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SHIFTING ENFORCEMENT PRIORITIES AT THE CFTC AND THE SEC

Under the new administration, priorities have shifted at the Commodity Futures Trading Commission and the Securities and Exchange Commission, particularly with the enforcement divisions at both agencies — which had faced widespread internal and external criticism. Both the CFTC and SEC are undergoing structural changes as a shift away from regulation through enforcement. This article discusses these developments in detail.

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It should come as no surprise that priorities have shifted at the Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”), particularly with the enforcement divisions at both agencies — which had faced widespread internal and external criticism for jurisdiction overreach and massive fines. What may be a little surprising to some, however, is the extent and speed of the shift in priorities and the resulting impact on the number of investigations, enforcement actions, and shifts away from entire areas.

COMMODITY FUTURES TRADING COMMISSION PRIORITIES

“Back to Basics”

Upon being appointed Acting Chair of the Commodity Futures Trading Commission (“CFTC”), Acting Chair Caroline Pham announced a desire to get “back to basics”¹ and move away from “regulation by

enforcement.”² Consistent with these stated desires, in early February 2025, Acting Chair Pham implemented a reorganization of the Division of Enforcement, resulting in the elimination of a number of specialized task forces — including the Cybersecurity and Emerging Technologies Task Force and Environmental Fraud Task Force — and the creation of the Complex Fraud Task Force and the Retail Fraud and General Enforcement Task Force.³

Acting Chairman Pham subsequently lauded the Department of Justice’s April 7, 2025 memorandum regarding “Ending Regulation by Prosecution” announcing that the Department of Justice “will no longer pursue litigation or enforcement actions that have the effect of superimposing regulatory frameworks on digital assets while President Trump’s actual regulators do this work outside the punitive criminal justice

¹ Acting Chairman Pham: Time For CFTC to Get Back to Basics, CFTC Release No. 9036-24 (Jan. 21, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9036-25>.

² CFTC Division of Enforcement to Refocus on Fraud and Helping Victims, Stop Regulation by Enforcement, CFTC Release No. 9044-25 (Feb. 4, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9044-25>.

³ *Id.*

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INSIDE THIS ISSUE

● **STRUCTURING SHARE REPURCHASES: RULES 10b-18 AND RULES 10b5-1 APPLIED TO VARIOUS OPEN MARKET REPURCHASE PROGRAMS, Page 309**