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## CFTC Staff Seeks Public Comment on 24/7 Trading and Perpetual Contracts in Derivatives Markets

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### Introduction

On April 21, 2025, Commodity Futures Trading Commission (“CFTC”) staff issued two Requests for Comment (“RFCs”) aimed at gathering public input on emerging areas of interest in the derivatives markets.<sup>1</sup>

The first RFC addresses the potential implementation of trading on a 24/7 basis and related potential effects on clearing operations by designated contract markets (“DCMs”), swap execution facilities (“SEFs”), and futures commission merchants (“FCMs”). The second RFC focuses on the emergence and proliferation of perpetual futures contracts—derivative instruments often linked to digital assets that do not have a set expiration date and allow traders to maintain leveraged positions indefinitely without settlement. The CFTC is soliciting feedback on the unique characteristics of these contracts, their impact on market dynamics, and the adequacy of existing regulatory frameworks to address associated risks.

This is not the first time that CFTC staff have explored the potential implementation of trading on a 24/7 basis. During an October 16, 2024, roundtable discussion, CFTC Division of Clearing and Risk staff asked questions regarding the challenges of 24/7 trading and what staff should consider to make the model “palatable and safe.”<sup>2</sup> This is also not the first time that CFTC staff have used an RFC to collect a wide range of opinions about a particular topic. CFTC staff previously issued RFCs on topics such as artificial intelligence and affiliations of CFTC-registered entities.<sup>3</sup>

Comments for both RFCs must be received by the CFTC on or before May 21, 2025. CFTC staff will use the feedback to “to better inform them on the potential uses, benefits, and risks” of 24/7 trading and perpetual contracts in the derivatives markets the CFTC regulates.

Members of WilmerHale’s Futures and Derivatives Practice are actively evaluating the RFCs on behalf of clients and welcome the opportunity to answer any questions you may have in considering responses to the CFTC’s inquiries.

## **24/7 Trading**

The “Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis”, issued by the CFTC’s Divisions of Market Oversight, Clearing and Risk, and Market Participants, aims to inform CFTC staff about the operational, regulatory, and risk management implications of continuous market operations in derivatives markets. The RFC states that CFTC staff recognize “that technological advancements and market demand are prompting certain DCMs and SEFs to provide trading services on a 24/7 basis.” The questions raised in the RFC focus on areas such as market liquidity, collateral access, operational resilience, and risk management.

### *Trading on a 24/7 Basis*

As stated in the RFC, CFTC staff acknowledge that extending trading hours to a continuous, 24/7 model could enhance market access and innovation. However, as discussed in the RFC, such a shift raises concerns about system reliability, market integrity, and compliance with regulatory obligations. In the RFC, CFTC staff seek feedback on several key areas:

- Trading platforms must ensure that their systems remain resilient and reliable without the benefit of extended downtime for maintenance and upgrades. Continuous operations may increase the risk of unplanned outages and complicate patch management.<sup>4</sup>
- Market participants must be able to maintain effective market surveillance capabilities to detect, prevent, and respond to abusive trading practices, such as front-running, wash trading, and other manipulative behaviors, in a continuous trading environment.<sup>5</sup>
- Governance and staffing models must be adapted to support operations at all hours, including the availability of compliance, risk, and technology staff, as well as coordination with third-party service providers during non-standard hours.<sup>6</sup>
- DCMs and SEFs must assess how their continuous operations comply with regulatory requirements, including Core Principle 20 on system safeguards<sup>7</sup> and Core Principle 14 on business continuity and disaster recovery planning.<sup>8</sup>

### *Clearing for 24/7 Trading*

The RFC notes that the extension of trading hours to a continuous model necessitates corresponding adjustments in the availability and functionality of clearing services. CFTC staff is evaluating how market participants can adapt to support this shift while maintaining robust risk management and compliance standards, specifically considering a few key areas. First, DCOs must use tools and procedures to manage risks continuously, including setting and collecting margin sufficient to cover potential exposures that arise during off-hours trading.<sup>9</sup> FCMs and liquidity providers must also be prepared to support 24/7 operations by maintaining staffing, systems, and capital resources necessary to manage risk, execute trades, and meet margin calls at any time of the day.<sup>10</sup> In addition, DCOs must ensure that they remain in compliance with regulatory requirements under the Commodity Exchange Act and CFTC regulations, particularly those related to default management, liquidity resources, and system safeguards, despite the challenges posed by continuous operations.

The questions posed in the RFC on 24/7 trading generally cover the following areas with respect to

derivatives market participants:

1. **Operational Challenges:** Exploring the technical and logistical challenges of implementing 24/7 trading and clearing, including system maintenance, staffing, and coordination with third parties.
2. **Risk Management:** Assessing how market participants can manage financial and operational risks associated with continuous operations, including margin requirements and default management.
3. **Regulatory Compliance:** Evaluating how DCMs, SEFs, DCOs, and FCMs can fulfill their operations, including adherence to Core Principles and other regulatory requirements.
4. **Market Integrity and Surveillance:** Considering the effectiveness of market surveillance and enforcement mechanisms in a 24/7 environment, including detection and prevention of abusive trading practices.
5. **Customer Protection:** Ensuring that customer interests are safeguarded in a continuous trading and clearing environment, including access to support and the management of customer risk exposures.

In addition to the detailed questions in the RFC as summarized herein and set forth in the attached appendix, CFTC staff requests general feedback on any areas of interest which are not covered by the questions enumerated in the RFC and any areas of key interest or concern where 24/7 trading may negatively impact market integrity, customer protection, or retail trading.

### **Perpetual Derivatives**

The “Request for Comment on the Trading and Clearing of ‘Perpetual’ Style Derivatives”, also issued by the CFTC’s Divisions of Market Oversight, Clearing and Risk, and Market Participants, seeks information regarding the characteristics of perpetual contracts in derivatives markets, the impact of such contracts on trading and clearing, and the adequacy of existing regulatory frameworks to address associated risks.<sup>11</sup>

As described in the RFC, unlike traditional derivative contracts, perpetual derivative contracts do not have a set expiration: price benchmarking between the derivative and underlying instrument occurs on an ongoing basis. Market participants have been increasingly interested in perpetual derivatives as a way of gaining exposure to a given market or product class, particularly in the context of cryptocurrency and digital asset products.<sup>12</sup>

The RFC on Perpetual Derivatives, as summarized below and set forth in the attached appendix, asks questions regarding the following topics:

1. **Definition of “Perpetual Derivative”:** Creating a working definition of “perpetual derivative” and assessing how these instruments compare to traditional swaps or futures contracts.
2. **Use Cases:** Evaluating potential advantages of perpetual derivatives over traditional derivative products; considering whether perpetual derivatives provide similar opportunities for risk mitigation, price discovery, or arbitrage as traditional derivative products.
3. **Impact on Current Markets:** Identifying likely users of perpetual derivatives and assessing the impact of perpetual derivatives on existing markets and market participants; evaluating

whether perpetual derivatives adversely impact the commercial risk management purposes of traditional futures markets.

4. **Risk Management:** Identifying and evaluating the unique risks to markets and market participants related to perpetual derivatives; assessing the adequacy of existing risk disclosure and regulatory safeguards; determining whether perpetual derivatives increase customer default risk.
5. **Market Integrity and Surveillance:** Evaluating whether perpetual derivatives raise unique concerns regarding susceptibility to manipulation or surveillance.

## **Questions in the CFTC's Requests for Comment**

### **24/7 Trading**

CFTC staff requests comment on the following questions related to trading and clearing on a 24/7 basis.

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?

### **Perpetual Derivatives**

The Staff requests comment on the following questions related to Perpetual Derivatives.

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?

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1. Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis (Apr. 21, 2025), [https://www.cftc.gov/media/12036/24\\_7\\_RFC042125/download](https://www.cftc.gov/media/12036/24_7_RFC042125/download) ("RFC on 24/7 Trading"); Request For Comment On The Trading And Clearing Of "Perpetual" Style Derivatives (Apr. 21, 2025), [https://www.cftc.gov/media/12041/Perpetuals\\_RFC042125/download](https://www.cftc.gov/media/12041/Perpetuals_RFC042125/download) ("RFC on Perpetual Derivatives").
  2. Roundtable on Existing, New, and Emerging Issues in Clearing (Oct. 16, 2024), [https://www.cftc.gov/sites/default/files/2025/01/1736284603/dcr\\_roundtable\\_transcript101624](https://www.cftc.gov/sites/default/files/2025/01/1736284603/dcr_roundtable_transcript101624) at 54.
  3. CFTC Staff Releases Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities (June 28, 2023); CFTC Staff Releases Request for Comment on the Use of Artificial Intelligence in CFTC-Regulated Markets (January 25, 2024).
  4. *Id.* at 1.
  5. *Id.*
  6. *Id.* at 2.
  7. 17 C.F.R. § 38.1050. "Core Principles" refer to the fundamental regulatory requirements that CFTC-registered entities including DCMs, SEFs and DCOs must comply with to obtain and maintain their designation or registration with the CFTC. See, e.g., 17 CFR Parts 37, 38 and 39.
  8. 17 C.F.R. § 37.1400.
  9. RFC on 24/7 Trading at 2.
  10. *Id.* at 2-3.
  11. RFC on Perpetual Derivatives at 1.
  12. *Id.*

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