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Inadvertent FCM Sanctioned by CFTC



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On June 24, the Commodity Futures Trading Commission (“CFTC”) sanctioned Starberry Limited, a Cyprus entity, for operating in the U.S. as an unregistered futures commission merchant (“FCM”) and ordered it to pay \$1.3 million in penalties. Starberry opened a proprietary account in the U.S. with a registered U.S. FCM and conducted 12,500 NYMEX WTI futures trades, generating \$86 million in profits for its foreign customer while collecting \$1.3 million in commissions and fees.

This is one in a series of recent CFTC enforcement actions demonstrating CFTC’s focus on three typical fact scenarios involving unregistered FCMs:

(1) Acting as a foreign broker and failing to meet the requirements of Sec. 3.10(c) (2) of CFTC regulations by operating its own proprietary futures trading account in the U.S., while using this account not for its own proprietary trading but for its customer’s trading and collecting margin to facilitate this trading ([Starberry Limited](#));

(2) Acting as a de facto broker for U.S. customers through proprietary accounts at registered FCMs to execute futures contracts not for its own book (as required for proprietary accounts) but instead for its customers with separate margined accounts to record the off-exchange futures contracts ([Upstream Energy](#) in 2019 and [Davisco Foods](#) in 2017); and

(3) Acting as an unregistered broker with respect to commodity derivatives contracts (typically on digital assets) for retail participants (*i.e.*, entities that do not qualify as eligible contract participants, as defined in Sec. 1a(18) of the Commodity Exchange Act of 1936) ([First Global Credit](#) in 2019 and [14 cases](#) in 2021).

These cases, together with CFTC enforcement actions involving unregistered commodity trading advisers (“CTAs”), indicate that the line between activities that

do not require registration is very easily crossed into the scope of activities that require a registration or where an exemption from registration should be sought.
