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May 21, 2025

VIA ELECTRONIC SUBMISSION

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Request for Comments on the Trading and Clearing of "Perpetual" Style Derivatives

Dear Mr. Kirkpatrick:

I. INTRODUCTION

On behalf of The Commercial Energy Working Group (the "**Working Group**"), Eversheds Sutherland (US) LLP submits this letter in response to the request for comments issued by the Commodity Futures Trading Commission (the "**CFTC**" or "**Commission**") on April 21, 2025 regarding the trading and clearing of "perpetual" style derivatives.[1] The Working Group appreciates the opportunity to provide input related to the use cases, challenges, and opportunities perpetual contracts may present to market participants and the broader derivatives market.

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities. Among the members of the Working Group are some of the largest users of energy derivatives in the United States and globally. The Working Group advocates for regulatory, legislative, and market developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

II. COMMENTS OF THE WORKING GROUP

[1] *See Request for Comment on the Trading and Clearing of "Perpetual Style" Derivatives*. CFTC Press Release Number 9069-25 (Apr. 21, 2025)("**RFC**"), found at: https://www.cftc.gov/PressRoom/PressReleases/9069-25.

The Working Group welcomes policy questions raised by the Commission that seek to facilitate innovation with respect to the design and operation of derivatives markets. As commercial hedgers in the energy sector, the Working Group's primary interest gravitates towards innovations that allow for more effective price discovery and efficient hedging of exposures to price risk in underlying physical markets.

The Working Group, however, fully recognizes the significant growth of new products traded in financial markets around the world. Certain of these products are designed such that prices, and associated payments, are derived from an associated cash or spot market price. As noted in the RFC, in contrast to "traditional" derivatives contracts, where the price benchmarking between the derivative and underlying spot instrument is done at or around the expiration of the derivatives contract, for these newer products the pricing relationship is monitored and settled on an ongoing basis – often multiple times a day ("**Perpetual Derivatives**").[2] A key feature of these derivative products have less of a need for a specific termination date associated with the given contract.[3]

Given the broad array of structural and operational issues raised by trading and clearing of Perpetual Derivatives, the Working Group does not believe that these products are appropriate for use in energy futures and other commodity markets. Further, at this stage of the policy debate process, the Working Group believes that designated contract markets and, as applicable, swap execution facilities (collectively, the "**Exchanges**") are best positioned to meaningfully comment on the feasibility and appropriateness of using Perpetual Derivatives in traditional energy and commodity markets. Accordingly, the Working Group adopts and incorporates by reference herein the comments filed in response to the RFC by the Commodity Markets Council ("**CMC**"), which includes perspectives from both the Exchanges, as well as commercial hedgers. [4]

Prior to commencing any formal rulemaking proceedings regarding the requirements of Perpetual Derivatives, we believe it appropriate that the Commission convene an industry Technical Conference for purposes of addressing, refining and clarifying certain threshold issues related to these products, notably:

- An industry-accepted and recognized definition of "Perpetual Derivative;"
- The regulatory status and treatment of "Perpetual Derivatives" under the Commodity Exchange Act ("**CEA**")[5] and CFTC Regulations;[6] and
- Approaches and practices that could be used to manipulate or disrupt fair and orderly trading in markets for Perpetual Derivatives, and the authority and tools

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2 RFC at 1.

3 *Id*.

4 *See* Commodity Markets Council, Request for Comment on Perpetual Derivatives (May 21, 2025)("**CMC Comments**"). The Working Group, at this time, takes no position as a matter of law or public policy whether the use of Perpetual Derivatives is appropriate in other product markets and asset classes.

5 7 U.S.C. §§ 1 *et. seq.*

6 17 C.F.R §§ 1 *et seq*.

available to the Commission under the CEA and CFTC Regulations to prohibit such practices, including the possible use of speculative position limits.

As discussed in greater detail in the CMC Comments, the Working Group supports the position that the trading of Perpetual Derivatives in traditional energy and commodity markets is of limited utility for commercial hedgers given that their lack of expiration date effectively eliminates price convergence with underlying physical markets, thereby decoupling the settlement of these products from underlying market price fundamentals.[7] Further, due to the lack of expiry date, Perpetual Derivatives are not an effective tool for purposes of hedging longer-term price risk exposures in the energy sector related to unsold anticipated production, unfilled anticipated requirements (hedging refinery feedstock), and forms of anticipated merchandising hedges (e.g., storage hedges and open sales strategies), as well as cross-commodity hedges (e.g., jet fuel, gasoline, and other refined clean products).[8]

While markets for Perpetual Derivative products in the energy sector may be of interest to speculative traders and high-frequency trading firms, among others, the Working Group is concerned that the use of these contracts could result in thinned liquidity for certain key benchmark energy futures contracts. Such a situation could result in less efficient and well-functioning markets for commercial hedgers to mitigate their exposure to price risk and could increase exposure to price volatility and wider spreads at the expiry of key benchmark futures contracts.[9]

In closing, commercial energy firms, such as the members of the Working Group, whose primary business activity is the physical delivery of one or more energy commodities to others, rely on derivative products whose core characteristic is convergence with related prices in physical markets. Because Perpetual Derivatives are structured such that they cannot perform meaningful risk management or hedging functions for existing energy and commodity derivative products, they are not appropriate for use in, and could have adverse impacts on, such markets.

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[7] CMC Comments at 3.

[8] Given their lack of ties to physical energy or commodity flows, CMC highlights an important point that perpetuals offer poor price discovery and no practical use for managing inventory, production, or input price volatility. While suitable to synthetic assets or markets without delivery, they do not and cannot play a meaningful role in energy and commodity markets where physical delivery takes – whether via cash market delivery or physically-delivered futures. *See* CMC Comments at 3.

[9] CMC Comments at 3.

III. CONCLUSION

The Working Group appreciates this opportunity to comment in this proceeding and looks forward to working with the Commission as it considers new policy initiatives or regulatory proposals with respect to the design of commodity derivative markets. The Working Group reserves the right to further supplement its comments filed herein.

If you have any questions, please contact the undersigned.

Respectfully submitted,
/s/ R. Michael Sweeney, Jr.

R. Michael Sweeney, Jr.
John Coffron
Aleeza Kanner

Counsel to
The Commercial Energy Working Group