

THE REVIEW OF  
**SECURITIES & COMMODITIES  
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS  
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

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## FUTURES MARKETS ENFORCEMENT TRENDS

*Federal regulators, and their self-regulatory organization and exchange counterparts, continue to signal an aggressive and determined approach to their enforcement of relevant law and regulations. They continue to pursue sanctions zealously for activity they believe interferes with the efficient operation of the commodity futures markets and continue to serve as watchdogs over the industry's interactions with the public. Moreover, they appear eager to address head-on the changing technological environment in which the markets function — whether it be to exercise broad jurisdiction over the digital asset industry, or to take action against firms and individuals whose modern communication tools do not appear to meet traditional recordkeeping strictures. Industry members would be wise to fortify their legal and compliance infrastructures to meet these challenges, and to expect continued close scrutiny by the organizations and agencies that oversee them.*

By Harris L. Kay, William E. Walsh, and Alexandra J. Marinzel \*

The futures and derivatives markets operate on an enormous scale: by some estimates, the notional value of the U.S. derivatives markets is \$25 trillion for futures, and \$360 trillion for U.S. swaps.<sup>1</sup> These markets are subject to significant regulation, both by federal agencies and self-regulatory organizations, who actively monitor the markets for rule violations. An important way in which regulators enforce the regulatory regime is by imposing monetary and other sanctions through enforcement actions. Here, we discuss key current trends in enforcement in futures markets.

### CFTC ENFORCEMENT TRENDS

As we consider and analyze trends developing in the arena of enforcement proceedings involving the futures

markets, we focus primarily upon the government agency responsible for those markets. The Commodity Futures Trading Commission (“CFTC”) has offered its long-term outlook on regulation of the futures and derivatives market in the coming years, through the release of its draft Strategic Plan for 2022-2026.<sup>2</sup> In Chairman Rostin Benham’s announcement of the Strategic Plan, he reaffirmed the CFTC’s overarching objectives of “fostering open, transparent, competitive, and financially sound markets; preventing and deterring misconduct and disruptions to market integrity; and protecting all market participants . . . from fraud, manipulation, and abusive practices.”

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<sup>1</sup> CFTC FY 2022 Agency Financial Report, <https://www.cftc.gov/media/7941/2022afr/download>.

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<sup>2</sup> April 1, 2022 CFTC 2022-2026 Draft Strategic Plan, [https://www.cftc.gov/media/7081/CFTC2022\\_2026StrategicPlan/download](https://www.cftc.gov/media/7081/CFTC2022_2026StrategicPlan/download).

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