ALERT MEMORANDUM

The Market That Never Sleeps: Perpetual Contracts and 24/7 Trading on CFTC-Regulated Markets

July 30, 2026

In May and June 2026, the Commodity Futures Trading Commission (CFTC or the Commission) took several steps to facilitate the listing and trading of perpetual contracts that reference digital commodities by CFTC-regulated intermediaries and subject to the CFTC's regulatory oversight. A perpetual contract is a cash-settled derivative instrument that has no fixed maturity date, and that became a popular derivative product in the cryptocurrency industry.[1] Perpetual contracts are typically exchange traded and offer leveraged exposure to a reference underlier. Until the CFTC's recent initiatives, however, perpetual contracts were only listed outside of the United States and only offered outside of the U.S. regulatory perimeter, leaving them largely unavailable to U.S. market participants.

CFTC-registered intermediaries can now offer perpetual contracts that reference the spot price of Bitcoin and other digital commodities to U.S. market participants, who can now also access similar products traded on foreign boards of trade. The CFTC is now inviting the market to comment on perpetual contracts on other underliers.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

NEW YORK

Deborah North
+1 212 225 2039
dnorth@cgsh.com

Brandon Hammer
+1 212 225 2635
bhammer@cgsh.com

Igor Kleyman
+1 212 225 2020
ikleyman@cgsh.com

Brian J. Morris
+1 212 225 2795
bmorris@cgsh.com

Eric Cook
+1 212 225 2066
ercook@cgsh.com

William Chao
+1 212 225 2045
wchao@cgsh.com

[1] *See* Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33160 (June 3, 2026), available at https://www.govinfo.gov/content/pkg/FR-2026-06-03/pdf/2026-11020.pdf?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.

Although perpetual contracts became prevalent in the context of crypto assets, certain trading venues are exploring offering them for additional asset classes.[2] To date the CFTC has only approved perpetual contracts that reference digital commodities, but it has acknowledged that perpetual contracts can reference other asset classes, and proposed a process for designated contract markets (DCMs) to seek approval for such products.[3] Separately, the CFTC has published a request for comment related to perpetual contracts for energy markets (the Energy Markets RFC).[4]

In this alert, we discuss these developments, including the key regulatory considerations addressed in the CFTC's recent guidance and relief as well as the impact on non-digital asset classes.

Because derivatives markets are limited by traditional intermediaries and the trading patterns of the underlying cash markets, 24/7 trading for derivatives has been a focus for some time. The CFTC has acknowledged that there is "emerging interest in 24/7 trading," and has accordingly put out an advisory outlining the potential risks associated with 24/7 trading, clearing, and settlement and how these risks are addressed in CFTC regulations, to "encourage responsible innovation"[5] This advisory has relevance to digital commodity perpetual contracts, because, as the CFTC has acknowledged, "derivatives referencing crypto assets may be well-suited for 24/7 trading due to their digital infrastructure and global reach." Several venues already offer 24/7 trading in cryptocurrency derivatives.[6] While the proliferation of tokenized assets and stablecoins may facilitate 24/7 trading more generally, the CFTC has noted that derivatives markets on other underliers may not be as well suited.[7] The Energy Markets RFC addresses both perpetual contracts and the efficacy of 24/7 trading in the futures

[2] Kalshi has filed with the CFTC for approval to list perpetual contracts on gold, silver, and platinum, and has stated that it is considering listing perpetuals on base metal underliers. *See* KalshiEX LLC – Commission Regulation 40.3(a), Voluntary submission of new products for Commission review and approval regarding the Initial Listing of the GOLDPERP Futures Contract (Jul. 21, 2026), available at https://www.cftc.gov/filings/ptc/ptc07212611017.pdf.; Bloomberg, Kalshi Considers New Instrument for Copper Bets After AI Buildout Boosts Demand (Jul. 23, 2026), available at https://www.bloomberg.com/news/articles/2026-07-23/kalshi-eyes-copper-perpetual-futures-after-precious-metals-push.
In addition, certain trading venues have announced perpetual contracts on non-digital commodities outside of the United States. *See, e.g.,* New York Stock Exchange To Launch Oil Perpetual Futures, Yahoo Finance (May 22, 2026), available at https://finance.yahoo.com/markets/commodities/articles/york-stock-exchange-launch-oil-125800309.html; Robinhood Rolls Out Perpetual Futures Tied to Commodities, ETFs, Bloomberg (July 1, 2026), available at https://www.bloomberg.com/news/articles/2026-07-01/robinhood-rolls-out-perpetual-futures-tied-to-commodities-etfs.

[3] *See* Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33160, at 33161-62 (June 3, 2026); 17 C.F.R. § 40.3; Order Approving KalshiEX LLC BTCPERP Futures Contract (May 29, 2026).

[4] *See* Request for Comment on the Extension of Standard Futures Contracts to 24/7 Trading and on Perpetual Contracts Referencing Physically Delivered or Storable Energy Commodities, 91 Fed. Reg. 38334 (Jun. 25, 2026).

[5] CFTC Letter No. 26-16, Staff Advisory for Extending Trading and/or Clearing Operations to a 24 hours-a-day, 7 days-a-week Basis (May 29, 2026), available at https://www.cftc.gov/csl/26-16/download.

[6] The Chicago Mercantile Exchange (CME) recently went live with 24/7 trading in cryptocurrency futures and options. *See* CME Clearing & Global Operations Summary of Requirements and Guidelines for Cryptocurrency Trading and 24x7 Clearing (Apr. 2026), available at https://www.cmegroup.com/clearing/files/cryptocurrency-guidelines.pdf. In addition, 24/7 trading in cryptocurrency derivatives is also offered by Coinbase Derivatives LLC and KalshiEX LLC, and prediction markets also generally offer 24/7 trading. *See, e.g.,* How 24/7 trading works at Coinbase Derivatives, available at https://www.coinbase.com/en-gb/learn/futures/24-7-trading; Kalshi, What are trading hours, available at https://help.kalshi.com/en/articles/13823807-what-are-trading-hours; CME Group, CME Group Holiday and Trading Hours, available at https://www.cmegroup.com/trading-hours.html#floors.

[7] *Id*. at 2.

markets more generally.[8] We outline these releases and the risks that the CFTC highlighted for market participants in connection with 24/7 trading, clearing, and related operations in Sections I and III.D below.

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I. The CFTC's Recent Steps Regarding Perpetual Contracts

The CFTC has made several announcements related to perpetual contracts:

- **Policy Statement on Perpetual Contracts:** On May 29, 2026, the CFTC issued a "Policy Statement Concerning the Listing of Perpetual Contracts" (the Policy Statement).[9] Pursuant to the Policy Statement, DCMs seeking to offer perpetual contracts that reference Bitcoin and similarly situated digital commodities with "deep, active, and continuous" spot markets may offer such contracts pursuant to the self-certification process set out under CFTC Regulation 40.2.[10] The CFTC suggests that DCMs seeking to offer perpetual contracts on other asset classes should follow the approval process under CFTC Regulation 40.3 (which requires affirmative CFTC approval before a contract can be listed).[11]

- **Approval of Kalshi Bitcoin Perpetual Contracts:** On May 29, 2026, the CFTC issued an order permitting KalshiEX, LLC (Kalshi), a registered DCM (such order, the Kalshi Order),[12] to list perpetual contracts that reference the spot price of Bitcoin and other digital commodities that have "deep, active, and continuous" spot markets, and which trade on a 24/7 basis.[13] As we discuss in greater detail below, in approving such perpetual contracts, the CFTC agreed with Kalshi's characterization of these perpetual contracts as futures contracts under the Commodity Exchange Act (CEA), rather than as swaps.[14]

- **Coinbase Perpetual Foreign Futures Relief and No-Action Letter:** On May 29, 2026, the staff of the Market Participants Division (MPD) issued an interpretation and a no-action letter in response to a request by Coinbase Financial Markets, Inc. (CFM), a registered futures commission merchant (FCM), allowing the offering of digital commodity derivatives, including perpetual contracts, to CFM's customers, listed on CFM's affiliated foreign board of trade, Deribit FZE (Deribit, and such interpretation and no-action letter,

[8] Request for Comment on the Extension of Standard Futures Contracts to 24/7 Trading and on Perpetual Contracts Referencing Physically Delivered or Storable Energy Commodities, 91 Fed. Reg. 38334 (Jun. 25, 2026).

[9] Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33160 (June 3, 2026), available at https://www.govinfo.gov/content/pkg/FR-2026-06-03/pdf/2026-11020.pdf?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.

[10] *Id.* at 33161-62; *see* 17 C.F.R. § 40.2.

[11] Policy Statement at 33161-62; *see* 17 C.F.R. § 40.3.

[12] Order Approving KalshiEX LLC BTCPERP Futures Contract (May 29, 2026), available at https://www.cftc.gov/filings/documents/2026/orgdcmkexbtxperporder26601.pdf.

[13] *Id.* at 8.

[14] *Id.*

the CFM Relief).[15] Consistent with the CFTC's analysis in the Kalshi Order, the CFTC agreed with the characterization of these products as futures, rather than swaps.

- **Perpetual-Style Contract Relief:** On June 12, 2026, DMO issued no-action letters to each of Bitnomial Exchange, LLC (Bitnomial) and Coinbase Derivatives, LLC (Coinbase DCM), both registered DCMs, seeking to convert existing "perpetual style" digital commodity futures contracts into perpetual futures contracts, consistent with the Policy Statement (the Perpetual-Style Contract Relief).[16] Bitnomial and Coinbase DCM each listed contracts that were intended to have characteristics similar, but not identical to, perpetual contracts. For example, these perpetual-style futures contracts generally have long-dated expiration dates (including expiration dates of up to 25 years out), unlike true perpetual contracts, which have no expiration date.[17] The Perpetual-Style Contract Relief allowed Bitnomial and Coinbase to modify these existing perpetual-style digital commodity futures contracts to remove the expiration dates from the terms of such contracts, and to do so promptly notwithstanding the normal CFTC review period.[18][19]

- **Staff Advisory on 24/7 Trading, Clearing, and Settlement:** The staff of the MPD, Division of Clearing and Risk (DCR), and Division of Market Oversight (DMO, and together, the Divisions) issued a staff advisory regarding 24/7 trading, clearing, and settlement (the 24/7 Advisory).[20] In the 24/7 Advisory, the Divisions set out their regulatory expectations for DCMs, swap execution facilities (SEFs), derivatives clearing organizations (DCOs), and FCMs considering 24/7 trading, clearing and related operations. While the 24/7 Advisory applies to 24/7 trading, clearing, and settlement generally, the CFTC issued the 24/7 Advisory along with the package of perpetual contract-focused guidance and relief in order to facilitate the 24/7 trading of perpetual contracts.

- **Joint CFTC and SEC RFC on Product Characterization:** On June 18, 2026, the CFTC and the Securities and Exchange Commission (SEC, and together with the CFTC, the Agencies) issued a request for comment "on potential ways to draw clearer regulatory lines for agency oversight of innovative products that may implicate the regulatory interests of both [Agencies]" (the Product RFC).[21] The request for comment includes a question regarding the

[15] CFTC Letter No. 26-17, Staff Interpretation Regarding the Categorization of Deribit Perpetuals as Foreign Futures and No-Action Position Regarding Digital Commodities and Payment Stablecoins Deposited to Margin Customer Positions with a Foreign Broker Under a Right of Re-Use (May 29, 2026), available at https://www.cftc.gov/csl/26-17/download.

[16] CFTC Letter No. 26-19, No-Action Positions Regarding Removal of Expiration Dates from Existing Digital Commodity Perpetual-Style Futures Contracts (June 12, 2026), available at https://www.cftc.gov/csl/26-19/download.

[17] *Id.* at 2.

[18] *Id.* at 4-7.

[19] The fundamental mechanics of perpetual-style futures contracts are identical to those of true perpetual futures contracts, except that, unlike true perpetual futures contracts which have no fixed expiration date, perpetual-style futures contracts have long-dated expiration dates, including up to 25 years.

[20] CFTC Letter No. 26-16, Staff Advisory for Extending Trading and/or Clearing Operations to a 24 hours-a-day, 7 days-a-week Basis (May 29, 2026), available at https://www.cftc.gov/csl/26-16/download.

[21] Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, 91 Fed. Reg. 37873 (Jun. 24, 2026), available at https://www.cftc.gov/media/14246/CFTC_SEC_JointRFCSwapDefinitions061826/download.

characterization of perpetual contracts that reference equity security underliers.[22] Comments on the Product RFC must be received by August 24, 2026.

- **CFTC Energy Markets RFC:** On June 22, 2026, the CFTC issued the Energy Markets RFC, in which the CFTC requested comment regarding two related developments in the energy derivatives markets: (1) the expansion of 24/7 trading in standard futures contract markets and (2) the listing of perpetual contracts that reference physically delivered or storable energy commodities, such as crude oil.[23] The CFTC emphasizes in the Energy Markets RFC that, pursuant to the Policy Statement, "perpetual contracts referencing asset classes not contemplated by the [Kalshi] Order—including, among others, agricultural and energy products—[are to] be evaluated on their own terms, with each asset class raising distinct considerations meriting independent analysis."[24] The CFTC's questions with respect to perpetual contracts that reference energy commodities relate to, among other things, the "distinct considerations" of such contracts. Comments on the Energy Markets RFC must be received by August 26, 2026.

II. Introduction to Perpetual Contracts

Perpetual contracts are derivative instruments that offer leveraged exposure to a reference underlier. Market participants are able to take the long or short side of the contract.[25] Unlike futures contracts generally, a perpetual contract does not have a fixed settlement date. In the futures context, the settlement date generally ensures that as the settlement date approaches the price of the futures contract and the spot price of the underlying cash commodity converges.[26] Where the convergence does not happen, this is usually due to idiosyncratic events occurring in the spot market (e.g., disruption in supply and demand or geopolitical events), which is referred to as "backwardation". By contrast a perpetual contract does not have a fixed settlement date and instead employs a periodic funding rate mechanism that is designed to maintain price convergence between the perpetual contract and the underlying cash price.[27] Pursuant to this funding rate mechanism, "[w]hen a perpetual contract trades above the spot price, the traders with long positions make payments while the traders with short positions receive payments; and vice versa," incentivizing a convergence back to parity between the perpetual price and spot price.[28] Perpetual contracts emerged as a derivatives product in the crypto-currency markets and have several features that market participants cite as being well-suited to crypto markets. In its application for relief, Kalshi stated that perpetual contracts allow traders to obtain long and short exposure to digital commodities without needing to "roll contracts regularly [or] trade with a much smaller basis to the spot market," and "allow liquidity to be concentrated in a single contract rather than fragmented across multiple expiration dates."[29]

In addition, perpetual contracts are also traded on a 24/7 basis, offering parallel exposure to the underlying crypto-assets, which also trade on 24/7 global spot

[22] *Id.* at 13. We discuss the relevance of the Product RFC below in Sections III.A and IV below.

[23] Request for Comment on the Extension of Standard Futures Contracts to 24/7 Trading and on Perpetual Contracts Referencing Physically Delivered or Storable Energy Commodities, 91 Fed. Reg. 38334 (Jun. 25, 2026), available at https://www.govinfo.gov/content/pkg/FR-2026-06-25/pdf/2026-12784.pdf. We discuss the relevance of the Energy Markets RFC in Sections III.D and IV below.

[24] *Id.* at 38335.

[25] Kalshi Order, at 7.

[26] *Id.* at 6-7.

[27] *Id.*

[28] Policy Statement, at 33161.

[29] KalshiEX LLC, Voluntary Submission of New Products for Commission Review and Approval Regarding the Initial Listing of the BTCPERP Futures Contract (May 28, 2026), available at https://www.cftc.gov/filings/ptc/ptc0528264535.pdf; *See also* Coinbase Derivatives, LLC, Comment Letter to the CFTC on Request for Comment on the Trading and Clearing of "Perpetual" Style Derivatives (May 21, 2025), available at https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35619.

markets.[30] In the 24/7 Advisory, the CFTC stated that "derivatives referencing crypto assets may be well-suited for 24/7 trading due to their digital infrastructure and global reach."[31]

III. Considerations in Connection with the CFTC's Recent Actions

A. Regulatory Classification of Perpetual Contracts

CFTC Request for Comment on 'Perpetual' Style Derivatives

In April 2025, the CFTC issued requests for comment soliciting public input on key elements of a framework needed to offer perpetual contracts subject to CFTC regulation. This included a "Request for Comment on the Trading and Clearing of 'Perpetual' Style Derivatives," which sought feedback on the characteristics, use cases, regulatory classification, and risks of these products.[32]

In the request for comment on perpetual contracts, the CFTC asked market participants whether perpetual contracts should "be classified as swaps or futures contracts?"[33]

Kalshi's Request for Approval of its Bitcoin-Denominated Perpetual Contract

In its request for approval, Kalshi sought to characterize its Bitcoin-denominated perpetual contract as a "futures" contract, citing how courts, when deciding on whether or not a product is a futures contract, have looked to characteristics common to futures including standardization, fungibility, and the ability to offset positions.[34] Kalshi maintained that although courts have described futures contracts as providing for the purchase or sale of a commodity at a "fixed date in the future," this is not a necessary feature so long as the contract has the attribute of "futurity," i.e., has a "value that is set in the future" and "exists where contracts provide for future executory payment obligations, not only where a contract has a final settlement date and fixed term."[35]

CFTC's Approval of Kalshi and Deribit Perpetual Contracts as Futures Contracts

In the Kalshi Order, the CFTC agreed with Kalshi's characterization of its Bitcoin-denominated perpetual contract, determining that perpetual contracts structured with a periodic funding rate mechanism and referencing a digital commodity's spot price may be listed for trading as futures contracts.[36] Similarly, in the CFM Relief, the Divisions confirmed that the digital commodity perpetual contracts offered on Deribit may be categorized as foreign futures, consistent with analysis in the Kalshi Order.[37]

CME Sues the CFTC over its Characterization of Perpetual Contracts

[30] We note generally that, as a result of risk mutualization, perpetual contracts and other products that are traded on a 24/7 basis may expose market participants to the risks associated with such products even if a participant is not transacting in such products (e.g., if a market participant clears more traditional derivatives transactions through an FCM that also clears perpetual contracts for other customers).

[31] 24/7 Advisory at 2.

[32] CFTC Staff Seek Public Comment Regarding Perpetual Contracts in Derivatives Markets, Release No. 9069-25 (Apr. 21, 2025).

[33] CFTC Staff Seek Public Comment Regarding Perpetual Contracts in Derivatives Markets, Release No. 9069-25, at 3 (Apr. 21, 2025).

[34] KalshiEX LLC, Voluntary Submission of New Products for Commission Review and Approval Regarding the Initial Listing of the BTCPERP Futures Contract, at 20 (May 28, 2026), available at https://www.cftc.gov/filings/ptc/ptc0528264535.pdf.

[35] Kalshi Order, at 5.

[36] This position would appear as, at least, a modification of the CFTC's historical position with respect to perpetual contracts offered outside of the United States. In enforcement actions, the CFTC had treated perpetual contracts as swaps. *See* CFTC v. HDR Global Trading Ltd., Complaint, No. 1:20-cv-8132 (S.D.N.Y. Oct. 1, 2020); CFTC v. Eisenberg, Complaint, No. 23-cv-173 (S.D.N.Y. Jan. 9, 2023); CFTC v. Zhao, Complaint, No. 1:23-cv-1887 (N.D. Ill. Mar. 27, 2023); In re Deridex, Inc., Consent Order, CFTC No. 23-42 (Sept. 7, 2023); CFTC v. Mek Glob. Ltd., Complaint, No. 24-cv-2255 (S.D.N.Y. Mar. 26, 2024).

[37] CFM Relief, at 8.

The characterization of perpetual contracts as futures is not without controversy. On June 18, 2026, CME filed suit challenging the CFTC's actions in approving the Kalshi Order, on the basis that the CFTC acted unlawfully in characterizing perpetual contracts as futures contracts instead of swaps.[38] In its filing, CME maintained that the CFTC violated the CEA and CFTC regulations by approving perpetual contracts as futures rather than swaps, "thereby relieving that derivative of the regulatory burdens Congress imposed on swaps and affording it favorable tax treatment."[39] Perpetual contracts, CME maintains, fit the statutory definition of a swap because they are agreements between parties to exchange payments based on the value of the underlier and because "[u]nlike a futures contract, a perpetual contract has no expiration date—that is where the perpetual gets its name."[40] CME also cited the CFTC's historical characterization of these products as swaps as the basis of enforcement actions that the CFTC brought against offshore entities trading in perpetuals.[41] In addition, CME stated that the CFTC had not responded to comments received on the April 2025 request for comment on the trading and clearing of perpetual contracts, or conducted any related rulemaking following the request for comment.[42] CME also claims that the CFTC's actions inflict competitive injury on CME because it "greenlit Kalshi to offer new derivatives products that will directly compete with CME's existing offerings in the market for retail investors."[43]

Product RFC

In the Product RFC, the Agencies asked whether additional guidance is necessary in connection with the treatment of futures in innovative markets and, specifically with respect to perpetual contracts that reference equity security underliers, asked whether there is "a need for greater clarity regarding whether a cash-settled 'perpetual' contract referencing an equity security could be treated as a security future?"[44] Relatedly, in the Policy Statement, the CFTC noted that "perpetual contracts that reference equity securities or narrow-based security indexes, among others, would benefit from review by the Commission and the [SEC]."[45] We discuss the implications that the CFTC's recent package of guidance and relief has for asset classes other than digital commodities in Section IV below.

B. Implications of the Classification of Perpetual Contracts as Futures

The classification of perpetual contracts on digital commodities as futures contracts rather than swaps has several implications:

1. *Initial Margin for Cleared Futures vs Swaps.* The CFTC's regulations prescribe minimum standards for how DCOs must calculate initial margin for different derivative products that they clear, to account for price movements during the time within which the DCO estimates that it would be able to liquidate a defaulting clearing member's position ("Liquidation Time"). The Liquidation Time for futures contracts is one day, whereas it is five days for most swaps, leading to a generally lower initial margin requirement for futures contracts versus swaps, all else being equal.[46]

2. *Tax treatment*. In general, U.S. federal tax rules provide for different tax outcomes for futures contracts, on the one hand, and swaps, on the other hand. Futures contracts can qualify for treatment under Section 1256 of the Internal Revenue Code, which provides for mark-to-market taxation and deems gains and

[38] Chicago Mercantile Exchange Inc. v. Selig, Complaint, No. 1:26-cv-02157 (D.D.C. Jun. 18, 2026).
[39] *Id.* ¶ 4.
[40] *Id.* ¶ 5.
[41] *Id.* ¶ ¶ 122-124.
[42] *Id.* ¶ ¶ 24-25.
[43] *Id.* ¶ 10.
[44] Product RFC, at 13.
[45] Policy Statement, at 33161. *See also* 24/7 Energy Markets RFC (identifying issues related to perpetual contracts referencing physical energy markets, including storage, delivery, and position limits).
[46] *See* 17 C.F.R. § 39.13(g)(2)(ii).

losses to be 40% short-term and 60% long-term capital gains. Commodity swaps, however, are subject to an entirely different set of rules. The ultimate tax treatment for perpetual contracts will depend on a number of factors and neither the IRS nor the CFTC has yet addressed that topic in any guidance.

3. *Availability to provide access to Foreign Futures.* As discussed in greater detail below, characterizing perpetual contracts as futures makes it possible to offer them to U.S. persons as foreign futures through the framework set out under Part 30 of the CFTC's regulations.

4. *Other regulatory obligations applicable to swaps.* In addition to the above, characterizing perpetual contracts as futures makes it so that market participants and CFTC-registered intermediaries are not required to comply with the CFTC's regulatory regimes applicable to cleared swaps. This includes (i) the obligation for persons making markets in swaps above a de minimis threshold to register with the CFTC as a swap dealer,[47] (ii) reporting obligations for DCMs that trade swaps under the CFTC's Parts 43 and 45 rules,[48] and (iii) obligations to segregate collateral held in connection with cleared swaps under the CFTC's legally segregated, operationally comingled, regime, versus the CFTC's gross omnibus segregation regime for futures contracts pursuant to Section 4d(a) of the CEA.

C. Extending Access to Foreign Futures

In its CFM Relief, MPD, consistent with the position in the Kalshi Order, confirmed that perpetual contracts offered and traded on Deribit qualify as "foreign futures" under CFTC Regulation 30.1, when customers transact through CFM.[49] In doing so, the CFTC allowed U.S. market participants to access non-U.S. derivatives through a registered FCM, subject to the application of the CFTC's foreign futures regime, and the additional conditions in the CFM Relief. The CFTC does not have a parallel framework for allowing access to non-U.S. swaps.[50]

Pursuant to the CFM Relief, CFM will offer its customers access to trading in digital commodity derivative products listed on Deribit (a foreign board of trade (FBOT) affiliated with CFM), including futures, options on futures, and perpetual contracts, in each case, that reference a digital commodity.

Transaction flow. The transaction flow contemplated by the CFM Relief is as follows: (1) CFM will act as the customers' FCM, (2) will route the customers' orders to its foreign broker affiliate, Coinbase Bermuda Limited (CBBM), via an automated order routing system, (3) CBBM will then route the CFM customer orders to Deribit, and (4) Deribit's matching engine will execute the orders.[51]

Customer positions and margin. The position and margin treatment is as follows: (1) CFM will hold its customers' positions and related margin collateral on its books,[52] (2) CFM will deposit the relevant customer funds into an omnibus customer account at CBBM, which will reflect the aggregate positions and margin

[47] 7 U.S.C. § 6s.
[48] 17 C.F.R. §§ 43, 45.
[49] CFM Relief, at 8.
[50] Under CFTC Regulations, U.S. persons may generally only clear swaps at a DCO that is registered with the CFTC or that has received an exemption from registration pursuant to CFTC Regulation 39.6. However, CFTC Regulation 39.6(b)(1) provides that an entity may generally only obtain an exemption from DCO registration if it does not offer customer clearing to U.S. persons (though the CFTC has granted relief from this requirement to the Japan Securities Clearing Corporation, *see* CFTC Letter No. 25-32, No-Action Letter with Regard to Sections 4d(f) and 4m(1) of the Commodity Exchange Act and CFTC Regulation 39.6(b)(1) (Sep. 12, 2025)). If perpetual contracts were classified as swaps, these limitations would restrict access for U.S. persons to perpetual contracts offered on non-U.S. platforms like Deribit, absent additional relief similar to that granted to the Japan Securities Clearing Corporation.
[51] CFM Relief, at 3.
[52] *Id.* at 4 ("CFM states that it will hold its customers' [positions] and related margin collateral in 30.7 customer accounts (as defined by CFTC Regulation 30.1) on its books.").

of all CFM customers on a gross basis, and will record each individual CFM customer position and margin in a pseudonymized subaccount under the CBBM omnibus account, and (3) Deribit will maintain assets with a "value equal to 100 percent of the net liquidating equity" of CFM customer positions at Coinbase Custody Trust Company, LLC, a New York state limited purpose trust company owned by Coinbase Global, Inc. (Coinbase Global). CFM will accept customer-owned digital commodities and payment stablecoins as margin collateral for these positions. To enable this account structure and movement of customer collateral, CFM will grant CBBM a right of re-use over the customer collateral to allow CBBM to post such collateral to Deribit for the purpose of margining and securing positions on the Deribit exchange.[53]

Absent relief or an exemption, CFTC Regulation 30.7, requires, among other things, (i) customer funds to be held in clearly identifiable accounts at certain permitted categories of depository institutions, (ii) the FCM to obtain an "Acknowledgment Letter" from any such depository holding customer funds, and (iii) that any foreign broker or permitted depository located in a foreign jurisdiction deposit customer funds under the laws and regulations of the foreign jurisdiction that provide the greatest degree of protection to such funds and not waive any of the protections afforded customer funds under the laws of the foreign jurisdiction (collectively, Part 30.7 Requirements). CFM sought relief in relation to its ability to post margin to CBBM under a right of re-use allowing the subsequent transfer of the margin to Deribit. MPD granted no-action relief subject to several conditions. In doing so, the CFTC extended to digital commodities and payment stablecoins relief it issued in November 2025, which permits FCMs to transfer customer securities collateral to a foreign broker, FBOT, or foreign clearing organization subject to a right of re-use or title transfer.[54][55] In addition, the CFM Relief further clarifies how to implement the CFTC's relief issued in December 2025, allowing FCMs to accept certain non-securities crypto assets and payment stablecoins as margin for foreign futures.[56] As CFM noted, although

[53] *Id*. at 4-5.

[54] CFTC Letter 25-38, Staff Interpretation Regarding FCM Deposits of Securities with Foreign Brokers and Foreign Clearing Organizations to Margin Customer Positions Entered into on, or Subject to the Rules of, a Foreign Board of Trade (Nov. 25, 2025). CFTC Letter 25-38 was intended to address the potential double segregation issue that could arise in connection with foreign futures and options transactions entered into under CFTC Regulations Part 30.

While the CFTC had issued previous no-action relief in connection with these requirements, that relief had been limited to certain circumstances and had only been granted in connection with requirements under U.K. law. *See* CFTC Letter 16-88, CFTC Regulation 30.7 – Staff No-Action position regarding transfer of customer-owned securities by US FCM to foreign broker (Dec. 9, 2016); CFTC Letter 18-26, CFTC Regulation 30.7 – Staff No-Action Position Regarding Futures Commission Merchant's Deposit of Customer-Owned Securities as Margin with a Foreign Broker (Oct. 31, 2018).

CFTC Letter 25-38 provides that FCMs may generally transfer customer securities collateral under a right of re-use or title transfer for the purpose of margining customer foreign futures or foreign options, subject to certain conditions, and that FCMs and foreign brokers do not need to utilize such a double segregation structure. This staff interpretation was limited to securities however, and did not address crypto assets.

[55] CFTC Letter 25-38 is further conditioned on such foreign broker, FBOT, or foreign clearing organization being authorized or required by local law to obtain title to, or a right of re-use over, the securities and the securities being transferred solely for purposes of margining or security customer obligations arising from customers' foreign futures and foreign options positions. The relief in CFTC Letter 25-38 clarifies that an FCM would not be in violation of its obligations under Regulation 30.7 and the foreign broker / foreign clearing organization would not be in violation of its obligations under the Acknowledgment Letter, if it took title to or invoked a right of re-use of the securities collateral that the FCM deposited as customer funds, held in a 30.7 account. CFM stated that it will meet this aspect of the relief in CFTC Letter 25-38, because it will only use or re-use customer digital assets for the purpose of margining or security customer obligations arising from foreign futures or foreign options positions.

[56] CFTC Letter 26-05, Staff No-Action Position Regarding Digital Assets Accepted as Margin Collateral (Feb. 06, 2026) (originally issued as CFTC Letter 25-40).

the CFTC's December 2025 relief contemplated such assets being used as margin for foreign futures, it did not address how non-securities crypto assets must be held in a foreign jurisdiction when treated as Section 30.7 funds.[57] Some of the key relief and conditions are outlined below:

Affiliation of CFM, CBBM, and Deribit with Coinbase Global. The CFM Relief is conditioned on CFM, CBBM, and Deribit remaining wholly-owned subsidiaries of Coinbase Global. The CFTC viewed this as providing protections and transparency to CFM's customers, including because Coinbase Global is a public reporting company, subject to SEC reporting obligations, including annual financial reports, quarterly financial information, and prompt disclosures of specified material events and internal financial reporting controls under the Sarbanes-Oxley Act.[58] In addition, CFM is required to ensure that CBBM and Deribit agree to handle digital assets subject to controls "integrated at the consolidated entity level as part of an affiliated group that includes a U.S. public reporting company."[59]

Additional Disclosure. CFM must make available to its customers additional information and assurances about CBBM and Deribit. This includes making available Deribit's annual audited financial statements and SOC2 reports. CFM is also required to provide additional disclosure statements to its customers, in addition to requirements under Rule 1.55(b) and 30.6, including disclosure that describes the transactions and funds flow, the role of each affiliated entity involved, and Deribit's default management framework.[60]

Conditions Consistent with NAL 25-38. CFM must ensure that CBBM and Deribit enter into an agreement "consistent in substance" with the Acknowledgment Letter in CFTC Regulations Part 30, that customer digital assets are used or re-used by CBBM solely for the purpose of margining or security obligations under

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[57] The relief under CFTC Letter 26-05 is subject to certain conditions, including that:

- with respect to collateral held in customer futures and cleared swaps accounts, the digital asset is accepted as collateral or for settlement by a registered DCO;
- with respect to collateral held in a customer foreign futures account under CFTC Regulation 30.7, the digital asset is either (i) accepted as collateral or for settlement by a registered DCO or a foreign clearing organization that has implemented the Recommendations for Central Counterparties, or (ii) is a payment stablecoin or an underlying commodity of a futures contract listed on a CFTC-registered DCM;
- the FCM generally values the collateral pursuant to the valuation applied by the applicable DCO or foreign clearing organization (including any haircuts applied by the DCO), and for payment stablecoins and other digital assets collateral held in a foreign futures account that are not accepted by a DCO or foreign clearing organization, the FCM shall generally take into account the fair market value of such collateral, and shall apply a haircut consistent with the FCM's policies and with CFTC Regulations (Staff Letter 26-05 provides further detail on how different types of digital assets should be valued for collateral purposes)
- if an FCM accepts a digital asset other than a payment stablecoin as collateral for a position that is both based on and denominated in that digital asset, the FCM shall be required to apply any applicable haircut only to the extent the digital asset offsets an under margined amount or a customer deficit in such a contract;
- with respect to digital assets that are not Bitcoin, Ether, or payment stablecoins, the FCM submits revised risk management policies and procedures to MPD before accepting such assets as collateral;
- for the first three months following the commencement of the FCM's reliance on the relief, the FCM only accepts digital assets collateral in the form of payment stablecoins, Bitcoin, and Ether;
- the FCM files a notice of intent to the MPD before relying on the relief, and makes certain reporting to the MPD for the first three months following the commencement of the FCM's reliance on the relief (starting with the calendar month following the month that the FCM files its notice of intent with the MPD).

[58] The CFTC cited Section 404 of the Sarbanes-Oxley Act, which requires publicly traded companies to regularly assess and report on their internal controls over financial reporting. *See* CFM Relief, at 12; 15 U.S.C. § 7262.

[59] *Id*. at 15.

[60] *Id*. at 14-15.

foreign futures and foreign options, and that the right of re-use is authorized or required under the local regulatory regime applicable to CBBM or Deribit or rules of Deribit. These conditions effectively extend the relief granted in CFTC Letter 25-38 for securities collateral in the context of foreign futures and foreign options to crypto assets. One notable difference is that, ordinarily, foreign brokers may hold 30.7 customer collateral on an omnibus basis. As part of the CFM Relief, that will continue to be the case but CBBM commits to keeping a pseudonymized subaccount for each CFM customer. This does not change the legal rights or protections for CFM customers.[61]

D. 24/7 Trading, Clearing, and Related Operations

The perpetual contracts approved by the CFTC trade on a 24/7 basis. In connection with the approval of these products, the Divisions also issued the 24/7 Advisory, which sets out their regulatory expectations for DCMs, SEFs, DCOs, and FCMs considering 24/7 trading, clearing and related operations. The 24/7 Advisory relates to 24/7 trading, clearing, and settlement for all asset classes.

For trading venues such as DCMs and SEFs, the 24/7 Advisory emphasizes the need for robust real-time monitoring, surveillance, and risk controls to address potential manipulation, disruptions, and operational risks in a continuous trading environment. The Divisions warned that thinly traded off-hours markets create greater opportunities for manipulation, front-running, and wash trading, and venues must demonstrate that their automated surveillance and circuit-breaker mechanisms are calibrated for those conditions. The 24/7 Advisory also calls for high-availability infrastructure with no single points of failure, redundant systems, real-time data synchronization, and the ability to perform rolling upgrades and live cutovers without interrupting markets.[62]

For DCOs, the 24/7 Advisory highlights the importance of appropriately calibrating margin requirements, managing liquidity and financial resources, and addressing the risks associated with weekend trading and potential divergence between trading and clearing cycles, and mentions the use of liquidity buffers and the pre-funding of initial margin ahead of extended trading hours as mechanisms DCOs may use to address such risks.[63] The 24/7 Advisory notes that extended trading hours may or may not be paired with a similar extension of hours for clearing services, and describes several models for how these two functions might be synchronized.[64]

For FCMs, the 24/7 Advisory underscores the need to maintain customer fund segregation, enhance risk management processes, provide appropriate customer disclosures, and ensure sufficient operational staffing and infrastructure. In addition, FCMs must update their customer risk disclosures under CFTC Regulation 1.55 to address these dynamics. FCMs must also evaluate whether their front-office and back-office systems, as well as third-party service providers, can operate continuously, including during overnight and weekend hours.[65]

In addition, the 24/7 Advisory notes that derivatives referencing crypto assets "may be well-suited for 24/7 trading due to their digital infrastructure and global reach, while other derivatives markets, such as in agricultural products, may be less suited for 24/7 trading due to their unique customer bases, regional

[61] These subaccounts are maintained for recordkeeping purposes, but the CFM Relief states that this structure does not "afford CBBM any direct legal rights against, or operational contact with, any individual [FCM] customer." CFM Relief, at 4.
[62] 24/7 Advisory, at 4.
[63] 24/7 Advisory, at 6-7. In connection with its offering of 24/7 trading in cryptocurrency futures and options, CME generally requires that participating clearing members pre-fund initial margin ahead of extended trading hours. *See* CME Clearing & Global Operations Summary of Requirements and Guidelines for Cryptocurrency Trading and 24x7 Clearing (Apr. 2026), available at https://www.cmegroup.com/clearing/files/cryptocurrency-guidelines.pdf.
[64] 24/7 Advisory, at 5-8.
[65] 24/7 Advisory, at 10-11.

nature, and the specialized trading and hedging practices in those markets."[66]

The Energy Markets RFC also contains a number of questions related to the impact of 24/7 trading in standard futures contracts, including questions related to the risk management of contracts that trade on a 24/7 basis[67] and related to the impact of 24/7 pricing on related markets and benchmarks.[68]

IV. What the CFTC's Recent Actions Mean for Other Asset Classes

The Policy Statement acknowledges that perpetual contracts, and the related 24/7 trading, may not be suitable for all asset classes, and as noted above the scope of the Kalshi Order and CFM Relief are limited to perpetual futures contracts that reference Bitcoin and similarly situated digital commodities that have "deep, active, and continuous" spot markets.[69]

For other asset classes, the Commission has stated that the case-by-case review process detailed in CFTC Regulation 40.3 is appropriate and that each asset class "will raise different considerations and merit independent analysis and review based on their unique circumstances."[70] Similarly, the 24/7 Advisory notes that derivatives referencing crypto assets may be well-suited for 24/7 trading, while other derivatives markets (such as markets in derivatives referencing agricultural products), may be less suited for 24/7 trading.[71]

As mentioned above, the Product RFC also includes a question regarding the characterization of perpetual contracts that reference equity security underliers.[72] In addition, in the Energy Markets RFC, the CFTC asks a number of questions related to the potential offering of perpetual contracts that refence energy commodity underliers, including questions regarding issues related to position limits, storage and delivery that arise in connection with energy commodity derivatives and that are not present in the cryptocurrency context.[73] The CFTC also asks regarding whether "access to perpetual contracts on energy commodities [should] be limited to certain categories of participants, such as eligible contract participants," and regarding what "objective and generally applicable criteria should the Commission consider in determining whether a given underlying commodity can support a perpetual contract consistent with the Core Principles…."[74]

[66] 24/7 Advisory, at 2.

[67] In this regard, the CFTC asks regarding "what real-time or tokenized payment infrastructure, if any, would be integrated into the clearing process to satisfy required margin payments when traditional payment systems are unavailable," and regarding "what procedures would be available to clearing members and other participants that do not hold digital or tokenized assets to meet a margin obligation arising when traditional payment systems are unavailable." Energy Markets RFC, at 8-9.

[68] For instance, the CFTC asks whether "prices established during weekends or extended trading hours trigger contractual provisions within over-the-counter derivatives markets," and whether "prices established during extended trading hours [may] affect physical commercial contracts in the real economy where futures prices are incorporated through [certain mechanisms]." *Id*. at 10-13. On July 9, 2026, the CFTC stayed the self-certification by New York Mercantile Exchange, Inc. (NYMEX), a subsidiary of CME, of a crude oil futures contract that NYMEX intended to offer for trading on a 24/7 basis, citing the need to gather additional information in connection with the open questions raised by the CFTC in the Energy Markets RFC regarding the impact of 24/7 trading in energy markets. *See* In the Matter of the 10-Barrel WTI Crude Oil futures contract self-certified by the New York Mercantile Exchange, Inc. under Commission Regulation 40.2, Order Instituting Proceedings and Staying the Listing of the Contract Under Commission Regulation 40.2(c) (Jul. 9, 2026), available at https://www.cftc.gov/media/14306/OrderProceedingStayingSelfCertification070926/download.

[69] Kalshi Order, at 8; CFM Relief, at 8. Since the approval of Kalshi's BTCPERP contracts, Kalshi has listed perpetual futures contracts on a number of other digital assets pursuant to the self-certification process under 17 C.F.R. § 40.2, including perpetual futures contracts on Ethereum, Hyperliquid, Solana, XRP, Chainlink, Bitcoin Cash, Sui, Litecoin, Dogecoin, and Shiba Inu. *See* Kalshi, All perpetuals, available at https://kalshi.com/perps.

[70] Policy Statement, at 33161.

[71] 24/7 Advisory, at 2.

[72] Product RFC, at 13.

[73] Energy Markets RFC, at 13-22.

[74] *Id*. at 22.

Certain trading venues are already exploring perpetual contracts on assets other than digital commodities.[75] Pursuant to the Policy Statement, DCMs seeking to offer perpetual futures contracts for asset classes other than digital commodities would seemingly have to engage with CFTC staff and follow the approval process under CFTC Regulation 40.3.

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[75] *See* Coinbase, The Future of Gold and Silver Trading is on Coinbase (May 6, 2026), available at https://www.coinbase.com/blog/the-future-of-gold-and-silver-trading-is-on-coinbase.