ALERT MEMORANDUM

Falcon Labs: Decentralized CFTC Jurisdiction

August 6, 2024

On May 13, 2024, the Commodity Futures Trading Commission ("CFTC") simultaneously filed and settled an enforcement order (the "Order") against Falcon Labs Ltd. ("Falcon Labs") for failing to register with the CFTC as a futures commission merchant ("FCM").[1] The Order marked the first time that the CFTC has brought an action against an unaffiliated intermediary of a digital asset trading platform for the facilitation of customers' access to digital asset products. The Order also casts new light on the CFTC's view of the scope of its cross-border jurisdiction over foreign clearing brokers and suggests a jurisdictional reach beyond its historic approach at least in the context of digital asset markets. In a concurring statement, CFTC Commissioner Caroline Pham criticized the CFTC's jurisdictional analysis, calling it an "unprecedented interpretation" of the Commodity Exchange Act ("CEA") which created a "novel U.S. location test" that could "impose new CFTC FCM registration requirements on non-U.S. brokers."[2]

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[1] *In re Falcon Labs Ltd.*, Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions, CFTC No. 24-06 (May 13, 2024), (https://www.cftc.gov/media/10711/enffalconlabsltdorder051324/download); *see also* CFTC Press Release No. 8909-24, CFTC Issues Order Against Crypto Prime Brokerage Firm for Illegally Providing U.S. Customers Access to Digital Asset Derivatives Trading Platforms (May 13, 2024), (https://www.cftc.gov/PressRoom/PressReleases/8909-24).

[2] Concurring Statement of Commissioner Caroline D. Pham on Novel U.S. Location Test and FCM Registration (May 13, 2024), (https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement051424).

Background of the Order

Falcon Labs, a wholly owned subsidiary of FalconX Holdings, offers products to institutional customers that facilitate access to digital asset trading. Falcon Labs' "Edge" product provides customers with direct access to non-U.S. digital asset trading platforms to trade derivative products, including futures, foreign futures and swaps."[3] While Falcon Labs is organized outside of the United States under the laws of the Seychelles, the CFTC found that "by soliciting and accepting orders for futures and swaps from U.S. customers" including "non-U.S. incorporated entities operated and controlled by U.S.-based trading firms," Falcon Labs fell within scope of the CEA's registration requirements for FCMs.[4]

In 2023, following a complaint brought by the CFTC against Binance in connection with its digital assets trading platform,[5] Falcon Labs voluntarily enhanced its Know Your Customer ("KYC") procedures and began to require that prospective customers provide additional documentation and location-related information, such as customers' jurisdiction of organization and principal place of business, the residency of traders using its Edge product and the ultimate beneficial owners (if applicable) of Edge customers. Falcon Labs also required Edge customers to provide written representations as to their non-U.S. status.[6] This requirement ultimately resulted in Falcon Labs off-boarding half of its Edge customers.

The Order recognized Falcon Labs' remediation efforts and cooperation with the CFTC. The Order required Falcon Labs to pay $1,179,008 in disgorgement of all net fees that it collected from U.S.-located Falcon Labs customers during the approximately two years covered by the Order as well as a civil monetary penalty of $589,504. Enforcement Director Ian McGinley noted that without Falcon Labs' remediation and cooperation efforts, penalty amounts would have been higher.[7]

McGinley, citing the Falcon Labs and Binance actions, remarked that enforcement in the digital asset space "has become a huge CFTC priority."[8] The Order signals that the CFTC intends to continue to exert broad regulatory authority over digital asset trading platforms, as well as intermediaries associated with such trading platforms. Additionally, the Order presents a new data point with respect to the CFTC's interpretation of its cross-border authority with respect to swaps and futures markets.[9]

Alleged Violations

The CEA defines an "FCM" as an entity that solicits or accepts orders for futures or swaps, among other derivatives, or that accepts money or other assets to support such trades or contract orders.[10] FCMs subject to the CFTC's jurisdictional authority are required to register, or qualify for an exemption from registration, with the CFTC.[11]

As a general matter, pursuant to Section 4(b) of the CEA, the CFTC's cross-border authority with respect to futures markets extends to transactions and market participants that are "located in the United States."[12] In the Order, the

[3] *See In re Falcon Labs Ltd.*

[4] *See* 7 U.S.C. § 6d(a)(1).

[5] While the Falcon Labs Order represents the first time that the CFTC has pursued an *unaffiliated* intermediary of a digital asset trading platform for failing to register as an FCM, last year, the CFTC's complaint brought against Binance Holdings Ltd included similar allegations related to Binance's offering prime brokers the ability to open "sub-accounts" to enable the trading of digital asset derivatives on the *affiliated* Binance platform, including the solicitation "to U.S. Persons" of customer orders to trade on its platform. The CFTC alleged that as a result of such activity, Binance functioned as an unregistered FCM. *See* Compl., *CFTC v. Zhao*, No. 1:23-cv-01887 (March 27, 2023) ("Binance Compl."); CFTC Press Release No. 8680-23 (Nov. 21, 2023), (https://www.cftc.gov/PressRoom/PressReleases/8825-23); *see also* Order, *CFTC v. Zhao*, No. 1:23-cv-01887 (Dec. 14, 2023).

[6] These KYC procedures were drawn from the Binance complaint, which suggested that even onboarding of non-U.S. customers with U.S. assets could trigger registration obligations. Binance Compl. ¶ 7.

[7] Remarks of Enforcement Director Ian McGinley at the City Bar White Collar Institute: "Trends in the CFTC's Recent Crypto Enforcement Actions" (May 23, 2024), (https://www.cftc.gov/PressRoom/SpeechesTestimony/opamcginley4).

[8] *Id*.

[9] *See* CFTC Press Release No. 8909-24 (May 13, 2024), (https://www.cftc.gov/PressRoom/PressReleases/8909-24).

[10] 7 U.S.C §1a(28)(A).

[11] 7 U.S.C. § 6d(a)(1).

[12] Section 4 of the CEA provides the jurisdictional scope for futures transactions located "anywhere in the United States, its territories or possessions," customarily referred to as "domestic transactions." 7 U.S.C. § 6(b); *see also* Foreign Futures and Foreign Options Transactions, 52 Fed. Reg. 28, 959, 980 (Aug.

CFTC found that because Falcon Labs, through its "Edge" product, served as an intermediary for customers, including customers controlled by U.S. firms, in the facilitation of their trading on various digital asset trading platforms, Falcon Labs met the definition of an FCM and was subject to FCM registration requirements.[13]

In particular, the CFTC focused on the Edge product, under which Falcon Labs established main accounts on various digital asset trading platforms in its own name as well as various "sub-accounts" that customers could use to engage in transactions on these digital asset trading platforms. The trading platforms did not require, and Falcon Labs did not provide, customer-identifying information for the sub-account holders. Falcon Labs also accepted money or other assets from the customers to margin or collateralize customers' trading activity. Through these activities, according to the CFTC, Falcon Labs acted as an FCM on behalf of customers "located in the United States" and was therefore subject to CEA registration requirements.[14] While the Order does not explicitly describe its cross-border jurisdictional analysis with respect to the activities of Falcon Labs, the CFTC noted that customers located in the United States included "non-U.S. incorporated entities operated and controlled by U.S.-based trading firms."[15]

Commissioner Pham issued a concurring statement questioning the CFTC's jurisdictional hook. She described the Order's jurisdictional analysis as applying a "novel 'U.S. location' test" that could require:

> any non-U.S. legal entity that transacts in futures, options, or swaps that has a U.S. parent entity or beneficial owner, or has personnel located in the U.S. that "control" (another undefined term with no cited statutory authority) a non-U.S. prime broker sub-account, to be deemed "located in the United States" even if its location of corporate organization is outside the United States.[16]

Given that the Order represents an additional touchpoint with respect to the CFTC's jurisdictional reach over foreign-based entities, it raises important considerations for the international futures markets— both within and outside of the digital assets context. These issues are discussed below:

Untangling the Historical Regulation of Swaps and Futures Markets

Section 4(b) of the CEA grants the CFTC the authority to regulate the foreign futures activity of persons "located in the United States."[17] While swaps and futures products are both regulated pursuant to Section 4(b)'s statutory grant of authority to regulate "U.S.-located persons,"[18] the CFTC has developed distinct regulatory regimes applicable to swaps and futures which reflect the distinct characteristics of these two markets. Futures contracts, defined to include orders for the purchase or sale of a commodity for future delivery, developed as regional derivative products tied to a physical exchange in a physical location. The futures markets involve organized, fungible contracts that are traded on regulated exchanges and centrally cleared at a single physical location, often as part of a vertically integrated market infrastructure model where the exchange and clearing house are affiliated. These exchanges and clearinghouses historically have been subject to clear local rules and oversight. As a result, the CFTC's location-based jurisdiction over foreign futures transactions (i.e., based on the location of the customer and market infrastructure creating and supporting the product) has historically provided the international markets reasonable certainty regarding CFTC jurisdiction and registration obligations.[19]

5, 1987). Section 4(b) of the CEA addresses extraterritorial application to "foreign transactions" or "the offer or sale of any [futures contract] that is made or to be made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions," engaged in by "any person located in the United States, its territories or possessions."

[13] *In re Falcon Labs Ltd.*, *supra* note 1.

[14] *Id.*

[15] *Id.*

[16] *See* Concurring Statement of Commissioner Caroline D. Pham on Novel U.S. Location Test and FCM Registration, *supra* note 2.

[17] *See infra* note 12.

[18] The CFTC has further promulgated rules exempting registration for foreign intermediaries. *See, e.g.*, 85 Fed. Reg. 78, 718 (Dec. 7, 2020).

[19] Subject to certain conditions, a person located outside the U.S. acting solely on behalf of persons located outside the U.S., is exempt from FCM registration requirements in connection with futures transactions executed on or subject to the rules of a

The standards for cross-border futures markets have been subject to relatively few updates since the CFTC promulgated Part 30 of the CFTC Regulations in 1987, which imposes registration requirements for any person who accepts futures orders from customers "located in the U.S." or who accepts margin to guarantee or secure any resulting positions. The CFTC provided for a number of exceptions to these cross-border futures transaction requirements, including permitting certain "authorized customers" located in the U.S. to place foreign futures orders directly with foreign broker-dealers.[20] The location of U.S. persons has historically been determined by reference to residence or location of incorporation of the customer or branch, typically without reference to principal place of business, location of agents or beneficial ownership.[21]

Swaps, by contrast, have been historically traded over-the-counter and, unlike futures contracts, are often not required to be executed or cleared in any physical location. Swaps markets developed without the same level of oversight and regulation applicable to futures markets; prior to passage of Title VII of the Dodd-Frank Act, the CFTC did not exert significant oversight over bespoke and negotiated swaps and instead primarily regulated commodities futures bought and sold on organized exchanges. Following the 2008 financial crisis, the passage of Dodd-Frank introduced sweeping regulatory reform in the financial markets, including by granting the CFTC authority to regulate swaps that are not security-based swaps. Pursuant to this authority, the CFTC introduced its regulatory regime applicable to swaps and swap dealers in 2013.

Given the global nature of the swaps market, the Dodd-Frank Act amended the CEA by adding section 2(i) to provide that the swap provisions enacted by the Dodd-Frank Act "shall not apply to activities outside the United States unless those activities have a direct and significant connection with activities in, or effect on, commerce of the United States" or contravene CFTC rules necessary to prevent evasion.

In 2013, the CFTC established a general, non-binding framework for the cross-border application of many substantive Dodd-Frank Act requirements. Under this cross-border swap guidance (the "2013 Guidance"), the extent to which the CFTC's swaps regulations apply to a swap depended on whether the swap was entered into by a U.S. person, a foreign branch of a U.S. bank ("foreign branch"), a guaranteed affiliate of a U.S. person, or a conduit affiliate of a U.S. person.[22]

The 2013 Guidance reached beyond the "location-based jurisdiction applicable to futures market customers by defining a "U.S. person" for purposes of the 2013 Guidance to include (1) an entity "organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States," and (2) an entity, collective investment vehicle, or account where the beneficial owner is a U.S. person (except for collective investment vehicles not offered to U.S. persons).

In May of 2016, the CFTC adopted the "Cross Border Margin Rules," which superseded the 2013 Guidance with respect to the cross-border application of margin requirements for uncleared swaps not subject to prudential regulation. The Cross-Border Margin Rules included a revised "U.S. person" definition, a revised "guarantee"

designated contract market or registered swap execution facility. *See* 17 C.F.R. § 3.10(c)(2).

[20] *See* CFTC Rule 30.12 (defining "authorized customers" to include registered commodity trading advisors ("CTAs") that have total assets under management greater than $50 million).

[21] *See, e.g.*, 17 C.F.R. §§ 30.4(a), 30.10 (2009) (permitting foreign futures brokers to petition for an exemption from CFTC registration if they prove their home jurisdiction provides comparable regulatory structure). *See* 17 C.F.R. § 3.10(c)(2). Subject to certain conditions, the CFTC also provided an exemption from registration as a commodity pool operator for foreign located persons in respect of transactions executed on behalf of a commodity pool the participants of which are all foreign located persons, subject to certain conditions. *See* 17 C.F.R. § 3.10(c)(5).

[22] The 2013 Guidance defined a "conduit affiliate" to mean a non-U.S. person that satisfies certain factors, including whether the non-U.S. person: (1) is a majority-owned affiliate of a U.S. person; (2) is controlling, controlled by or under common control with the U.S. person; (3) has financial results that are included in the consolidated financial statements of the U.S. person; and (4) in the regular course of business, engages in swaps with non-U.S. third-party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with its U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with third-party(ies) to its U.S. affiliates. 2013 Guidance, 78 Fed. Reg, at 45359.

definition, and a new category for foreign consolidated subsidiaries ("FCS") of U.S. persons.[23]

In July 2020, the CFTC finalized rules that superseded certain other aspects of the CFTC's 2013 Guidance (the "2020 Final Rules").[24] The 2020 Final Rules revised many of the definitions used in the 2013 Guidance and replaced the conduit affiliate concept with a new "significant risk subsidiary" classification.[25]

The 2020 Final Rules clarified that an entity's "principal place of business" for purposes of the U.S. person definition means "the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person." For externally managed investment vehicles, the principal place of business is the office from which the manager of the vehicle "primarily directs, controls, and coordinates the investment activities of the vehicle." Under the 2020 Final Rules, the U.S. person definition includes accounts of U.S. persons, but unlike under the 2013 Guidance, the definition under the 2020 Final Rules does not pick up the beneficial owners of such accounts.[26]

FCMs Balance Differing Cross-Border Approaches for Futures and Swaps

While the cross-border frameworks for the two regulatory regimes applicable to swaps and futures have developed on independent tracks, in 2012 the CFTC designated FCMs as responsible for handling and clearing orders for swaps in addition to futures.[27] As a result, FCMs have been caught in the middle of navigating independent regulatory schemes applicable to swaps and futures, particularly with regard to cross-border transactions.[28] As discussed above, the FCM regulatory framework developed in relation to the futures market, rooted in regional oversight of physical commodities markets. This nexus to a physical location made it a relatively straightforward exercise to determine if an FCM was introducing foreign entities to the US futures markets or U.S. products to foreign-located persons. Accordingly, the statutory jurisdictional test for FCM registration of a non-U.S. clearing broker turns on whether the FCM or its customers are "located in the United States." This exemption has been extended to FCMs intermediating swap transactions despite the fact that there are much more detailed tests for determining whether a principal that is party to a swap transaction is a U.S. person or otherwise subject to CFTC jurisdiction as a

[23] An FCS is a non-U.S. person in which an ultimate parent entity that is a U.S. person has a controlling financial interest, in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), such that the U.S. ultimate parent entity includes the non-U.S. person's operating results, financial position, and statement of cash flows in the U.S. ultimate parent entity's consolidated financial statements, in accordance with U.S. GAAP. *See* 17 C.F.R. § 23.160(a)(1).

[24] The 2020 Final Rules address most, but not all, of the requirements applicable to swap entities under Title VII of the Dodd-Frank Act. The unaddressed requirements include: mandatory clearing, mandatory trade execution, real-time public reporting, swap data repository reporting, large trader reporting, margin for uncleared swaps, capital, and financial records and reporting. Several of these requirements (mandatory clearing, mandatory trade execution, real-time public reporting, swap data repository reporting, large trader reporting) remain subject to the 2013 Guidance. The remaining requirements were addressed by other CFTC rulemakings, including a capital rule that the CFTC finalized the day before it adopted the 2020 Final Rules.

[25] *See* Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 Fed. Reg. 56924 (Sept. 14, 2020) (the "2020 Final Rules"); *see also* Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013). For more information on the 2020 Final Rules, see Cleary's alert memo: *CFTC Finalizes New Cross-Border Swap Rules, But How Much Has Changed?* (July 29, 2020) (https://www.clearygottlieb.com/-/media/files/alert-memos-2020/cftc-finalizes-new-cross-border-swap-rules.pdf).

[26] Additionally, as part of the 2020 Final Rules, the CFTC indicated that ANE Transactions are to be treated in the same manner as any other transaction between non-U.S. persons. In adopting the 2020 Final Rules, the CFTC stated that as a matter of policy it will not apply mandatory clearing, mandatory trade execution, and real-time public reporting requirements (i.e., requirements that are subject to the 2013 Guidance rather than the 2020 Final Rules) to ANE Transactions between non-U.S. counterparties.

[27] Specifically, in 2012 the CFTC updated its definition of certain products triggering FCM registration (*i.e.*, "commodity interest") to include swaps in addition to futures. 17 C.F.R. § 1.3.

[28] The CEA defines an FCM as those engaged in soliciting or accepting orders for futures or swaps, among other derivatives, and, in connection therewith, accepting any property to margin such trades or contracts. 7 U.S.C § 1a(28). The CFTC requires FCMs to register with the CFTC and imposes certain additional regulatory requirements, including net capital requirements and reporting obligations. 7 U.S.C. § 6d(a)(1).

guaranteed affiliate, conduit affiliate or significant risk subsidiary.[29]

The CFTC's jurisdictional analysis for FCMs has additionally relied on a host of exclusions/exemptions from the definition of "FCM" for certain foreign futures transactions that do not apply in the swaps context.[30]

Taken individually, swaps rules and guidance on the one hand, and cross-border regulation of futures on the other, each offer relatively clear—albeit complex—guidelines as to the application of CFTC requirements for cross-border transactions.

Implications of Falcon Labs Order and Other Recent CFTC Digital Asset Enforcement Actions

Just as regulation of the swaps market challenged the historical focus on location of the product as a locus for regulatory jurisdiction in favor of regulation of location of the persons involved in swap transactions, the CFTC has more recently eroded the historical location-based jurisdiction of market participants in the context of the digital asset markets.[31]

Many digital assets operate on distributed ledger technology, which records transactions across a network of computers. This decentralized nature means there is no central authority or specific location that controls or regulates the entire network. Instead, transactions and consensus are managed collectively by nodes spread across the network, ensuring transparency and resilience against single points of failure. Like the digital assets themselves, digital asset trading platforms can operate without a central authority, allowing users to trade directly peer-to-peer using smart contracts on blockchain platforms. Similarly, decentralized wallet-services enable users to manage their digital assets securely on the blockchain without relying on a central server or intermediary. The decentralized nature of digital assets and related services presents complications for determining an entity's principal place of business and jurisdictional nexus.

Rather than responding with detailed guidance and regulation consistent with the shift from futures to swap market regulation, the agency appears to be responding to digital asset market decentralization through enforcement actions,[32] and as a result, is introducing further uncertainty and lack of clarity to swaps and futures markets.

While in the swaps context the trend has been to provide clear guidance and regulations to simplify or eliminate tests based on beneficial ownership or location of personnel, these enforcement actions are pushing in the opposite direction. In the Order, the CFTC applied the historically more established and limited jurisdictional test applicable to FCMs, in a very novel, and to the market unexpected manner. These enforcement actions may have significant implications for both the futures and swaps markets, potentially broadly expanding the scope of registration obligations through enforcement rather than rulemaking.

To date enforcement actions of this nature, which are designed to expand the CFTC's jurisdiction to non-traditional assets, have focused on exchanges, but as evidenced by the Falcon Labs Order, recent Binance

[29] *See* 17 C.F.R. § 3.10(c)(2)(ii).

[30] *See* 17 C.F.R. §§ 30.4 and 32.3. The definition of an "FCM" does not include entities engaged in the brokerage of certain foreign futures and options. The CFTC may also specifically grant entities an exemption as a "Foreign FCM" if subject to a comparable foreign regulatory regime. 17 C.F.R. § 30.5; *see also* 17 C.F.R. § 30.10, which permits certain US employees of a foreign bank to refer US customers, on an unsolicited basis, to a foreign affiliate that is not registered as an FCM.

[31] For example, the CFTC's consent order brought against digital asset trading platform BitMEX required BitMEX and its related entities to pay $100 million in civil penalties for alleged conduct, including its failure to register with the CFTC as a designated contract market or a swap execution facility. While BitMEX was incorporated under the laws of the Seychelles and made public representations that it was not conducting business with U.S. persons, the CFTC found that BitMEX violated CFTC registration requirements by conducting inadequate customer due diligence and failing to prevent customers from accessing the BitMEX platform from the U.S. *See* Order, *CFTC v. HDR Global*, No. 1:20-cv-08132 (Aug. 10, 2021) (https://www.cftc.gov/PressRoom/PressReleases/8412-21); *see also* Compl., *CFTC v. Zhao*, No. 1:23-cv-01887 (March 27, 2023) (charging Binance with illegally offering and executing commodity derivatives transactions to and for U.S. customers); *CFTC v. bZeroX, LLC*, No. 3:22-cv-5416 (Sept. 22, 2022) (alleging that digital asset trading platform, bZeroX (the predecessor entity to Ooki DAO) violated CFTC registration requirements for FCMs by offering to "any user anywhere in the world, including in the United States, the ability to trade on the bZx Protocol" and for bZeroX's failure to "not take any steps to exclude U.S. and/or non-eligible contract participants") ("Ooki DAO judgment"). (https://www.cftc.gov/PressRoom/PressReleases/8590-22).

[32] *See infra* note 30.

settlement, and Ooki DAO judgment, the CFTC is expanding the scope of enforcement to market intermediaries.[33]

It is unclear the extent to which the CFTC expects as a matter of discretion for these enforcement actions to apply different or additional cross-border standards in the digital asset context, or whether they expect to apply similarly expanded standards to non-digital asset intermediaries. Further, due to a lack of clear jurisdictional analysis in the Falcon Labs order, it is unclear whether the CFTC expects these novel jurisdictional standards to be applied to all swaps and/or futures contracts.

Absent this guidance, market participants should consider whether they need to apply the standards from the Falcon Labs order to the existing swaps and futures frameworks generally, which may require a rethinking of existing jurisdictional tests. In a major departure from existing practice, foreign firms would need to take into account additional considerations of control, location of personnel, beneficial ownership and location of assets of the entities they interact with.[34] The impact of the CFTC's jurisdictional signaling may be especially relevant given that there is currently no industry standard cross-border representation letter for FCMs (akin to the ISDA cross-border representation letter for swaps) or infrastructure or compliance programs that would identify that type of US nexus. Foreign intermediaries, particularly those in the digital asset industry, should consider these factors in designing their own compliance models, at least in the current CFTC enforcement environment. It is likely that the CFTC's current expansive approach to its jurisdiction in response to decentralized digital asset markets will continue, including through enforcement actions against trading platforms, intermediaries and potentially other digital asset market participants. More worryingly, however, the CFTC does not appear to limit the precedent set by its enforcement actions in respect of digital assets to that asset class, so query whether the CFTC expects foreign brokers or even foreign funds to revisit their compliance approach.

While the Order may signal the CFTC's broadening view of its extraterritorial authority, this settled enforcement action does not have precedential authority in any federal court.[35] Accordingly, it has not yet been resolved how a court might view these issues in in light of existing caselaw and precedent.[36]

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[33] *See* Binance Compl. *supra* note 2; *see also CFTC v. Zhao*, No. 1:23-cv-01887 (March 27, 2023); *CFTC v. bZeroX, LLC*, No. 3:22-cv-5416 (Sept. 22, 2022).

[34] *See, e.g.*, ISDA U.S. Self-Disclosure Letter (published Jan. 15, 2021); *see also* ISDA Cross-Border Representation Letter (published August 19, 2013).

[35] It could in fact be challenging for the CFTC to establish personal jurisdiction in respect of an entity that operates outside of the United States and is contacted abroad by a plaintiff.

[36] *See, e.g., Morrison v. National Australia Bank*, 561 U.S. 247, 270 (2010) (requiring that domestic claims be brought by plaintiffs that "transact in securities listed on domestic exchanges," or enter into "domestic transactions in other securities").