

A close-up of an hourglass with blue sand, set against a solid blue background. The sand is flowing from the top bulb to the bottom bulb. The hourglass is positioned on the right side of the frame.

This webinar will begin shortly.

FIA



Looking Forward:

Shifting Priorities at the CFTC and SEC

July 10, 2025



Reminders

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Presenters

Host:

Natalie Tynan, Associate General Counsel, Head of Technology Documentation Strategy, FIA

Speakers:

Jim Lundy, Foley & Lardner

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CFTC Enforcement Update



Enforcement Initiatives – Self-Reporting and Cooperation Guidance

Enforcement Advisory on Self-Reporting, Cooperation, and Remediation (2/25/25)

- Sets forth and describes different tiers for levels of self-reporting, cooperation, and remediation
- Provides “Mitigation Credit Matrix” setting forth percentage discount for different levels of cooperation and self-reporting, ranging from 0 to 55%
- Makes clear self-reporting credit is provided for any self-report, not just self-reports to Division of Enforcement



Enforcement Initiatives – 30-Day Enforcement Sprint

Keynote Address by Acting Chairman Caroline D. Pham, FIA BOCA50 (3/11/25)

- Announced that CFTC was seeking expedited resolution—within 30 days—of investigations and enforcement matter involving compliance issues, such as recordkeeping or reporting violations, where there is no customer harm, fraud or market abuse.
- Stated goal was to free up the Division of Enforcement’s resources so that it can focus on fraud and manipulation cases.
- Firms wishing to participate were told to contact CFTC staff within two weeks of March 11, 2025, with an update on remediation plans and a reasonable settlement offer.
- Recognition that recent penalties may be too high (“In order to assess the CMP, the CFTC will take a more holistic approach that will look at CMPs over time, including over the last 10 years, not just the last few years.”)



Enforcement Initiatives – Establishing Materiality Standard

Staff Advisory on Materiality of Other Criteria That Operating Divisions Will Use to Determine Referrals to the Division of Enforcement (4/17/25)

- “The Operating Divisions may refer violations that are material to DOE, for example those that involve harm to clients, counterparties or customers, or members or participants, as applicable; harm to market integrity; or significant financial losses.”
- “Reasonableness standard” for determining materiality with the following criteria:
 - (1) especially egregious or prolonged systematic deficiencies or material weakness of the supervisory system or controls, or program;
 - (2) knowing and willful misconduct by management, such as conduct evidencing an intent to conceal a potential violation, or supervision or non-compliance issue;
 - (3) or lack of substantial progress towards completion of a remediation plan for an unreasonably lengthy period of time, such as several years, particularly after a sustained and continuous process with the Appropriate Division regarding the lack of substantial progress.

The mere failure to meet, or extension of, a deadline for corrective action or remediation plan, on its own, will not be sufficient for a referral to DOE.



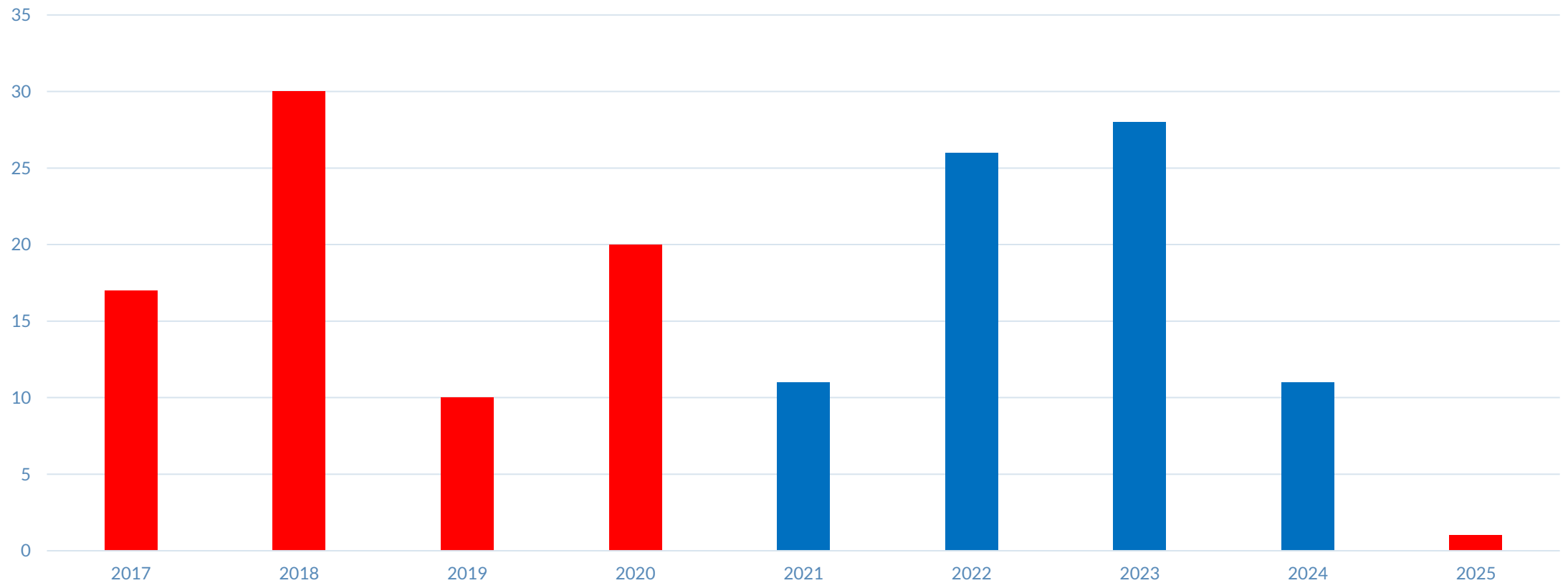
Enforcement Initiatives – Results

100 Days: Keynote Address by Acting Chairman Caroline D. Pham, 39th ISDA Annual General Meeting (5/15/25)

- “In only four months, DOE dispositioned 50% (representing several hundreds) of its open enforcement matters, including preliminary investigations, investigations, and litigation. Of these resolved matters, over a dozen had been open for over 15 years and over three dozen had been open for over 10 years. Resolving this backlog and lack of efficiency in case management practices will enable DOE to refocus its resources on catching fraudsters and scammers and helping victims, especially egregious or prolonged systematic deficiencies or material weakness of the supervisory system or controls, or program;”
- “DOE launched a 30-day compliance and remediation initiative, or enforcement sprint, in March to expeditiously resolve outstanding investigations and enforcement matters regarding compliance violations without customer harm or market abuse. Of approximately two dozen firms that expressed interest in participating in the enforcement sprint, over five matters are, or will soon be, in circulation for a Commission vote on the administrative settlement orders. These proposed settlement orders resolve years of investigation, apply the new DOE advisory regarding mitigation credit, and have civil monetary penalties that are reflective of historical amounts—a fraction of DOE’s previous initial demand amounts that were often disproportionately 10, 20, or even 100 times larger than in the past.”

Sharp Decline in Enforcement Actions

Number of new enforcement actions filed in first half of year



Decisions Not to Pursue Enforcement

- 1/31/25: “The Divisions [of Market Oversight and Clearing and Risk] will not recommend the Commission initiate an enforcement action against KalshiEX LLC, Kalshi Klear LLC, or their participants for failure to comply with certain swap-related recordkeeping requirements and for failure to report to swap data repositories data associated with binary option transactions and variable payout contract transactions executed on or subject to the rules of KalshiEX LLC and cleared through Kalshi Klear LLC, subject to the terms of the no-action letter. The supplemental letter also removes the condition in CFTC Letter No. [24-15](#) that prohibits Kalshi participants from clearing contracts through a third-party clearing member.”

Decisions Not to Pursue Enforcement

CFTC Letter 25-05: Withdrawal of Staff Advisory on Swap Execution Facility Registration Requirement (3/13/25)

- Withdrew 9/29/21 SEF Registration Advisory that formed the basis of many threatened enforcement actions
- Acknowledged that the Advisory had “created regulatory uncertainty regarding whether certain entities that operate in the swaps market are required to register as SEFs with respect to their particular functions within the swaps market, as well as the specific attributes of their business models.”

Decisions Not to Pursue Enforcement

CFTC Letter 25-14: Staff Interpretation Regarding Certain Cross-Border Definitions (5/21/25)

- Clarified the application of various cross-border definitions for market participants involved in a foreign jurisdiction:
 - “non-U.S. Person” for calculating the swap dealer de minimis threshold
 - “U.S. Person” as defined under 2013 Guidance
 - “foreign located person” under FCM exemption under Rule 3.10
 - “participant located in the United States” under Rule 30.1
 - “person located in the United States” under CFTC Rule 48.2 for FBOTs
- Key factors in determining the status of a person under the various cross-border definitions are:
 - Place of organization
 - Principal place of business

Decisions Not to Pursue Enforcement

Release No. 9063-25, Acting Chairman Pham Lauds DOJ Policy Ending Regulation by Prosecution of Digital Assets Industry and Directs CFTC Staff to Comply with Executive Orders (4/8/25)

- Reiterated focus on fraud and manipulation
- Expressed commitment to complying with Executive Orders, including Executive Order 14219 (Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulation Initiative)
- Praised the DOJ's Memo – Ending Regulation by Prosecution – announcing shift away from digital assets space
 - “In order to finally end the CFTC’s regulation by enforcement over the past several years, I direct the CFTC staff and the Director of Enforcement, consistent with DOJ policy, to not seek to ‘charge regulatory violations in cases involving digital assets,’ in particular ‘violations of registration requirements under the Commodity Exchange Act,’ unless ‘there is evidence that the defendant knew of the licensing or registration requirement at issue and violated such a requirement willfully,’ as set forth in DOJ’s Ending Regulation by Prosecution.



Education and Outreach Efforts

- Release No. 9052-25: ‘Dating or Defrauding?’ a Joint Effort to Alert Online Daters, Social Media Users of Relationship Investment Scams (2/10/25)
- Release No. 9056-25: CFTC’s Office of Customer Education and Outreach Releases New Advisory on Fraud Using Generative AI (3/19/25)
- Release No. 9075-25: CFTC Warns Public of Imposter Scam Targeting Fraud Victims (5/14/25)
- Release No. 9069-25: Request for Comment on the Trading and Clearing of “Perpetual” Style Derivatives (4/21/25)
- Release No. 9069-25: Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis (4/21/25)



Drama!!!

- 2/6/25: CFTC Statement on False Allegations Targeting Acting Chairman, 9048-25
- 4/23/25: Acting Chairman Pham Issues Statement on OIG Audit of CFTC's Use of Charge Cards
- 4/29/25: Acting Chairman Pham Statement on OIG Investigation of Telework Violations
- 5/5/25: CFTC Staff on Leave Pending Investigation, 9071-25
- 5/13/25: Acting Chairman Pham on Court Sanctions Against CFTC, 9074-25
- Staff departures



What to Expect With New Chair



CFTC's Transition to New Chair

- Former Commissioner Brian Quintenz nominated as CFTC Chair in February 2025.
- Acting Chair Pham announced return to private sector upon Quintenz's confirmation.
- Quintenz served as CFTC Commissioner from 2017 to 2021, before moving to the private sector to become Head of Policy for Andreessen Horowitz's crypto fund, a16z crypto.
- Quintenz is awaiting confirmation.



What to Expect from Quintenz's CFTC?

DeFi-friendly

- As Commissioner, Quintenz “embrac[ed] the rapid advancement of technology, opportunity, and innovation in finance...” (Aug. 19, 2021 Quintenz Statement on End of Term and Future Plans)
- Sponsored the CFTC’s Technology Advisory Committee (TAC) which oversaw innovations in the digital asset space (e.g., listing of Bitcoin futures). (Aug. 19, 2021 Statement)
- “I look forward to keeping innovation, particularly related to crypto and DeFi, relevant to my career and will continue advocating for the freedom, innovation, inclusion, and prosperity they offer.” (Aug. 19, 2021 Statement)



What to Expect from Quintenz's CFTC? (cont.)

Risk-Based Regulation

- As Commissioner, sought to “ensur[e] the [CFTC was] focused on risks, with rules appropriately tailored to those risks...” (Aug. 19, 2021 Statement)
- Embraced “targeted, appropriate responses to [] specific risks,” criticizing “prior approaches that too often imposed one-size-fits-all regimes.” (Aug. 19, 2021 Statement)
 - E.g., Feb. 14, 2018 Quintenz Opening Statement before TAC (stating that the CFTC “should not adopt automated trading regulations to address amorphous, hypothetical concerns or simply for the sake of having them on the book,” but rather institute a more thoughtful approach to target specific risks).



What to Expect from Quintenz's CFTC? (cont.)

Strict Enforcement of Fraud and Manipulation

- “The CFTC should not attempt to make value judgments about which new [digital asset] products are worthwhile and which are not – the markets, investors, and consumers need to decide that for themselves. *However, the CFTC should aggressively target fraudulent and manipulative behavior*, whether in the derivatives markets or in the underlying cash markets.” (Feb. 14, 2018 Opening Statement) (emphasis added)
- “I would much rather pursue engagement [between innovators and the CFTC] than enforcement – but in the absence of engagement, enforcement is our only option.” (Oct. 16, 2018 Quintenz Remarks at 38th Annual GITEX Technology Week Conference)
- Commended Division of Enforcement’s “tireless efforts to ensure that market participants, especially exchanges and intermediaries, comply with the Commodity Exchange Act and CFTC Regulations and don’t skirt those rules to the disadvantage of U.S. customers and law-abiding market participants.” (Oct. 1, 2020, Quintenz Statement re CFTC’s Action against BitMEX)
- Notwithstanding, Quintenz appears staunchly opposed to regulation by enforcement, at least with respect to digital assets. In 2023, he publicly criticized (on Twitter) the SEC’s action against Coinbase as “an irresponsible regulation-by-enforcement approach that hurts entrepreneurs, investors, and consumers while threatening to stifle innovation and drive responsible companies away from the US. ... Enforcement is not a substitute for GUIDANCE.” (June 6, 2023 Quintenz Tweets)



What to Expect from Quintenz's CFTC? (cont.)

Regulation of Retail Market and Event Contracts

- As Commissioner, supported regulation of digital assets in the retail market “to strike the appropriate balance between protecting the general public from bad actors and financial harm and providing a functional, adaptable regulatory framework to a rapidly evolving business.” (Mar. 24, 2020 Quintenz Statement in Support of Final Interpretive Guidance)
- Dissent to would-be prohibition of ErisX's NFL futures event contracts. (Mar. 25, 2021 Quintenz Statement on ErisX RSBIX NFL Contracts)
 - In December 2020, CFTC issued stay of ErisX's self-certification filing to list NFL futures event contracts. ErisX withdrew filing before CFTC issued order, which would have prohibited the contracts. Quintenz issued a lengthy dissent to the proposed order.
 - Rejected notions that “taking an economic position on an event's outcome is legally equivalent to a gaming/gambling activity, and that there is no fundamental or qualitative difference between gambling and speculating.”
 - But did not express outright support for deregulation of event contracts, and in fact noted “[i]t is more than understandable from the [CFTC's] perspective ... to not want event contracts trading under its jurisdiction....”
 - Rather, based dissent on statutory, regulatory, and constitutional concerns.
 - Strongly criticized delegating regulatory authority of this nature to the CFTC. “The debate and decision to ban such financial activity and the freedom of private enterprise to engage in it within the financial markets should be conducted within the Halls of Congress....”



What to Expect from Quintenz's CFTC? (cont.)

Cross-Border Regulation

- As Commissioner, Quintenz “advocated for authorities across the globe to adopt a deference-based regulatory framework that respects other jurisdictions’ supervisory interests in regulating their own local markets.” (Aug. 19, 2021 Statement)
- Helped craft rules on registration exemptions for non-U.S. DCOs and on cross-border regulation of swap dealers. (Aug. 19, 2021 Statement)

Collaboration with SEC

- As Commissioner, worked with SEC Commissioner Hester Peirce “on coordinating and harmonizing regulations, processes, and overlapping jurisdictional issues” between the CFTC and SEC. (Aug. 19, 2021 Statement)
- Given Commissioner Peirce’s current role as the leader of the SEC’s Crypto Task Force, expect to see continued collaboration between the CFTC and SEC on regulation of digital assets.



Developments at the SEC



A Commission in Transition

- Changes Under Acting Chair Uyeda
 - Revised process/enhanced oversight of formal orders
 - Return to Wells submissions/Wells meetings
 - Reduction in Staff/return to office
 - Establishment of crypto task force/dropping of several high-profile crypto cases
 - Pause in climate-rule defense
- Continuation of Changes and Expectations Under Chair Atkins
 - Slowdown of rulemaking/extension of compliance deadlines
 - Departure from industry sweeps/regulation by enforcement
 - Focus on economic analysis of penalties and individual liability
 - Easing regulatory burdens on capital formation and emphasizing efforts to protect retail investors



Chair Atkins Speeches and Statements

- SEC Speaks (5/19/25) (<https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>)
 - Themes: Innovation, crypto, FinHub, investing in private funds, and “CAT”
 - Closing statement led with: “It *is* a new day at the SEC ...”
- Testimony Before the House (5/20/25) (<https://www.sec.gov/newsroom/speeches-statements/atkins-testimony-fsgg-052025>)
 - Early remarks included: “First and foremost, it *is* a new day at the SEC.”
 - Themes: SEC mission, digital assets, SEC Commissioner roles, SEC Staff numbers, reorganization, technology review and optimizing efficiency, regional offices and leasing, and SEC funding.
- Testimony Before the Senate (6/3/25) (<https://www.sec.gov/newsroom/speeches-statements/testimony-atkins-060325>)
 - Prepared remarks similar to those for testimony before the House but with addition of 2026 budget request.



Regional Reorganization and Staffing

- No longer regional directors for each of the SEC's 10 regional offices.
 - As reorganized, there are now 3 deputy directors to oversee 3 geographic regions - northeast, southwest, and west - and one deputy director for the specialized units.
 - Enforcement Staff report directly to one of the four respective deputy directors.
- Chair Atkins has publicly affirmed his belief in the "SEC's regional office concept" and the "need to maintain these offices."
- The SEC's Offices and Divisions have decreased headcount by 15% since the beginning of the current fiscal year.
 - Chair Atkins has stated that: "These departures leave vacancies that in many cases need to be filled. When I left the agency in 2008, we had approximately 3,600 employees. At our height a year ago, we had approximately 5,000 employees plus 2,000 contractors. Today we are at approximately 4,200 employees and 1,700 contractors." (Testimony Before the House and Senate).
- The fiscal year 2026's budget request was \$2.149B which is relatively flat year-over-year and contemplates approximately 4,100 employees.



What's Next?

- Chair Atkins has announced several new division appointments
 - Brian Daly – Division of Investment Management
 - Jamie Selway – Division of Trading and Markets
- Still no permanent Director in the Division of Examinations or the Division of Enforcement.
- Priorities for the Division of Examinations
 - October 21, 2024 report (<https://www.sec.gov/files/2025-exam-priorities.pdf>)
- Priorities for the Division of Enforcement
 - Protection of retail investors
 - Conduct based in fraud
 - Cybersecurity and artificial intelligence
 - Complex financial instruments

Thank you for joining us today!

Upcoming Webinars:



EMIR 3.0 – ESMA final report on active account requirements
2:00 PM - 3:15 PM BST



Trends in ETD Trading Q2 2025
10:30 AM - 11:30 AM ET



Trends in Extraterritorial Enforcement in Derivatives Markets
10:00 AM - 11:00 AM ET



State Attorneys General
10:00 AM - 11:00 AM ET

The image features the FIA logo centered against a background of large, overlapping geometric shapes in shades of light green, light blue, and light grey. The logo itself consists of the letters 'FIA' in a bold, sans-serif font. The 'F' is dark grey. The 'I' is also dark grey. The 'A' is composed of two overlapping shapes: a light green one on the left and a light blue one on the right, creating a sense of depth and movement.

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