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Confirming a Negative: CFTC Staff Issue an Advisory Clarifying When Foreign-Organized Entities Are Trading and Brokering Digital Asset Derivatives Outside of the Commission's Cross-Border Jurisdiction

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Based on a recent Katten advisory, this article discusses a May 21 advisory letter issued by the Commodity Futures Trading Commission (CFTC) that clarifies the Staff's interpretation of the agency's jurisdiction over foreign-organized entities trading digital asset derivatives outside the United States. The advisory letter marks a return to well-understood jurisdictional tests for swaps, focusing on where an entity is organized and where its senior management directs and controls operations (the "nerve center" test), rather than on broader operational touch-points such as the location of personnel, servers or beneficial owners.

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