BLOCKCHAIN ASSOCIATION

May 21, 2025

<u>Via comments.cftc.gov</u>

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

Re: Requests for Comments on the Trading and Clearing of "Perpetual" Style Derivatives and Trading and Clearing Derivatives on a 24/7 Basis

Dear Mr. Kirkpatrick:

Blockchain Association ("BA") submits this letter in response to the requests for comment (the "RFCs") issued by Staff of the Commodity Futures Trading Commission (the "Commission" or "CFTC") on (a) the trading and clearing of "perpetual" style derivatives and (b) trading and clearing derivatives on a 24/7 basis.[1]

BA is the leading nonprofit membership organization dedicated to promoting a pro-innovation policy environment for the digital asset industry. BA is composed of over 120 members, including leading software developers, infrastructure providers, investors, and others supporting the public blockchain ecosystem. BA works with its broad-based membership to achieve regulatory clarity and to educate policymakers, regulators, and the courts about how blockchain technology can pave the way for a more secure, competitive, and consumer-friendly digital marketplace.

We support the Staff's decision to seek public feedback on perpetual derivatives and 24/7 trading and clearing. Perpetual derivatives are a beneficial market innovation, which was born from the digital asset markets but has broader use cases. Extending trading hours, including up to a 24/7 basis, is likewise beneficial in terms of enabling broader risk management opportunities and market access.

These innovations have met significant success outside the United States, demonstrating not only their utility but also the ability for market operators to deploy them safely. In addition, non-U.S. participants can trade perpetuals over decentralized protocols that embed core regulatory safeguards—including risk-based margining, real-time public reporting, and comprehensive audit trails—through transparent smart contract execution. Expanding access to these innovations in the United States will bring significant benefits to market participants through enhanced liquidity and transparency, and by offering superior customer protection than offshore alternatives.

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[1] *See* CFTC Release Numbers 9068-25 and 9069-25.

The Commission should support these innovations by providing targeted guidance and relief in key areas, including:

- Clarifying the categorization of perpetual derivatives as futures contracts or swaps;
- Better aligning the regulatory treatment of futures contracts and exchange-traded swaps; and
- Permitting margining and settlement using stablecoins and other digital assets.

More broadly, the Commission should afford market participants the flexibility to structure offerings to address their desired use cases and take advantage of advancing technologies, without dictating product design through prescriptive rules or guidance.

In this letter, we set out some of the key use cases and benefits of perpetual derivatives and 24/7 trading and clearing, along with more detail concerning the relief summarized above.[2]

I. Perpetual Derivatives

In general, perpetual derivatives (i) provide for cash-settled, leveraged, "delta-one" exposure to the spot price of an asset and (ii) are traded on an exchange or otherwise in an organized market in accordance with standardized terms.[3] This combination has led perpetual derivatives to be very successful in non-U.S. digital asset markets, but U.S. participants have been blocked from accessing these products due to regulatory challenges. Indeed, the Commission has aggressively enforced against non-U.S. exchanges, prime brokers, and protocol developers or interface providers that have not restricted U.S. access. At the same time, the Commission has not taken affirmative steps to facilitate offering of perpetual derivatives by U.S.-regulated firms, such as by providing guidance or relief to unlock offerings like we see in offshore markets.

Permitting U.S. market operators and protocol developers to offer perpetual derivatives in the United States subject to appropriate Commission regulation would provide numerous benefits for the overall U.S. derivatives market, including:

- "Onshoring" perpetual derivatives trading would enhance market integrity and safety by moving liquidity away from less regulated or unregulated non-U.S. venues;

[2] For a detailed technical analysis and further insights into institutional uses, risk mitigation, and regulatory considerations, we refer the Commission to the comment letter submitted by Talos, a leading provider of institutional trading infrastructure for digital assets. *See* Talos Comment Letter to CFTC (May 14, 2025).

[3] Other common terms include: the lack of a stated expiry date (hence the term "perpetual"); presence of a funding rate that pays out based on the difference between the contract price and the spot price; and automatic liquidation processes triggered when a user's margin/equity amount declines below a specified level. However, there can be variations among these terms, such as including a stated (but long-dated) expiry date, variations in how the funding rate is calculated, margining and liquidation mechanics, and whether the contract is linear or inverse (*i.e.*, whether it is funded/margined in fiat currency or an equivalent vs. the underlying asset). Also, perpetual derivatives may be traded over a centralized exchange or on a DeFi protocol.

- Trading perpetual derivatives would enable U.S. market participants to obtain more targeted and efficient exposure to spot prices because, unlike a futures contract, perpetual derivatives do not involve a party facing basis risk relative to the spot price, and a party does not need to bear the additional slippage costs and hassle of rolling his or her position in order to retain exposure;

- Trading perpetual derivatives would allow U.S. market participants to obtain spot price exposure without requiring them to take physical ownership of the relevant asset, which means that they would not need to bear any custody-related costs or risks (for long parties) or source assets to borrow (for short parties) or bear any legal or operational risks associated with pledging the relevant asset;

- Trading in perpetual derivatives would be more balance sheet efficient for U.S. market participants than trading in the cash market because perpetual derivatives convey exposure to spot prices in the form of a derivative instead of physical ownership. As a result, only the current mark-to-market value of the derivatives exposure would need to be recorded on-balance sheet, instead of the full notional amount of a physical asset;

- Opening up perpetual derivatives trading in the United States would promote overall U.S. market liquidity and enable fairer and more efficient price relationships between the cash market and the market for other derivatives such as dated futures and options by enabling U.S. market makers and arbitrageurs to access leveraged exposure to spot prices via perpetual derivatives would, which would enhance their profit opportunities; and

- Standardization and trading of perpetual derivatives on exchanges and other organized markets would promote U.S. market transparency and liquidity and mitigate conflicts of interest relative to trading similar contracts (such as total return swaps or contracts for difference) on a bilateral or other over-the-counter basis.

Due to these benefits, we would expect perpetual derivatives to enjoy wide support across a diverse range of U.S. market participants, including institutional market participants (such as hedge funds, asset managers, and proprietary trading firms) as well as retail traders, both of which could participate as market makers, hedgers, and/or speculators.

To enable these benefits, the Commission should open up U.S. access to perpetual derivatives by engaging with market operators (such as designated contract markets and derivatives clearing organizations) and decentralized protocol developers seeking to design safe and efficient product offerings. The Commission should be open to innovation with respect to these offerings, allowing experimentation with respect to contract terms, margin and liquidation mechanics, and intermediation structures (including protocols that allow peer-to-peer trading without any intermediary at all). Variations in these areas will affect how the market operator or protocol developer addresses many of the considerations raised by the RFC, including risk mitigation,[4] disclosure, market integrity (including surveillance),[5] and conflicts of interest.

The Commission itself should not dictate product design decisions so long as the proposed offering addresses these considerations. In particular, the Commission should focus on regulatory outcomes, not whether an offering fits a conventional form. Whether a product is cleared by a central counterparty or settled by a self-executing smart contract, the key regulatory questions should be: does the product offering mitigate systemic risk, protect customer funds, and promote market integrity?[6]

The Commission should also provide clarity around when it will categorize perpetual derivatives as futures contracts or swaps and what the consequences of such categorization would be. Currently, for a standardized, "delta-one" contract traded on an exchange or other organized market that allows for risk transference and settlement without physical delivery, the main difference between a futures contract and a swap is that futures contracts typically exhibit "futurity," *i.e.*, final settlement on a specified date or during a specified delivery period at a price or pricing formula established at contract initiation. In contrast, a swap does not need to include this characteristic, and so it could provide for undated (*i.e.*, "perpetual") exposure. That said, long-dated futures with funding rate adjustments can approximate similar economic exposure to a perpetual swap contract.

Despite their close similarities, futures contracts and exchange-traded swaps are subject to significant differences in regulation, including with respect to minimum margin levels, segregation of customer funds and related bankruptcy treatment, dealer registration requirements, transaction reporting, and cross-border scope. These differences are not warranted by different economic or policy considerations, but they can lead to inefficient product design choices intended to mitigate unjustified regulatory burdens. To address this issue, the Commission should better align regulatory treatment between these categories.

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[4] Robust risk management measures are essential to safely introducing perpetual derivatives. We note the comprehensive review provided by Talos, outlining practical implementations of liquidation mechanisms, insurance funds, leverage limitations, and collateral mobility strategies that have been successfully employed by institutional market participants globally. *See* Talos Comment Letter, Section on "Potential Risks and Mitigations."

[5] Effective market monitoring and analytics play a crucial role in safeguarding the integrity of perpetual markets. Talos's submission details how real-time data analytics and surveillance tools already in use by global institutions can detect anomalies, improve transparency, and proactively mitigate manipulation. *See* Talos Comment Letter, Section on "Data Analytics and Market Monitoring."

[6] In addition to working with traditional market operators in these areas, the Commission should create flexible paths for developers to demonstrate how decentralized protocols can comply with core risk, transparency, and customer protection principles, potentially through sandboxes or other forms of tailored relief or guidance.

II. 24/7 Trading and Clearing

In digital asset markets, it is common for derivatives, including perpetuals, to trade and clear on a 24/7 basis. This convention is due to certain characteristics of digital asset markets, including:

- Underlying spot digital assets themselves trade on a 24/7 basis. Unless digital asset derivatives traded on the same basis, market participants would face the risk of their derivatives position changing in value significantly without the ability to close out or otherwise manage the position;

- 24/7 trading of underlying spot digital assets also ensures availability of pricing data necessary to price, margin, and settle derivatives at all relevant times;

- Digital asset markets are global in scope, which ensures high levels of liquidity during overnight hours and some portions of weekends and holidays;

- Retail traders make up a significant proportion of digital asset market participants, and 24/7 trading enables them to manage their portfolios more effectively outside the workday; and

- Stablecoins and other digital assets enable market participants to margin and settle positions at all times, in contrast to fiat currency and traditional assets that can only be transferred via market infrastructure not accessible overnight or on weekends or holidays.

For markets that exhibit these characteristics, it is not only feasible, but also highly desirable, to permit extended trading hours, including up to 24/7. Like with perpetual derivatives, here the Commission should engage with market operators and protocol developers to understand how they are addressing risk management and markets and systems integrity considerations in the context of specific product offerings, rather than taking a prescriptive, "one-size-fits-all" approach. In doing so, the Commission can build on its long experience with extended trading hours, such the roughly 23/6 trading that takes place on the CME's Globex market today.

The Commission should also remove unwarranted regulatory barriers to 24/7 trading and clearing. In particular, as noted above, the ability to settle and margin transactions using stablecoins and other digital assets is critical to enabling 24/7 trading and clearing. However, the Commission's rules and guidance do not clearly permit use of those assets for this purpose. For example, although Commission Staff have withdrawn some of their prior guidance inhibiting listing and clearing of virtual currency derivatives and digital assets,[7] Staff guidance continues to limit the ability for futures commission merchants to accept such assets from customers.[8] The Commission should examine its rules and guidance to lift undue restrictions of this sort.

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[7] *See* CFTC Staff Letters No. 25-07 and 25-08 (Mar. 28, 2025).

[8] *See* CFTC Staff Letter No. 20-34 (Oct. 21, 2020).

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We appreciate the opportunity to provide feedback to the Staff and the Commission more broadly on these important topics. The staff of the Blockchain Association and our counsel are available to meet and discuss these matters with the Commission and to respond to any questions.

Respectfully submitted,

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cc: Colin D. Lloyd, Sullivan & Cromwell LLP