6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Policy Statement Concerning the Listing of Perpetual Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Policy Statement.

SUMMARY: This policy statement describes the views of the Commodity Futures Trading Commission (the "CFTC" or "Commission") concerning the listing of perpetual contracts. Contemporaneously with the issuance of this policy statement, the Commission has issued an order (the "Order") permitting the listing of a perpetual contract that references the spot price of bitcoin by a designated contract market ("DCM") as a futures contract. Given the unique characteristics of perpetual contracts, which tend to vary based on the underlying asset they reference, the Commission is of the view that the case-by-case review process detailed in Commission Regulation 40.3 is appropriate for the listing of perpetual contracts that reference asset classes that are not contemplated in the Order.

DATES: The Commission's policy statement is adopted as of May 29, 2026.

FOR FURTHER INFORMATION CONTACT: Roger Smith, 202-418-5344, *rsmith@cftc.gov*, Division of Market Oversight, Commodity Futures Trading Commission, 77 West Jackson Blvd., Suite 800, Chicago, Illinois 60604 or Stephen Andrews, Deputy General Counsel for Regulation, 202-308-7563, *sdandrews@cftc.gov*, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Perpetual contracts are derivative contracts that have no fixed expiration date, and which rely on a periodic funding rate mechanism, rather than a fixed expiration date, to maintain relative price parity with the underlying asset's spot price. Perpetual contracts have become a dominant form of crypto derivative trading in global markets. However, given the regulatory uncertainty concerning the appropriate classification of these types of contracts in the U.S. derivatives markets, the market for perpetual contracts has largely developed outside of the United States, with the majority of trading occurring on offshore trading venues.

The Commission has taken a series of steps over the past year to develop a workable domestic framework for these products. On April 21, 2025, Commission staff issued a Request for Comment on the Trading and Clearing of "Perpetual" Style Derivatives (the "Request").[1] The Request solicited public input on the characteristics, use cases, regulatory classification, and risks of perpetual contracts. The Request was issued in conjunction with a Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis, which sought public input on the operational, surveillance, clearing, and margin implications of extending CFTC-regulated derivatives trading to a continuous basis.[2]

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[1] CFTC Release No. 9069-25, *Request for Comment on the Trading and Clearing of "Perpetual" Style Derivatives* (April 21, 2025).

[2] CFTC Release No. 9068-25, *Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis*, (April 21, 2025).

On July 30, 2025, the President's Working Group on Digital Asset Markets issued its report, Strengthening American Leadership in Digital Financial Technology (the "PWG Report").[3] The PWG Report recommended that the Commission and the U.S. Securities and Exchange Commission permit eligible market participants to access derivatives, including perpetual contracts, through regulated intermediaries and that the agencies use existing exemptive and interpretative authorities to provide near-term clarity for innovative derivatives products.

As discussed, this policy statement is being released in conjunction with the Order,[4] which approved the listing of a perpetual contract that references the spot price of bitcoin by a DCM as a futures contract. The Commission issues this policy statement to articulate, for the benefit of registrants, market participants, and the public, its view that perpetual contracts that reference underlying asset classes that are not contemplated in the Order[5] should be submitted for Commission review and approval pursuant to the voluntary product approval process under Commission Regulation 40.3.[6]

This policy statement is a general statement of policy issued under 5 U.S.C. 553(b)(A). It does not impose any obligation on any person, modify or supersede any provision of the Commodity Exchange Act ("CEA") or the Commission's regulations

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[3] President's Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology* (July 30, 2025), available at *https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf*.

[4] *See* Order Approving KalshiEX LLC BTCPERP Futures Contract, May 29, 2026.

[5] These types of asset classes include, but are not limited to, agricultural products, precious metals, equity securities, and narrow-based security indexes. Each asset class will raise different considerations and merit independent analysis and review based on their unique circumstances. For example, perpetual contracts are likely particularly ill-suited for agricultural products based on the considerations identified in the Order, while perpetual contracts that reference equity securities or narrow-based security indexes, among others, would benefit from review by the Commission and the U.S. Securities and Exchange Commission.

[6] 17 CFR 40.3.

thereunder, create any right or benefit enforceable at law or in equity, and is not subject to the notice-and-comment requirements of the Administrative Procedure Act. Each contract submitted to the Commission under part 40 will continue to be evaluated on its own terms.

II. The Structural Distinctiveness of Perpetual Contracts

Traditional futures contracts rely primarily on a fixed expiration date to achieve convergence with the underlying asset's spot price. Futures contracts have emerged as a primary instrument in the U.S. derivatives markets for hedgers and traders to effectively secure a price for an asset today in connection with a transaction that will occur in the future. Price convergence with the underlying spot price at expiration is thus inherent to the design of a traditional futures contract and ultimately what makes them a useful instrument for hedging and price discovery.

A perpetual contract has no fixed expiration date through which it can achieve convergence. It therefore requires a substitute mechanism to maintain relative price parity with the underlying spot price of the asset that it references. The mechanism that has emerged in the global crypto asset markets is known as a funding rate, or a periodic payment between the long and short sides of the contract, the direction and magnitude of which is generally determined by the difference between the perpetual contract's market price and the underlying asset's spot price. When 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. These payments are intended to create an economic incentive for market participants to arbitrage away the price differential by opening positions on whichever side of the market is accruing the payments. In this way,

the funding rate is designed to keep closely aligned a perpetual contract's price to the underlying asset's price and functions as a replacement to the traditional expiration-based convergence mechanism upon which a futures contract typically relies.

Perpetual contracts raise novel and complex questions relating to market structure, customer protection, resilience during periods of market stress, and consistency with the Core Principles applicable to registrants under the CEA. For example, a perpetual contract's design and characteristics raise important considerations with respect to DCM Core Principle 3, which requires that a DCM list only those contracts that are not readily susceptible to manipulation.[7] For a traditional, cash-settled futures contract, the susceptibility-to-manipulation analysis directed at the cash settlement reference price is an analysis of one moment in time: the settlement reference price must be reliable at expiry. For a perpetual contract, however, the reference must be reliable at every funding interval, without interruption, for as long as the contract remains active.

It is therefore the Commission's view that perpetual contracts that reference asset classes that are not contemplated in the Order should be submitted for Commission review and approval pursuant to the voluntary product approval process under Commission Regulation 40.3.

The Commission notes that Regulation 40.2 permits registrants to self-certify new products where the submitting registrant determines that the product complies with the CEA and Commission regulations thereunder.[8] However, given the novel characteristics of perpetual contracts, including their lack of a traditional expiration date and the

[7] 7 U.S.C. 7(d)(3); *see also* 17 CFR part 38, app. C.

[8] 17 CFR 40.2.

complex questions concerning, among others, market structure and customer protections, the Commission believes that the public interest is best served by requiring perpetual contracts that reference assets that are not contemplated in the Order to undergo Commission review and approval pursuant to Commission Regulation 40.3.

III. Submissions Under Commission Regulation 40.3

The Commission believes that the Commission Regulation 40.3 process provides important benefits for regulators, market participants, and the public. Prior review promotes transparency, facilitates engagement between Commission staff and registrants during product development, and provides greater regulatory clarity for market participants and members of the public seeking to responsibly innovate within the CFTC's regulatory framework.

In accordance with the purpose of the CEA, the Commission remains committed to promoting responsible innovation and fair competition in the U.S. derivatives markets.[9] The Commission believes that clear regulatory pathways and transparent supervisory expectations are essential to ensuring that emerging technologies and novel financial products can develop responsibly within regulated U.S. markets rather than migrating to less regulated jurisdictions outside of the United States.

This policy statement is intended solely to provide the Commission's views concerning the listing of perpetual contracts and does not alter or amend the CEA or the Commission's regulations thereunder. Nothing in this policy statement is intended to be binding or foreclose the possibility that, on appropriate facts and contract design, the Commission might in the future address perpetual contracts through separate policy

[9] 7 U.S.C. 5(b).

statements, interpretative guidance, or the rulemaking process; the Commission makes no determination as to that possibility here.

Issued in Washington, D.C., on May 29, 2026, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.