

Commodities, Futures & Derivatives Group

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Key Considerations When Adopting Artificial Intelligence as a CFTC-Regulated Firm

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On December 5, 2024, the U.S. Commodities Futures Trading Commission (CFTC) staff (Staff) issued a staff advisory (Advisory) on the use of artificial intelligence (AI) by market participants in CFTC-regulated markets.¹ Staff reminds registered entities and registrants that, as with any rapidly evolving technology, whether they choose to utilize AI directly or indirectly, they must maintain compliance with applicable requirements. The Advisory provides guidance and considerations depending on the type of registered entity and/or registrant as follows.

Designated Contract Markets (DCMs), Swap Execution Facilitations (SEFs), and Swap Data Repositories (SDRs): Staff highlights three areas where it anticipates AI may be used by DCMs, SEFs, and SDRs: (i) order processing and trade matching; (ii) market surveillance; and (iii) system safeguards. For example, DCMs may use AI-based products and services (AI Software) to facilitate more-efficient order processing and trade matching but are reminded to maintain procedures that are consistent with Core Principle 9. Additionally, DCMs and SEFs may utilize AI Software to identify abusive trading practices quicker and respond accordingly, greatly reducing inefficiencies and improving responsiveness. However, such practices must be deployed in compliance with Core Principles 2, 4, and 12 for DCMs, and Core Principles 2, 3, and 4 for SEFs. Staff further notes that while some registered entities may develop in-house AI solutions, others are likely to integrate AI Software supplied by third-party service providers. Staff's expectation is that registered entities' use of AI Software is consistent with Core Principle 20 for DCMs, Core Principle 14 for SEFs, and § 49.24 for SDRs.

Derivatives Clearing Organizations (DCOs): DCOs that intend to utilize AI Software are required to comply with all regulatory requirements under the Commodities Exchange Act (CEA) and applicable CFTC regulations, such as Core Principles I (System Safeguards), B (Collateral), D (Risk Management), C (Participant Admission), and E (Settlement). Staff anticipates that DCOs will use AI to enhance cybersecurity systems, monitoring software, member communications, and support settlement processes such as netting and anomaly detection. DCOs are reminded to follow best practices and that in the event a third-party service provider's products and systems are integrated, the ultimate responsibility for compliance remains with DCOs under Regulation 39.18(d)(2).

Future Commission Merchants, Swap Dealers, Commodity Pool Operators, Commodity Trading Advisors, Introducing Brokers, Retail Foreign Exchange Dealers, and Associated Persons: Staff provided a non-exhaustive list of applicable obligations for registrants with respect to the use of AI, including: (i) risk assessment and risk management; (ii) compliance and recordkeeping; and (iii) customer protection. Specifically, Staff anticipates AI may be used for the calculation and collection of initial and variation margin for uncleared swaps. Even if AI is used, swap dealers are still obligated to confirm adequate performance of AI Software or AI-enhanced systems and ensure that risk is properly managed. A registrant's recordkeeping, disclosure, and reporting obligations may also be supported by AI tools to ensure accuracy and timeliness of financial information and risk disclosures that are provided to the CFTC, the National Futures Association (NFA), and customers. While AI may assist in the development of the materials produced to satisfy their obligations, firms are reminded to ensure that such materials are compliant with statutory and regulatory requirements. Registrants should be aware that AI Software solutions may not consider all of registrants' obligations, such as the requirements of Part 4 of CFTC regulations. Additionally, in the event AI is used

to account for the proper segregation of customer funds, registrants should be mindful of all regulatory requirements, such as under Part 1 of the CFTC's regulations.

Takeaways: As AI Software and services continue to evolve and more registered entities and registrants deploy such solutions, the CFTC will become more focused on understanding the use of AI Software through their review of registration applications, exams, and investigations. Registered entities and registrants that intend to adopt AI Software should design, adopt, and enforce robust procedures and controls to ensure compliance with applicable CFTC rules and regulations and are reminded to provide timely advance notice in the event such use of AI results in a material change to existing controls and systems (where applicable).

¹ <https://www.cftc.gov/PressRoom/PressReleases/9013-24>

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