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CLE Paper:
Strategic Considerations for Acquisitions of Regulated Commodities Entities

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Strategic Considerations for Acquisitions of Regulated Commodities Entities[2]

I. INTRODUCTION

The Commodity Futures Trading Commission (the "CFTC" or "Commission") regulates key participants and infrastructure in the U.S. derivatives markets, including contract markets, derivatives clearing organizations, futures commission merchants, introducing brokers, swap dealers, and other registered entities. Transactions involving these entities raise complex issues at the intersection of regulatory approval, compliance risk, and commercial strategy.

This paper addresses key considerations for firms seeking to acquire CFTC-regulated entities, particularly in light of recent regulatory and market developments. It first provides an overview of current trends shaping transaction activity, and then analyzes the acquisition lifecycle, from pre-transaction strategy through post-closing integration, highlighting practical, strategic, and regulatory considerations issues potential acquirers should consider.

II. RECENT REGULATORY AND MARKET TRENDS

Under the current presidential administration and the CFTC Chairmanships of Caroline Pham and now Michael Selig, the CFTC has facilitated rapid and significant changes in several key areas. These developments are reshaping market structure, regulatory expectations, and the strategic value of CFTC-regulated entities.

Expansion of Crypto and Digital Asset Activities

In August 2025, then-Acting CFTC Chairman Pham announced the kickoff of the CFTC's "Crypto Sprint" initiative to begin implementing recommendations from the President's Working Group on Digital Asset Markets.[3] Following a period of public engagement,[4] the CFTC took several notable actions in December 2025, including permitting, for the first time, listed spot cryptocurrency products to be traded on CFTC-registered exchanges[5] and launching a pilot

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[2] Prepared for the Futures Industry Association Law and Compliance Division Conference (2026) by Peter Y. Malyshev, Nathan A. Howell, Kate Lashley, Ian McGinley, and Rebecca Lewis Tierney of Sidley Austin LLP. Special thanks to Hannah K. Petty and Elaine R. McCartin, also of Sidley Austin LLP, for their assistance.

[3] *See* CFTC Press Release, *Acting Chairman Pham Announces CFTC Crypto Sprint*, Release No. 9104-25 (Aug. 1, 2025), https://www.cftc.gov/PressRoom/PressReleases/9104-25.

[4] *See, e.g.*, CFTC Press Release, *Acting Chairman Pham Launches Listed Spot Crypto Trading Initiative*, Release No. 9105-25 (Aug. 4, 2025), https://www.cftc.gov/PressRoom/PressReleases/9105-25 (requesting feedback and suggestions on listing spot crypto asset contracts on a designated contract market), and CFTC Press Release, *Acting Chairman Pham Announces Next Crypto Sprint Initiative*, Release No. 9109-25 (Aug. 21, 2025), https://www.cftc.gov/PressRoom/PressReleases/9109-25 (requesting feedback and suggestions on all recommendations for the CFTC in the President's Working Group on Digital Asset Markets report).

[5] *See* CFTC Press Release, *Acting Chairman Pham Announces First-Ever Listed Spot Crypto Trading on U.S. Regulated Exchanges*, Release No. 9145-25 (Dec. 4, 2025), https://www.cftc.gov/PressRoom/PressReleases/9145-25.

program and related guidance and no-action to allow certain digital assets to be used as collateral in derivatives markets.[6]

Chairman Selig has continued to emphasize regulatory clarity and market innovation, including through additional no-action relief, guidance,[7] and the establishment of an "Innovation Task Force" focused on emerging products and technologies within the derivatives markets.[8]

At the legislative level, market participants are anticipating the passage of the Digital Asset Market Clarity Act,[9] or similar digital assets market structure legislation, which would significantly reshape the U.S. regulatory landscape for digital assets, including by introducing tailored registration regimes for digital asset activities and clarifying the jurisdictional boundaries between the CFTC and the Securities and Exchange Commission ("SEC").

These developments are expanding the scope of permissible activities within CFTC-regulated markets and increasing regulatory visibility into digital asset products. For acquirors, this evolution may enhance the strategic value of regulated entities with digital asset capabilities, while also introducing uncertainty as new regulatory frameworks and compliance obligations continue to develop.

Prediction Markets

In March 2026, the CFTC issued an advance notice of proposed rulemaking on prediction markets seeking public comment on how certain statutory provisions and related regulations should apply to modern prediction markets.[10] This action follows earlier Commission activity, including the withdrawal of a proposed rule that would have restricted certain political- and sports-based event contracts and direction to staff to develop a new regulatory framework for prediction markets.[11]

At the same time, Chairman Selig has publicly asserted that the CFTC has exclusive jurisdiction over event contracts, notwithstanding competing claims from state gaming regulators and

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[6] *See* CFTC Press Release, *Acting Chairman Pham Announces Launch of Digital Assets Pilot Program for Tokenized Collateral in Derivatives Markets*, Release No. 9146-26 (Dec. 8, 2025), https://www.cftc.gov/PressRoom/PressReleases/9146-25.

[7] CFTC Press Release, *CFTC Staff Issues FAQs Concerning Registrant and Registered Entity Activities Relating to Crypto Assets and Blockchain Technologies*, Release No. 9200-26 (Mar. 20, 2026), https://www.cftc.gov/PressRoom/PressReleases/9200-26.

[8] CFTC Press Release, *Chairman Selig Announces Formation of New Innovation Task Force*, Release No. 9201-26 (Mar. 24, 2026), https://www.cftc.gov/PressRoom/PressReleases/9201-26.

[9] House Bill (H.R. 3633) Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/house-bill/3633/text.

[10] Prediction Markets, 91 Fed. Reg. 12,516 (Mar. 16, 2026) (advance notice of proposed rulemaking), https://www.federalregister.gov/documents/2026/03/16/2026-05105/prediction-markets.

[11] *See* CFTC Press Release, *CFTC Withdraws Event Contracts Rule Proposal and Staff Sports Event Contracts Advisory*, Release No. 9179-26 (Feb. 4, 2026), https://www.cftc.gov/PressRoom/PressReleases/9179-26.

private litigants.[12] That position, if sustained, would support broader distribution of CFTC-regulated event contracts across multiple jurisdictions, but has intensified conflicts with state regulatory regimes and prompted ongoing litigation and legislative challenges.

Although the CFTC is embracing prediction markets, members of Congress and state regulators have increasingly challenged the CFTC's authority to permit sports- and political-based event contracts. These tensions set the stage for possible Supreme Court or legislative intervention that could test the outer bounds of the CFTC's exclusive jurisdiction over event contracts under the Commodity Exchange Act ("CEA").

Rapid Market Growth and New Entrants

Across both digital asset derivatives and prediction markets, the industry has experienced significant growth and an influx of new entrants, including traditional financial institutions and consumer-facing platforms. In the digital asset space, established platforms have expanded their derivatives offerings, while newer entrants continue to pursue vertically integrated trading, clearing, and custody models. In parallel, prediction markets have seen rapid growth in trading volumes and user adoption.

Market participants are pursuing a range of entry strategies, including partnerships with existing exchanges, registration as introducing brokers ("IBs") or futures commission merchants ("FCMs"), and the launch or acquisition of designated contract markets ("DCMs") and derivatives clearing organizations ("DCOs"). A growing pipeline of new exchange applications and product offerings reflects increasing interest in these markets.

These trends are driving increased transaction activity, strategic partnerships, and consolidation across the sector. As a result, CFTC-regulated licenses, distribution platforms, and supporting infrastructure are increasingly viewed as scarce and strategic assets, with direct implications for transaction structuring, timing, and valuation.

Technological Change and "Retailification"

Advances in technology are enabling new market structures and business models, particularly through retail-facing platforms that offer fully collateralized, auto-liquidating trading environments. These platforms rely on real-time margining, automated risk management, and direct market access, reducing the need for intermediary balance sheet support. As a result, these platforms can operate with lower capital requirements and reduced exposure to client defaults compared to traditional FCM structures.[13] The retailification of commodity markets is

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[12] CFTC Press Release, *CFTC Reaffirms Exclusive Jurisdiction over Prediction Markets in U.S. Circuit Court Filing*, Release No. 9183-26 (Feb. 17, 2026), https://www.cftc.gov/PressRoom/PressReleases/9183-26.

[13] NFA Compliance Rule 2-51, https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=4&RuleID=RULE%202-51.

expanding market participation and trading demand, but may also disintermediate traditional intermediaries as direct access models gain traction.

Moreover, the same features that enhance risk mitigation may also reduce revenue streams historically relied upon by FCMs, including interest income on client balances, margin financing spreads, and certain execution-related fees. Increased transparency and competition from technology-driven platforms may further place downward pressure on pricing. Thus, while these new technology-enabled models reduce counterparty risk, they may negatively impact traditional FCM economics and should be carefully evaluated in any acquisition context.

Changes To Swap Dealer Threshold

The CFTC is assessing whether to expand the relief provided by the swap dealer *de minimis* threshold under Section 1a(49) of the CEA, by carving out certain asset classes such as energy, metals, or agricultural swaps from the calculation.[14] The *de minimis* threshold exempts smaller market participants from registration while capturing entities whose dealing activity is significant enough to warrant full regulatory oversight.

Because many market participants focus their dealing activity on energy, metals, and agricultural swaps, expanding the relief would expand the activity that firms can undertake without registering as swap dealers. This could, in turn, affect the economic rationale for maintaining swap dealer registration and materially reduce the value of a swap dealer license.

III. PRE-PURCHASE STRATEGY

Acquirors of CFTC-regulated entities must make a series of threshold strategic decisions before initiating a transaction. Each of these decisions can materially affect execution risk, regulatory posture, and long-term value creation. Chief among these are whether to build capabilities organically or acquire an existing registrant, and whether to operate the target as a long-term platform or position it for eventual exit. In practice, these strategic decisions must align not only with commercial objectives but also with the constraints imposed by the CFTC regulatory framework, which may limit flexibility in structuring, timing, and post-closing operations.

Build or Buy?

Market participants typically consider whether to build capabilities organically or acquire an existing regulated entity. The "build or buy" decision often turns on timing, regulatory barriers to entry, and the availability of suitable targets.

Building can offer tighter control over technology, compliance architecture, and product design—particularly important for novel areas like event contracts or digital asset derivatives where regulatory expectations are evolving and bespoke risk controls are critical. However, the

[14] CFTC, Staff Letter No. 25-51 (Dec. 19, 2025), https://www.cftc.gov/csl/25-51/download.

registration process with the CFTC and, where applicable, self-regulatory organizations ("SROs"), can be time consuming and uncertain, especially for products that may face heightened scrutiny.

Acquiring an existing regulated entity can provide immediate regulatory licenses, established compliance infrastructure, and embedded relationships with regulators and market participants. Horizontal acquisitions may expand product scope (*e.g.*, adding event contracts alongside crypto derivatives), while vertical integration—such as combining execution, clearing, and custody capabilities—can create efficiencies but may raise regulatory concerns around conflicts of interest and systemic risk that must be carefully managed.

Operate or Flip?

Similarly, acquirors must decide whether to operate the target as a long-term strategic asset or position it for a future sale. This "operate or flip" dynamic can influence diligence depth, integration planning, and post-closing investment.

Operating the entity requires a long-term commitment to regulatory compliance, governance, and capital requirements, as well as, for certain categories of registrants, ongoing engagement with the CFTC on product approvals—particularly for emerging areas like event contracts or blockchain-based derivatives, where policy positions may evolve. It also requires personnel with appropriate regulatory experience, including qualified associated persons and compliance staff. Acquirors must assess whether such personnel will remain in place post-closing or can be replaced without disrupting regulatory approvals or ongoing operations.

This path can generate durable revenue streams and strategic control over market infrastructure but demands significant operational expertise and risk management. By contrast, acquiring the entity as an investment may involve prioritizing product expansion or technology enhancements to increase valuation. However, this approach must still account for regulatory approval of ownership changes, limitations on passive ownership in certain registrant categories, and the reality that the value of the asset is closely tied to maintaining good standing with the CFTC and preserving market confidence.

IV. TRANSACTION LIFECYCLE

Once a potential acquirer has made the decision to purchase a CFTC-regulated entity, a number of considerations come into play. The lifecycle for the acquisition of a CFTC-regulated entity begins with extensive due diligence, particularly focused on regulatory status and compliance, financial condition, and operational infrastructure. A thorough evaluation of the target's regulatory status—including registrations, memberships, and disciplinary history—is critical to assessing risk, informing transaction structure, and post-closing integration planning.

Acquirors should also assess the durability of the regulatory framework underpinning the target's business model, including any reliance on interpretive positions or no-action relief, and the risk that future rulemaking or enforcement could materially affect key products or revenue streams.

In addition, due diligence should evaluate contractual constraints, including, as applicable, the assignability of customer agreements, exchange memberships, clearing and custody arrangements, and other key commercial contracts, as well as any consents, notices, or approvals that may be triggered by a change in control.

Following execution of definitive agreements, the parties engage in a regulatory review and approval process. Depending on the target's registration category, regulators may assess the fitness and qualifications of new principals, changes in control, and the adequacy of the post-closing compliance program. In parallel, parties must manage third-party consent processes and ensure that required approvals under customer agreements, exchange rules, and clearing arrangements are obtained prior to closing.

Post-signing and pre-closing, acquirors must prepare for compliance integration and operational transition, including aligning supervisory structures, updating policies and procedures, and ensuring continuity of key personnel and regulatory relationships. After closing, firms must be prepared to address ongoing regulatory examinations and any pre-existing investigations, as well as to remediate identified compliance issues.

Regulatory review timelines are often uncertain and can extend well beyond initial expectations, particularly where the transaction involves novel products or new market entrants. Transaction agreements should account for this uncertainty through appropriate long-stop dates, interim operating covenants, and regulatory cooperation provisions.

V. REGULATORY AND COMPLIANCE CONSIDERATIONS

An acquiror of a CFTC-regulated entity must take into account numerous important regulatory and compliance considerations. These considerations often drive both regulatory approvals and transaction execution risk.

Principals and APs: Principal determinations are central to regulatory approvals. Under National Futures Association ("NFA") rules, a "principal" is any individual or entity that has the power, directly or indirectly, to exercise a controlling influence over the management or policies of an NFA Member, including officers, directors, general partners, certain shareholders, and individuals performing similar functions.[15] Associated persons ("APs") are individuals who solicit or accept customer orders, funds, or accounts, or supervise such activities on behalf of a CFTC registrant.[16] Associated persons, both existing and newly designated, must be properly registered with the CFTC and NFA and may be subject to proficiency requirements.[17] Inadvertent AP status can create

[15] 17 C.F.R. § 3.1 (2026), https://www.ecfr.gov/current/title-17/chapter-I/part-3/subpart-A?utm; NFA, Principal Status, https://www.nfa.futures.org/registration-membership/who-has-to-register/principal.html.
[16] 17 C.F.R. § 1.3 (2026) (definition of "associated person") https://www.ecfr.gov/current/title-17/chapter-I/part-1/subject-group-ECFR893b3e8e94c8047/section-1.3.
[17] 7 U.S.C. § 6k(2) (Commodity Exchange Act – registration of associated persons), https://www.law.cornell.edu/uscode/text/7/6k.

unexpected compliance obligations. Individuals may be disqualified from being a principal or AP under the CEA if they have certain criminal convictions, injunctions, or regulatory sanctions.[18]

Transferring Customer Accounts and Funds: Know Your Customer and Anti-Money Laundering ("AML") frameworks must be reviewed for adequacy, particularly in light of evolving enforcement expectations. The transfer of customer accounts raises additional issues, including custody arrangements, customer consent (including redemption rights), and use of approved depositories.

Transferring Positions: Similarly, transferring exchange positions requires controls to prevent inadvertent wash trades, layering, spoofing, and other illegal market manipulation tactics during the transition process, as such conduct may violate the CEA and CFTC regulations and expose the firm and its personnel to significant regulatory and enforcement risk.[19]

Derivatives Regulatory Approvals: Transactions involving regulated entities often require approvals from multiple regulators, including from the CFTC, NFA, and other SROs. Depending on the target's registration status, the transaction may trigger change-of-control filings, prior approval requirements, or membership transfer processes with NFA or SROs. The NFA generally requires advance notice and may conduct a fitness review of the acquiring entity and its principals, including an assessment of disciplinary history, financial condition, and supervisory structure.[20]

Other Regulatory Approvals: Antitrust clearance may be required under the Hart-Scott-Rodino Act, requiring premerger notification and expiration or early termination of the applicable waiting period. If the acquirer is a bank holding company or otherwise affiliated with a banking organization, approval under the Bank Holding Company Act may also be required. Early engagement with relevant regulators is often advisable to facilitate a smooth approval process and ensure continuity of the target's regulated activities post-closing.

Ongoing Regulatory Compliance: The parties must also ensure that the regulated entity will continue to satisfy applicable regulatory requirements, including capital and financial reporting obligations, customer protection rules, and recordkeeping requirements.[21] In certain cases, customer consents and account transfer documentation may be required, particularly where customer accounts are introduced, carried, or managed by the target.

New Compliance Requirements: An acquiror that is not currently regulated may become directly subject to regulation upon acquisition. Alternatively, it may become an affiliate of a regulated

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[18] 7 U.S.C. § 12a(2) (Commodity Exchange Act – statutory disqualification), https://www.law.cornell.edu/uscode/text/7/12a.

[19] 7 U.S.C. § 6c(a)(5) (Commodity Exchange Act – prohibition on spoofing and manipulative practices), https://www.law.cornell.edu/uscode/text/7/6c.

[20] Nat'l Futures Ass'n, *Regulatory Requirements Guide* (2026), https://www.nfa.futures.org/members/regulatory-requirements-guide.html.

[21] 17 C.F.R. pt. 1 (2026), https://www.ecfr.gov/current/title-17/chapter-I/part-1/.

entity, thereby subjecting it to indirect compliance obligations and supervisory expectations. Therefore, early analysis of registration thresholds, control persons and principals, affiliated persons, approval requirements, and downstream regulatory effects is crucial to structuring and timing a transaction.

Cross-Border Implications: Cross-border acquisitions raise additional complexities. Non-U.S. acquirors purchasing U.S.-regulated entities must navigate U.S. regulatory requirements, while U.S. acquirors purchasing foreign-regulated entities must consider local regulatory regimes, potential conflicts of law, and how CFTC cross-border rules will apply to the combined enterprise. In both cases, cross-border acquisitions of CFTC-regulated entities require careful coordination of multi-jurisdictional regulatory approvals, alignment of global compliance programs, and proactive engagement with regulators to address potential conflicts of law, data localization and sharing constraints, and differing supervisory expectations.

VI. CONSIDERATIONS FOR THE TARGET

A well-prepared target is more likely to withstand diligence scrutiny and achieve favorable valuation.

Preparing for Sale: Targets should ensure that their compliance programs, financial records, and regulatory filings are in order prior to a sale process. This includes maintaining robust written supervisory procedures, a well-documented compliance management system, and evidence of periodic testing, surveillance, and remediation.[22]

Collecting Records: Books and records should be complete, accurate, and readily accessible in accordance with CFTC recordkeeping requirements, including trade data, communications, and customer documentation. Financial records should clearly reflect ongoing compliance with regulatory capital requirements, segregation and protection of customer funds (where applicable), and any historical capital deficiencies or reporting issues.

Diligence Planning: Targets should anticipate detailed diligence around risk management frameworks, margin methodologies, valuation practices (particularly for swaps), cybersecurity controls, and business continuity planning. Prior examination reports from the CFTC and NFA, as well as any deficiency letters, enforcement inquiries, or remediation efforts, should be organized and supported by a clear narrative demonstrating timely and effective resolution.[23]

Demonstrating Regulatory Compliance: Regulatory filings should be current, accurate, and internally consistent. Any historical errors, restatements, or late filings should be identified and explained, with corresponding remediation measures. Targets should also confirm that their

[22] 17 C.F.R. § 166.3 (2025); NFA, *Compliance Rule 2-9* (2025), https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=4&RuleID=RULE%202-9.

[23] NFA, *Futures Exams*, https://www.nfa.futures.org/members/cta/futures-exams.html.

registration status, associated persons, disclosure documents, and marketing materials are aligned with current operations and regulatory expectations.

Ensure Cultural Alignment: Cultural alignment with the acquiror is also an important consideration, particularly in highly regulated environments where compliance culture is critical. For CFTC-regulated entities, this includes alignment on risk appetite, escalation protocols, tone from the top, and the authority and independence of the compliance function.

Residual Regulatory Liabilities: Under the CEA and CFTC regulations, liability attaches to the underlying conduct and is not extinguished by a change in ownership. Core obligations relating to supervision,[24] recordkeeping and retention,[25] and customer protection—particularly segregation and safeguarding of customer funds[26]—continue to have effect with respect to pre-closing activities and may require ongoing compliance, cooperation, or remediation by the seller. The CFTC looks beyond transactional form to the substance of prior misconduct and may pursue legacy violations notwithstanding the transfer of the business. Sellers therefore must ensure that adequate provision is made for continued access to books and records, responsiveness to regulatory inquiries, and the handling of legacy customer issues.

VII. SPECIFICS BY ENTITY TYPE

Acquirors must also consider the distinct regulatory requirements applicable to different types of CFTC-regulated entities.

Acquiring Infrastructure Providers and Financial Utilities: Acquisitions of infrastructure providers (such as DCMs, DCOs, swap data repositories, and foreign boards of trade) raise unique considerations, including systemic importance and whether the entity is affiliated with a Global Systemically Important Bank ("GSIB"). GSIBs are subject to heightened regulatory scrutiny, including enhanced requirements for capital, liquidity, risk management, and stress testing, reflecting the broader financial stability risks posed by their potential failure.[27] More broadly, applicable CFTC rules and guidance should be reviewed to determine required regulatory notification between signing and closing. For example, CFTC Regulation 38.5 requires DCMs to notify the CFTC of transfers of 10% or more of equity interests.

Acquiring NFA Members: Different NFA member categories present different considerations. FCMs involve customer funds and segregation; IBs focus on solicitation and disclosure; commodity trading advisors ("CTAs") and commodity pool operators ("CPOs") implicate fiduciary

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[24] 17 C.F.R. § 166.3, https://www.ecfr.gov/current/title-17/chapter-I/part-166/section-166.3.

[25] 17 C.F.R. § 1.31, https://www.ecfr.gov/current/title-17/chapter-I/part-1/subject-group-ECFR26e2c365a191fa7/section-1.31.

[26] 17 C.F.R. § 1.20, https://www.ecfr.gov/current/title-17/chapter-I/part-1/subject-group-ECFR0b7db1d7cacc538/section-1.20.

[27] Bd. Of Governors of the Fed. Rsrv. Sys., *Global Systemically Important Banks* (last updated Feb. 25, 2026), https://www.federalreserve.gov/supervisionreg/global-systemically-important-banks.htm.

duties; and swap dealers are subject to complex swap-specific regimes. In each case, provision must be made for ongoing compliance with NFA requirements.

Acquiring Entities Subject To Other Regulators: Firms should assess whether a CFTC registrant must also register with the SEC or other regulators. For example, CTAs providing securities advice must evaluate potential registration under the Investment Advisers Act of 1940, and FCMs or IBs engaging in securities activities may need to register as broker-dealers. Dual-hatted entities subject to both SEC and CFTC oversight require careful coordination across regulatory regimes. Entities subject to U.S. prudential regulation under the Bank Holding Company Act are also subject to additional oversight and capital requirements.[28]

VIII. PRODUCT-SPECIFIC REGULATIONS

Applicable regulations also differ depending on the types of products underlying an entity's activities and business model.

Physical Commodities: Entities trading physical commodities must comply with position limits at both the exchange and federal level. The CEA, as amended by Dodd-Frank, requires the CFTC to impose limits to prevent excessive speculation and price distortions, including for certain physically settled derivatives and related instruments, subject to exemptions such as bona fide hedging.[29] Aggregation rules can create additional exposure post-acquisition, as positions generally must be combined where there is common ownership or control, although certain exemptions (including for FCMs) may apply.

Operational Complexities for Entities Trading Certain Commodities: Energy commodities present additional complexities because physical market participation can create environmental liability exposure tied to infrastructure such as storage facilities and pipelines. Hydrocarbon markets also differ by product, involving distinct transportation, storage, and delivery systems, and with different operational risks and pricing dynamics. Agricultural commodities may implicate U.S. Department of Agriculture oversight, including grading, inspection, and warehouse licensing under statutes such as the U.S. Warehouse Act, as well as protections under the Perishable Agricultural Commodities Act and Packers and Stockyards Act.[30] Metals trading raises parallel issues, particularly with respect to warehouse systems, delivery mechanics, and pricing impacts in base metals markets. For precious metals, additional Treasury and AML-related considerations arise, including chain-of-custody, vaulting, and scrutiny of cross-border bullion flows.[31]

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[28] Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841–1852, https://www.law.cornell.edu/uscode/text/12/1841; Capital Adequacy of Bank Holding Companies, 12 C.F.R. pt. 217, https://www.ecfr.gov/current/title-12/chapter-II/subchapter-A/part-217.

[29] 17 C.F.R. pt. 150 (2025), https://www.ecfr.gov/current/title-17/chapter-I/part-150.

[30] Perishable Agricultural Commodities Act (PACA), 7 U.S.C. §§ 499a-499t, https://www.law.cornell.edu/uscode/text/7/499a; Packers and Stockyards Act (PSA), 7 U.S.C. §§ 181-229, https://www.law.cornell.edu/uscode/text/7/181.

[31] London Bullion Mkt. Ass'n, *Gold Bar Integrity Initiative – Security Feature*, https://www.lbma.org.uk/good-delivery/lbma-gold-bar-integrity-initiative-security-feature.

Digital Assets: Entities engaged in digital asset-related activities face rapidly evolving regulatory frameworks. The anticipated U.S. market structure legislation may introduce clearer taxonomy and registration regimes, facilitate tokenization of traditional assets, and support expanded custody and multi-line business models.[32] At the same time, decentralized finance ("DeFi") structures present unique compliance challenges, and the treatment of digital collateral under CFTC regulations remains an area of ongoing focus. For acquirors, key issues include asset classification, custody and control frameworks, and the risk that evolving regulatory interpretations may affect product viability or compliance obligations.

Event Contracts: Event contracts remain an area of active regulatory scrutiny, with evolving CFTC guidance, ongoing litigation, and continued uncertainty. The CFTC has recently shifted toward permitting certain political and sports-related contracts, including withdrawing a prior proposed prohibition, while signaling additional rulemaking that is likely to draw both industry participation and judicial review.[33] Litigation risk remains significant, as federal courts, state regulators, and market participants continue to test the boundary between derivatives regulation and gambling law. In a recent Arizona criminal case against Kalshi, state authorities alleged that certain event contracts violated state anti-gambling laws, underscoring the tension between federal authorization and state-level enforcement.[34]

Financial Derivatives: Regulatory considerations depend on whether trading occurs on an exchange or on an "over-the-counter" ("OTC") basis. OTC transactions require careful review of International Swaps and Derivatives Association (also known as "ISDA") or other transaction documentation, including representations, transfer restrictions, and novation mechanics.

Environmental Products: Markets for carbon credits and other environmental products remain uncertain, particularly in light of the CFTC's withdrawal of prior guidance and reduced regulatory support.[35]

IX. DEALING WITH LEFT-OVER LIABILITIES

Acquirors of CFTC-regulated entities must approach residual liabilities with particular care, as regulatory frameworks and market infrastructure obligations can limit the effectiveness of contractual risk allocation.

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[32] *SEC Announces Launch of "Project Crypto,"* Sidley Austin LLP (Aug. 5, 2025), https://www.sidley.com/en/insights/newsupdates/2025/08/sec-announces-launch-of-project-crypto.

[33] *U.S. CFTC Signals Imminent Rulemaking on Prediction Markets*, Sidley Austin LLP (Feb. 6, 2026), https://www.sidley.com/en/insights/newsupdates/2026/02/us-cftc-signals-imminent-rulemaking-on-prediction-markets.

[34] David Yaffe-Bellany & Matthew Goldstein, *Arizona Files Criminal Charges Against Kalshi*, N.Y. Times (Mar. 17, 2026), https://www.nytimes.com/2026/03/17/technology/arizona-criminal-charges-kalshi.html.

[35] CFTC Press Release, *CFTC Withdraws Guidance Regarding Listing of Voluntary Carbon Credit Derivative Contracts*, Release No. 9119-25 (Sept. 10, 2025), https://www.cftc.gov/PressRoom/PressReleases/9119-25.

Investigations and Litigation: Acquirors must be prepared to inherit ongoing investigations and litigation, which may continue post-closing and require active management.

Pre-Acquisition Claims: Claims arising prior to acquisition are typically addressed through indemnities, though enforceability and collectability should be carefully evaluated.

Liability Allocation: Transaction documents distinguish between assumed and excluded liabilities, but certain liabilities (especially regulatory obligations, exchange or clearinghouse responsibilities, and customer-related claims) may effectively run with the entity and cannot be fully disclaimed by contract, notwithstanding negotiated allocation between the parties.

Bankruptcy Considerations: In distressed scenarios, bankruptcy considerations may impact liability allocation, creditor rights, and the ability to consummate a transaction free and clear of encumbrances.