



Decision

Matter of: Commodity Futures Trading Commission—Applicability of the Congressional Review Act to Letter No. 25-14

File: B-337960

Date: April 9, 2026

DIGEST

On May 21, 2025, the Commodity Futures Trading Commission (CFTC) issued CFTC Letter No. 25-14, titled *RE: Staff Interpretation Regarding Certain Cross-Border Definitions* (CFTC Letter or Letter). The CFTC Letter provides a staff interpretation on the applicability of certain statutory and regulatory provisions to the entity that requested the Letter.

The Congressional Review Act (CRA) requires that before a rule can take effect, an agency must submit the rule to both the House of Representatives and the Senate, as well as the Comptroller General. CRA adopts the Administrative Procedure Act (APA) definition of a rule and therefore does not cover those types of agency actions that APA defines separately, including orders. We conclude that the CFTC Letter is an order and therefore not a rule subject to CRA's submission requirements. The Letter concerns a case-specific determination of a specific set of facts using existing statutory and regulatory criteria with an immediate effect only on the individual entity. In addition, we note that even if the Letter met the APA definition of a rule, it would fall within CRA's exception for rules of particular applicability, applying statutory and regulatory provisions only to a specific entity, and would similarly not be subject to CRA's submission requirements.

DECISION

On May 21, 2025, the Commodity Futures Trading Commission (CFTC) issued CFTC Letter No. 25-14, titled *RE: Staff Interpretation Regarding Certain Cross-Border Definitions* (CFTC Letter or Letter).¹ We received a request for a

¹ CFTC, Letter No. 25-14, *RE: Staff Interpretation Regarding Certain Cross-Border Definitions* (May 21, 2025), available at <https://www.cftc.gov/csl/25-14/download> (last visited Mar. 16, 2026).

decision as to whether the CFTC Letter is a rule for purposes of the Congressional Review Act (CRA).² As discussed below, we conclude that the CFTC Letter is not a rule subject to CRA's submission requirements.

Our practice when rendering decisions is to contact the relevant agencies to obtain factual information and their legal views on the subject of the request.³ Accordingly, we reached out to CFTC on December 18, 2025, and received CFTC's response on January 16, 2026.⁴

BACKGROUND

CFTC Jurisdiction Over Certain Foreign Activities

CFTC oversees the U.S. derivatives markets, which include futures, options, and swaps.⁵ CFTC also has jurisdiction over certain foreign activities. For example, the Commodity Exchange Act (CEA)⁶ grants CFTC authority to regulate the foreign futures activity of persons "located in the United States."⁷ In addition, the CEA, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,⁸ gives CFTC authority over swaps activity outside of the United States if the activity has "a direct and significant connection with activities in, or effect on, commerce of the United States."⁹

² Letter from Senator Jack Reed, Senator Tina Smith, and Senator Dick Durbin to Comptroller General (Dec. 2, 2025).

³ GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>.

⁴ Letter from Managing Associate General Counsel for Appropriations Law, GAO, to Acting General Counsel, CFTC (Dec. 18, 2025); Letter from Acting General Counsel, CFTC, to Managing Associate General Counsel for Appropriations Law, GAO (Jan. 16, 2026) (CFTC Response).

⁵ CFTC, *Agency Financial Report, Fiscal Year 2025* (Jan. 16, 2026), at 6, available at <https://www.cftc.gov/media/13096/2025AFR/download> (last visited Mar. 16, 2026).

⁶ Pub. L. No. 74-675, 49 Stat. 1491 (June 15, 1936), 7 U.S.C. §§ 1–26.

⁷ See 7 U.S.C. § 6(b).

⁸ Pub. L. No. 111-203, § 722(d), 124 Stat. 1376, 1673 (July 21, 2010).

⁹ See 7 U.S.C. § 2(i).

CFTC has implemented this authority in regulations and guidance. For example, with respect to foreign futures and options activities, CFTC requires certain entities to register with CFTC, including: (1) foreign brokers that provide entities “located in the United States, its territories or possessions” with access to foreign futures or foreign options, who must generally register as futures commission merchants¹⁰; and (2) foreign boards of trade that provide direct access to entities “located in the United States.”¹¹ Relatedly, foreign located persons engaging in the activity of a futures commission merchant only on behalf of persons “located outside the United States, its territories, or possessions” are not required to register with CFTC as a futures commission merchant.¹²

With respect to CFTC’s cross-border swaps jurisdiction, CFTC published guidance in 2013 defining a “U.S. person,” and explaining that this definition generally encompasses those persons whose swap activities have a direct and significant connection with activities in, or effect on, commerce of the United States within the meaning of the CEA.¹³ In 2020, CFTC adopted regulations at 17 C.F.R. § 23.23 that

¹⁰ See 17 C.F.R. §§ 30.1(c) (defining “[f]oreign futures or foreign options customer” as “any person located in the United States, its territories or possessions who trades in foreign futures or foreign options”), 30.4(a) (generally prohibiting entities from soliciting or accepting orders from foreign futures or foreign options customers unless they register with CFTC); CFTC Letter, at 1–2. Futures commission merchants are “[i]ndividuals, associations, partnerships, corporations, and trusts that solicit or accept orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any exchange and that accept payment from or extend credit to those whose orders are accepted.” CFTC, *Futures Glossary*, available at <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm> (last visited Mar. 16, 2026) (citing 7 U.S.C. § 1a(28)).

¹¹ See 17 C.F.R. §§ 48.2(c) (defining “direct access” as granting certain authority “to an identified member or other participant located in the United States”), 48.3(a) (generally prohibiting a foreign board of trade from permitting direct access unless and until CFTC has issued an “Order of Registration” to the board); CFTC Letter, at 1–2.

¹² See 17 C.F.R. § 3.10(c)(1)(ii) (defining “[f]oreign located person” as “a person located outside the United States, its territories, or possessions”), (c)(2)(ii) (generally exempting foreign located persons who engage in the activities of a futures commission merchant only on behalf of foreign located persons or international financial institutions from the registration requirements and from the statutory and regulatory provisions applicable solely to registered futures commission merchants or to persons required to be so registered); CFTC Letter, at 2–3.

¹³ *Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 Fed. Reg. 45292, 45308, 45316–17 (July 26, 2013) (2013 Guidance); see CFTC Letter, at 3–4.

superseded the 2013 guidance in certain respects, included a separate definition of “U.S. person,” and defined “[n]on-U.S. person” as “any person that is not a U.S. person.”¹⁴

CFTC Letter

The CFTC Letter was issued jointly by CFTC’s Market Participants Division and Division of Market Oversight in response to a request from a private entity, SCB Limited (SCB).¹⁵ SCB requested that the Divisions issue an interpretative letter confirming that SCB would qualify as a “non-U.S. person” as defined by 17 C.F.R. § 23.23(a)(10), not a “U.S. person” as defined by the 2013 Guidance, a “foreign located person” as defined by 17 C.F.R. § 3.10(c)(1)(ii), not a “person located in the United States” for purposes of 17 C.F.R. § 30.1(c), and not a “participant located in the United States” for purposes of 17 C.F.R. § 48.2(c).¹⁶ SCB provided relevant facts on its current business structure, operations, and activities, and also described future plans to expand its activities in the United States.¹⁷

An interpretative letter is “written advice or guidance issued by the staff of a Division of [CFTC] or the Office of the General Counsel.”¹⁸ CFTC’s regulations state that “[a]n interpretative letter binds only the issuing Division or the Office of the General Counsel, as applicable, and does not bind the Commission or other Commission staff.”¹⁹ On the other hand, “[a]n interpretative letter may be relied upon by persons in addition to the [b]eneficiary.”²⁰ The Market Participants Division oversees

¹⁴ CFTC Letter, at 4–5; see *Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants*, 85 Fed. Reg. 56924, 56932–39 (Sept. 14, 2020); 17 C.F.R. § 23.23(a)(10), (23).

¹⁵ CFTC Letter, at 1.

¹⁶ *Id.*

¹⁷ *Id.* at 5–6.

¹⁸ 17 C.F.R. § 140.99(a)(3).

¹⁹ *Id.*; CFTC Response, at 1; see CFTC Letter, at 7–8 (stating that the Letter’s “interpretation represents the position of the Divisions and does not necessarily represent the views of the Commission”; that the Letter and interpretation “are based upon the facts and circumstances represented to the staff of the Divisions”; that “[a]ny different, changed, or omitted material facts or circumstances may require a different position or render this letter void”; and that “the Divisions retain the authority to condition further, modify, suspend, terminate, or otherwise restrict the interpretation provided herein, in their discretion”).

²⁰ 17 C.F.R. § 140.99(a)(3); CFTC Response, at 3.

derivatives market intermediaries and designated self-regulatory organizations.²¹ The Division's activities include examining intermediaries and designated self-regulatory organizations, maintaining appropriate standards for registration of intermediaries, and issuing concise and timely interpretations and guidance for intermediaries.²² The Division of Market Oversight oversees the health and market structure of the derivatives markets regulated by CFTC, as well as the exchanges and facilities on which those derivatives trade.²³ The Division's activities include assessing various entities' compliance with the CEA and CFTC regulations, as well as reviewing and making recommendations to the Commission on registration applications for foreign boards of trade, swap execution facilities, and other entities.²⁴

The CFTC Letter discusses the relevant statutory and regulatory background, including relevant sections of the CEA and CFTC regulations, past rulemakings, the 2013 Guidance, and previous CFTC staff letters.²⁵ The Letter also summarizes the relevant facts regarding SCB's situation.²⁶

Based on the facts presented, the Letter confirms that: (1) SCB is not a "person located in the United States" for purposes of the "foreign futures or foreign options customer" definition in 17 C.F.R. § 30.1(c); (2) SCB is not a "participant located in the United States" for purposes of 17 C.F.R. § 48.2(c); (3) SCB is a "foreign located person" for purposes of 17 C.F.R. § 3.10(c)(1)(ii); and (4) SCB is a "non-U.S. person" and not a "U.S. person" as defined by 17 C.F.R. § 23.23(a) and the 2013 Guidance.²⁷ The Letter goes on to explain the effects of these determinations on the application of CFTC's regulations to SCB's swap activities.²⁸ For example, the Letter states that SCB's swap dealing activity would not count toward the threshold for registering as a swap dealer, and its swap transactions would not be subject to

²¹ CFTC, *Market Participants Division (MPD)*, available at <https://www.cftc.gov/About/CFTCOrganization/MPD> (last visited Mar. 16, 2026).

²² *Id.*

²³ CFTC, *Division of Market Oversight (DMO)*, available at <https://www.cftc.gov/About/CFTCOrganization/DMO> (last visited Mar. 16, 2026).

²⁴ *Id.*

²⁵ CFTC Letter, at 1–5.

²⁶ *Id.* at 5–6.

²⁷ *Id.* at 6–7.

²⁸ *Id.*

certain reporting requirements.²⁹ In addition, the Letter explains the effect of its determinations on non-U.S. exchanges and brokers if they facilitate SCB's futures or swaps activity, stating that such entities would not need to register with CFTC solely on the basis of doing business with SCB.³⁰ The Letter further states that SCB's proposed plans to expand its activities in the United States would not impact SCB's status under the relevant CFTC regulations.³¹

Congressional Review Act (CRA)

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires federal agencies to submit a report on each new rule to both houses of Congress and the Comptroller General for review before the rule can take effect.³² The report must contain a copy of the rule, "a concise general statement relating to the rule," and the rule's proposed effective date.³³ CRA allows Congress to review and disapprove rules issued by federal agencies for a period of 60 days using special procedures.³⁴ If a resolution of disapproval is enacted, then the new rule has no force or effect.³⁵

CRA adopts the definition of a rule under the Administrative Procedure Act (APA), which states that a rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."³⁶ However, CRA excludes three categories of APA rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.³⁷

²⁹ *Id.* at 7.

³⁰ *Id.*

³¹ *Id.*

³² 5 U.S.C. § 801(a)(1)(A).

³³ *Id.*

³⁴ *See* 5 U.S.C. § 802.

³⁵ 5 U.S.C. § 801(b)(1).

³⁶ 5 U.S.C. §§ 551(4); 804(3).

³⁷ 5 U.S.C. § 804(3).

CFTC did not submit a CRA report to Congress or the Comptroller General on the CFTC Letter.³⁸ In its response to us, CFTC stated that the Letter does not meet the APA definition of a rule because it is a staff letter and does not constitute an “agency statement.”³⁹

DISCUSSION

At issue here is whether the CFTC Letter meets CRA’s definition of a rule, which adopts APA’s definition of a rule with three exceptions. As explained below, we conclude that the Letter is an order, not a rule, under APA, and therefore is not subject to CRA’s submission requirements. In addition, we conclude that even were the Letter to meet the APA definition of a rule, it would fall within CRA’s first exception for rules of particular applicability and would similarly not be subject to CRA’s submission requirements.

The CFTC Letter is an Agency Action Under APA

APA provides for two types of agency actions that are mutually exclusive: rules and orders.⁴⁰ An agency action meeting the definition of an order cannot be a rule under APA and thus cannot be a rule for purposes of CRA.⁴¹ Both rules and orders are actions taken by an “agency” as defined in APA.⁴² CFTC is an agency under APA,⁴³ and the Letter was issued by two CFTC Divisions. Therefore, the Letter constitutes an action taken by an agency under APA.

CFTC states in its response that the Letter is neither a rule nor an order because it represents only the views of the Divisions that issued it and is not binding on the Commission itself or other agency staff.⁴⁴

³⁸ CFTC Response, at 1.

³⁹ CFTC Response, at 2.

⁴⁰ *E.g.*, B-337370, Aug. 28, 2025 (*citing* 5 U.S.C. § 551(5)–(6); B-334995, July 6, 2023).

⁴¹ *E.g.*, B-337370, Aug. 28, 2025 (*citing* B-335030, May 8, 2024).

⁴² *See* 5 U.S.C. § 551(1), (13).

⁴³ *See, e.g., Investment Co. Institute v. CFTC*, 720 F.3d 370, 376, 381 (D.C. Cir. 2013) (treating CFTC rule as “agency action” under APA and assessing whether the rule violated APA requirements).

⁴⁴ CFTC Response, at 2–3.

We have previously determined that actions taken by less than the full agency can still constitute agency actions for purposes of APA. For example, in B-334540, Oct. 31, 2023, we examined whether a Staff Accounting Bulletin (Bulletin) issued by two offices within the Securities and Exchange Commission (SEC) was a rule under CRA. SEC asserted that the Bulletin was not an agency action because it represented the views of the two offices and was not binding on the Commission.⁴⁵ We noted that the Bulletin was issued by agency staff, published on the agency's website, and that it described how the two SEC offices interpreted accounting-related disclosure requirements.⁴⁶ We determined that because one of the offices was responsible for monitoring compliance with those requirements, it was reasonable to conclude that entities might change their behavior to comply with the staff interpretations found in the Bulletin.⁴⁷ Accordingly, we concluded that the Bulletin constituted agency action.⁴⁸ We similarly concluded in several other decisions that Supervision and Regulatory Letters issued by staff of the Board of Governors of the Federal Reserve System (FRB) constituted action by FRB.⁴⁹

The CFTC Letter, like the SEC Bulletin, was published on the agency's website and issued by staff responsible for overseeing regulated entities and monitoring compliance with relevant requirements. The Market Participants Division oversees derivatives market intermediaries and maintains registration standards for those entities, while the Division of Market Oversight oversees derivatives markets and related exchanges and facilities, reviews and makes recommendations on registration applications, and assesses various entities' compliance with the CEA and CFTC regulations.⁵⁰ Therefore, the CFTC Letter, like the SEC Bulletin, has an impact on regulated entities, given that the Letter binds the two issuing Divisions and SCB and other entities may rely on the Letter.⁵¹ Our previous decisions therefore support our conclusion that the Letter constitutes agency action under APA.

⁴⁵ B-334540, Oct. 31, 2023.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ B-336217, Aug. 6, 2024; *see also* B-331560, Apr. 16, 2020; B-331324, Oct. 22, 2019; B-330843, Oct. 22, 2019.

⁵⁰ CFTC, *Market Participants Division*; CFTC, *Division of Market Oversight (DMO)*.

⁵¹ *See* 17 C.F.R. § 140.99(a)(3).

The opinion of the U.S. Court of Appeals for the Fifth Circuit in *Clarke v. CFTC*⁵² further supports our conclusion. In that case, the court reviewed the Division of Market Oversight’s withdrawal of another type of CFTC staff letter, known as a “no-action letter.”⁵³ The court concluded that both the no-action letter and subsequent withdrawal constituted agency action under APA notwithstanding that they were issued by a single CFTC division.⁵⁴

The CFTC Letter is an Order Under APA

APA defines an order as “the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing.”⁵⁵ While rules result from rulemaking, orders result from adjudications, which are “case-specific, individual determination[s] of a particular set of facts that ha[ve] immediate effect on the individual(s) involved.”⁵⁶ Adjudications apply existing criteria and processes from an agency’s regulations and the statutes they implement to a given set of facts.⁵⁷ In contrast, rulemaking involves the broad application of general principles, and rules have only prospective effect.⁵⁸

⁵² 74 F.4th 627 (5th Cir. 2023).

⁵³ *Id.* at 633. No-action letters are issued by a CFTC Division or Office of the General Counsel stating that the staff will not recommend enforcement action to the Commission for failure to comply with a specific statutory provision or provision of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted. 17 C.F.R. § 140.99(a)(2). Similar to interpretative letters, “[a] no-action letter binds only the issuing Division or the Office of the General Counsel, as applicable, and not the Commission or other Commission staff.” *Id.*

⁵⁴ See *Clarke*, 74 F.4th at 636–37.

⁵⁵ 5 U.S.C. § 551(6).

⁵⁶ *E.g.*, B-334309, Nov. 30, 2023 (citing *United States v. Florida East Coast Railway Co.*, 410 U.S. 224, 245–46 (1973); *Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017)).

⁵⁷ *E.g.*, B-337582, Nov. 20, 2025 (citing B-334995, July 6, 2023).

⁵⁸ B-334309, Nov. 30, 2023; see *Neustar*, 857 F.3d at 893, 895; *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 216–17 (1988) (Scalia, J., concurring) (explaining that “rules have legal consequences only for the future” while “[a]djudication . . . has future as well as past legal consequences”).

For example, in B-337370, Aug. 28, 2025, we examined a determination by the Environmental Protection Agency (EPA) concluding that eight areas in five states had failed to attain the applicable National Ambient Air Quality Standards (NAAQS) by the specified attainment date. EPA further stated that, by operation of law, those areas would be reclassified to a new category of nonattainment and would have to attain the relevant standard by a specified date.⁵⁹ We concluded that EPA's action was an order under APA because it involved final determinations that the areas had failed to attain the applicable NAAQS by the required date and that those determinations resulted from EPA's application of the Clean Air Act requirements and EPA regulations to a specific set of facts.⁶⁰

The CFTC Letter bears all the hallmarks of an order resulting from adjudication. The Letter represents the final disposition of SCB's request for an interpretative letter. The Letter applies the relevant provisions of the CEA and CFTC's regulations to SCB's specific facts to determine that SCB is not a "person located in the United States," is not a "participant located in the United States," is a "foreign located person," is a "non-U.S. person," and is not a "U.S. person" under various CFTC regulations and guidance.⁶¹ The Letter goes on to explain the effect of these determinations on the application of CFTC's regulations to SCB's swap activities and on non-U.S. exchanges and brokers if they facilitate SCB's futures or swaps activity.⁶² For example, SCB's swap dealing activity would not count toward the threshold for registering as a swap dealer and its swap transactions would not be subject to certain reporting requirements.⁶³ The Letter therefore has immediate effect on SCB because it clarifies SCB's status under certain CFTC regulations and the applicability of certain CFTC requirements given that status. Because the Letter involves a case-specific determination of a specific set of facts using existing statutory and regulatory criteria and has immediate effect on the individual entity involved, it constitutes an adjudicatory order under APA.

That the Letter may announce a new interpretation of CFTC's extraterritorial jurisdiction that could apply prospectively to entities other than SCB does not affect our conclusion. Courts have recognized that "[s]tatutory interpretation can be rendered in the form of an adjudication, not only in a rulemaking" and "[t]he fact that an order rendered in an adjudication may affect agency policy and have general

⁵⁹ B-337370, Aug. 28, 2025.

⁶⁰ *Id.*

⁶¹ CFTC Letter, at 6–7.

⁶² *Id.*

⁶³ *Id.* at 7.

prospective application, does not make it rulemaking subject to APA.”⁶⁴ For example, in *Conference Group, LLC v. FCC*, the Federal Communications Commission (FCC) “decided that the audio bridging services provided by [an entity were] properly classified as ‘telecommunications’ under the Communications Act of 1934, as amended, and thereby obligate[d] it and ‘similarly situated’ providers to contribute directly to the Universal Service Fund,” a fund set up to preserve and advance universal service.⁶⁵ The court determined that the statutory interpretation in the order “was neither a legislative nor an interpretative rule. Rather it was simply an interpretation given in the course of an informal adjudication.”⁶⁶ In reaching this conclusion, the court noted that FCC relied primarily on the relevant statutory definitions, as interpreted in various orders and implementing regulations, as well as the agency’s relevant classification precedent.⁶⁷ The court rejected the contention that FCC’s statement that its interpretation applied to similarly situated providers transmuted the adjudication into a rulemaking.⁶⁸ The court stated that the precedential effect of the order would be the same without the phrase given that “[t]he nature of adjudication is that similarly situated non-parties may be affected by the policy or precedent applied, or even merely announced in dicta.”⁶⁹

We have applied this same reasoning in our CRA decisions. For example, in B-334400, Feb. 9, 2023, we examined an EPA document in which the agency denied petitions from small refineries seeking exemption from certain requirements due to disproportionate economic hardship. EPA stated that its denial was based on its revised interpretation of what constituted disproportionate economic hardship.⁷⁰ Citing *Neustar*, *Conference Group*, and other court opinions, we concluded that neither EPA’s change in interpretation nor the fact that the denial could affect the disposition of future exemption petitions rendered the denial a rule under APA.⁷¹

⁶⁴ *Neustar*, 857 F.3d at 894 (quoting *Conference Group, LLC v. FCC*, 720 F.3d 957, 958, 966 (D.C. Cir. 2013)) (internal quotation marks omitted).

⁶⁵ *Conference Group*, 720 F.3d at 958–59.

⁶⁶ *Id.* at 965.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* (quoting *Goodman v. FCC*, 182 F.3d 987, 994 (D.C. Cir. 1999)) (internal quotation marks omitted).

⁷⁰ B-334400, Feb. 9, 2023.

⁷¹ B-334400, Feb. 9, 2023; see also B-334309, Nov. 30, 2023.

Here, the Letter’s interpretation of the agency’s jurisdiction over SCB’s activities and the determinations regarding the application of certain statutory and regulatory requirements may prospectively affect other entities similarly situated to SCB, who may look to the Letter to assess their own status and compliance. This is particularly likely given that CFTC interpretative letters bind the issuing Divisions and “may be relied upon by persons in addition to the” requesting entity.⁷² However, as in *Conference Group* and B-334400, such effects on non-parties are part of the nature of adjudication, and do not render the CFTC Letter a rule under APA.

Likewise, the Letter’s explanation of how the determinations on SCB’s status under certain CFTC regulations would affect non-U.S. exchanges and brokers that facilitate SCB’s activities does not transform the Letter into a rule. We have previously examined agency actions with downstream effects on other entities and nevertheless concluded that those actions were orders and not rules. For example, in B-334995, July 6, 2023, we determined that a revision to the U.S. Food and Drug Administration’s (FDA’s) risk evaluation and mitigation strategy (REMS) for the drug mifepristone was an order. We reached that conclusion even though the REMS appeared to indirectly impose duties and obligations on pharmacies, doctors and patients.⁷³ Similarly, in B-337380, Sept. 11, 2025, and B-337582, Nov. 20, 2025, we determined that letters announcing that the U.S. Department of the Interior (Interior) would acquire certain land in trust for specific Tribes were orders. The fact that the letters described potential downstream effects on other entities resulting from these decisions, such as increased costs to local agencies and loss of tax revenue, did not affect our conclusion.⁷⁴

In this case, the CFTC Letter explains the effect of its determinations with respect to SCB on non-U.S. exchanges and brokers if they facilitate SCB’s futures or swaps activity, stating that such entities would not need to register with CFTC solely on the basis of doing business with SCB.⁷⁵ Such statements are similar to those in Interior’s letters in B-337380 and B-337582, in that they merely describe the downstream effects of the agency’s determinations with respect to the subject of the Letter—in this case the determinations regarding SCB’s status under various CFTC regulations. CFTC’s regulations already prescribe how an entity’s status determines whether non-U.S. exchanges and brokers facilitating that entity’s futures and swaps activity need to register with CFTC.⁷⁶ Therefore, like FCC’s statement in *Conference Group* regarding the effect of the agency’s interpretation on similarly situated non-parties, the effect of the Letter’s determinations regarding SCB on non-

⁷² See 17 C.F.R. § 140.99(a)(3).

⁷³ B-334995, July 6, 2023.

⁷⁴ B-337380, Sept. 11, 2025; B-337582, Nov. 20, 2025.

⁷⁵ CFTC Letter, at 7.

⁷⁶ See 17 C.F.R. §§ 3.10(c)(1)(ii), 3.10(c)(2)(ii), 30.1(c), 30.4(a), 48.2(c), 48.3(a).

U.S. exchanges and brokers would be the same even without the Letter's explanation.

Rule of Particular Applicability

We note that even if the CFTC Letter met the APA definition of a rule, it would still not be subject to CRA as it would fall within CRA's first exception for rules of particular applicability. Such rules are addressed to specific, identified persons or entities and determine actions those persons or entities may or may not take, considering the facts and circumstances specific to those persons or entities.⁷⁷

In each of the decisions cited above where we determined that the relevant agency action was an order and not a rule under APA, we further determined that even if the action were a rule, it would fall within this exception.⁷⁸ For example, in B-337370, we concluded that EPA's determination would be a rule of particular applicability because it was addressed to specific entities—the eight nonattainment areas—and addressed their failure to attain the ozone standard by the applicable attainment date based on the facts presented and the relevant statutory and regulatory provisions. Like the EPA determination in B-337370, the CFTC Letter is addressed to a specific entity, SCB, and makes determinations regarding SCB's status based on the specific facts presented and the relevant statutory and regulatory provisions, in this case the CEA and CFTC regulations.

Further, just as we have determined in past decisions that agency actions were orders notwithstanding potential downstream effects on entities other than the subject of the action, we have also concluded that even if such actions were rules, they would be rules of particular applicability despite those effects.⁷⁹ In those decisions, we noted that the relevant actions were addressed to specific, identified entities and not the downstream entities that might also be affected.⁸⁰ As discussed above, the CFTC Letter concerns a specific entity, SCB, and addresses SCB's

⁷⁷ *E.g.*, B-334995, July 6, 2023.

⁷⁸ See B-337582, Nov. 20, 2025; B-337380, Sept. 11, 2025; B-337370, Aug. 28, 2025; B-334309, Nov. 30, 2023; B-334995, July 6, 2023.

⁷⁹ See B-337582, Nov. 20, 2025; B-337380, Sept. 11, 2025; B-334995, July 6, 2023.

⁸⁰ See B-334995, July 6, 2023 (“While the statute contemplates that a REMS could contain requirements for pharmacies and doctors, those entities are not directly subject to enforcement of those requirements by FDA. Rather, it is the sponsors who are required to distribute the drug in accordance with the REMS.”) (internal citations omitted); B-337380, Sept. 11, 2025 (“[T]he Decision Letter only applies to the Koi Nation, even if downstream effects from the determinations may extend to additional parties, such as state, county, and local governments, as well as other tribes in the surrounding area.”); B-337582, Nov. 20, 2025.

status under certain CFTC regulations. Accordingly, we similarly conclude that the Letter would be a rule of particular applicability notwithstanding the Letter's discussion of how the determinations regarding SCB would affect non-U.S. exchanges and brokers that facilitate SCB's activities.

CONCLUSION

The CFTC Letter is an order, and therefore not a rule subject to CRA's submission requirements. We note that even were the Letter to meet the APA definition of a rule, it would fall under CRA's first exception for rules of particular applicability and would similarly not be subject to CRA's submission requirements.

A handwritten signature in cursive script, reading "Edda Emmanuelli Perez".

Edda Emmanuelli Perez
General Counsel