By Electronic Submission

May 21, 2025

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

Re: Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis

Dear Mr. Kirkpatrick:

Better Markets[1] appreciates the opportunity to comment on the Request for Comment[2] ("RFC") issued by the Commodity Futures Trading Commission ("CFTC" or "Commission"), regarding the trading and clearing of derivatives on a 24/7 basis. As noted in the RFC, advances in technology and evolving market demand have prompted certain designated contract markets ("DCMs") and swap execution facilities ("SEFs") to explore continuous trading models.

While these developments may offer new avenues for market access and innovation, they also raise a host of critical regulatory, operational, and market integrity concerns. These include questions about liquidity, collateral management, operational resiliency, default management, and the capacity of platforms to maintain robust market surveillance and compliance protocols without the benefit of traditional downtime or maintenance windows.

Despite these acknowledged risks, the CFTC has already allowed a registered entity to proceed with launching 24/7 trading while the CFTC's public comment process on the issue remains open. This premature decision undermines the integrity of the administrative process and signals to the public that meaningful input from market participants, consumer advocates, and

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 CFTC Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis (April 21, 2025), *available at* https://www.cftc.gov/PressRoom/PressReleases/9068-25.

other stakeholders may be disregarded in favor of expediency or commercial interests. The CFTC's stated intent in the RFC is to better understand the implications of 24/7 trading and clearing, and yet it has already allowed such trading to commence without first establishing a regulatory framework or minimum safeguards.

Permitting 24/7 trading without first establishing clear regulatory guardrails exposes the derivatives markets to significant and novel risks. Continuous trading fundamentally alters the structure and rhythm of the market, eliminating critical periods for system maintenance, surveillance review, and risk recalibration. It strains operational and compliance capacities, particularly during weekends and holidays when staffing and liquidity are typically reduced. It also raises serious questions about how margins can be managed, how defaults can be addressed, and how customers, especially retail participants, can be adequately protected in a non-stop trading environment. Without comprehensive rules and enforceable standards in place, the shift to 24/7 trading could undermine market resilience and increase the likelihood of systemic disruptions.

The dangers associated with 24/7 trading and clearing were brought into sharp focus during the CFTC's own Division of Clearing and Risk Roundtable in October 2024, where a broad cross-section of market participants—including clearing organizations, risk officers, and futures commission merchants—voiced serious concerns about the operational, liquidity, and risk management challenges posed by a continuous market model.[3]

Participants highlighted the inability to move collateral or meet margin calls during off-hours, the heightened risk of operational failures when key personnel are unavailable, and the regulatory asymmetry created when front-end trading operates continuously while clearing and risk management systems remain bound to traditional banking hours.[4] For example, the ability to move money or post collateral is significantly limited on a Sunday night compared to normal banking hours on a Wednesday morning. That fundamental constraint alters the risk profile of the entire system, exposing both firms and customers to heightened vulnerabilities.[5]

These warnings from experienced industry professionals should not be ignored. They make clear that the infrastructure and governance necessary for resilient, round-the-clock derivatives markets are not yet in place and that premature implementation could heighten systemic risks rather than mitigate them.

Given these foreseeable and well-documented risks, the CFTC must not allow the market structure to outpace the regulatory framework. It should immediately establish minimum standards and supervisory expectations for any DCM, SEF, derivatives clearing organization (DCM), or

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3 CFTC Division of Clearing and Risk, *Staff Roundtable Discussion on New and Emerging Issues in Clearing*, Transcript, (October 16, 2024) *available at* https://www.cftc.gov/sites/default/files/2025/01/1736284603/dcr_roundtable_transcript101624.pdf

4 *Id.*

5 *Id.*

futures commission merchant (FCM) seeking to operate on a 24/7 basis. This includes requiring robust liquidity and collateral management protocols, verified operational resiliency plans, real-time surveillance capabilities, and clear procedures for addressing defaults outside normal business hours.[6] Until these safeguards are in place and demonstrably effective, the CFTC should prohibit the launch or expansion of 24/7 trading and clearing models. Anything less would risk placing commercial innovation ahead of market stability, investor protection, and regulatory integrity.

I. Before Allowing 24/7 Trading and Clearing to Expand any Further, the CFTC Must First Address a Number of Critical Risk Areas that Threaten Market Stability, Investor Protection, and Regulatory Integrity.

The shift toward 24/7 trading and clearing represents a profound transformation in the derivatives market structure, one that introduces risks far beyond those associated with ordinary operational changes. As continuous access becomes a reality, the CFTC must proactively assess and mitigate a range of interdependent threats spanning surveillance, operational resilience, risk management, and customer protection.

The following sections outline several critical areas that demand immediate regulatory attention to prevent instability, market distortion, and harm to market participants, particularly retail customers who are least equipped to absorb these emerging risks.

A. Market Integrity and Surveillance Weaknesses

The shift to 24/7 trading substantially increases the risk of market abuse and undermines the ability of DCMs and SEFs to conduct effective, real-time surveillance. Without adequate staffing and technological capacity during off-peak hours—including nights, weekends, and holidays—malicious actors may exploit periods of thin liquidity and reduced oversight to engage in disruptive, manipulative, or fraudulent trading practices.

The CFTC should require any platform operating during non-standard hours to demonstrate that it has adequate staffing, automated monitoring systems, and third-party coordination protocols in place to detect and respond to abusive behavior in real-time.[7] Such requirements are essential to ensure that compliance with Core Principles is maintained regardless of trading hours.

B. Operational Resiliency and Maintenance Risks

The absence of planned maintenance windows jeopardizes critical cybersecurity, stability, and disaster recovery operations. Routine tasks such as software updates, security patch

6 *See* CFTC Request for Comment on 24/7 Trading and Clearing (Apr. 21, 2025), and Commodity Exchange Act Core Principles on risk management and operational resiliency, 7 U.S.C. §§ 7(d), 7a–1(c)(2).

7 These measures are essential to ensure compliance with Core Principle 4 (prevention of market disruption), Core Principle 5 (position limits and monitoring of trading), and Core Principle 12 (protection of market participants), as codified in Section 5(d) of the Commodity Exchange Act, 7 U.S.C. § 7(d).

deployments, and penetration testing that are ordinarily conducted during scheduled downtime would have to be executed live in a high-availability environment. This dramatically increases the risk of system outages, software failures, and undetected vulnerabilities, particularly in a continuously operating trading environment where even short disruptions can have cascading effects.

To preserve market continuity and investor confidence, DCMs and SEFs should be required to implement live rollback mechanisms, active-active failover systems, and a formal "maintenance waiver" process that permits brief, transparent pauses for essential updates. Without such safeguards, continuous trading could destabilize rather than modernize U.S. derivatives markets, placing both operational integrity and market participants at unnecessary risk.[8]

While Better Markets does not take a position on the specific technical standards for systems architecture, it is essential that any 24/7 trading framework be built on independently verified, industry-standard cybersecurity and operational resilience practices. Given that the CFTC has already allowed a registrant to begin continuous operations, it is even more important that future proposals be subject to meaningful scrutiny. The CFTC should require all DCMs and SEFs operating or seeking to operate 24/7 to publicly demonstrate adherence to rigorous testing, failover, and systems safeguards aligned with best practices before being permitted to expand or continue such operations.

C. Clearing and Margin Liquidity Concerns

The ability of DCOs and FCMs to manage intraday and overnight margin calls is severely constrained during weekends and holidays. In a true 24/7 model, margin shortfalls may arise precisely when liquidity is limited, collateral cannot be transferred, or banking systems are closed. These constraints significantly impair the ability of DCOs and FCMs to fulfill their obligations in a timely and risk-sensitive manner.

Unlike the current model, where markets pause overnight and on weekends, allowing for risk recalibration and margin management within standard banking windows, a continuous 24/7 framework removes those natural breaks, leaving DCOs and FCMs exposed to margin shortfalls at times when liquidity is thinnest and operational support is least available.

This concern was echoed by market participants at the CFTC's October 2024 Division of Clearing and Risk Roundtable, where several panelists emphasized that collateral movement and

8 These safeguards are necessary to uphold Core Principle 20 (for DCMs) and Core Principle 14 (for SEFs), which require each entity to maintain adequate system safeguards and risk analysis programs, including vulnerability testing, business continuity-disaster recovery planning, and operational reliability. See Commodity Exchange Act § 5(d), 7 U.S.C. § 7(d); 17 C.F.R. §§ 38.1050, 37.1400.

liquidity management are not viable on weekends under the current infrastructure, a fact that materially changes the clearing risk environment.[9]

In such scenarios, firms may be forced to initiate auto-liquidations, amplifying volatility and disproportionately harming retail customers who are unable to respond to margin calls outside of standard business hours. This is not just a customer protection issue. It is a systemic risk concern.

Given that 24/7 trading has already begun, the CFTC should immediately require any DCO or FCM engaged in round-the-clock clearing to demonstrate its ability to monitor and manage margin in real-time, even during periods of limited liquidity and closed banking infrastructure.[10] The CFTC should also issue guidance or initiate rulemaking to establish baseline expectations for collateral accessibility, real-time risk controls, and contingency planning. Granting one registrant permission to operate 24/7 without public input sets a troubling precedent. To restore confidence in the fairness and rigor of the regulatory process, the CFTC should refrain from approving further 24/7 clearing models and should establish a uniform framework to evaluate all current and future proposals.

In addition, the Commission should evaluate whether current net capital and financial reporting requirements for FCMs are sufficient to support risk management in a 24/7 market structure. Real-time exposure, liquidity, and collateral demands may necessitate more dynamic capital thresholds and more frequent financial disclosures to ensure firms remain resilient under continuous stress conditions.

D. Auto-Liquidation is Not a Substitute for Robust Risk Management

While auto-liquidation mechanisms may serve as a component of risk management, Better Markets has previously raised serious concerns about their use, particularly in volatile and illiquid markets where they can do more harm than good.[11] In our 2022 comment letter opposing FTX's proposal to implement an automated, real-time liquidation model, we cautioned that it is unclear how such auto-liquidation functions would perform in volatile conditions with reduced liquidity. As we noted then, "Auto-liquidations could move the market further and trigger more auto-liquidations resulting in a feedback loop or 'flash crash.'"[12] These concerns are even more acute in

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9 *See* CFTC Division of Clearing and Risk, *Staff Roundtable Discussion on New and Emerging Issues in Clearing*, Transcript (October 16, 2024).

10 These concerns implicate DCO Core Principle B (financial resources) and Core Principle D (risk management), which require clearing organizations to maintain sufficient resources and controls to withstand member defaults under extreme but plausible market conditions. See Commodity Exchange Act § 5b(c)(2), 7 U.S.C. § 7a-1(c)(2)(B)–(D); 17 C.F.R. §§ 39.11–39.13.

11 *See* Better Markets, Comment Letter on FTX Request for Amended DCO Registration (May 11, 2022) *available at* https://bettermarkets.org/wp-content/uploads/2022/05/BetterMarkets_Request_for_Comment_FTX_Request_for_Amended_DCO_Registration_Order.pdf.

12 *Id.*

a 24/7 trading environment, where customers may not be actively monitoring their positions and banking infrastructure may be inaccessible during key periods.

Given these risks, the CFTC should not rely on auto-liquidation as a primary risk mitigant in a 24/7 market. Instead, any auto-liquidation protocols must be subject to strict regulatory oversight, including requirements for transparent and fair procedures, enhanced customer disclosures, and strong liquidity protections to minimize cascading effects. Until such safeguards are in place and demonstrably effective, alternative risk management tools—such as margin buffers, time-limited trading suspensions, or manual intervention mechanisms—should be prioritized to protect market stability and retail customers.

E. Revising CFTC Regulation 1.55 to Address 24/7 Trading Risks and Strengthen Customer Protections

Existing customer disclosures fail to adequately address the new and heightened risks introduced by 24/7 trading, particularly for retail participants, who often lack the tools, resources, and round-the-clock access required to manage positions effectively in a continuous market. Volatility spikes, auto-liquidation events, and limited access to customer service or margin support during non-business hours all increase the likelihood of harmful outcomes for less sophisticated investors. These risks are compounded by information gaps and asymmetries between institutional participants and retail customers.

The CFTC should revise the disclosures required under CFTC Regulation 1.55 to explicitly reflect the risks associated with 24/7 trading and clearing.[13] In addition, the CFTC should consider adopting enhanced disclosure requirements and evaluating whether suitability standards are necessary for retail accounts that opt into round-the-clock trading environments.

In our 2022 comment letter opposing FTX's application for an amended DCO registration order, Better Markets emphasized that before approving any model involving round-the-clock access, intra-second margining, or auto-liquidation, the CFTC must require firms to adopt a far more robust commitment to retail customer protection.[14] This includes: (1) clear, understandable risk disclosures both about derivatives trading in general and about the specific risks of automated liquidations during off-hours; (2) an appropriate, non-gameable test to ensure each retail customer actually understands futures trading; (3) safeguards to prevent unwarranted customer losses from

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[13] CFTC Regulation 1.55 requires FCMs to provide standardized risk disclosure statements to customers, but these disclosures were not designed for a 24/7 trading environment and do not account for risks unique to continuous access, thin liquidity, or off-hour margin management. See 17 C.F.R. § 1.55.

[14] *See* Better Markets, Comment Letter on FTX Request for Amended DCO Registration (May 11, 2022) *available at* https://bettermarkets.org/wp-content/uploads/2022/05/BetterMarkets_Request_for_Comment_FTX_Request_for_Amended_DCO_Registration_Order.pdf.

flash crashes and other market events; and (4) restrictions on gamified marketing and hype-driven promotion that could mislead inexperienced investors.[15]

These recommendations are even more critical today as the CFTC considers a regulatory framework for 24/7 trading. Without modernized disclosures, stronger suitability standards, and clear guardrails on marketing practices, retail investors could face significant and unforeseen losses in a market structure that offers them little time to recover.

II. Not All Derivatives Products Are Appropriate for 24/7 Trading, and the CFTC Must Carefully Evaluate Which Product Types Pose Risks That Cannot be Adequately Mitigated in a Continuous Market Environment.

As the CFTC considers how to accommodate 24/7 trading, it must recognize that not all derivatives products are equally suited for continuous access. Statements made during the CFTC's October 2024 Division of Clearing and Risk Roundtable made clear that demand for 24/7 trading is being driven primarily by speculative and crypto-aligned platforms, not by traditional commercial hedgers or institutional end-users.[16] Several participants stated that end-users generally see limited utility in continuous trading, and some cautioned that expanding market hours could degrade liquidity and weaken the quality of price discovery—particularly during weekends and other off-peak periods.[17]

Participants also raised serious concerns about the capacity of market infrastructure and oversight systems to handle continuous operations. They noted that trading venues, clearinghouses, and regulators currently rely on natural breaks in trading hours for essential activities such as system maintenance, risk recalibration, margin processing, and surveillance reviews.[18] Extending market hours without corresponding upgrades to collateral movement systems, operational support models, and risk analytics would increase fragility and heighten the potential for market disruptions.

In addition to these infrastructure challenges, the CFTC must also consider the human capital risks posed by a continuous trading model. Round-the-clock trading could place untenable strain on the individuals responsible for managing risk, operations, compliance, and customer support, many of whom already operate under significant pressure during standard market hours. In particular, junior staff and risk personnel may face heightened stress and burnout in a system that never pauses. The CFTC should not ignore the toll this model may impose on the workforce,

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15 *Id.*

16 *See* CFTC Division of Clearing and Risk, *Staff Roundtable Discussion on New and Emerging Issues in Clearing*, Transcript (October 16, 2024).

17 *Id.*

18 *Id.*

especially when such burdens have direct consequences for operational resiliency and market stability.

Product design matters. Contracts that are highly complex, illiquid, or embedded with leverage pose disproportionate risks in a 24/7 environment, particularly during off-peak hours when spreads widen, liquidity thins, and operational support is reduced. In such conditions, small trades can cause outsized price moves, triggering disorderly market events, unnecessary margin calls, or cascading auto-liquidations. These vulnerabilities are only magnified when critical infrastructure—such as banking systems, collateral movement, or risk management teams—is operating at limited capacity.

Participants also questioned whether the CFTC has the resources, personnel, and regulatory infrastructure necessary to supervise a fully continuous market. They pointed out that core tools—such as position limits, trade surveillance, and clearing oversight—were not designed for uninterrupted operation and would need substantial enhancements to function effectively.[19] Without these upgrades, expanding 24/7 access could outpace the CFTC's ability to ensure market integrity and investor protection.

Accordingly, the CFTC should rigorously evaluate the risk profile of each product before allowing it for 24/7 trading. Illiquid, volatile, or novel derivatives should face heightened scrutiny until credible risk mitigation systems, infrastructure upgrades, and oversight capacity are in place. Treating all products as equally suitable for round-the-clock trading, without accounting for differences in complexity, liquidity, and systemic risk, would be a serious regulatory misstep.

III. Gamification in a 24/7 Trading Environment Poses Heightened Risks to Retail Investors

As the CFTC considers the implications of 24/7 trading, it must not overlook the emerging risks associated with how trading platforms are designed and marketed to retail investors. In a continuous trading environment, interface design is not neutral. The increasing use of gamification techniques—such as digital rewards, push notifications, leaderboard rankings, and visually stimulating prompts—risks encouraging excessive, impulsive, and poorly informed trading behavior. These design features can mirror behavioral triggers found in gambling and social media applications, potentially leading to similar patterns of impulsive behavior.

When combined with the always-on availability of 24/7 markets, these techniques can create powerful psychological incentives that exploit retail investors' cognitive biases, often leading to frequent, high-risk trading without a full understanding of the consequences. These risks are especially acute during off-hours—nights, weekends, and holidays—when access to customer support, real-time information, or professional guidance may be limited or nonexistent. For example, a retail participant enticed to open a position late on a Sunday night may make impulsive

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19 *Id.*

decisions without fully understanding the risks involved and may wake up to a margin call or auto-liquidation before ever realizing the position had become overexposed.

This dynamic threatens to normalize speculative, engagement-driven market behavior at the expense of long-term financial decision-making. As Better Markets highlighted in a report, the gamification of trading interfaces introduces a new layer of behavioral risk that compounds the operational and systemic vulnerabilities already present in round-the-clock markets.[20]

The CFTC should make clear that trading platforms operating in a 24/7 environment must prioritize investor protection over user engagement. That includes prohibiting interface features designed to promote excessive trading, ensuring that disclosures reflect the behavioral and temporal risks of always-on markets, and working collaboratively with other financial regulators to establish guardrails around the use of behavioral design in derivatives trading. Without these protections, the shift to continuous access may expose vulnerable market participants to manipulation, loss, and market conditions they are ill-equipped to navigate.

CONCLUSION

We hope these comments are helpful as the CFTC evaluates how to responsibly govern the expansion of 24/7 trading and clearing in the U.S. derivatives markets.

Sincerely,

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[20] Better Markets, Let's Not Make the Same Mistakes With Stock Trading as We Made With Sports Gambling (May 14, 2025), *available at* https://bettermarkets.org/wp-content/uploads/2025/05/BetterMarkets_24-7_Trading_Report_05-14-2025.pdf