

CFTC Seeks Public Input on Market Innovations: *Agency considers 24/7 Trading and Perpetual Contracts*

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Acknowledging the development of novel market structures and contracts, Commodity Futures Trading Commission Staff is soliciting comments on two issues related to innovative product offerings. The first of these requests for comment (“**RFC**”) relates to round-the-clock trading on designated contract markets (“**DCM**”) and swap execution facilities (“**SEF**”).¹ Generally, DCMs and SEFs provide trading services only during certain defined business hours when banks are open. The second RFC addresses perpetual futures and other perpetual derivatives contracts. Among other topics, CFTC Staff asks whether the current regulatory regime would adequately support their trading.² The Commodity Exchange Act directs the CFTC to promote responsible innovation, with a view to maintaining market and financial integrity and customer protection. These RFCs are timely. 24/7 trading is currently available

¹ CFTC Release No. 9068-25, Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis (Apr. 21, 2025), available [here](#) (hereinafter “**24/7 RFC**”).

² CFTC Release No. 9069-25, Request for Comment on the Trading and Clearing of “Perpetual” Style Derivatives (Apr. 21, 2025), available [here](#) (hereinafter “**Perpetual RFC**”).

in certain markets, including with respect to fully collateralized contracts, and at least two DCMs have announced their intentions to list perpetual futures contracts.

To ensure consideration, comments are due no later than May 21, 2025.

24/7 Trading

The 24/7 RFC observes that “technological advancements and market demand” have prompted certain DCMs and SEFs to consider implementing 24/7 trading.³ While such a model may promote market innovation and access, the RFC notes that “it also raises important questions regarding system resilience, market integrity, and the ability of the DCM or SEF to fulfill core regulatory obligations.”⁴ For example, the RFC asks how DCMs and SEFs would ensure trading system integrity and reliability consistent with regulatory requirements without extended downtime for maintenance and upgrades.

The RFC seeks to gather information from industry regarding the logistics of how trading on a 24/7 basis would work while still being consistent with the Commodity Exchange Act and CFTC regulations. Specifically, the RFC asks “what governance frameworks, exchange staffing models, and technologies would be necessary to ensure market integrity and operational resilience, as well as compliance with all Core Principles, under a continuous trading model.”⁵

Further, the RFC asks for comment on how 24/7 trading would impact the ability of registrants to comply with CFTC regulations regarding clearing and how registrants would remain in compliance with their regulatory obligations while continuously clearing trading activity. For instance, the RFC asks for comment on how setting and collecting margin would occur under 24/7 trading.

Included among the questions⁶ related to 24/7 trading on which Staff requests comment are:

- What risks does 24/7 trading pose to trade clearing, beyond those risks faced during traditional business hours, and what protections should be in place to adequately mitigate those risks?
- Are there any pre- or post-trade risk controls that should be implemented in 24/7 trading beyond those used in the current market?
- Are there product types that are better suited to 24/7 trading?

³ 24/7 Trading RFC at 1.

⁴ *Id.*

⁵ *Id.* at 2.

⁶ *Id.* at 3-4.

- Do any current CFTC regulations hinder the implementation of 24/7 trading?

In addition, Staff invites comments on general themes and issues related to 24/7 trading that commenters believe would help inform the CFTC's understanding of 24/7 trading as a general matter.

Trading and Clearing Perpetual Style Derivatives

Perpetual style derivatives are products with no set expiry date. They are priced and settled on an ongoing basis, thereby eliminating the need for a set expiration date and allowing perpetual contracts to be held indefinitely or until the holder liquidates its position. The Perpetual RFC notes that perpetual derivatives are growing in popularity due to their high correlation with the underlying contract as well as the fact that they reduce the need to roll a contract to a later expiry. The Perpetual RFC also observes, however, that the nature of such contracts may “raise novel questions and concerns related to trading and clearing risk management.”⁷ The CFTC is considering how current regulations would apply to perpetual derivatives and whether additional regulations are needed. The Perpetual RFC seeks industry comment and requests input on sixteen questions including:

- What is an appropriate working definition of perpetual derivative?
- Should perpetual derivatives be classified as swaps or futures contracts?
- Would perpetual derivatives pose any unique risks for market participants or the broader markets and are there additional protections or safeguards that the CFTC or exchanges should adopt to mitigate risks associated with those products?
- Do perpetual derivatives raise unique concerns about susceptibility to manipulation?
- Do perpetual derivatives raise unique surveillance concerns for exchanges listing such products?

As with the 24/7 RFC, the Staff welcomes comments on general themes and issues related to perpetual contracts that commenters think would be helpful to the Staff in better understanding the topic.

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These RFCs provide an important opportunity for market participants to offer their insights on novel market developments. Meaningful input from the industry on financial, technology, staffing, business continuity and other relevant matters will be of great use to CFTC Staff. Comments will assist the CFTC in determining whether current regulations are suitable and sufficient for new market structures and products. And if new regulations are necessary, comments will help the CFTC craft them in an appropriate and sustainable manner.

⁷ Perpetual RFC at 1.

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If you have any questions regarding this client alert, please contact one of the authors, any member of our CFTC team listed below, or the Willkie attorney with whom you regularly work.

Willkie has a dedicated team of attorneys with extensive knowledge and experience in all aspects of the Commodity Exchange Act and the CFTC regulatory regime. We would be pleased to assist on your matters.

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