

CLIENT ALERT

CFTC Previews Regulation CTX: Proposed Interpretation of Section 2(c)(2)(D) for Leveraged Retail Crypto Asset Transactions

Advance notice would clarify when an offer of leverage brings a crypto asset transaction within the CFTC's jurisdiction and what constitutes "actual delivery" of a crypto asset, alongside a companion purpose-built exchange framework (Regulation CAM).

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On October 13, 2026, the Commodity Futures Trading Commission issued an advance notice of proposed rulemaking under section 2(c)(2)(D) of the Commodity Exchange Act, previewing rules for leveraged, margined, or financed retail commodity transactions in crypto assets.¹

¹ Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets, 91 Fed. Reg. 64,811 (Oct. 13, 2026) (advance notice of proposed rulemaking).

The advance notice of proposed rulemaking (the “ANPRM”) has two components: proposed Regulation Crypto Asset Transactions (“Regulation CTX”), which would interpret when a crypto asset transaction falls within section 2(c)(2)(D) (such transactions, “CTXs”), and proposed Regulation Crypto Asset Markets (“Regulation CAM”), which would create a crypto asset market (“CAM”) subcategory of designated contract market (“DCM”).² This alert summarizes Regulation CTX’s scoping and treatment of CTXs and the “actual delivery” exception and briefly previews Regulation CAM.

The ANPRM follows the December 2025 withdrawal by the Commodity Futures Trading Commission (“CFTC” or “Commission”) of its 2020 actual delivery guidance and expressly repudiates its prior “regulation by enforcement” approach to crypto assets. It builds on the Joint Crypto Asset Taxonomy, 91 Fed. Reg. 13,714 (Mar. 23, 2026) and is coordinated with the SEC’s proposed Regulation Crypto Assets.³

Key Takeaways

- **Broad Reading of “Covered Offer.”** A “covered offer” is an offer of leverage, margin, or financing to a retail customer that could bring a crypto asset transaction within section 2(c)(2)(D). A covered offer would attach to all transactions as to which it is made, whether or not leverage is accepted. As a result, a declined offer of leverage followed by a fully paid purchase (a “fully paid, open CTX”) would be subject to section 2(c)(2)(D), as described below. A covered offer could be made through standard customer documentation, including onboarding documents, exchange terms and conditions, and credit or margin documentation, and on a class basis covering all transactions on an exchange, in an account, or in a product class.
- **“Acting in Concert” Financing.** Third-party financing that the offeror or counterparty facilitates, arranges, endorses, influences, markets, shares revenue from, or makes available through its own financing platform could be a covered offer.
- **Fully Paid Transactions Remain Covered Until Actual Delivery.** A fully paid, open CTX would remain subject to the Commodity Exchange Act (“CEA”), including the on-exchange requirement, while recorded only on the exchange’s internal book-entry.
- **Actual Delivery Tied to Private Keys and Unfettered Rights.** Actual delivery may require possession of credentials, such as private keys, to the wallet; for assets with governance or staking rights, actual delivery may also require unfettered access, including disintermediated governance participation and staking without intermediary fees. Under this interpretation, the presence of a lien or similar security interest does not foreclose actual delivery.

² See ANPRM, 91 Fed. Reg. at 64,816, 64,828, 64,830 (Sections I.A, III, V.A) (describing proposed Regulation CTX and Regulation CAM).

³ See ANPRM, 91 Fed. Reg. at 64,818-22 (Section I.B) (withdrawal of the 2020 actual delivery guidance, regulation-by-enforcement history, the Joint Crypto Asset Taxonomy, and proposed Regulation Crypto Assets).

- **Onchain Protocols May Result in Actual Delivery.** Transactions executed through onchain protocols may result in actual delivery, again potentially even where a lien or other security interest remains, such as where the protocol permits use of the asset subject to liquidation or burn if margin falls below a threshold.
- **Companion Regulation CAM.** The ANPRM would create a tailored DCM subcategory, with mandatory FCM intermediation, DCO clearing, and eligible leverage providers for CTXs.

Covered Offers Under Section 2(c)(2)(D)(i)

Section 2(c)(2)(D), added to the CEA by the Dodd-Frank Act, applies to any agreement, contract, or transaction in any commodity that is entered into with, or offered to, a person that is neither an eligible contract participant nor an eligible commercial entity (a “retail” customer) on a leveraged or margined basis, or that is financed by the offeror, the counterparty, or a person acting in concert with either. These transactions are treated as if they were futures contracts for purposes of CEA sections 4(a), 4(b), and 4b and therefore generally must be conducted on or subject to the rules of a DCM (the “on-exchange requirement”). Certain transactions are excepted, including a contract of sale that results in actual delivery within 28 days.

Regulation CTX would clarify when an offer of leverage, margin, or financing brings a crypto asset transaction within section 2(c)(2)(D). The ANPRM reads “offered (even if not entered into)” broadly: a covered offer brings the associated CTX within section 2(c)(2)(D) even if the customer declines it.⁴

A covered offer could be made through standard customer documentation, such as onboarding documents, exchange terms and conditions, or credit or margin documentation, and on a class basis covering all transactions on an exchange, in an account, or in a product class. Financing from a third party “acting in concert” with the offeror could also qualify, including financing the offeror arranges, endorses, influences, markets, shares revenue from, or makes available through its own platform. As a result, coverage may turn on how a product is offered rather than on whether the customer uses leverage.⁵

Fully Paid, Open CTXs

A fully paid, open CTX would remain subject to the CEA, including the on-exchange requirement, while it is recorded only on an exchange’s internal book-entry before actual delivery. A customer’s decision to decline financing would not by itself remove the transaction from section 2(c)(2)(D); the transaction would remain covered unless and until an exception, such as actual delivery, applies.⁶ After actual delivery, only the Commission’s anti-fraud and anti-manipulation authority would apply.⁷

⁴ See ANPRM, 91 Fed. Reg. at 64,828 (Section III.A) (preliminary interpretation of “offer” under section 2(c)(2)(D)(i)).

⁵ See ANPRM, 91 Fed. Reg. at 64,828-29 (Section III.A) (offers through customer documentation, on a class basis, and by persons acting in concert).

⁶ See ANPRM, 91 Fed. Reg. at 64,823, 64,829 (Sections II.A, III.C) (treatment of fully paid, open CTXs and the statutory “except as provided in clause (ii)” language).

⁷ See ANPRM, 91 Fed. Reg. at 64,823, 64,829-30 (Sections II.A, III.C) (discussing *Monex*, constructive delivery, and the Commission’s residual anti-fraud and anti-manipulation authority). The ANPRM reasons that an internal book-entry is merely constructive delivery, so a

The ANPRM also takes the position that state law does not govern the operation of trading facilities offering CTXs and that state money transmission regimes, such as New York's BitLicense, do not provide equivalent protections. An exchange that does not make covered offers could continue operating under state regimes, and the ANPRM asks whether that path is commercially viable.⁸

Scope and Meaning of “Actual Delivery”

Consistent with *CFTC v. Monex Credit Co.*, 931 F.3d 966, 974 (9th Cir. 2019), actual delivery would require a meaningful degree of possession or control. For a crypto asset, that may require possession of the credentials, such as the private keys, to the associated wallet, so the analysis may turn on whether the customer, rather than an exchange or custodian, controls the asset.⁹

For assets that confer governance or staking rights, actual delivery may also require unfettered access to those rights, such as the capacity to participate in governance directly or to stake without paying intermediary fees.¹⁰

The Commission would also regulate the mechanics of delivery itself, including transfers from an exchange to a customer's wallet. The interpretation is limited to section 2(c)(2)(D) and does not address delivery under the federal securities laws.¹¹

Many onchain trading protocols may result in actual delivery because the purchaser typically receives the asset directly in its own wallet rather than through an intermediary's book-entry. Delivery may occur even if a lien remains, such as where a protocol permits free use of the asset subject to liquidation or “burn” if margin falls below a threshold.¹²

Questions for Comment

The Commission seeks comment on all aspects of its interpretation of “offer,” including whether it gives exchanges a commercially viable option not to make covered offers and to remain under state regulation.¹³

It also asks about novel leverage mechanisms, including whether facilitating access to onchain “vaults” through an exchange interface could be a covered offer; whether onchain protocols typically result in actual delivery; how liens

fully paid, open CTX continues to resemble the rolling spot contracts at issue in *CFTC v. Zelener*, 373 F.3d 861 (7th Cir. 2004). In *Zelener*, the Seventh Circuit held that the CFTC lacked jurisdiction over certain retail foreign currency contracts that were rolled forward rather than settled because they were not futures contracts. Congress responded in 2008 by applying certain CEA provisions to leveraged retail foreign currency transactions under CEA section 2(c)(2)(C) and subsequently, in the Dodd-Frank Act, extended this “*Zelener* fix” to leveraged retail transactions in all commodities through section 2(c)(2)(D).

⁸ See ANPRM, 91 Fed. Reg. at 64,813-15, 64,824, 64,839 (Sections I.A, II.B, V.H) (state money transmission regimes, the proposed preemption analysis, and the viability of continued operation under state regimes).

⁹ See ANPRM, 91 Fed. Reg. at 64,829 (Section III.B) (possession and control, including private keys).

¹⁰ See ANPRM, 91 Fed. Reg. at 64,829 (Section III.B) (governance rights, staking, and unfettered access).

¹¹ See ANPRM, 91 Fed. Reg. at 64,829 (Section III.B) (transfer mechanics and the limited scope of the proposed interpretation).

¹² See ANPRM, 91 Fed. Reg. at 64,830 (Section IV.C) (onchain protocols, liens, security interests, and actual delivery).

¹³ See ANPRM, 91 Fed. Reg. at 64,829-30 (Section IV.B) (questions concerning “offer” and the viability of remaining under state regulation).

bear on possession and control; and which crypto-specific features, such as governance and staking rights, should inform the actual-delivery analysis.¹⁴

Regulation CAM: A Brief Preview

Proposed Regulation CAM would establish a subcategory of DCM designation for exchanges listing only CTXs, subject to tailored CAM Core Principles. Existing DCMs could instead list CTXs under their current registration.¹⁵

A CAM could dual-register as an FCM or DCO or operate with affiliated ones. FCM intermediation and DCO clearing would be mandatory, and leverage would be available only through arrangements enumerated in the CAM's rulebook and administered by an FCM or an FCM-sponsored bank.¹⁶

The ANPRM seeks comment on CAM listing standards and crypto asset disclosures, proof-of-reserves practices, margin and eligible collateral, custody and segregation, the application of the part 190 bankruptcy regime for commodity brokers, and a possible *de minimis* exemption from CAM registration. It also asks how blockchain technologies should be incorporated into surveillance, recordkeeping, execution, operational-risk controls, and the CAM margin regime.¹⁷

The ANPRM cites the Commission's pending *Conflicts and Affiliations* proposal, 91 Fed. Reg. 50,926 (Aug. 6, 2026), in discussing integrated structures. For a discussion of that proposal, see our prior client alert.¹⁸

Conclusion

Comments may be submitted through Regulations.gov, referencing "*Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets*" and RIN 3038-AF80, within 60 days after publication of the ANPRM in the Federal Register.¹⁹

Market participants, including state-regulated crypto exchanges, DCMs, FCMs, DCOs, banks, and technology firms, should focus on the breadth of a covered offer and whether documentation-level offers sweep in fully paid spot trading; whether an election to remain under a state regime is commercially viable; the actual-delivery standard for custodial versus self-custody arrangements and for staking and governance rights; the treatment of onchain protocols and vaults; and the interaction among proposed Regulation CTX, the SEC's proposed Regulation Crypto Assets, and the Joint Crypto Asset Taxonomy.

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¹⁴ See ANPRM, 91 Fed. Reg. at 64,830 (Sections IV.B-C) (vaults, onchain protocols, liens, governance rights, and staking).

¹⁵ See ANPRM, 91 Fed. Reg. at 64,830-31 (Section V.A) (CAM designation, the CAM subcategory of DCM registration, and existing DCMs).

¹⁶ See ANPRM, 91 Fed. Reg. at 64,831-32 (Section V.A.1) (integrated structures, FCM intermediation, DCO clearing, and eligible leverage providers).

¹⁷ See ANPRM, 91 Fed. Reg. at 64,833-39 (Sections V.B-H) (listing standards, disclosures, proof of reserves, margin, custody, part 190, and de minimis registration issues).

¹⁸ See ANPRM, 91 Fed. Reg. at 64,831 n.285 (Section V.A.1) (citing *Conflicts and Affiliations*, 91 Fed. Reg. 50,926 (Aug. 6, 2026)).

¹⁹ See ANPRM, 91 Fed. Reg. at 64,811 (comment deadline and submission instructions).

If you have any questions regarding this client alert or if we can assist you in preparing or reviewing a comment letter, please contact one of the authors, any member of our CFTC team listed below, or the Willkie attorney with whom you regularly work.

Willkie has a dedicated team of attorneys with extensive knowledge and experience in all aspects of the Commodity Exchange Act and the CFTC regulatory regime. We would be pleased to assist with your matters.

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