CITADEL | Securities

May 21, 2025

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

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

Dear Mr. Kirkpatrick,

We commend the Commodity Futures Trading Commission (the "CFTC") for requesting comment regarding the trading and clearing of perpetual derivatives.[1] While we support innovation and smart regulation in the evolving digital asset market—where perpetual derivatives are currently traded—it is important to carefully consider the implications for all CFTC-regulated markets, including traditional commodity futures. Before making a significant change to the regulatory treatment of perpetual derivatives, such as reclassifying them as futures instead of swaps, we recommend that the CFTC (i) review whether the self-certification process provides adequate checks and balances with respect to the evaluation of novel products, and (ii) coordinate with the SEC to ensure consistent treatment of security-based derivative products. This is timely as novel products primarily marketed to retail investors are increasingly emerging on CFTC-regulated trading venues.

The Self-Certification Framework Appears Lacking As Novel Products Increasingly Emerge on CFTC-Regulated Trading Venues

The Commodity Exchange Act ("CEA") and CFTC regulations permit trading venues to self-certify to the CFTC that a novel product complies with applicable legal requirements and to begin listing that product for trading as soon as the next business day, all without soliciting public comment. The CFTC can only stay a self-certification under limited circumstances, and can only reject a filing if it affirmatively concludes that it is inconsistent with the CEA and associated regulations.

This product approval process stands in stark contrast to the regulatory framework for listing novel products in SEC-regulated markets, where (i) *trading venues bear the burden* of demonstrating that a filing meets applicable legal requirements, (ii) public comment is solicited, and (iii) the SEC typically must affirmatively approve the trading venue proposal in a written order based on the record before the agency before trading can begin.

As novel products primarily marketed to retail investors increasingly emerge on CFTC-regulated trading venues—including perpetual derivatives and event contracts—we urge the CFTC to review whether the self-certification process adequately protects investors and addresses

[1] Request for Comment on the Trading and Clearing of "Perpetual" Style Derivatives (Apr. 21, 2025), available at https://www.cftc.gov/PressRoom/PressReleases/9069-25.

potential unintended consequences. For example, a particular novel product might be appropriate in one asset class (e.g. digital assets) but raise unique market integrity and investor protection concerns in other markets regulated by the CFTC.

Following this review—and before making a significant change to the regulatory treatment of perpetual derivatives—the CFTC should work with Congress to ensure that the product certification process applicable to CFTC-regulated markets for listing novel products primarily marketed to retail investors is fit for purpose and involves reasonable CFTC oversight. Potential improvements include more closely aligning the CFTC's product listing requirements with the SEC's by requiring trading venues to demonstrate a filing meets applicable legal requirements, incorporating a public comment period, and requiring the CFTC to affirmatively approve a trading venue's filing before trading can begin.

The CFTC Should Coordinate with the SEC to Ensure Consistent Treatment of Securities-Based Derivative Products

In addition, the CFTC and SEC should increase coordination and consistency across the product approval process to guard against regulatory arbitrage. Given the significant differences in the CFTC and SEC product approval regimes, there is a potential for regulatory arbitrage—with CFTC-regulated trading venues listing "look-a-like" products that are specifically designed to mimic SEC-regulated products without going through a comparable approval process. The CFTC should coordinate with the SEC regarding any interpretation that could affect the regulatory status of security-based derivative products as swaps or futures, and ensure that the requirements and standards for listing security-based derivative products are consistent across related markets.

* * * * * * * * * *

We thank the CFTC for considering our comments.

Please feel free to call the undersigned with any questions regarding these comments.

Respectfully,

/s/ Stephen John Berger

Managing Director

Global Head of Government & Regulatory Policy