

U.S. CFTC Opens 30-Day Window for Comment on 24/7 Trading and Perpetual Derivatives, With Likely Implications for Digital Asset Markets

April 29, 2025

On April 21, 2025, the staff of the Commodity Futures Trading Commission (CFTC) issued two requests for public comment focusing on evolving market structures and products that have gained traction in digital asset markets and increasingly are generating interest in the traditional financial markets. The [first request](#) for comment addresses **24/7 derivatives trading and clearing**,¹ and the [second](#) looks at the uses, risks, and regulatory considerations for so-called “**perpetual**” derivatives.² These requests come as part of a broader initiative by the CFTC to clarify the application of CFTC rules to the digital asset ecosystem and to foster market innovation —both in the digital assets space and more broadly.

Comments are due by May 21, 2025, giving the industry **less than a month** to prepare thoughtful comments on the issues raised. Many market participants will be affected by any CFTC rulemaking or policy positions that are adopted as a result of the public comment process. Market participants should raise relevant issues and propose solutions during the comment period to help educate CFTC staff and to ensure that market structure does not evolve in ways adverse to their business interests.

These requests follow a similar recent initiative by the U.S. Securities and Exchange Commission (SEC). As discussed in our [Update](#), on February 21, 2025, SEC Commissioner Hester Peirce issued a statement inviting public input on regulatory issues related to cryptoassets and blockchain technology, reflecting the priorities of the SEC’s newly established Crypto Task Force. Together, these initiatives reflect a growing trend among regulators to engage stakeholders directly in shaping the future of market structure, particularly as innovations originating in the digital asset space increasingly influence the broader derivatives ecosystem.

24/7 Trading

The CFTC staff’s request for comment on 24/7 trading and clearing seeks public input on the potential uses, benefits, and risks of trading on a 24/7 basis in the derivatives markets the CFTC regulates, focusing on system resilience, operational continuity without downtime, continuous market surveillance, clearing and margin practices outside banking hours, regulatory constraints, and collateral management. The request demonstrates the staff’s willingness to consider substantial regulatory changes to facilitate

much-needed modernization of the markets that they regulate.

Continuous, around-the-clock trading is prevalent in the digital assets markets and has been increasingly of interest to participants in the traditional financial markets. While some products can be traded today on CFTC-registered futures exchanges and swap execution facilities during nonbusiness hours, trading volumes and liquidity tend to be much lower than they are during business hours. For this reason, the Acting Chair has stated that she favors 24/7 only when there is enough liquidity.³

Many market participants would welcome more markets being available to trade around the clock. However, transitioning regulated markets that have operated for decades on a “business hours/business days only” model to a model in which trading and clearing routinely are made available at all times raises regulatory and operational issues that the CFTC will need to address before 24/7 trading on regulated markets is commonplace.

For example, futures exchanges currently have daily settlement cycles in which specific procedures, such as valuation of positions, calls for margin from members, and movement of cash and noncash collateral by settlement banks and custodians occur at predetermined times. Moving to 24/7 trading and clearing would require substantial changes to those procedures. Furthermore, expanding the trading and clearing hours on regulated markets without also expanding the hours during which settlement banks and custodians are staffed and capable of moving funds and collateral would allow unmarginated risk to build up in accounts, with potentially massive margin calls coming due as the banks are reopening for business.

A full list of the questions asked by the CFTC is included below as **Appendix A** to this Update.

Perpetual Derivatives

Increasingly, global derivative markets are making available so-called “perpetual” style derivatives, which are widely traded on offshore digital asset exchanges in particular. Perpetuals (sometimes referred to as “perps”) are derivatives without expiration dates that use funding rates to maintain price parity with spot markets.

Perpetual derivatives are unlike traditional futures contracts, in which the price benchmarking between the derivative and the underlying cash commodity market is done at or around the expiration of the contract. Also unlike traditional futures markets in which “variation” settlement (i.e., payments between the parties that reflect changes in the market value of the position) may occur once, or perhaps twice, during the business day, settlement of open exposures on perpetual derivatives may be continuous or may occur many times during the day. Perpetual derivatives may also trade 24/7, which raises many of the same issues addressed in the CFTC’s 24/7 trading and clearing request for comment.

The CFTC’s request for comment on **perpetual derivatives** focuses on the characteristics, use cases, and market risks of perpetual contracts, including their regulatory classification, potential for manipulation, and whether existing customer disclosures and protections are adequate for this novel product set.

Notably, on April 24, just days after the issuance of the request, a CFTC-registered futures exchange announced the self-certification of the first-ever perpetual futures contracts to be listed on a U.S. exchange.

A full list of the questions asked by the CFTC is included below as **Appendix B** to this Update.

Comments in response to the requests can be submitted via the CFTC's website:

- [24/7 Trading RFC](#)
- [Perpetual Derivatives RFC](#)

Sidley regularly advises clients on the issues addressed in both the 24/7 request for comment and the perpetual derivatives request for comment. Our team is available to draft comment letters or assess the implications for your business.

Appendix A

The Staff requests comment on any or all of the below questions related to trading and clearing on a 24/7 basis. In addition to the below more detailed questions, the staff is interested in comment on the following general themes: 1) any areas of key interest or concern which are not yet covered by any of the enumerated questions; and 2) any areas of key interest or concern where 24/7 trading may negatively impact the areas of market integrity, customer protection, or retail trading.

1. What risks (e.g. market, liquidity, operational) does clearing for trading on a 24/7 basis pose to the DCO and to FCM clearing members, beyond those faced during traditional business hours? What protections, or mitigants, should be in place at the DCO or FCM clearing member to ensure adequate mitigation of these novel risks?
2. Are there any pre- or post-trade risk controls that would be necessary, or highly valuable, for the DCM, DCO, or FCM clearing member to implement, beyond those used in current markets? What novel risks would these controls aim to mitigate? Should FCMs require customers with open positions going into a weekend to prefund additional margin as a cushion against adverse price moves?
3. Do the current risk disclosures provided by FCMs to customers adequately address risks associated with 24/7 trading? Should the Commission's standard customer risk disclosure template required by Regulation 1.55 be revised to explicitly address 24/7 trading? What additional risk disclosures should be included in the standard template?
4. Is auto-liquidation of customer positions an acceptable and prudent risk mitigant for FCMs that hold open positions for customers during weekends and other periods of time when customers cannot make margin deposits? Does auto-liquidation present other risks to the market or market participants?
5. How do the risks associated with 24/7 trading differ from the risks currently experienced by FCMs and DCOs from holding customer positions open during weekends or overnight?
6. Are there competitive or other issues resulting from a market structure where an affiliate of a DCM or FCM supports or guarantees margin payments on behalf of customers during non-banking hours?
7. Are there product types that are more reasonably suited to a 24/7 model? Are there others for which a 24/7 model would introduce risks which could not be adequately mitigated? What characteristics distinguish the first from the second set of products?

8. What changes in market structure or operational capabilities (e.g. broader abilities to source and exchange collateral over weekends) could potentially mitigate risks associated with 24/7 markets? Are there forms of 24/7 trading which cannot or should not be allowed prior to these structural innovations?
9. Are there any current Commission regulations which would hinder 24/7 markets?
10. Are the Commission's existing customer protection, financial integrity, net capital, and financial reporting requirements for FCM adequate for a 24/7 marketplace? If not, what should the Commission consider to enhance the above requirements?

DCMs and SEFs

1. Continuous trading requires a high-availability systems architecture with active failover, hot-swappable components, and load balancing. What generally accepted standards and best practices should DCMs and SEFs follow when developing and maintaining such systems?
2. Without windows for regular updates, patches, and upgrades, DCMs and SEFs must maintain a live deployment capability, with robust rollback mechanisms in the event of faulty updates. What generally accepted standards and best practices should DCMs and SEFs follow when developing and maintaining such a capability?
3. The lack of a planned maintenance window may increase the chance of unscheduled disruptions, which are more difficult to control and message to participants. What measures should DCMs and SEFs take to reduce the likelihood and frequency of such disruptions and mitigate their impact?
4. How can DCMs and SEFs ensure that they are adequately staffed to detect and respond to market anomalies and technical events at all hours? What procedures and contingencies should be in place for DCMs and SEFs to coordinate with service providers and other third parties during trading hours where those third parties may be thinly staffed? Is it acceptable for certain technical and compliance staff to be on-call?
5. Does 24/7 trading introduce any new or different considerations with respect to DCM and SEF self-regulatory practices, including in the areas of trade practice surveillance and market surveillance?
6. DCMs and SEFs are required to conduct certain types of system safeguards testing pursuant to Core Principles 20 and 14, respectively.
 - a. How should DCMs and SEFs approach business continuity-disaster recovery testing in a high-availability environment?
 - b. How should DCMs and SEFs approach penetration testing and vulnerability scanning in a high-availability environment?

Appendix B

The Staff requests comment on any or all of the below questions related to Perpetual Derivatives. In addition to the below more detailed questions, the staff is interested in comment on the following general themes: 1) any areas of key interest or concern which are not yet covered by any of the enumerated

questions; and 2) any areas of key interest or concern where Perpetual Derivatives may negatively impact the areas of market integrity, customer protection, or retail trading.

1. What is an appropriate working definition of “perpetual derivative?” In addressing this question, please consider:
 - a. What characteristics must a product have to qualify as a “perpetual” derivative?
 - b. Is there a taxonomy of different kinds of perpetual derivatives and what would be key characteristics in this taxonomy?
 - c. Are there specific characteristics that distinguish a perpetual futures contract from other perpetual derivatives?
2. Would Perpetual Derivatives have advantages for market participants over traditional futures contracts or spot market products? Would Perpetual Derivative products provide commercial risk management features that cannot be met with existing products?
3. Would Perpetual Derivatives products pose any unique risks for market participants or the broader markets? Are there additional protections or safeguards that the Commission or exchanges should adopt to mitigate risks associated with these products?
4. Do the current risk disclosures that futures commission merchants are required to provide customers, pursuant to Commission regulations, adequately address risks associated with Perpetual Derivatives? If not, what additional disclosures should be required to be provided to customers?
5. Do Perpetual Derivatives pose any unique risks if they were to be offered in physical commodity markets, such as with agricultural or energy commodity derivatives?
6. Do Perpetual Derivatives raise unique concerns about susceptibility to manipulation?
 - a. Are there additional protections or safeguards that should be adopted by the Commission or exchanges to mitigate concerns about susceptibility to manipulation with Perpetual Derivatives?
 - b. Is there any additional guidance the Commission should adopt to clarify the regulatory treatment of Perpetual Derivatives?
 - c. Would Perpetual Derivatives raise any novel concerns with regard to conflicts of interest?
7. Do Perpetual Derivatives raise unique surveillance concerns for exchanges listing perpetual products?
8. Do Perpetual Derivatives have the potential to adversely impact the liquidity or usefulness for commercial risk management purposes of traditional futures market products?
9. Please describe the likely user base for Perpetual Derivatives. Will Perpetual Derivatives attract the same array of market participants as traditional futures, including commercials, asset managers, hedge funds, speculators, and others?
10. Are some traditional futures market participants less likely to participate in Perpetual Derivatives

markets? Will Perpetual Derivatives markets function as effectively and efficiently if certain traditional participants are less present or if the market is heavily weighted towards certain types of participants?

11. The aims of derivatives markets include price discovery and risk mitigation. How do Perpetual Derivatives further risk mitigation? How do they further price discovery? Please provide likely use cases for Perpetual Derivatives.
12. Futures markets can provide arbitrage opportunities between futures and cash markets, with convergence at expiration being a hallmark of a properly functioning market. What arbitrage could reasonably be expected between Perpetual Derivatives, traditional futures, and cash markets? What cash market convergence could reasonably be expected?
13. Should Perpetual Derivatives be classified as swaps or futures contracts?
14. Is a Perpetual Derivative consistent with a traditional futures contract model whereby there is a specified expiry date, and the price of the contract represents the price of the underlying commodity at the time of expiry?
15. Do Perpetual Derivatives increase customer default risk that may expose other customers to potential losses in the event of an FCM insolvency resulting from the customer default?
16. Do Perpetual Derivatives raise unique issues in the event of a futures commission merchant or derivatives clearing organization insolvency under part 190 of the Commission's regulations or the U.S. Bankruptcy Code?

¹ Request For Comment on Trading and Clearing Derivatives on a 24/7 Basis, CFTC Divisions of Market Oversight, Clearing and Risk and Market Participants (April 21, 2025), available at https://www.cftc.gov/media/12036/24_7_RFC042125/download.

² Request for Comment on the Trading and Clearing of "Perpetual" Style Derivatives, CFTC Divisions of Market Oversight, Clearing and Risk and Market Participants (April 21, 2025), available at https://www.cftc.gov/media/12041/Perpetuals_RFC042125/download.

³ <https://news.bloomberglaw.com/banking-law/cftc-head-favors-24-7-derivatives-trading-only-in-liquid-markets>.

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