CFTC Letter No. 26-25   No-Action   September 17, 2026

UNITED STATES
COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Market Participants Division

DJ Hennes
Director

Re: No-Action Position regarding Introducing Broker Registration Requirement under Section 4d(g) and Associated Person Registration Requirement under Section 4k(1) of the Commodity Exchange Act[1]

Ladies and Gentlemen:

On March 17, 2026, the Market Participants Division (the "**Division**" or "**MPD**") of the Commodity Futures Trading Commission (the "**Commission**") issued CFTC Staff Letter 26-09 ("**Letter 26-09**")[2] in response to a request from a developer of software applications that passively enable trading in Commission-regulated derivatives products, including through self-custodial crypto asset wallet software. In Letter 26-09, MPD provided a no-action position to the software developer under Commission Regulation 140.99[3] stating that, subject to the satisfaction of certain conditions described in the letter, and until the effective date of a Commission rulemaking or guidance addressing the application of the introducing broker ("**IB**") registration requirement to software developers, the Division will not recommend that the Commission commence an enforcement action against the software developer for failure to register with the Commission as an IB under Section 4d(g) of the Commodity Exchange Act (the "**Act**")[4] or against any of such developer's relevant personnel for failure to register as an associated person ("**AP**") of an IB under

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[1] This letter contains one or more collections of information under Office of Management and Budget ("**OMB**") number 3038-0049. No person is required to respond to a request for information unless a valid OMB number is displayed.

[2] Letter 26-09, *available at* https://www.cftc.gov/csl/26-09/download, issued to Phantom Technologies, Inc ("**Phantom**").

[3] 17 CFR 140.99. The Commission's regulations are found in Chapter 17 of the Code of Federal Regulations, 17 CFR Part 1 *et seq*.

[4] 7 U.S.C. § 6d(g). The Act (7 U.S.C. § 1 *et seq.*) is accessible at the Commission's web site www.cftc.gov.

Section 4k(1) of the Act or Commission Regulation 3.12(a),[5] solely as a result of them engaging in certain activities (such activities were defined in Letter 26-09 as the "Proposed Activities").

Following issuance of Letter 26-09, MPD has received inquiries from other similarly situated providers of passive software ("**Passive Software Providers**" or "**PSPs**") and their counsel seeking a similar no-action position.[6]

I. Background

Pursuant to Section 4d(g) of the Act,[7] it is unlawful for any person to act in the capacity of an IB, unless such person is registered as an IB with the Commission. The Act and Commission Regulation 1.3 define an IB as any person that, for compensation or profit, is engaged in soliciting or accepting orders for the purchase or sale of, among other financial products, any commodity for future delivery.[8] Similarly, section 4k(1) of the Act and Commission Regulation 3.12(a) provide that it is unlawful for any person to act as an AP of an IB, unless such person is registered as an AP with the Commission.[9] Commission Regulation 1.3 defines an AP of an IB as a natural person associated with an IB as a partner, officer, employee, or agent (or similar status) involved in the solicitation or acceptance of customers' orders (other than in a clerical capacity) or in the supervision of persons so engaged.[10] The Commission has long construed the terms "soliciting and accepting" orders to cover a wide range of activities, not restricted to the literal solicitation or acceptance of customers' orders.[11] However, as discussed below, Commission staff has, under appropriate circumstances, determined that certain technology service vendors ("**TSVs**") need not register as IBs.

Specifically, one of the Division's predecessors, the Division of Clearing and Intermediary Oversight ("**DCIO**"), issued to certain TSVs a series of interpretative letters (the "**TSV Letters**") in which it determined that each TSV was not an IB and would, therefore, not be required to

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[5] 7 U.S.C. § 6k(1) and 17 CFR 3.12(a).

[6] Pursuant to 17 CFR 140.99(a)(2), only the Beneficiary of a no-action letter may rely on it and, thus, no PSP other than Phantom may rely on Letter 26-09.

[7] 7 U.S.C. § 6d(g).

[8] *See* Section 1a(31) of the Act, 7 U.S.C. § 1a(31), and Commission Regulation 1.3, 17 CFR 1.3.

[9] 7 U.S.C. § 6k(1) and 17 CFR 3.12(a).

[10] 17 CFR 1.3.

[11] Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements, 48 FR 35248, 35250 (Aug. 3, 1983) ("[T]he Commission is of the opinion that the phrase 'soliciting or accepting orders,' as it is used in Section 2(a) of the Act, must be construed to encompass not just the literal solicitation or acceptance of customers' orders, but also the solicitation of customers of acceptance of their orders for referral to [a futures commission merchant] for the institution of a trading relationship and the execution of those orders. Similarly, the Commission believes that persons who are currently compensated on a per-trade basis or by a referral fee as described above would be deemed to be the 'agent' of a futures commission merchant for the purpose of the acceptance of those customer orders. As such, any person who continues to engage in those activities would be within the definition of, and generally required to register as, an introducing broker.")

register as such.[12] To reach these interpretations, DCIO relied on representations from the TSV that required, among other things: (1) each customer would have established a pre-existing relationship with a futures commission merchant ("**FCM**") or IB independent of its relationship with the TSV; (2) the TSV would not recommend, propose, or encourage that customers use any particular FCM or IB, even upon request; (3) the TSV's platform would not produce express "buy" or "sell" signals; (4) the TSV would not solicit or accept orders for any commodity futures or commodity option transaction; (5) fees charged by the TSV would not be related to any fees charged by the FCM or IB for the execution of any futures orders; and (6) the TSV would not have a membership with trading privileges on any designated contract market ("**DCM**") or derivatives transaction execution facility (requirements (1) through (6) collectively, the "**TSV Letter Requirements**").[13]

In relation to Letter 26-09, the software developer proposed to act as a TSV to a DCM or registered FCMs or IBs (collectively referred to hereinafter as "**Registrants**") so that a participant of the DCM or customer of the FCM or IB (either referred to hereinafter as a "**User**"), respectively, could access trading in Commission-regulated derivatives on or through the Registrant via front-end interface software developed, provided, and maintained by the software developer and, in relation thereto, engage in the Proposed Activities. As certain of these activities fell outside of the TSV Letter Requirements (*e.g.*, the Registrant and User did not need to have a pre-existing relationship), the software developer was not eligible to rely on the TSV Letters to engage in the Proposed Activities without registration with the Commission as an IB (or registration as an AP of an IB by its relevant personnel) and therefore sought a no-action position. As discussed above, MPD provided the requested position subject to certain conditions contained in the letter.

II. Division No-Action Position

The Division believes that a no-action position for all PSPs on substantially the same terms as that provided to the software developer in Letter 26-09 is warranted.[14] Accordingly, until the effective date of a Commission rulemaking or guidance addressing the application of the IB registration requirement to software developers, the Division will not recommend that the Commission commence an enforcement action against a PSP for failure to register with the

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[12] *See, e.g.*, CFTC Staff Letter 06-29 ("**Letter 06-29**"), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/06-29.pdf; CFTC Staff Letter 08-07 ("**Letter 08-07**"), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/08-07.pdf; and CFTC Staff Letter 08-12 ("**Letter 08-12**"), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/08-12.pdf. In each of the TSV Letters, the Division noted that, if in the future the Commission determines that persons who provide technology to facilitate the order entry process must be registered under the Act, the TSV may have to comply with the applicable registration requirements at that time.

[13] *Id*. The requesting TSV in Letter 06-29 and Letter 08-07 also represented that the TSV did not receive any compensation from any customer's FCM or IB. This was not required in Letter 08-12 for the reasons discussed therein.

[14] For the avoidance of doubt, PSPs are not limited to providers of crypto asset related software.

Commission as an IB or against any relevant personnel of a PSP for failure to register as an AP of an IB, solely as a result of them engaging in the Covered Activities (as described and limited below), subject to the following conditions:

1. The PSP, its principals (as defined by Commission Regulation 3.1[15]), and any individual engaged in soliciting Users as part of the Covered Activities are not subject to statutory disqualification, absent a waiver by the Division. Should any such person become subject to statutory disqualification, the PSP shall promptly notify the Division regarding the nature of the facts giving rise to such disqualification. For this purpose, "statutory disqualification" means, with respect to a person that is not a registrant with the Commission, grounds for refusal to register or to revoke, condition, or restrict the registration of any registrant or applicant for registration as set forth in sections 8a(2) through 8a(4) of the Act,[16] or, with respect to a person that is a registrant with the Commission, the Commission has refused registration or revoked, conditioned, or restricted the registration of such registrant or applicant for registration pursuant to sections 8a(2) through 8a(4) of the Act.[17]

2. The PSP provides, and each User acknowledges receipt of, disclosures regarding the PSP's relationship with the relevant Registrant(s), addressing potential conflicts of interest (including fees).

3. The PSP provides, and each User acknowledges receipt of, a risk disclosure statement addressing the risks covered by the risk disclosure statement contained in Commission Regulation 1.55(b),[18] to the extent relevant to the trading activity facilitated by the PSP. The PSP may provide this disclosure as part of its terms of service or other User onboarding documentation, provided that the PSP shall retain a record of the User's acknowledgement of the disclosure. This condition shall not be applicable if a Registrant is registered with the Commission and obligated to provide a risk disclosure statement to the User consistent with Commission Regulation 1.55.[19]

4. Users are onboarded as direct members (for DCMs) or customers (for registered FCMs and IBs), and they continue to have the ability to access the respective Registrant independently of the PSP.

5. The PSP adopts and enforces policies and procedures reasonably designed to ensure compliance with applicable Commission and National Futures Association ("**NFA**") rules

[15] 17 CFR 3.1.

[16] 7 U.S.C. §§ 12a(2) – 12a(4).

[17] *Id.*

[18] 17 CFR 1.55(b).

[19] 17 CFR 1.55.

regarding communications with the public and marketing as if the PSP were registered as an IB.[20]

6. The PSP does not engage in advertising or promotions that, if the PSP were registered as an IB, would require pre-approval by NFA under NFA Compliance Rule 2-29.

7. The PSP and each of its Registrants execute in writing an undertaking by which they each agree to be jointly and severally liable for any violations of the Act or Commission regulations by the PSP or any of its personnel when the PSP or its personnel engage in the Covered Activities with or on behalf of such Registrant. In this undertaking, the PSP and its Registrant also consent to the jurisdiction of the Commission to investigate and take enforcement action against them for any violation of the Act or Commission regulations in connection with the Covered Activities engaged in by the PSP or any of its personnel on behalf of the Registrant. The PSP files each of these undertakings with the Division.

8. The PSP maintains records regarding its compliance with these conditions and its business involving Commission-regulated activity in a manner consistent with Commission Regulation 1.31.[21]

9. The PSP provides notice to the Division if the entity becomes insolvent or enters a bankruptcy proceeding.

10. The PSP files a notice with the Division agreeing to satisfy these conditions and consenting to the Commission's jurisdiction to investigate and take enforcement action against the PSP for any violation of the Act or Commission regulations in connection with the Covered Activities engaged in by the PSP or any of its personnel.[22]

Each document or notice required to be submitted under these conditions to the Division must be sent to the MPD Director via email to MPDLetters@cftc.gov and referencing this letter.

The term "**Covered Activities**" includes only the following activities:

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[20] These include 7 U.S.C. § 6b; 17 CFR 180.1; and NFA Compliance Rule 2-29: Communications with the Public and Promotional Material, *available at* https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=4&RuleID=RULE%202-29 ("**NFA Compliance Rule 2-29**"). *See also* NFA, Interpretive Notice 9003 – NFA Compliance Rule 2-29: Communications with the Public and Promotional Material (Apr. 22, 2020), *available at* https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9003.

[21] 17 CFR 1.31.

[22] Some PSPs may be affiliated with a state or tribal government and as such potentially protected by sovereign immunity. Thus, a PSP shall include a waiver of sovereign immunity, limited or otherwise, if necessary to make enforceable the PSP's consent to the Commission's jurisdiction to investigate and take enforcement action against the PSP for any violation of the Act of Commission regulations in connection with the Covered Activities engaged in by the PSP or any of its personnel.

- The PSP will develop and distribute front-end interface software for Users to review market data and aggregate position information, view information about product offerings, and submit orders for Commission-regulated derivative products directly to Registrants, including event contracts, perpetual contracts, and other Commission-regulated derivatives. The PSP's involvement in order submission will be limited to providing software on the User's device, which enables the User to transmit its orders directly to Registrants. The PSP will not have any affirmative involvement with any particular orders.

- The PSP will offer this access to Commission-regulated derivative products by contracting with one or more Registrants, which may also agree to share a specified portion of their relevant revenues with the PSP in exchange for the PSP providing this software to the Registrant's Users. The PSP will also contract with Users (*e.g.*, via its terms of use) to authorize them to use the software, and this agreement may provide for the PSP to charge a transaction-based fee directly to Users.

- The PSP (including relevant personnel)[23] will market its services and relationships with the relevant Registrants to promote these activities, including promoting the availability of particular derivatives contracts.

- The PSP (including relevant personnel) will introduce Users to—and solicit Users to engage with—specific Registrants, but Users will face no contractual or operational restriction from accessing those Registrants directly, without the PSP's involvement.

- The PSP will offer this proposed User interface either as a standalone product or as an embedded feature of its existing wallet software, if any. In the latter case, the PSP's software interface would clearly and conspicuously distinguish when a User is engaging in Commission-regulated activity or not.

Further, "Covered Activities" are limited to circumstances where a User is transacting on a DCM either directly as a member of the DCM or indirectly as a customer of an FCM or IB that is a member of the DCM. In these instances, the User would also maintain the funds or other property securing its derivatives positions in custody with the DCM's derivatives clearing organization ("**DCO**") and/or an FCM that is a member of such DCO. In that sense, the Covered Activities envision a "custodial" model of trading that is consistent with existing market structure for exchange-traded derivatives. The PSP's software would serve only to passively enable Users to transact in Commission-regulated derivatives products. At no point would the PSP hold, control, or take into custody User assets, generate express "buy" or "sell" signals, or exercise discretion with respect to the routing or execution of User orders.

[23] Activity by relevant personnel would involve discussing and demonstrating the PSP's software offering at industry conferences and other events, as well as making promotional statements on social media, in each case subject to the PSP's pre-approval and supervision.

This letter, and the position taken herein, represent the views of the Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. This letter and the no-action position taken herein are not binding on the Commission.[24] Further, this letter, and the position taken herein, are based upon the facts and circumstances presented to the Division staff. Any different, changed or omitted material facts or circumstances might render the position taken in this letter void. Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the position taken herein, in its discretion.

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Questions concerning this no-action letter may be directed to Frank Fisanich, Deputy Director, MPD, ffisanich@cftc.gov; Jacob Chachkin, Associate Director, MPD, jchachkin@cftc.gov; or Christopher Cummings, Special Counsel, MPD, ccummings@cftc.gov.

Sincerely,

DJ Hennes
Director
Market Participants Division

cc:

Kathleen Clapper, NFA Compliance
National Futures Association, Chicago

Michael Otten, OTC Derivatives
National Futures Association, New York

[24] *See* 17 CFR 140.99(a)(2) ("A no-action letter binds only the issuing Division . . . and not the Commission or other Commission staff.")