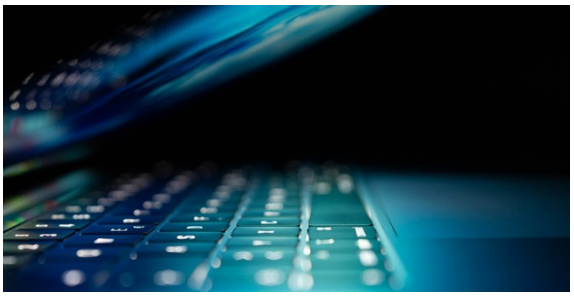
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The CFTC Modernizes its Approach to Digital Assets as Collateral

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Background

The Commodity Futures Trading Commission ("CFTC") rang in the new year under new leadership and a fresh approach to digital assets. On December 8, 2025, the CFTC, under then-Acting Chairman Caroline Pham, released three letters aimed at modernizing the use of digital assets as collateral in derivatives markets. Capping off a banner year for U.S. digital asset regulation, these letters build on several significant developments from 2025, including the tokenized collateral initiative launched in September as part of the CFTC's "Crypto Sprint," the Guiding and Establishing National Innovation for U.S. Stablecoins Act ("GENIUS Act") which was signed into law by President Trump in July, and the President's Working Group on Digital Assets Markets' 2025 Recommendations to Strengthen American Leadership in Digital Financial Technology (the "PWG Recommendations").

At a high level:

- (i) CFTC Letter No. 25-39 offers guidance on the treatment of tokenized assets as collateral;
- (ii) CFTC Letter No. 25-40 provides no-action relief that will allow Futures Commission Merchants ("FCMs") to accept certain digital assets as customer margin collateral and to deposit certain payment stablecoins (as defined in the GENIUS Act) into customer accounts as residual interest; and
- (iii) CFTC Letter No. 25-41 withdraws Staff Advisory No. 20-34, which had substantially limited the ability of FCMs to hold and accept virtual currencies.

Days later, on December 11, 2025, the CFTC also announced the withdrawal of prior interpretive guidance it had issued on June 24, 2020, which had provided a mechanism for determining "actual delivery" in the context of retail commodity transactions involving virtual currency.

These actions represent significant developments for firms seeking to utilize digital assets and/or tokenized assets in listed, cleared, and uncleared derivatives markets. They also marked some of the final acts of Caroline Pham's tenure as Acting CFTC Chairman.

Understanding the Letters

CFTC Letter No. 25-39 – Tokenized Collateral Guidance

Following recommendations from the CFTC's Global Markets Advisory Committee ("GMAC") and other commenters, CFTC Letter No. 25-39 offers new guidance from the MPD, the Division of Market Oversight ("DMO") of the CFTC, and the Division of Clearing and Risk ("DCR" and together, the "Divisions") of the CFTC on the use of tokenized assets[1] as collateral and offers the Divisions' views pertaining to five key regulatory areas: (i) eligible tokenized assets; (ii) legal enforceability; (iii) segregation, custody, and control arrangements; (iv) haircuts and valuation; and (v) operational risks. This guidance has direct implications for firms transacting in listed, cleared, and uncleared derivatives.

The new guidance emphasizes that, although the rights and protections afforded to token-holders by each tokenized asset and tokenization structure must be evaluated on an individual basis, digital ledger technology does not necessarily change the underlying character of the asset nor do existing CFTC regulations mandate the use of any particular technology or operational infrastructure for transferring or holding assets as collateral. Instead, tokenized assets remain eligible for use as margin if they satisfy all applicable regulatory requirements, including those governing legal enforceability, custody and segregation, and risk management.

The guidance further highlights that registered entities or registrants must demonstrate that non-cash assets utilized as regulatory margin comply with legal enforceability standards. Derivatives clearing organizations ("DCOs") must operate under a "well-founded, transparent, and enforceable legal framework" that establishes netting arrangements, the DCO's interest in the collateral and settlement finality. Swap entities continue to be subject to regulatory margin requirements, including the requirement to hold initial margin pursuant to a legal, valid, binding and enforceable custody agreement.

Collateral held by FCMs, DCOs and swap entities as margin continues to be subject to segregation and custody requirements and needs to be held by an eligible custodian. Additionally, FCMs, DCOs, and swap entities must establish and maintain policies, procedures, and risk management programs, and comply with their obligations thereunder, including those designed to continuously mitigate risks related to segregation, capital, liquidity and settlement.

The Divisions take the view that, in line with existing rules and regulations, the same risk-based methodology used for underlying assets can be applied when determining haircuts for tokenized assets. Registered entities and registrants should be ready to assess whether a tokenized asset should receive a haircut comparable to its traditional form, with modifications to account for any

1 CFTC Letter No. 25-39 defines a "tokenized asset" to mean a digital representation of a real-world asset, such as a U.S. treasury or agency security, corporate bond, share in a money market fund or equity security, that has been recorded on a blockchain as a digital token.

variations in settlement timing or differences in credit, market or liquidity risk profiles.

The guidance further recommends that market participants seeking to transfer or hold tokenized assets as collateral should consider whether they are operationally ready to conduct such activities, especially with regard to their technical capabilities such as their ability to handle potential cybersecurity, access/authorization or network-wide threats.

In providing this guidance, the Divisions note that technology and regulations continue to develop and acknowledge that the guidance may need to be updated in the future.

CFTC Letter No. 25-40 – Digital Assets as Margin Collateral

In CFTC Letter No. 25-40, the Market Participants Division ("MPD") of the CFTC provides no-action relief, stating that, subject to certain conditions, it will not recommend enforcement against FCMs that accept payment stablecoins and other non-securities digital assets (as determined by the relevant clearing organization or board of trade) as customer margin collateral or that deposit their own payment stablecoins into segregated customer accounts as residual interest.

Among other things, an FCM accepting payment stablecoins and other non-securities digital assets as margin collateral in reliance on this no-action letter must:

- (i) take into account the value of such non-securities digital assets, including payment stablecoins, when determining whether or to what extent a customer account is under-margined and when performing required segregation and DCO margin valuation calculations (including application of specified CFTC and DCO haircuts);
- (ii) when depositing its own payment stablecoins into segregated customer accounts as residual interest, impose an applicable capital charge against the value of the payment stablecoins and compute any applicable capital charge in accordance with the firm's risk management program and its obligations under CFTC regulations;
- (iii) prior to relying on the no-action letter, file a notice of its intent to rely on the no-action letter with MPD, providing the date it will begin accepting digital assets from customers as margin collateral;
- (iv) for a period of three months from the commencement of the FCM's reliance on the no-action letter as stated in the FCM's notice of intent, accept no digital assets other than payment stablecoins, Bitcoin and Ether as margin collateral from customers and deposit no digital assets other than proprietary payment stablecoins as residual interest in futures, foreign futures and 30.7 customer accounts while taking into account the value of the collateral and taking any applicable capital charge against the value of the payment stablecoins deposited as residual interest;

- (v) for a period of three months starting with the calendar month following the month in which the FCM files its notice of intent to rely on the no-action letter, provide reports to WinJammer electronic filing system at the close of business each week detailing the total amounts of digital assets held in each of the futures, cleared swaps and 30.7 customer funds account; and
- (vi) for a period of three months from the commencement of the FCM's reliance on the no-action letter as stated in the FCM's notice of intent, provide prompt written notice to WinJammer electronic filing system of any significant operation or system issue, disruption or failure, including any cybersecurity incident, that affects the use of digital assets as customer margin collateral.

Notwithstanding CFTC Letter No. 25-40, FCMs will still need to comply with Parts 1, 22 and 30 of the CFTC regulations (including Regulation 1.49 on permitted depositories and Regulation 1.25 on permitted investments of customer funds). We note that the relief in CFTC Letter No. 25-40 is set to expire upon the effectiveness of any CFTC action that addresses FCMs accepting and holding digital asset collateral in segregated customer accounts (and such CFTC actions may include rulemaking implementing the GENIUS Act).

CFTC Letter No. 25-41 – Withdrawal of Prior Guidance

The MPD has withdrawn Staff Advisory No. 20-34 in its entirety through the issuance of CFTC Letter No. 25-41. While Staff Advisory No. 20-34 permitted FCMs to accept virtual currency into customer accounts in certain limited circumstances (e.g. in connection with certain cleared swaps contracts providing for the physical delivery of virtual currency) it substantially restricted FCMs' ability to accept virtual currencies as customer margin collateral. This restrictive approach reflected concerns including the absence of comprehensive regulatory oversight of virtual currencies and the distinct operational complexities and risks that virtual currency collateral would pose for FCMs.

In explaining its decision to withdraw Staff Advisory No. 20-34, the MPD suggests that substantial developments have taken place in the digital asset space that have rendered Staff Advisory No. 20-34 outdated and no longer relevant to current market conditions. In particular, the MPD points to the progress that has been made through the CFTC's tokenized collateral initiative and the establishment of a federal regulatory framework for stablecoins through the GENIUS Act.

The withdrawal of Staff Advisory No. 20-34 removes regulatory barriers that previously prevented FCMs from fully integrating virtual currencies into their collateral frameworks and opens the door for FCMs to begin accepting a broader range of digital assets from customers in derivatives markets.

Notice of Withdrawal – Interpretive Guidance on Retail Commodity Transactions Involving Certain Digital Assets

On December 11, 2025, the CFTC announced the withdrawal of its previous guidance interpreting when "actual delivery" occurs in the context of retail commodity transactions involving virtual currency, without immediately replacing it with a new framework for such assessment.

Under Section 2(c)(2)(D) of the Commodity Exchange Act, retail commodity transactions conducted on a leveraged, margined or financed basis are generally treated as if they are futures contracts and are subject to CFTC oversight. Importantly, an exemption exists when actual delivery of such levered, margined and financed contracts takes place within 28 days.[2]

The now-withdrawn guidance had provided a framework establishing that actual delivery of virtual currency had taken place when: (a) a customer secured (i) possession and control of the entire quantity of the commodity and (ii) the ability to use the entire quantity of the commodity freely in commerce no later than 28 days from the date of the transaction and at all times thereafter; and (b) the offeror and counterparty seller did not retain any interest or legal right in, or control over, any of the commodity at the expiration of 28 days from the date of the transaction.

The withdrawal of the CFTC's previous guidance eliminates an established framework without providing a replacement mechanism in its place. While the CFTC intends to consider whether new guidance or FAQs are appropriate, for now the industry will need to operate with reduced regulatory clarity as to when "actual delivery" has taken place in the virtual currency context.

Potential Impact on the Market

These coordinated regulatory actions form part of a broader push by the CFTC (and other U.S. financial regulators, such as the SEC) to integrate digital assets into regulated U.S. derivatives markets.

Among other things, they may help facilitate:

- (i) increase use of **inverse contracts** (where a digital asset is both the subject of the contract and the denomination used for profit and loss settlement);
- (ii) progress towards **real-time 24/7/365 settlement** for margin and collateral movements along blockchain-based rails;
- (iii) wider adoption of **payment stablecoins** as margin and residual interest within FCM customer accounts; and
- (iv) broader eligibility of **tokenized real-world assets** as collateral, using existing risk-based frameworks for valuation and haircuts.

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2 7 U.S.C. 2(c)(2)(D)(ii)(III)(aa).

Market participants that seek to post or accept digital assets or tokenized assets as collateral should:

- review CFTC Letter No. 25-40 to ensure that any use of digital assets as margin for listed and cleared derivatives complies with its conditions and reporting requirements;
- reassess their policies, procedures and risk management frameworks in light of CFTC Letter No. 25-39, to ensure that they are in compliance with applicable guidance, rules and regulations;
- consider how the withdrawal of Staff Advisory No. 20-34 and the prior "actual delivery" guidance affects product structuring, collateral eligibility, disclosures and risk assessments; and
- monitor how Chairman Selig's policy priorities, combined with Acting Chairman Pham's earlier work, shape the next phase of CFTC rulemaking and guidance on digital assets.

Leadership Transitions

Although the three December 8 letters and the December 11 withdrawal were finalized under Acting Chairman Pham, her last day at the CFTC was December 22, 2025. On December 18, 2025, the U.S. Senate confirmed Michael Selig to lead the CFTC, and he was sworn in as CFTC Chairman on December 23, 2025. Following Acting Chairman Pham's departure from the CFTC to join digital asset market participant, MoonPay, as its Chief Legal Officer and Chief Administrative Officer, Selig also became the sole CFTC Commissioner. Notably, the CFTC currently has no Democrat-appointed Commissioner.

As CFTC Chairman, Selig brings extensive experience at the intersection of derivatives, securities, and digital assets. Earlier in his career, he served as a law clerk to former CFTC Chairman J. Christopher Giancarlo, a prominent early proponent of leveraging blockchain technology in the derivatives markets. More recently, Selig chaired the U.S. Securities and Exchange Commission's ("SEC") Crypto Task Force under SEC Chairman Paul Atkins and Commissioner Hester Peirce, where he focused on developing the SEC's approaches for crypto markets.

Looking Forward

In light of protracted negotiations concerning a Senate version of a digital assets market structure legislation, Tim Scott, Chairman of the Senate Banking Committee, reportedly has targeted January 15, 2026, for a critical vote. If passed out of committee, the bill would move to the Senate floor. However, it is not clear that there is sufficient support to pass the bill in committee, let alone in the full Senate, given significant tension concerning topics, including, among others, decentralized finance ("DeFi"), questions concerning potential conflicts of interest and the ability to pay yield on stablecoins (including in light of a recent Chinese policy shift, effective January 1, 2026, by the People's Bank of China permitting commercial banks to pay interest on digital yuan (e-CNY) wallet

balances). If the January 15 Senate Banking Committee vote fails, some fear that Congress is unlikely to pass digital asset market structure legislation this year. Nevertheless, irrespective of whether new Federal laws are passed, the U.S. is highly likely to see continued work by federal agencies, including the CFTC, focused on digital asset regulation. However, with the *Chevron* doctrine no longer legally relevant, we could see attacks, including along partisan lines, alleging that certain agency guidance exceeds the CFTC's (or other agencies') statutory authority.

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