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 of "Perpetual" Style Derivatives

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 perpetual derivatives. As the RFC notes, these novel financial instruments are often structured without a set expiration date and continuously benchmarked to a reference price. These instruments are gaining popularity in the global markets.[3] While they may offer new avenues for speculative trading, perpetual derivatives represent a significant departure from traditional futures contracts, raising pressing concerns about market integrity, systemic risk, and customer protection, particularly for retail participants.

Proponents argue that perpetual derivatives increase market access and flexibility, especially in digital asset markets.[4] But these supposed benefits come at a steep cost. Their round-

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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 of "Perpetual" Style Derivatives (April 21, 2025), *available at* https://www.cftc.gov/PressRoom/PressReleases/9069-25.

3 Coinbase Institutional, *A Primer on Perpetual Futures,* (June 10, 2024) *available at* https://www.coinbase.com/institutional/research-insights/research/market-intelligence/a-primer-on-perpetual-futures.

4 *See* Coinbase, "*What Are Perpetual Futures?*" *available* at https://www.coinbase.com/learn/perpetual-futures/what-are-perpetual-futures.

the-clock trading model, synthetic pricing mechanisms, and infinite duration are more reminiscent of speculative gaming than structured risk management.[5] Retail investors lured by the promise of 24/7 trading and high leverage may unknowingly assume excessive risk, often with little understanding of how these contracts function or how losses can rapidly compound. Meanwhile, the absence of an expiration date undermines key regulatory expectations—such as contract settlement, convergence with physical markets, and time-limited exposure—all of which are essential for containing leverage, enabling effective oversight, and supporting price discovery.[6] The CFTC must evaluate whether perpetual-style derivatives are consistent with the statutory definition of a futures contract under the Commodity Exchange Act (CEA) and whether they align with the Commission's public interest mandate to ensure fair, orderly, and transparent markets while protecting customers from abusive practices.[7]

Beyond the risks to individual investors, perpetual derivatives pose broader structural threats to the integrity and stability of U.S. derivatives markets. Their continuous nature, high leverage, and reliance on synthetic pricing mechanisms introduce novel stressors into clearing systems and risk management frameworks that were designed around contracts with defined maturities and predictable exposure cycles.[8] Derivatives clearing organizations ("DCOs") and futures commission merchants ("FCMs") may face mounting challenges in managing real-time margin obligations, especially during off-hours when banking systems are closed and liquidity is thin.[9] At the same time, around-the-clock trading increases the strain on surveillance infrastructure and compliance personnel, heightening the likelihood that manipulation or disruptive trading activity will go undetected. If introduced without clear regulatory guardrails, perpetual derivatives could weaken the foundations of the clearing ecosystem, exacerbate systemic vulnerabilities, and erode public confidence in the integrity of the derivatives markets.

These structural weaknesses are embedded in the design of perpetual derivatives themselves. Far from serving legitimate risk management needs, these products are engineered for speculation, speed, and synthetic exposure, often mirroring the behavioral triggers found in gambling applications rather than the discipline of traditional futures contracts.

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5 *See* Bitstamp, "*What Are Perpetual Futures Contracts?*" *available at* https://www.bitstamp.net/en-gb/learn/crypto-trading/what-are-perpetual-futures-contracts/.

6 *See* CFTC, Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36612 (June 19, 2012) (explaining the importance of contract design, convergence, and the role of expiration in promoting price discovery and minimizing manipulation).

7 *See* Commodity Exchange Act § 3(b), 7 U.S.C. § 5(b) (stating that the purpose of the CEA is to promote responsible innovation and fair competition while ensuring market transparency, price discovery, and the financial integrity of transactions); see also CEA § 5(d)(3), 7 U.S.C. § 7(d)(3) (requiring contracts to be not readily susceptible to manipulation).

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

9 *Id.*

I. Perpetual Derivatives Blur the Line Between Trading and Gambling

Perpetual derivatives do not expire and are continuously benchmarked to a reference price, typically via a funding rate mechanism.[10] Unlike traditional futures contracts, which mature and settle, these instruments allow users to hold open positions indefinitely. Their design is optimized not for hedging or long-term risk management but for continuous speculative exposure.

While perpetual contracts may vary in technical design, the most common form is the perpetual futures contract, characterized by continuous margining, a funding rate mechanism, and no expiration date. Other variants may exist, but they share the core feature of indefinite exposure and synthetic price maintenance.

Many of these contracts originated in unregulated or lightly regulated offshore crypto markets[11] and now threaten to import those speculative dynamics into CFTC-supervised platforms. With their gamified interfaces, leverage-heavy mechanics, and synthetic price links, perpetuals often function more like gambling tools than legitimate risk management instruments.

Industry advocates, particularly within the digital asset sector, have argued that perpetual derivatives offer greater flexibility, capital efficiency, and alignment with the 24/7 nature of crypto markets.[12] However, these purported advantages are not regulatory virtues—they are market design choices that often come at the expense of transparency, accountability, and customer protection. Having originated in the largely unregulated cryptocurrency sector, perpetual derivatives were developed without a framework for regulatory oversight, leading to their current ambiguous status under CFTC regulations.[13] That reality underscores a critical point: perpetual derivatives were intentionally engineered to circumvent the expiration, margining, and convergence principles that define traditional U.S. futures markets. Their spread into CFTC-regulated markets risks importing the same speculative volatility, structural opacity, and regulatory arbitrage that have plagued the crypto sector globally.

These products raise serious questions about compliance with the CFTC's Core Principles—particularly Core Principle 3 (contracts not readily susceptible to manipulation), Core

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[10] Adam Hayes, "*Perpetual Futures: What They Are and How They Work*," Investopedia (August 20, 2024) available at https://www.investopedia.com/what-are-perpetual-futures-7494870.

[11] ION Group, "*Crypto Derivatives: A Comprehensive Guide*," (March 2025) *available at* https://iongroup.com/blog/markets/crypto-derivatives-a-comprehensive-guide/.

[12] *See* Coinbase, "*What Are Perpetual Futures?*" *available at* https://www.coinbase.com/learn/perpetual-futures/what-are-perpetual-futures.

[13] Digital Chamber, "*How Perpetual Futures Differs from Traditional Futures and Why It Matters for Crypto,*" (July 15, 2024) *available at* https://digitalchamber.org/how-perpetual-futures-differs-from-traditional-futures-and-why-it-matters-for-crypto/#:~:text=While%20perpetual%20futures%20are%20not,US%20customers%20in%20select%20jurisdictions.

Principle 4 (market disruption prevention), Core Principle 5 (position limits and excessive speculation), and Core Principle 12 (customer protection).[14] The indefinite duration and high-leverage design of perpetuals make it difficult for designated contract markets (DCMs) to enforce effective position limits, undermining the Commission's ability to contain market concentration and volatility. If the CFTC cannot ensure that DCMs are implementing meaningful position controls for perpetuals, then it risks violating its obligation under Core Principle 5.[15] This raises serious regulatory questions about whether such products should be allowed at all without new rulemaking or substantial safeguards. The Commission must rigorously assess whether perpetual derivatives are even capable of meeting these foundational standards and act decisively to prevent these inherently unstable products from undermining the integrity of the U.S. derivatives framework.

II. Risks to Market Integrity and Oversight

A. Continuous Leverage and the Absence of Maturity Discipline

Traditional futures contracts include expiration dates that serve critical risk management and market structure functions. Maturity forces position closure, facilitates convergence with the physical market, and helps reset speculative exposure. Perpetual derivatives eliminate this structural guardrail, allowing participants to roll leveraged positions indefinitely without any requirement to deliver the underlying asset or mark positions to physical reality. The result is a trading environment that incentivizes outsized, prolonged speculation often disconnected from underlying market fundamentals. This structural departure increases the risk of market crowding, directional imbalances, and disorderly trading, particularly in fast-moving or illiquid conditions.[16] Without a defined maturity cycle, perpetuals lack the temporal discipline that has long served as a check on excessive leverage and volatility in futures markets.

B. Heightened Susceptibility to Price Manipulation

Perpetual derivatives also raise significant concerns about price integrity. These contracts typically rely on composite indexes or reference rates derived from external spot markets, many of which may be opaque, fragmented, or lightly regulated. During periods of thin liquidity or off-peak trading hours, these reference prices can be particularly vulnerable to manipulation through

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[14] *Core Principles and Other Requirements for Designated Contract Markets*, 77 Fed. Reg. 36612 (June 19, 2012) (implementing requirements under Sections 5(d)(3), (4), (5), and (12) of the Commodity Exchange Act, 7 U.S.C. § 7(d)(3), (4), (5), and (12)).

[15] *Id.*

[16] Marc van Kralingen, Diego Garlaschelli, Karolina Scholtus, and Iman van Lelyveld, "*Crowded Trades, Market Clustering, and Price Instability*," Entropy, vol. 23, no. 3, (March 12, 2021) *available at* https://www.mdpi.com/1099-4300/23/3/336.

spoofing, wash trading, or sudden liquidity withdrawal.[17] Because funding payments in perpetual contracts are directly tied to deviations between the contract price and the reference index, even modest price distortions can have disproportionate financial effects, triggering liquidations, shifting capital flows, or altering trader behavior.[18]

The Commission must closely examine whether existing surveillance systems are adequate to monitor and respond to these risks in real time. In a product that trades continuously, across multiple time zones and potentially volatile asset classes, traditional monitoring tools may prove insufficient. Enhanced oversight standards, independent index validation, and mandatory stress testing of exchange-level risk management systems must accompany any consideration of perpetual derivatives.

III. Unique Risks to Retail Customers

A. Gamified Speculation

Perpetual derivatives pose distinct risks to retail investors, particularly because they are often packaged and presented in ways that mimic online gaming platforms. Features such as 24/7 trading, synthetic pricing, and app-based interfaces can encourage impulsive, high-frequency trading detached from informed risk assessment. Without contract expirations to impose discipline, these products facilitate continuous speculation, heightening the risk of overtrading, rapid losses, and financial harm for unsophisticated participants.

B. Inadequate Risk Disclosures

The CFTC's existing risk disclosure framework under Regulation 1.55 is not tailored to the unique mechanics of perpetual derivatives.[19] Many retail customers are unlikely to understand that margin requirements may fluctuate by the minute, that positions can be automatically liquidated at any time, or that these products lack the convergence characteristics that anchor traditional futures to underlying markets. Furthermore, the pricing and funding mechanisms—critical to understanding cost and risk exposure—are rarely explained in plain language.

The Commission should require enhanced, product-specific risk disclosures that address the unique features of perpetual derivatives, including real-world scenarios illustrating liquidation

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[17] Jonathan Stempel, *Trader Convicted of Mango Markets Fraud in First US Crypto Manipulation Case,* REUTERS (Apr. 18, 2024), *available at* https://www.reuters.com/legal/trader-convicted-mango-markets-fraud-first-us-crypto-manipulation-case-2024-04-18/.

[18] Marcus Bacchi-Howard, *Understanding the Funding Rate in Perpetual Futures*, One Trading Blog (Mar. 17, 2025) *available at* https://www.onetrading.com/blog/understanding-the-funding-rate-in-perpetual-futures.

[19] CFTC Regulation 1.55 requires FCMs to provide standardized risk disclosure statements to customers, but these disclosures were not designed for risks associated with perpetual derivatives or 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.

risks, funding rate volatility, and round-the-clock exposure. Disclosures should be standardized, easily accessible, and written in language that is understandable to non-professional investors. In addition, the Commission should evaluate whether suitability requirements or trading thresholds are necessary to limit exposure for unsophisticated retail participants.

IV. Systemic and Clearinghouse Concerns

A. Clearinghouse and Market Stability Risks

The perpetual nature of these contracts, combined with high leverage and continuous pricing, materially increases the risk of sharp margin calls during volatile market conditions. Because there is no natural expiration to reset exposure, retail participants and proprietary firms can accumulate significant positions that are subject to sudden and severe revaluation. During abrupt market moves, this can lead to rapid defaults and forced liquidations, straining the ability of clearing members and DCOs to contain losses.

These risks are amplified during off-peak hours, when liquidity may be thin and the broader financial infrastructure—such as banks and payment systems—is offline.[20] Under such conditions, futures commission merchants (FCMs) and clearing firms may be unable to meet margin demands or transfer collateral efficiently, increasing the risk of a liquidity shortfall cascading through the system. This scenario raises serious questions about the adequacy of default fund contributions, the design of DCO risk waterfalls, and the operational readiness of clearinghouses to manage 24/7 exposures.[21]

The Commission should conduct a comprehensive review of how perpetual derivatives affect clearinghouse resilience and whether additional safeguards—such as intraday capital buffers, enhanced real-time stress testing, and off-hours liquidity provisions—are needed to preserve systemic stability.

B. Customer Fund Protection and Insolvency Uncertainty

Perpetual derivatives also raise novel and underexplored issues for customer protection under the U.S. bankruptcy framework. Because these contracts are open-ended and do not "settle" in the conventional sense, it is unclear how they would be valued, liquidated, or transferred in the event of an FCM insolvency or a DCO resolution. This legal and operational ambiguity could

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

[21] *See* Derivatives Clearing Organizations and International Standards, 78 Fed. Reg. 72476 (Dec. 2, 2013) (discussing the design of default waterfalls and financial resource requirements under CFTC Regulation 39.11); *see also* 17 C.F.R. § 39.11 (requiring each DCO to maintain sufficient financial resources to cover the default of its largest clearing member); Core Principles and Other Requirements for Derivatives Clearing Organizations, 76 Fed. Reg. 69334 (Nov. 8, 2011) (addressing operational risk management and the role of default funds in DCO resilience).

complicate customer claims and delay recovery of funds, especially in stressed market conditions where precision and speed are critical.

The Commission should evaluate whether the existing customer fund segregation and claims processes under Part 190 of its regulations are sufficient to address the unique risks posed by perpetual derivatives. It should also consider issuing interpretive guidance clarifying how open positions in perpetual products would be treated in a clearing member default or broader insolvency scenario, including whether these positions would be subject to special valuation methods or liquidation timelines.

V. Recommendations

A. Clarify Legal Status of Perpetual Derivatives

The Commission should formally clarify whether perpetual-style contracts qualify as "contracts of sale of a commodity for future delivery" under the Commodity Exchange Act (CEA), given their lack of fixed expiration, final settlement, and convergence to an underlying cash market. The CEA defines that term in Section 1a(27).[22] If the Commission determines that perpetual contracts do not meet the statutory definition of a futures contract, it must consider whether these contracts fall within the definition of a "swap" under Section 1a(47) of the CEA.[23] That provision encompasses a broad range of derivatives, including contracts that involve the ongoing exchange of payments tied to the value of an underlying commodity or index.

Given the novel structure of perpetual contracts, the Commission should issue interpretive guidance or pursue rulemaking to ensure consistent regulatory treatment, prevent regulatory arbitrage, and provide clarity as to whether such products are regulated adequately as futures, swaps, or some other instrument under the CEA.

B. Prohibit Self-Certification for Perpetual Products

Perpetual derivatives should not be eligible for listing through the self-certification process under Section 5c(c)(1) of the CEA, which permits designated contract markets to certify new futures products only if they comply with the CEA and Commission regulations.[24] If the Commission determines that perpetual-style contracts are not "contracts of sale of a commodity for future delivery," but instead fall within the statutory definition of "swaps" under Section 1a(47), then they would be subject to a different regulatory regime—potentially requiring trading on swap execution facilities (SEFs), central clearing, margining, and swap data reporting. However, regardless of classification, the Commission retains authority under Section 5c(c)(5)(C) to prohibit any contract—futures or swap—that involves gaming, is unlawful, or is contrary to the

22 7 U.S.C. § 1a(27).

23 7 U.S.C. § 1a(47).

24 7 U.S.C. § 7a-2(c)(1).

public interest.[25] Given the speculative structure, continuous leverage, and lack of demonstrable hedging utility of perpetual derivatives, such products warrant heightened scrutiny through formal rulemaking or notice-and-comment review before any listing or trading is permitted.

C. Require Tailored Disclosures and Leverage Limits

Under CEA Section 4b[26] and CFTC Regulation 1.55[27], the CFTC has the authority to ensure that customers receive risk disclosures that are clear and adequate. These rules should be expanded or interpreted to require tailored disclosures specific to perpetual derivatives, including risks related to funding payments, 24/7 trading, and minute-by-minute margin adjustments. In addition, the Commission has authority under its general antifraud and customer protection powers to impose leverage limits or trading restrictions for customer protection.[28]

D. Strengthen Surveillance and Monitoring Requirements

The Commission should require DCMs listing perpetual derivatives to meet enhanced surveillance obligations under CEA Section 5(d)(4), which mandates DCMs to prevent market disruptions and monitor for abusive practices.[29]

E. Prohibit Perpetual Contracts in Physical Commodity Markets

The Commission should exercise its public interest authority under Section 5c(c)(5)(C) of the CEA to prohibit the listing of perpetual contracts in agricultural, energy, or other physical commodities.[30] Such contracts do not promote price discovery or legitimate hedging, and may instead distort physical settlement markets, undermining the statutory objectives of CEA Section 3, which emphasize fair competition, responsible innovation, and the protection of market integrity and public interest.[31]

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25 7 U.S.C. § 7a-2(c)(5)(C).

26 7 U.S.C. § 6b.

27 17 C.F.R. § 1.55.

28 7 U.S.C. §§ 6b, 6c(b).

29 7 U.S.C. § 7(d)(4) (Core Principle 4). Additional requirements under Core Principle 6 (Position Monitoring, § 7(d)(6)) and Core Principle 12 (Protection of Market Participants, § 7(d)(12)) also support enhanced oversight of 24/7 trading environments.

30 7 U.S.C. § 7a-2(c)(5)(C).

31 7 U.S.C. § 5.

CONCLUSION

We hope these comments are helpful.

Sincerely,

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