

February 24, 2026

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

**Re: Petition for an Order under Section 4(c) of the Commodity Exchange Act:
Trading and Clearing of Perpetual Derivatives on Digital Assets**

Dear Mr. Kirkpatrick:

The Blockchain Association (“BA”) and its members respectfully petition the Commodity Futures Trading Commission (the “CFTC” or “Commission”) to issue an order under Section 4(c) of the Commodity Exchange Act (“CEA”) exempting perpetual futures (sometimes called “perpetual contracts,” “perpetual derivatives,” or simply “perpetuals”) on digital asset commodities with 24/7 spot markets from all requirements applicable to swaps under the CEA and CFTC regulations on the condition that they will be subject to all requirements applicable to futures contracts. As Chairman Selig recently stated, perpetuals are “widely used tools for risk management and price discovery” with “clear market demand.”¹ Yet regulatory barriers prevent them from flourishing in the United States. This petition is an opportunity for the Commission to remove those barriers to allow perpetuals to trade, as the Chairman put it, under a “transparent and workable framework[.]”² Certain other limited relief will also be required to align applicable futures regulations with the unique characteristics of these instruments. BA recognizes that on-chain perpetuals may raise distinct considerations, and nothing in this petition should be read as expressing a view on the appropriate regulatory treatment of on-chain decentralized perpetual exchanges.

BA is the leading nonprofit membership organization dedicated to advancing a pro-innovation policy environment for the digital asset industry. BA is composed of over 130 members, including leading software developers, infrastructure providers, investors, and others supporting the public blockchain ecosystem. BA works with its diverse, broad-based membership to seek regulatory clarity and to educate policymakers, regulators, and the

¹ *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (January 29, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1> (“Unleashing Innovation”).

² *Id.*

courts about how blockchain technology can pave the way for a more secure, competitive, and consumer-friendly digital marketplace. As part of that mission, BA and its members have participated extensively in the Commission’s “Crypto Sprint,” including on the subject of perpetual derivatives.

I. Background

A perpetual futures contract is a standardized agreement to buy or sell an underlying asset at an unspecified future time. Because they lack an expiration or delivery date, perpetuals remain open until the position is closed by one of the counterparties. This eliminates the need for market participants who wish to maintain exposure over the long term to periodically “roll over” the position as required in traditional futures markets. It also eliminates any need for the contracts to roll automatically. Traders pay initial and then ongoing variation margin to collateralize their perpetual positions. Separate from margin, perpetuals periodically pay their holders based on a “funding rate” reflecting the difference between the contract’s price and a measure of the underlying asset’s spot price, typically at regular settlement intervals throughout the day, which is enabled in the case of digital assets by the fact that their underlying spot-markets operate 24/7. Terms can vary as to the means for calculating the settlement price, margining and liquidation mechanics, and whether the contract is linear or inverse (*i.e.*, funded or margined in fiat currency or an equivalent or in the underlying asset). When traded on an exchange or other organized market, perpetuals closely resemble futures, operating as standardized, fungible, margined instruments executed through a centralized platform with continuous mark-to-market and exchange-level risk management. The absence of final settlement on a specified date or during a specified delivery window at a predetermined price is addressed through the funding rate, which anchors prices to the underlying digital asset’s spot price. In this sense, as discussed below, perpetual futures are economically very similar to leveraged retail commodity contracts that may also have no expiry, and that are subject to futures regulation under CEA Section 2(c)(2)(D). The Commission has recently expressed strong interest in enabling U.S. exchanges to offer 2(c)(2)(D) digital asset contracts.³

Digital asset perpetuals currently are traded on exchanges and other organized markets or DeFi protocols across the world—outside of the United States. U.S. firms have not been able to offer contracts without an expiry in part due to uncertainty over whether perpetuals are more appropriately characterized as futures or swaps, and how the

³ *CFTC-SEC Joint Staff Statement (Project Crypto-Crypto Sprint)* (Sept. 2, 2025), <https://www.cftc.gov/PressRoom/SpeechesTestimony/cftcsecjointcryptostatement090225>.

Commission intends to regulate them. The result has been to stunt the development of this important digital asset class in the United States.

II. Legal Discussion

Section 4(c) of the CEA provides that, “to promote responsible economic or financial innovation and fair competition,” the Commission may exempt any class of agreement, contract, or transaction from the requirements of the Act upon finding that: (1) such exemption would be consistent with the public interest; (2) the agreement, contract, or transaction will be entered into solely between appropriate persons; and (3) such exemption will not have a material adverse effect on the ability of the Commission or contract market to discharge its regulatory or self-regulatory duties.⁴ In cases where a provision’s applicability is uncertain—as is the case here in the absence of a determination of whether perpetuals are futures or swaps—the Commission need not first determine that the provision does indeed apply.⁵ Rather, Section 4(c) “provides flexibility for the Commission to provide legal certainty to novel instruments” where that determination may not be straightforward.⁶ Finally, the Commission may grant an exemption either unconditionally or on stated terms and conditions.⁷

BA submits that Section 4(c)’s requirements are met, and the Commission should issue an order to provide that DCM-traded perpetual digital asset futures may be offered and cleared in compliance with applicable statutory and regulatory requirements for futures rather than swaps, with certain modifications discussed below to account for the perpetual nature of the contracts.

⁴ 7 U.S.C. § 6(c)(1), (2). The text of this provision only requires such findings with respect to the requirement that futures be traded on a Designated Contract Market (“DCM”). In practice, however, the Commission has applied the same factors to exemptions from regulation as swaps. See *Final Exemptive Order Regarding Compliance with Certain Swap Regulations*, 78 Fed. Reg. 858, 860-61 n.15 (Jan 7, 2013).

⁵ *Final Order in Response to a Petition From Certain ISOs and RTOs To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act*, 78 Fed. Reg. 19880, 19881-82 n.15 (Apr. 2, 2013) (“ISO/RTO Order”).

⁶ *Exemption for Bilateral Transactions*, 65 Fed. Reg. 78030, 78031-32 (Dec. 13, 2000).

⁷ 7 U.S.C. § 6(c)(1). Section 4(c) excludes certain swaps-related provisions from the Commission’s authority to issue an exemptive order. *Id.* However, because the Commission need not decide the close question of whether perpetuals are futures or swaps, it need not determine whether those provisions would apply in any event.

A. The Public Interest Favors an Exemption.

In one of his first Executive Orders, President Trump declared that it is the policy of the United States “to support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy.”⁸ Along those lines, the President’s Working Group on Digital Asset Markets (“President’s Working Group”) in its report, *Strengthening American Leadership in Digital Financial Technology* (“*Strengthening American Leadership*”), bemoaned that in recent years, innovation in the digital asset industry has migrated offshore to avoid the unfavorable regulatory environment in the United States, and announced a goal of the current Administration to reverse that trend.⁹ The Commission, in keeping with that goal, has begun its own efforts to “welcome back Americans that want to trade efficiently and safely under CFTC regulations, and open up U.S. markets to the rest of the world.”¹⁰ That is a critical goal for perpetuals on digital assets, whose trading volume overseas has grown into the tens of trillions of dollars.¹¹

In that vein, soon after taking office, then-Acting-Chairman Pham issued a Request for Comment to better inform staff on the potential uses, benefits, and risks of perpetual contracts in CFTC-regulated derivatives markets.¹² Hundreds of commenters responded, providing a wealth of information and expressing overwhelming support for a regulatory environment that will allow perpetuals to flourish safely.¹³ The President’s Working Group singled out this action for praise.¹⁴

More broadly, the President’s Working Group recommended in its report that the CFTC “use [its] existing authorit[y] to provide fulsome regulatory clarity that best keeps blockchain-based innovation within the United States.” Soon after, the (then) Acting Chairman announced that the Commission would consider using its exemptive authority for “innovation exemptions” to foster productive economic activity in the digital asset space

⁸ Exec. Ord. No. 14,178, § 1(a) (Jan. 23, 2025).

⁹ *Strengthening American Leadership*, at 6 (Jul. 30, 2025), available at <https://www.whitehouse.gov/crypto/>.

¹⁰ *Acting Chairman Pham Announces FBOT Advisory to Provide Regulatory Clarity for Non-U.S. Exchanges*, CFTC Rel. No. 9111-25 (Aug. 28, 2025).

¹¹ Qihong Ruan, *The Emerging Market of Cryptocurrencies and Perpetual Contracts* (Feb. 20, 2024), <https://business.cornell.edu/hub/2024/02/20/the-emerging-market-cryptocurrencies-perpetual-contracts/>.

¹² *CFTC Staff Seek Public Comment Regarding Perpetual Contracts in Derivatives Markets*, CFTC Rel. No. 9069-25 (Apr. 21, 2025).

¹³ *Comments for General CFTC Request for Comment on the Trading and Clearing of "Perpetual" Style Derivatives*, <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7584>.

¹⁴ *Strengthening American Leadership*, at 44.

and specifically referenced perpetual derivatives as a candidate for relief.¹⁵ Chairman Selig recently reaffirmed that “the CFTC will use the tools at its disposal to onshore perpetual and other novel derivatives products so that they can flourish across both centralized and decentralized markets, subject to appropriate safeguards.”¹⁶ The Commission should now move forward and use its authority under CEA Section 4(c) to exempt digital asset perpetuals from unnecessary and burdensome regulation as swaps and allow U.S. entities to offer and clear those products as regulated futures. This will advance the public interest articulated by the President without compromising market integrity or customer protection, which have been the hallmark of CFTC-regulated futures markets for more than a half century.

1. Utility of Perpetuals

Perpetuals represent a unique class of derivatives with distinct advantages over traditional futures and swaps.¹⁷ Most significantly, because the contract’s term is indefinite, it eliminates the operational risks and burdens of rolling positions and managing liquidity that is fragmented across contracts with different expiry dates. This, in turn, creates a smoother and more intuitive trading experience for retail customers, many of whom are drawn to perpetuals due to their simplicity.

Rolling positions in expiry futures incurs costs, which can be exacerbated by timing errors or imperfect price correlation between contract months or between futures and spot prices. The task of continuous rolling also incurs overhead and may be especially burdensome or risky for hedgers, such as digital asset miners, whose primary business is not trading. In addition, expiry futures contracts were designed to hedge risks over specific periods and may trade at different prices depending on their maturity date. Because of a lack of expiry and the use of a funding rate that enables near-continuous convergence of the spot and futures prices, liquidity in perpetual contracts is not fragmented in this same way.

Likely because of these and other advantages, overseas perpetual futures markets have attracted massive liquidity and thrived as an important source of price discovery. A recent academic study found that for bitcoin, perpetual futures on major offshore exchanges serve as the *primary* source of price discovery, even relative to regulated spot

¹⁵ *Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC*, (Sept. 5, 2025), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamatkinsstatement090525>.

¹⁶ *Unleashing Innovation*, <https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement012026>.

¹⁷ See generally Talos Comment Letter to CFTC, *Requests for Comments on the Trading and Clearing of “Perpetual” Style Derivatives and Trading and Clearing Derivatives on a 24/7 Basis* at 9-14 (May 14, 2025).

markets.¹⁸ As that study observed, this “highlights the significant influence of transaction costs” incurred in traditional futures trading that do not exist in markets for perpetuals. This beneficial economic activity now takes place entirely overseas, outside of any CFTC oversight.

2. Burdens of Offering Perpetuals Under the Swaps Regime

As the Commission knows, the specifics of futures regulation differ in many respects from the regulation of swaps. If perpetuals were regulated as swaps, there is a risk that participating in these markets would subject participants to regulation as swap dealers—a hugely expensive proposition that, considering the close similarity of these products to traditional futures, would be of no benefit to market participants and place U.S. business at a disadvantage to those overseas.

Swaps regulation would also cause U.S. businesses to incur substantial initial and recurring costs to stand up and operate a parallel compliance program, again with no benefit to market participants. These would include elements such as:

- Swap-data reporting under Part 45, when DCMs are already subject to reporting requirements for futures under Part 16 of the Commission’s regulations;
- “Real-time” public reporting under Part 43, when DCMs already publish robust futures data in exchange feeds and public order books in real time out of business necessity;
- Recordkeeping under Part 45, when DCMs are already subject to futures recordkeeping requirements under Part 38;
- Separate segregated accounts for perpetual customer property, which would offer no additional protection beyond what already exists in comprehensively regulated accounts for futures customers; and
- Additional audit burdens due to the existence of an expanded compliance program, with no corresponding benefit to the markets.

¹⁸ *Id.* (citing Riccardo Cosenza and Simon Stalder, *Where is the Price of Bitcoin Determined? Price Discovery in a Fragmented Market*, SSRN, April 9, 2025, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4983566).

3. Nothing in the CEA Prevents the Commission from Exempting No-Expiry Contracts as Futures.

Neither the CEA nor any CFTC regulation defines “futures contract” or “contract of sale of a commodity for future delivery,” the statutory term of art for futures. Customarily, futures contracts expire, but there is no statutory or regulatory requirement that they do so. Indeed, the CFTC at one point took the position that the potential for indefinite duration is “no more than a prepaid rollover privilege.”¹⁹ Accordingly, there is nothing in the CEA to preclude the Commission from regulating a no-expiry contract as a future. Nor is there any policy reflected in the CEA militating against doing so. To the contrary, in one closely analogous context, the Commission *must* regulate an open-ended contract as a future: leveraged, retail commodity transactions under CEA Section 2(c)(2)(D).²⁰

In the Dodd-Frank Act, Congress established—in the very same legislation as its sweeping reforms of the nation’s swaps markets—that where a “transaction in a[] commodity” is “offered ... on a leveraged or margined basis” to “a person that is not an eligible contract participant,” that transaction is subject to CEA Sections 4(a), 4(b), and 4b, “as if ... it was a contract of sale of a commodity for future delivery.”²¹ There is an exception, however, for transactions that “result[] in actual delivery” of the commodity “within 28 days.”²² If there is no delivery within that window—or conceivably ever—CEA Sections 2(c)(2)(D), 4(a), 4(b), and 4b operate collectively to import virtually the entire regulatory regime for futures. Thus, rather than any policy *against* regulating no-expiry contracts as futures, Section 2(c)(2)(D) reflects a specific determination by Congress that indefinite duration is a reason to regulate those transactions as futures.²³

As noted, the Commission is currently undertaking an effort to enable DCMs to offer Section 2(c)(2)(D) digital asset contracts on regulated exchanges.²⁴ Theoretically, a DCM could structure a digital asset product as an indefinite Section 2(c)(2)(D) transaction by

¹⁹ *Chicago Mercantile Exchange v. SEC*, 883 F.2d 537, 546 (7th Cir.1989); see also *CFTC v. Int’l Foreign Currency, Inc.*, 334 F. Supp. 2d 305 (2004) (“While futures contracts generally have a specified future delivery date that date is not always specified thus allowing some futures contracts to be of indefinite duration.” (cleaned up)).

²⁰ 7 U.S.C. § 2(c)(2)(D).

²¹ *Id.* § 2(c)(2)(D)(i), (iii).

²² *Id.* § 2(c)(2)(D)(ii)(II)(aa).

²³ The fact that a given perpetuals transaction might be “in the contract” rather than “in” the commodity itself is all the more reason to treat it as a future. See *CFTC v. Zelener*, 373 F.3d 861, 865 (7th Cir. 2004).

²⁴ *CFTC and SEC Staff Issue Joint Statement on Trading of Certain Spot Crypto Asset Products*, <https://www.cftc.gov/PressRoom/PressReleases/9112-25> (Sept. 2, 2025).

papering it as a contract for a spot sale of a digital commodity on leverage, deliverable solely at the election of the parties. But, BA submits, that would be pointless and do nothing to protect market participants. It would also hinder markets from offering cash-settled perpetuals, which are common and thriving overseas. The same pro-innovation, pro-competition, and pro-consumer policies that underlie the Commission’s favorable view of regulating Section 2(c)(2)(D) transactions in digital assets as futures apply with equal force to perpetual digital asset derivatives.

4. Overseas Competition

The public interest in fair competition with foreign markets also favors allowing perpetuals to trade and be cleared as futures. Overseas, markets for perpetuals have blossomed as deep and liquid sources for digital asset exposure. Exchanges offering perpetuals in foreign jurisdictions have enjoyed great success—reported valuations in excess of \$1 billion are common.

The currently unclear status of perpetuals, and in particular the potential that the CFTC will regulate them as swaps, is hindering domestic businesses from offering perpetuals to willing retail and institutional market participants. This is precisely the sort of unfair and inefficient regulatory outcome this Administration has vowed to address, and that Section 4(c) empowers the Commission to prevent.

B. Perpetual Futures Will Be Entered into Solely Between Appropriate Persons.

CEA Section 4(c)(3) lists several classes of “appropriate persons” for transactions subject to an exemption. These include financial institutions, insurance companies, large businesses, government entities, and, as most relevant here, “[s]uch other persons that the Commission determines to be appropriate in light of ... the applicability of appropriate regulatory protections.”²⁵

The Commission has many times found that “appropriate regulatory protections” exist where transactions are subject to regulation by other federal agencies.²⁶ Here, all market participants would be protected by the CFTC *itself* under the futures regime, along with registered entities in their capacities as self-regulatory organizations (“SROs”), and in some respects the National Futures Association (“NFA”). It is well recognized that futures regulation in the United States is the global gold standard. Especially in light of the

²⁵ 7 U.S.C. § 4(c)(3).

²⁶ See, e.g., *Order Exempting the Trading and Clearing of Certain Products Related to iShares COMEX Gold Trust Shares and iShares Silver Trust Shares*, 73 Fed. Reg. 79830, 79831 (Dec. 30, 2008) (Securities and Exchange Commission).

Commission’s historical findings that *other* regulators can provide oversight of important markets, there is no question that individuals trading perpetuals under CFTC, SRO, and NFA futures regulation will enjoy “appropriate regulatory protections.”

C. An Exemption Will Have No Material Adverse Effect on the Ability of the Commission or Contract Markets to Discharge Their Regulatory or Self-Regulatory Duties.

For the same reasons, an exemption to allow perpetuals to trade and be cleared as futures would have no material adverse effect on the ability of the Commission or any contract market to discharge their regulatory or self-regulatory duties. To permit this activity under the futures regime rather than requiring exchanges to adapt their SRO functions to swaps regulation would enable them to continue with what they already know best. This will support, rather than adversely affect, their ability to discharge their obligations.

III. Additional Exemptive Relief

Several regulations use terms that apply only to expiring futures contracts, such as “delivery month” or “contract month.” Because digital asset perpetuals have no such end point, the Commission’s exemptive order should specify alternative requirements as follows:²⁷

- Rule 1.35(g)(1) – requires each member of a DCO to maintain records of each futures transaction executed on a DCM, including the delivery month. The Commission should allow DCO members to omit the delivery month with respect to perpetual futures on digital assets.
- Rules 4.23(a)(1) & (2) – require a commodity pool operator (“CPO”) to maintain an itemized daily record of each futures transaction undertaken by each pool, each CPO, and each principal, including the delivery month. The Commission should allow CPOs and their principals to omit the delivery month with respect to perpetual futures on digital assets.
- Rule 4.23(f)(1) – requires each member of a DCM to promptly create and maintain a record of each futures transaction, including the delivery month. The Commission should allow DCM members to omit the delivery month with respect to perpetual futures on digital assets.

²⁷ These regulations all cover several classes of transaction, including swaps, that may also not have a delivery date or the equivalent, so market participants do not record one. It may therefore be the case already that no such record would be required for perpetual futures. In the context of a product that will be regulated as a futures contract, however, the Commission should make that clear to avoid any confusion.

- Rule 4.33(b)(1) – requires a commodity trading adviser (“CTA”) to maintain an itemized daily record of each futures transaction, including the “delivery month.” The Commission should allow CTAs to omit the delivery month with respect to perpetual futures on digital assets.
- Rule 17.00(a)(1) – with respect to large trader reporting, requires a Futures Commission Merchant (“FCM”) to show all positions in all contract months for the same commodity on the same reporting market. The Commission should state that an FCM should report all perpetual digital asset futures positions for the same underlying digital asset.
- Part 38, Appendix C, (c)(3)(v) – states that it is an acceptable practice for a DCM to make a futures contract’s “final cash settlement price” public as soon as possible after a “contract month’s expiration.” The Commission should state that it is an acceptable practice for a DCM to make a perpetual digital asset future’s settlement price public as soon as possible after each periodic settlement.

IV. Conclusion and Request for Relief

To advance the Administration’s goal of bringing digital asset products back from foreign jurisdictions safely and subject to reasonable regulation, the Commission should exercise its exemptive authority under Section 4(c) to provide the foregoing relief.²⁸

If the Commission or its staff have any questions or require further information regarding this submission, please do not hesitate to contact me.

Respectfully submitted,

The Blockchain Association

By: Ashok Pinto

Executive Vice President, Legal and Government Affairs

²⁸ To ensure proper tax treatment with respect to perpetuals, BA recommends that the Commission coordinate with the Department of the Treasury.