met, namely, when such activities have a "direct and significant connection with activities in, or effect on, commerce of the United States" or when they contravene CFTC rules or regulations as are necessary or appropriate to prevent evasion of the swaps provisions of the CEA. Notably, however, this provision only addresses the cross-border treatment of the CFTC's regulations regarding swaps. It does not apply to those regulatory provisions regarding futures contracts, for which cross-border regulations and guidance have existed long before 2010 and the passage of the Dodd-Frank Act (and remain unmodified thereby, as discussed herein).

The CFTC's roll-out of its cross-border guidance and regulations has been marked by piecemeal evolution, having been released in bits and pieces over time (both prior to and after the Dodd-Frank Act), rather than as a single overarching rule. For example, one of the earlier efforts to provide guidance was an interpretive letter issued by the CFTC's Division of Trading and Markets in 1992 which defined "United States person" and was later codified into a regulation. This regulation was then later removed, and is now superseded, in part, by the current definition of "Non-United States person" under CFTC Regulation 4.7, which preserves, to a large extent (but not completely), much of the same scope as the earlier regulation.<sup>4</sup> More recently, the CFTC's swap regulations issued under the Dodd-Frank Act have added a separate definition of "U.S. person." Thus, as of November 2025 there are multiple overlapping variations of the same concept, and potentially confusing and complex answers to the following questions: Who is a U.S. person? When are derivatives transactions or market participants subject to CFTC regulations, such as registration, business conduct standards, margin, reporting, clearing, and trading-venue access rules?

In response to this evolving complexity, and in an effort to provide the market with some clarity as to these issues, in 2025 various divisions of the CFTC issued three new no-action letters: CFTC Letter No. 25-14, CFTC Letter No. 25-27 and CFTC Letter No. 25-42 (collectively, the "2025 Cross-Border Advisory Letters"). Collectively, the 2025 Cross-Border Advisory Letters have recalibrated how

market participants must assess U.S. nexus, counterparty status, and the circumstances under which CFTC requirements may apply to offshore activities, entities, and transactions. Overall, these letters provided the market with a welcome dose of clarity and simplification of the CFTC's cross-border rules.

Unfortunately, however, it is still not quite the case that there is “one regulation to rule them all” when it comes to the question of what constitutes a U.S. person for derivatives regulatory purposes. Instead, as discussed in greater detail in this article, assessment of these issues must still take into consideration the applicable product type (swaps and/or futures) and the applicable entity types. For example, a party acting in the role of a dealer will need to consider definitions and terms that differ from those applicable to a hedge fund, which will in turn be different from those relevant to a clearing broker, and all of which are also different for a trading venue.

To read the full article from the *Futures & Derivatives Law Report*, click [here](#).