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May 21, 2025

Mr. Christopher J. Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1151 21 Street NW
Washington, DC 20581

Re: **Staff Request for Comment Regarding on the Trading and Clearing of "Perpetual" Style Derivatives**

Dear Mr. Kirkpatrick:

The North American Derivatives Exchange, Inc. d/b/a Crypto.com | Derivatives North America ("CDNA") appreciates the opportunity to respond to the Commodity Futures Trading Commission ("CFTC" or the "Commission") Staff's Request for Comment on the Trading and Clearing of "Perpetual" Style Derivatives.[1]

CDNA is a CFTC-registered designated contract market ("DCM") and derivatives clearing organization ("DCO"). CDNA currently lists fully collateralized products based on digital assets, and event outcomes, as well as traditional assets, such as foreign exchange rates, equity indices, and commodities. At present, no perpetual derivatives contracts are listed on the CDNA DCM or are cleared at the CDNA DCO. CDNA's comments below relate solely to its status as a registered DCM and DCO, and therefore we do not address the regulations applicable to swap execution facilities.

Crypto.com was founded in 2016 on a simple belief: it is a basic human right for everyone to control their money, data and identity. With over 140 million users on its platform today, Crypto.com provides a powerful alternative to traditional financial services, turning its vision of "cryptocurrency in every wallet" into reality, one customer at a time. Among other offerings, Crypto.com operates a derivatives exchange outside the United States, where perpetual derivatives contracts are made available for certain non-U.S. persons to trade.

Below, we provide CDNA's responses to the Request for Comment, including the following key points:

- Perpetual derivatives offer highly effective price discovery and risk management functions to market participants.

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[1] CFTC Staff Seek Public Comment Regarding Perpetual Contracts in Derivatives Markets, https://www.cftc.gov/PressRoom/PressReleases/9069-25 (last visited May 19, 2025).

- The CFTC should ensure that U.S. derivatives markets are competitive globally, and facilitate growth and innovation in perpetual contracts.
- The existing DCM and DCO Core Principles and CFTC regulations already account for the risks associated with a perpetual derivatives contract.
- Perpetual derivatives and 24/7 trading exist in tandem; in order for perpetual derivatives to flourish in the United States, the CFTC should also facilitate 24/7 trading.

We appreciate the Commission's thoughtful approach to fostering innovation and growth in U.S. derivatives markets, including providing meaningful opportunities for industry participants to engage with the CFTC and appropriately tailoring the Commission's regulations. Our full response to the Request for Comment follows.

I. **Definition of a "Perpetual Derivative"**

In response to the Staff's question about the definition of "perpetual derivative," CDNA believes that there are three defining characteristics of these products:

1. The contract provides future expiration through offset, even though it has no traditional expiration or maturity date;
2. The contract provides for continuous trading and settlement on a 24/7 basis; and
3. There is a regular funding payment mechanism between the counterparties.

More specifically, a perpetual derivatives instrument is a contract that derives its value from an underlying reference asset, much like any other derivatives product. At present, digital assets may be the most common underlier for these types of products, in part due to the around-the-clock nature of trading in spot digital asset markets and the risk mitigation benefits that digital asset perpetual derivatives offer (discussed below). Crypto.com's non-U.S. derivatives exchange offers these types of contracts based on specific digital asset trading pairs, the details of which are set forth in each of the applicable product specifications.

With respect to the regular funding payment mechanism, if the perpetual derivatives contract trades higher than the price of the underlier, then the funding rate is positive and the counterparty that is the long position holder makes a payment to the counterparty that is the short position holder. Conversely, if the perpetual derivatives contract trades lower than the price of the underlier, then the funding rate is negative and the short position holder makes a payment to the long position holder. As an example, on the Crypto.com non-U.S. derivatives exchange, these funding payments occur every hour.

When considered in totality, perpetual derivatives may appear novel and unique. But when each element is examined individually, there is precedent for each element of a perpetual derivatives contract. This is to say that in many respects, a perpetual derivatives contract mirrors an exchange-traded futures contract that is transacted on a 24/7 basis. There is precedent for each element of a perpetual derivative, seen in (i) rolling spot and futures products, (ii) funding rate mechanisms in total return index futures, (iii) long-dated futures contracts and stacking of futures expirations to manage extended years-long price risk, and (iv) other products that are traded on a 24/7 basis.

In response to staff's question regarding the classification of perpetual derivatives, the Commodity Exchange Act ("Act") does not authorize the Commission to compel the classification of linear payout contracts into either the futures or swaps category. Rather, the Act allows for flexibility based on how such contracts are offered and traded. The Act, Commission regulations, and the Core Principles applicable to DCMs and DCOs collectively establish a comprehensive framework for the listing and clearing of a broad range of exchange-traded futures contracts, including perpetuals. There is no regulatory or public policy justification for reversing this well-established precedent.

II. <u>The Existing DCM and DCO Core Principles are Sufficient to Address the Risks Associated With Perpetual Derivatives</u>

The existing regulatory framework for DCMs, DCOs and derivatives trading is sufficient to address the risks associated with perpetual derivatives. As set forth in the Act, "[u]nless otherwise determined by the Commission by rule or regulation… boards of trade shall have reasonable discretion in establishing the manner in which they comply with the core principles."[2] This principles-based approach has been an effective means of overseeing DCMs (and DCOs), while also allowing for U.S. derivatives markets to flourish and keep pace with rapidly changing technology and market needs.

Under existing Commission regulations, relevant to listing perpetual derivatives, DCMs are required to:

1. promulgate and enforce rules prohibiting abusive trading practices (Core Principle 2);
2. have automated trade surveillance and real-time market monitoring (Core Principles 2 and 4);
3. only list products that are not readily susceptible to manipulation (Core Principle 3);
4. monitor the pricing of the index and the appropriateness of the methodology for deriving the index to which the contract will be settled (Core Principle 4);
5. establish position and accountability limits, as appropriate (Core Principle 5);
6. adopt rules to provide for the exercise of emergency authority, including suspending trading in any contract (Core Principle 6); and
7. disclose product terms, conditions and trading mechanisms to the Commission and the public (Core Principle 7).

Collectively, these DCM Core Principles (and other CFTC rules, guidance and acceptable practices) provide appropriate guidance to, and require sufficient rigor from, DCMs to enhance

[2] Designated Contract Market Core Principle 1, 7 U.S.C. § 7(d)(1)(B).

their rules, compliance policies and procedures, and operational resources in order to account for the risks associated with any new product offered by the DCM.

As it relates to perpetual derivatives, the lack of expiry may increase the risk of market manipulation because trading may be diluted during certain time periods, including non-traditional business hours. Trading patterns and liquidity may be harder to predict over the course of years, and DCMs will need to account for this in determining how best to comply with the DCM Core Principles. Importantly, key tenets of the DCM Core Principles already require DCMs to conduct surveillance of the markets for manipulative activity, monitor their markets in real time, and create position and accountability limits. These compliance obligations, combined with market maker programs established by CDNA and other DCMs, address many of the concerns related to low liquidity and the potential for manipulation. DCMs can also offer a variety of automated order type functionalities (on a 24/7 basis), including stop limit orders and conditional orders, in order to enhance liquidity in perpetual derivatives. Similarly, DCOs are subject to their own set of Core Principles that appropriately address the risks associated with perpetual derivatives. For example, Core Principle D (Risk Management) requires a clearinghouse to have enough data to mark to market multiple times on an intraday basis, and to have the authority and operational capacity to effect settlement on an intraday basis when thresholds are breached or in times of extreme market volatility.

In addition, DCMs are required to adopt rules to provide for the exercise of emergency authority under DCM Core Principle 6. This is relevant to perpetual derivatives because if all else fails – after a DCM has acted in good faith to establish a robust compliance program to prevent, detect and mitigate manipulation and disruptive trading – a DCM also has the authority to (i) liquidate or transfer open positions, (ii) suspend trading in any contract, and (iii) create special margin requirements for any particular contract. CDNA does not believe there is any specific characteristic of a perpetual derivatives contract that makes this emergency authority more important, but would highlight to the Commission that the Core Principles are already designed to account for new products with variations in their risk profiles.

CDNA's website provides market participants with education related to products traded on its DCM and when CDNA provides perpetual derivatives, this will continue. Such educational resources will provide information related to product characteristics, how they are traded, and the risks and benefits of trading such products.

The risks associated with perpetual derivatives are substantially similar to risks associated with existing and traditional derivatives products already listed on and settled by CDNA and other DCMs and DCOs. Accordingly, it is unnecessary for the Commission to promulgate any new rules or compliance obligations for DCMs and DCOs related to perpetual derivatives.

III. Perpetual Derivatives Offer Effective Price Discovery and Risk Mitigation Benefits

As noted above, perpetual derivatives share many attributes with traditional exchange-traded futures contracts. However, the three unique characteristics of perpetual derivatives – expiry through offset, 24/7 trading, and a regular funding payment mechanism – allow for a significantly closer alignment with the underlying spot market. This allows for exceptionally effective hedging and price discovery particularly with respect to spot transactions, and in certain markets more so than traditional derivatives products. Said another way, perpetual derivatives maintain "convergence" with underlying spot markets, and therefore serve as a benefit to market participants seeking to mitigate related risks.

Given the strong market demand for perpetual derivatives and their distinct advantages, the Commission should facilitate their listing and trading in U.S. derivatives markets. Moreover, in light of their widespread adoption in non-U.S. markets, it is essential that the U.S. apply appropriately tailed oversight of these products as they are integrated into domestic markets, and for the U.S. to maintain its leadership in global financial markets.

IV. Perpetual Derivatives and 24/7 Trading Operate in Tandem and the Commission Should Facilitate Both

As noted above, one of the key distinguishing factors of a perpetual derivatives contract is the fact that it is typically traded 24 hours per day, 7 days per week. 24/7 trading poses its own specific risks and considerations, though CDNA would note that U.S. derivatives markets have already started to head in this direction (and in fact, CDNA offers trading on its DCM and settlement on its DCO on a 24/7 basis). In order for perpetual derivatives to be successfully traded and cleared in the U.S., it is necessary for derivatives markets to be able to support 24/7 trading, and the Commission should facilitate this. CDNA applauds the Commission's efforts to engage with the derivatives industry on 24/7 trading contemporaneously with this Request for Comment.

V. Conclusion

In addition to the risk mitigation and price discovery benefits discussed above, the Commission should also facilitate the listing and trading of perpetual derivatives on CFTC-registered DCMs in order to ensure that U.S. derivatives markets are competitive globally. In recent years, regulation by enforcement and regulatory uncertainty plagued U.S. derivatives markets and pushed some of the most innovative derivatives products and platforms outside the U.S. In order for U.S. derivatives markets to flourish, and for innovation and investment to flow back into the U.S., regulatory certainty is crucial.

In order to accomplish this, CDNA does not believe any new rules or compliance obligations are necessary with respect to listing and trading perpetual derivatives. CDNA and other CFTC registered entities can work with the CFTC and staff to address any questions that arise through the product and rule review process already in place under Part 40 of the Commission's regulations.

CDNA is supportive of well-crafted, effective regulation of derivatives markets, and commends the Commission for its efforts to engage with market participants on the nascent perpetual derivatives market. The CFTC's Core Principles and regulations as they exist are sufficient to achieve this goal without amendment or modification.

We welcome the opportunity to discuss our comments in further detail.

Sincerely,

Steve Humenik

SVP, Global Head of Capital Markets – Legal & Head of Clearing