

CLIENT ALERT

CFTC Releases Prioritize U.S. Derivatives Market Development, Including Access to Crypto Perpetuals and 24/7 Trading

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AUTHORS

Kari S. Larsen | A. Kristina Littman | Rita M. Molesworth | Chelsea Pizzola
Claudia Greenspan | Austin Stanton

Introduction

The Commodity Futures Trading Commission has set out to clarify the regulatory framework for crypto-linked perpetual futures and around-the-clock derivatives markets in the United States. On May 29, 2026, the CFTC released four coordinated actions that begin to define what is permissible for U.S. market access to perpetual futures contracts (“Perpetual Contracts”) and 24/7 trading. The releases are: (1) a Policy Statement on the Listing of Perpetual Contracts;¹ (2) an Order Approving KalshiEX LLC BTCPERP Futures Contract;²

¹ Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33,160 (June 3, 2026) (hereinafter, the “Policy Statement”), <https://www.govinfo.gov/content/pkg/FR-2026-06-03/pdf/2026-11020.pdf>.

² CFTC, Order Approving KalshiEX LLC BTCPERP Futures Contract (May 29, 2026) (hereinafter, the “Kalshi Order”), https://www.cftc.gov/media/14071/DMO_KalshiBTCPERPOrder052926/download.

(3) a No-Action Letter to Coinbase Financial Markets, Inc.;³ and (4) a Staff Advisory on 24/7 Trading and Clearing Operations.⁴ On June 16, 2026, the CFTC published a Request for Information seeking comment to identify Commission regulations which unduly impede market participants from entering into partnerships with CFTC registrants and registered entities.⁵ This client alert summarizes the key aspects of each release.

KEY TAKEAWAYS

- **Initial Boundaries for U.S. Access:** The coordinated CFTC actions identify what is currently permissible for digital commodity perpetual contracts, but the Policy Statement is nonbinding and the Kalshi Order is limited to Bitcoin and similar digital commodities.
- **Regulation 40.3 Review Required:** Perpetual Contracts on asset classes outside the Kalshi Order (e.g., agricultural products, precious metals, equities, and narrow-based securities indices) must undergo prior CFTC approval under Regulation 40.3; self-certification is not permitted.
- **Digital Commodities Suitability:** Perpetual Contracts are well-suited for digital commodities with deep, continuous spot markets; other asset classes (agricultural, precious metals, and equities) require case-by-case review.
- **Coinbase No-Action Relief:** Coinbase may route U.S. customers to Deribit perpetuals without Part 48 foreign board of trade (“FBOT”) registration,⁶ but this relief is narrowly conditioned on the specific corporate structure of Coinbase.
- **24/7 Operations Guidance:** The Staff Advisory outlines expectations for DCMs, DCOs, and FCMs, extending to 24/7 trading, emphasizing system safeguards, compliance staffing, and risk management

Regulatory Backdrop

These releases build on two April 2025 Requests for Comment—one on perpetual derivatives and one on 24/7 trading—that solicited public input on regulatory classification, operational considerations, and risk management.

³ CFTC Staff Letter No. 26-17, Staff Interpretation Regarding the Categorization of Deribit Perpetuals as Foreign Futures and No-Action Position Regarding Digital Commodities and Payment Stablecoins Deposited to Margin Customer Positions with a Foreign Broker Under a Right of Re-Use (May 29, 2026) (hereinafter, the “No-Action Letter”), <https://www.cftc.gov/csl/26-17/download>.

⁴ CFTC Staff Letter No. 26-16, Staff Advisory for Extending Trading and/or Clearing Operations to a 24 hours-a-day, 7 days-a-week Basis (May 29, 2026) (hereinafter, the “Staff Advisory”), <https://www.cftc.gov/csl/26-16/download>.

⁵ CFTC Release 9524-26, CFTC Issues a Request for Information to Facilitate Innovation and Competition for Fintech Firms (June 16, 2026), (hereinafter, the “RFI”) https://www.cftc.gov/PressRoom/PressReleases/9254-26?utm_source=govdelivery.

⁶ Under Part 48 of the CFTC regulations, a foreign board of trade must register with the CFTC in order to provide U.S.-located members or participants with “direct access” to its electronic trading system. See 17 C.F.R. § 48.3(a). Deribit, however, is not providing “direct access” to U.S. participants. Instead, U.S. customers access Deribit products through Coinbase’s registered FCM, which routes orders to an affiliated foreign broker (Coinbase Bermuda Limited), which in turn executes on Deribit. This intermediated structure allows Deribit to operate as an FBOT for purposes of the Regulation 30.1 “foreign futures” definition without triggering the Part 48 registration requirement that would apply if Deribit granted U.S. participants direct trading access. See No-Action Letter at 1 n.3.

The four coordinated actions discussed in this alert respond to the information gathered through those public comment processes.⁷

The Policy Statement

The Policy Statement provides broad guidance on how the CFTC will regulate Perpetual Contracts.⁸ Perpetual Contracts are derivatives with no fixed expiration that use periodic funding rates (rather than terminal settlement) to track the spot price of the underlying asset. They dominate crypto derivative trading globally.⁹ The Policy Statement signals the intent of the Commission to keep these products “within regulated U.S. markets rather than migrating to less regulated jurisdictions.”

Perpetual Contracts outside the scope of the Kalshi Order (discussed below) should go through the voluntary approval process under Regulation 40.3, as the Policy Statement concludes that self-certification under Regulation 40.2 is not appropriate for such contracts.¹⁰ The Kalshi Order covers only BTCPERP and similarly structured contracts referencing Bitcoin or other digital commodities with “deep, active, and continuous spot market trading.”¹¹ The Commission cited “novel and complex questions” around market structure, customer protection, and stress resilience as reasons for requiring prior approval. For example, the Commission noted that, unlike traditional futures (where manipulation risk for the cash settlement reference price is present only around the time of contract expiry), a Perpetual Contract’s reference price must be reliable at every funding interval.¹²

As noted, the Commission signaled that Perpetual Contracts are not appropriate for all asset classes.¹³ Agricultural products are “particularly ill-suited,” while equity securities and narrow-based security indices would benefit from joint CFTC/SEC review.¹⁴ By contrast, digital commodities where spot markets are deep and continuously traded are well-suited. A “digital commodity” derives value from a functional crypto system’s programmatic operation and supply/demand dynamics, not from managerial efforts of others.¹⁵ In practical terms, this category includes Bitcoin, Ether, and similar tokens native to decentralized networks whose value is determined by network utility rather than issuer promises.¹⁶

The Policy Statement is nonbinding—it does not modify the Commodity Exchange Act or create enforceable rights. But its practical effect is clear: Registrants should use Regulation 40.3 for any Perpetual Contract not covered by the Kalshi Order. The Commission views the Regulation 40.3 process as promoting transparency, facilitating

⁷ See Request for Comment on the Trading and Clearing of “Perpetual” Style Derivatives, 90 Fed. Reg. 17,495 (Apr. 21, 2025); Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis, 90 Fed. Reg. 17,468 (Apr. 21, 2025).

⁸ See *generally* Policy Statement.

⁹ See *generally* Perpetual Futures, Investopedia, <https://www.investopedia.com/what-are-perpetual-futures-7494870> (providing a general overview of perpetual futures contract mechanics).

¹⁰ See 17 C.F.R. § 40.3 (setting forth the voluntary submission procedures for new product approval).

¹¹ Kalshi Order at 8.

¹² Policy Statement at 4.

¹³ Policy Statement at 3.

¹⁴ *Id.*

¹⁵ See Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, 91 Fed. Reg. 13,714, 13,718 (Mar. 23, 2026).

¹⁶ See *id.*

engagement between staff and registrants during product development, and providing regulatory clarity for market participants.¹⁷

The Kalshi Order

The Commission approved KalshiEX LLC (“Kalshi”), a designated contract market (“DCM”), to list BTCPERP—a cash-settled perpetual futures contract referencing the spot price of Bitcoin via the CF Benchmarks Bitcoin Real Time Index.¹⁸ The contract trades in 1/10,000 BTC units, 24/7.

The Commission found that BTCPERP meets the futures contract definition, satisfying all seven traditional characteristics identified in relevant case law:¹⁹ risk transference, offset capability, margin requirements, central clearing, public price dissemination, standardized terms, and “futures.” The Commission relied on the holding of the Seventh Circuit that contracts of “indefinite duration” can possess futurity through ongoing payment obligations.²⁰

Approval rested on spot market characteristics specific to Bitcoin and other widely traded digital commodities that support the integrity of the funding rate mechanism under DCM Core Principle 3 (anti-manipulation): (i) 24/7 trading across distributed venues enables continuous price observability; (ii) deep liquidity makes the reference price hard to manipulate; and (iii) real-time arbitrage opportunities prevent price dislocations.

The Kalshi Order extends to other DCMs listing similarly structured contracts on digital commodities with comparable spot market characteristics—but explicitly excludes other asset classes. The Commission noted that “continually available spot price data” will be key to evaluating other underlyings, and encouraged early engagement with staff.

The No-Action Letter (Coinbase)

The CFTC’s Market Participants Division issued a No-Action Letter (Staff Letter No. 26-17) to Coinbase Financial Markets, Inc. (“CFM”), Coinbase’s registered futures commission merchant (“FCM”).²¹ The letter: (1) confirms that perpetuals listed on Deribit, the Dubai-regulated exchange that Coinbase recently acquired, qualify as “foreign futures” under Regulation 30.1 when offered through Coinbase’s FCM and (2) permits Coinbase to post customer-owned digital assets as margin collateral with its Bermuda-based affiliate (Coinbase Bermuda Limited), which can forward those assets to Deribit for margining purposes.

¹⁷ Policy Statement at 6 (“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.”).

¹⁸ See generally Kalshi Order.

¹⁹ The CFTC defines a Futures Contract as “an agreement to sell a commodity for delivery in the future: (1) at a price that is determined at initiation of the contract; (2) that obligates each party to the contract to fulfill the contract at the specified price; (3) that is used to assume or shift price risk; and (4) that may be satisfied by delivery or offset.” (CFTC glossary available [here](#)).

²⁰ *Chi. Mercantile Exch. v. SEC*, 883 F.2d 537, 541 (7th Cir. 1989).

²¹ See generally No-Action Letter (responding to Coinbase’s request for an interpretative and no-action letter under Commission Regulation 140.99).

Key limitations include that the relief requires CFM, Coinbase Bermuda, and Deribit to remain wholly owned subsidiaries of Coinbase Global (a U.S. public company), plus eight additional conditions related to security, transparency, and disclosure. This structure-specific relief means that Coinbase can route U.S. retail customers to the Deribit global liquidity pool without Deribit registering as a U.S. DCM or Part 48 FBOT, but this pathway may not be available to others without similar corporate structures.²²

Unlike the Commission-level Policy Statement and Kalshi Order, the No-Action Letter is staff-level relief that can be withdrawn at any time. Like the Commission-level Policy Statement but unlike the Kalshi Order, the No-Action Letter is not binding on the Commission.²³

Staff Advisory on 24/7 Trading

The final action of the May 29 releases was a Staff Advisory addressed to DCMs, swap execution facilities (“SEFs”), derivatives clearing organizations (“DCOs”), and FCMs that seek to extend trading and/or clearing operations to a 24/7 basis.

The Staff Advisory identifies key risk areas that Commission staff will evaluate. For DCMs and SEFs, the Advisory emphasizes real-time surveillance and compliance staffing during off-peak hours, system safeguards for uninterrupted platform reliability, and avoidance of settlement during periods when the underlying market is inactive. The Advisory notes that extending to 24/7 trading “could potentially result in reduced liquidity, increased volatility, widened bid/ask spreads, and, as a result, create greater opportunities for market manipulation.” For DCOs, the Advisory addresses margin calibration for multiday exposure windows, collateral eligibility and liquidity during weekends, and default management procedures tailored to continuous operations. For FCMs, the Advisory highlights segregation compliance risks from weekend volatility, the need for enhanced customer disclosures regarding auto-liquidation during extended hours, and risk management program adjustments.

Notably, the Advisory recognizes that 24/7 suitability varies by asset class. Derivatives referencing crypto assets are identified as well-suited for continuous trading due to their digital infrastructure and global reach, while other markets (e.g., agricultural products) may be less suited due to their unique customer bases, regional nature, and specialized trading practices. Because Perpetual Contracts are inherently continuous-trading instruments, the Staff Advisory will be directly relevant to any registrant seeking to list or clear such contracts.

Conclusion and Next Steps

These four actions represent meaningful progress toward clarifying what is permissible for Perpetual Contracts in the U.S. The Commission has signaled its commitment to “promoting responsible innovation and fair competition” and to ensuring that novel financial products develop within regulated U.S. markets rather than migrating to less-regulated offshore jurisdictions.

²² The scope of the No-Action Letter is expressly limited. The letter distinguishes between an FBOT as defined in Commission Regulation 30.1 for purposes of categorizing a product as a “foreign future” versus an FBOT registered under Part 48 providing “direct access” to U.S. participants. No-Action Letter at 1 n.3.

²³ See 17 C.F.R. § 140.99(a)(2) (“A no-action letter binds only the Issuing Division . . . and not the Commission or other Commission staff.”).

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Practitioners should note key limitations: the Policy Statement is nonbinding, the No-Action Letter is withdrawable staff-level relief conditioned on the specific corporate structure of Coinbase, and significant questions remain for asset classes beyond digital commodities.

Separately, the CFTC issued a Request for Information on June 16, 2026, seeking feedback on which existing regulations unduly impede market participants from entering into partnerships with financial intermediaries regulated by the Commission.²⁴ These insights will inform the Commission on how to design more streamlined regulatory processes, including registration, designation, and authorization. The Commission aims to target “overly burdensome and fragmented” regulations and supervisory practices that hinder the development of financial markets, particularly digital asset-related services. This formal request for public input represents a concrete next step in the Commission’s efforts to foster responsible innovation, fair competition, and regulatory clarity in the development of digital assets markets in the United States, building on the earlier four releases.

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.

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²⁴ See generally RFI.

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Willkie has a dedicated team of attorneys with extensive knowledge in all aspects of digital assets and CFTC regulations, including experience engaging directly with the CFTC for examinations, enforcement, no-action relief and other advocacy. We would be pleased to assist with your matters.

Gabriel Acri

212 728 8802
gacri@willkie.com

Tamika P. Bent

212 728 3935
tbent@willkie.com

Kari S. Larsen

212 728 3297
klarsen@willkie.com

A. Kristina Littman

202 303 1209
aklittman@willkie.com

Steven C. Matos

212 728 8757
smatos@willkie.com

Rita M. Molesworth

212 728 8727
rmolesworth@willkie.com

Chelsea Pizzola

202 303 1092
cpizzola@willkie.com

Deborah A. Tuchman

212 728 8491
dtuchman@willkie.com

Leanne Aban

212 728 8168
laban@willkie.com

Claudia Greenspan

212 728 5565
cgreenspan@willkie.com

Kelley Merwin

202 303 1178
kmerwin@willkie.com

Austin Stanton

713 972 6012
astanton@willkie.com



BRUSSELS CHICAGO DALLAS FRANKFURT HAMBURG HOUSTON LONDON LOS ANGELES
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