

Submitted via CFTC Comments Portal

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

May 21, 2025

Re: Request for Comment on Perpetual Derivatives

Dear Secretary Kirkpatrick:

The Digital Chamber (“TDC”) respectfully provides this submission in response to the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) April 21, 2025 Request for Comment on the regulatory treatment of perpetual derivatives. Formed in 2014, TDC is the world’s largest digital asset and blockchain trade association. We represent more than 200 companies innovating in the digital asset and blockchain industry and advocate for policies that foster responsible innovation, protect market participants, and support the long-term growth of the digital asset ecosystem.

Our members include leading blockchain technology companies, digital asset platforms, law firms, and financial institutions that are building the infrastructure for a decentralized, global financial future. Many of our members or their affiliates already operate perpetuals, and we therefore are uniquely positioned to provide technical expertise on these subjects and would welcome further discussions.

Based on this experience, we write to express our strong support for the responsible listing and trading of perpetual derivatives within the digital asset markets. Perpetual derivatives, when properly designed and regulated, can provide significant benefits to participants in the digital asset space, and we believe that such trading would increase accessibility, foster innovation, and further the United States’ competitive position as a leader in digital finance. While we do not take a position on the appropriateness of perpetuals for traditional futures markets such as agricultural and energy commodities, we do believe some of the views expressed herein may apply in those markets as well.

1. What is an appropriate working definition of “perpetual derivative?”

A perpetual derivative is a financial instrument that allows for continuous exposure to the price of an underlying asset without a predefined expiration date or with an expiration date far in the future. Key characteristics include: (a) margining with frequent funding payments, (b) absence of a settlement date, and (c) price anchoring to spot via a funding rate mechanism.

1a. Characteristics required for a perpetual derivative

To qualify, the product must lack an expiration date or have an expiration date far in the future, use a funding mechanism to anchor to the spot price, and, ordinarily, allow for ongoing rollover of positions without physical delivery. It is possible, however, that a perpetual futures contract may require physical delivery if there is an expiration date.

1b. Taxonomy of perpetual derivatives

Perpetuals may be classified by the nature of their pricing mechanism (e.g., fixed funding vs. variable funding), underlying asset class (e.g., digital assets, indices), and margin structure (e.g., cross or isolated).

1c. Distinguishing perpetual futures from other perpetual derivatives

Perpetual futures use funding rates to maintain price alignment with the spot market, unlike perpetual options or swaps, which may follow different pricing and margining models.¹

2. Advantages over traditional futures or spot products

In digital asset markets, perpetuals provide indefinite 24/7 hedging and speculative tools aligned with the trading patterns of the underlying spot markets. They also enable efficient price discovery and liquidity without requiring contract rollover and the costs associated with such rollover (e.g., differences in prices between the rollover months and commissions).

3. Unique risks and safeguards

These products may present increased volatility and leverage risk. Risk controls such as margin limits, funding rate caps, circuit breakers, and robust real-time surveillance could potentially mitigate these risks.

¹ Talos Trading LLC (“Talos”), a member of TDC, has also submitted a letter on this topic. Please refer to pages 4-8 of their letter for additional information related to this specific point.

4. Adequacy of current risk disclosures

Current disclosures under Commission regulations may not sufficiently address perpetual-specific risks. Additional disclosures regarding funding rate volatility, leverage exposure, and liquidity dynamics should likely be required.

5. Unique risks in physical commodity markets

We express no view regarding the use of perpetual derivatives in physical commodity markets. However, the digital asset markets differ fundamentally in that they are natively electronic, global, and operate on a 24/7 basis, making perpetuals instruments that are more natural in digital asset markets.

6. Manipulation concerns and safeguards

6a. Additional Protections or safeguards

Digital asset perpetual markets may be more susceptible to manipulation due to fragmented liquidity. Enhanced market surveillance and centralized trade reporting could potentially mitigate this. As with all other financial products, exchanges should implement anti-manipulation measures, such as price banding and trade surveillance tools.

6b. Regulatory guidance

We support the Commission issuing guidance clarifying how perpetual derivatives are treated under existing futures and swap definitions, particularly for digital assets.

6c. Conflicts of interest

Conflicts of interest may arise if exchanges act as both trading venues and clearing entities. These risks are not unique to perpetuals and could potentially be mitigated the same way they are in other derivatives markets, including through clear segregation of duties and governance standards, as well as enhanced disclosure to customers of the potential conflicts, through a principles-based regulatory approach.

7. Surveillance concerns

Exchanges offering perpetual derivatives should be required to implement robust trade surveillance systems, including real-time monitoring for spoofing, wash trading, and other types of manipulation, as is required for exchanges offering all other futures and swaps.²

8. Impact on traditional futures markets

We take no position regarding impacts on agricultural or energy derivatives. Within digital assets, perps are complementary and do not undermine traditional futures but rather enhance participation.

9. Likely user base

The user base in digital asset markets includes retail traders, proprietary firms, market makers, and hedge funds. Perpetuals have democratized access to hedging and leveraged trading in digital asset markets.

10. Participation by traditional market participants

Traditional institutional participation in digital asset perps has been more limited initially, but is increasing as institutional-grade platforms emerge. As regulatory clarity improves, participation by asset managers and other institutions is expected to grow.

Perpetual derivatives are attractive to a broad range of market participants, including proprietary traders, market makers, asset managers, hedge funds, and retail traders. As regulatory clarity improves, and access to perpetual derivatives increases, participation by all market participants will grow.

Institutional and retail clients would benefit from access to perpetual derivatives by not having to manage rollovers of positions and not incurring the accompanying costs.

11. Use cases and market function

Perpetuals enhance price discovery in fragmented spot markets and allow risk transfer without expiration management. Use cases include hedging, algorithmic trading strategies, liquidity provision, and speculation.

² Please refer to pages 18-23 of Talos' comment letter for additional information related to this specific point.

Perpetual contracts on digital assets offer investors the ability to hedge their investments in virtual currencies and other digital assets with a contract that can parallel their investment strategy. Unlike traditional market participant hedgers who have an established delivery date related to their commercial line of business (e.g., physical commodity merchants or producers), digital asset investors may not have a pre-established purchase or sale date for their digital commodity, making a perpetual contract an attractive and effective hedging option.

Additionally, perpetual derivatives also create important opportunities in real-world sectors where traditional hedging instruments have been unavailable or illiquid. For example, platforms that enable 24/7 trading of city-level residential real estate indices, allowing homeowners, REITs, lenders, and institutions to hedge localized property exposure or express directional views with low-friction derivatives.

12. Arbitrage opportunities

Perpetuals enable arbitrage between spot and derivative prices via funding payments. While there is no expiration-based convergence, the funding mechanism acts as a continuous convergence tool.

13. Classification as swap or futures

Perpetuals have characteristics of both futures and swaps. For example, they are similar to swaps in that they have no fixed expiration or settlement date, involve periodic payments, and may be bilateral. They resemble futures due to margining and exchange trading, though their lack of expiration is atypical. Regardless of classification, perpetuals that are offered on a registered DCM would be accessible to all market participants.

The Commission should also consider whether perpetual derivatives—particularly those implemented through decentralized systems—warrant a distinct regulatory classification or tailored regulated pathway tailored to the contract type, in recognition of their unique design, risk controls, and market structure. This would avoid the inefficiencies of forcing functionally novel instruments into outdated legacy categories.

14. Consistency with futures model

They are not consistent with the traditional model due to the absence of expiration or having an expiration in the far future. However, the economic function they serve—price discovery and risk transfer—is consistent with the futures model.

15. Customer default risk

As with all leveraged products, perpetuals carry default risk. Strong margining practices and real-time risk management, as with all futures and swaps, can minimize exposure to other customers.

16. Insolvency issues

Insolvency of an FCM or DCO may raise novel issues given the continuous nature of perpetuals. Regulatory clarity on treatment under Part 190 and the Bankruptcy Code is necessary to ensure orderly resolution.

Additional Considerations: Decentralized Perpetuals

In addition to centralized exchanges and clearing entities, a growing number of decentralized perpetual trading protocols have emerged—leveraging transparent smart contracts to manage margining, funding payments, liquidation, and settlement on a fully automated and non-custodial basis. These systems do not rely on intermediaries or custodians and often provide full auditability and real-time enforcement of core risk management principles. We encourage the Commission to recognize that such architectures may satisfy existing regulatory objectives through fundamentally different means and to ensure that decentralized market models are not excluded from consideration solely due to their structure. Regulatory frameworks should account for these distinctions and avoid imposing intermediary requirements that are incompatible with decentralized designs. Regulatory certainty in this area would support the development of compliant DeFi models while facilitating constructive engagement between protocol developers and regulators.

The Commission has historically been a principles-based regulator, which has enabled innovative products to launch in the financial markets, and it should continue to do so in this sphere.

TDC thanks the Commission for the opportunity to provide these comments. We support a regulatory framework that embraces innovation while protecting market participants and believe that perpetual derivatives—when properly designed—can play an important role in modernizing the digital asset ecosystem.

TDC acknowledges the significant efforts of Kevin Batteh, Delta Strategy Group, and Isabelle Corbett Sterling and Jonathan Cardenas, Baker & Hostetler LLP, towards the preparation of this letter. TDC also thanks the many members that contributed their time and expertise towards the development of this letter, including but not limited to, Olta Andoni, General Counsel, Enclave Markets Inc., and Josh Peschko, Head of Compliance and Regulatory Strategy, Talos Global, Inc.

Sincerely,

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