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CLIENT ALERT

Great Question. Let's Break It Down: CFTC Considering Compute Futures

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The Commodity Futures Trading Commission has issued a Request for Comment to inform its understanding and oversight of derivatives markets in compute, the processing power used by the large language models at the center of the artificial intelligence economy. The Request does not propose new rules or regulations. Rather, it solicits public input on the factors a designated contract market should consider when addressing the provisions of the Commodity Exchange Act and the Commission's regulations relevant to the listing for trading of derivatives with compute as the underlier.

This alert describes the background against which the Commission issued the Request for Comment (the "Request") and then summarizes the questions it poses in each of the four categories it identifies: the size, liquidity, and characteristics of compute cash markets; market oversight and susceptibility to manipulation; customer protection; and perpetual compute futures.

Key Takeaways

- **Information-Gathering Exercise, Not a Rulemaking.** The Request does not propose new rules. It solicits comment on the application of existing designated contract market ("DCM") Core Principles and Commodity Futures Trading Commission ("CFTC" or "Commission") regulations to an emerging asset class, organized around the four categories of questions described above.

- **Cash Market Opacity Is a Central Concern.** The Commission observes that compute markets are fragmented, price formation occurs primarily in opaque bilateral transactions, and the underlying commodity may not yet exhibit the fungibility, standardization, and liquidity that typically characterize commodities underlying a derivatives market.

- **Manipulation Risks Receive Detailed Attention.** Several questions probe whether published compute price series, constructed in part from posted rates administered by the compute capacity providers themselves, can satisfy Core Principle 3's requirement that a DCM list only contracts that are not readily susceptible to manipulation, and whether adequate surveillance capabilities exist or are feasible for purposes of Core Principle 4.

- **Perpetual Futures Are Squarely on the Table.** The Request devotes a separate section to perpetual compute futures, asking whether they offer advantages over traditional fixed-date contracts and whether they pose unique risks requiring additional safeguards.

- **Broader Than DCMs.** Although the Request primarily addresses DCM listings, the Commission also seeks comment on issues arising in connection with swap execution facility ("SEF") listings of contracts that cash settle to the price of compute, and on physically settled compute swap contracts.

Background

The Request arrives against a backdrop of significant commercial activity. Multiple exchanges have publicly announced plans to list compute futures contracts tied to GPU rental prices, subject to regulatory review.[1] Chairman Michael S. Selig framed the initiative in strategic terms, stating that "America cannot win the AI race without a robust derivatives market for compute."[2] Those announcements put a concrete question before the Commission: whether compute, as it is bought and sold today, can support exchange-traded derivatives under the existing regulatory framework.

The Commission describes compute, the processing power used principally by artificial intelligence ("AI") models, as a scarce, capital-intensive commodity that anchors an industry measured in the hundreds of billions of dollars.

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1 *See, e.g.*, Press Release, Architect Financial Technologies Inc., Architect Financial Technologies to Launch U.S. Futures Exchange for Compute and AI Commodities Following DCM Acquisition (May 28, 2026), https://www.prnewswire.com/news-releases/architect-financial-technologies-to-launch-us-futures-exchange-for-compute-and-ai-commodities-following-dcm-acquisition-302784564.html; Press Release, Intercontinental Exchange, Inc., ICE and Ornn to Launch GPU Compute Futures Contracts (May 19, 2026), https://ir.theice.com/press/news-details/2026/ICE-and-Ornn-to-Launch-GPU-Compute-Futures-Contracts/default.aspx.

2 CFTC Press Release No. 9286-26 (Aug. 19, 2026), https://www.cftc.gov/PressRoom/PressReleases/9286-26.

Federal policy points in the same direction. The Request cites the White House's July 2025 AI Action Plan, which recommends improving the financial market for compute to ensure access for startups and academics, and Executive Order 14179, "Removing Barriers to American Leadership in Artificial Intelligence."[3] Compute derivatives thus present a market the Commission has reason to accommodate and an asset class with which it has limited regulatory experience.

The Request works within the existing DCM Core Principles rather than proposing any new requirement, and the Commission's preliminary views about compute explain why it is asking rather than proposing. The Commission understands compute markets to be fragmented, with price formation occurring primarily in opaque bilateral transactions and consensus still forming on the appropriate underlying commodity, and it notes that dominant participants may wield pricing power that creates susceptibility to manipulation and preferential pricing. It therefore states that compute may not yet exhibit the characteristics that commodities underlying a derivatives market typically display, naming fungibility, standardization, and sufficient liquidity, and it observes that a compute derivatives market consistent with its rules would likely require standardizing the variables associated with compute, both for the settlement reference index and for the standards of any compute required to be delivered.[4] Those premises frame the questions that follow.

Topic 1: Compute Cash Markets: Size, Liquidity, and Other Considerations

The Request begins where any listing analysis must begin, with the underlying cash market. The Commission asks commenters to describe observed price behavior in compute markets and to compare it with cash markets underlying derivatives the Commission has customarily regulated, distinguishing among on-demand, spot, reserved, and committed purchase modes. It further asks what data sources and methodologies should be used to determine market size, liquidity, transaction volume, participant types, and supplier concentration. Embedded in that request is the Commission's own preliminary understanding that non-public, bilateral agreements carry the majority of economic value in these markets yet remain undisclosed and privately negotiated.

The balance of this category tests how far compute departs from the commodities that the Commission already regulates. The Commission asks what proportion of compute transactions occur at publicly disclosed prices, whether any audits or independent verifications of that transaction data have been conducted, and whether it would be appropriate to permit trading in a contract settling to a price computed from data the Commission may not be able to observe, verify, or surveil. It then asks commenters to address five characteristics: whether the underlying commodity is storable, whether a publicly observable transaction record exists and what share of volume it captures, how concentrated production is among the largest producers, whether units are fungible across producers without adjustment, and whether any price reporting agency or enforced standardized methodology exists. Each of those characteristics bears directly on the manipulation analysis that follows.

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[3] The White House, Winning the Race: America's AI Action Plan (July 2025), https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf; Exec. Order No. 14,179, Removing Barriers to American Leadership in Artificial Intelligence, 90 Fed. Reg. 8741 (Jan. 31, 2025).

[4] *See* Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36,612, 36,632 (June 19, 2012).

Topic 2: Market Oversight and Susceptibility to Manipulation

Core Principle 3 requires a DCM to list only contracts that are not readily susceptible to manipulation,[5] and the Commission asks what features a compute contract cash settling to an index calculated over predominantly bilateral and privately priced transactions would have to demonstrate to satisfy that standard consistent with the guidance in Appendix C to Part 38 of the Commission's regulations ("Appendix C").

The Commission observes that certain published price series are constructed in whole or in part from posted or listed rates that the compute capacity providers themselves administer, with the remaining transactions executed on venues that a small number of participants operate or dominate. That structure attracts particular attention. The Commission therefore asks what protections would prevent a provider from manipulating a settlement index by adjusting a posted rate, by directing capacity onto or away from a contributing venue, or by executing or declining to execute transactions during the observation window. It also asks whether any existing cash price series satisfies the Appendix C criteria that a settlement price be reliable, acceptable, publicly available, and timely, and computed from a cash market that is sufficiently liquid and not itself readily susceptible to manipulation. If none does, the Commission asks what steps it should take.

Whether a DCM could surveil these markets at all is a question of capability rather than contract design. Because Core Principle 4 requires a DCM to have the capacity and responsibility to prevent manipulation, price distortion, and disruption of the cash-settlement process,[6] the Commission asks what surveillance capabilities compute derivatives would demand and whether those capabilities are presently feasible as a technological, operational, and legal matter. It further asks whether a DCM should be expected or required to maintain information-sharing arrangements with each compute venue and each capacity provider whose transactions or posted rates enter the settlement reference price. Core Principle 5, which requires a DCM to adopt position limits or position accountability levels as necessary and appropriate, presents a distinct problem of measurement.[7] The Commission asks what deliverable supply estimate methodology would be appropriate for evaluating the necessity of position limits or accountability levels, and, invoking the Appendix C guidance on deliverable supply and susceptibility to squeezes and corners, what the estimated deliverable supply for compute is at the relevant pricing points and how it is measured. Neither question has a settled answer for a commodity that cannot be stored and whose capacity is committed largely through private arrangements.

Topic 3: Customer Protection of Market Participants

The customer protection questions turn on two features of compute: its geopolitical sensitivity and the prospect of retail participation. The Commission asks what heightened anti-money laundering ("AML") and know-your-customer concerns compute markets present relative to more mature commodity markets, and what difficulties introducing brokers, futures commission merchants, and other intermediaries would face in building a Bank Secrecy Act and AML compliance program for compute futures. It further asks what disclosure requirements follow from offering a

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5 CEA § 5(d)(3), 7 U.S.C. § 7(d)(3); *see also* 17 C.F.R. §§ 38.200–38.201; 17 C.F.R. pt. 38, app. C.

6 CEA § 5(d)(4), 7 U.S.C. § 7(d)(4); *see also* 17 C.F.R. §§ 38.250–38.258.

7 CEA § 5(d)(5), 7 U.S.C. § 7(d)(5); *see also* 17 C.F.R. §§ 38.300–38.301.

contract that settles against a geopolitically sensitive commodity, how those considerations differ from derivatives settling against commodities such as oil, and whether the terms and conditions of a compute contract should be required to identify specific idiosyncratic risks. Finally, it asks what protections are appropriate for retail participants and whether any trader or intermediary conduct particular to these markets warrants further Commission action.

Topic 4: Perpetual Compute Futures

The Commission asks whether perpetual contracts would offer advantages over traditional fixed-date futures, and whether they would supply commercial risk management features that existing products cannot. It also asks whether perpetual compute derivatives pose unique risks to participants or the broader markets, and whether the Commission or the exchanges should adopt additional protections or safeguards to mitigate them. This inquiry follows a separate request for comment the Commission published in June 2026 on extending standard futures contracts to 24/7 trading and on perpetual contracts referencing physically delivered or storable energy commodities, which suggests the Commission is considering perpetual contracts across asset classes rather than only in connection with compute.[8]

Conclusion

Comments are due by October 20th, 2026, and may be submitted through Regulations.gov, referencing "Request for Comment on the Listing of Compute Derivatives Contracts" and RIN 3038-AF77. The Commission invites comment on all aspects of the compute markets, including matters the enumerated questions do not reach, and it particularly encourages empirical and data-driven submissions.

Participants weighing a response should concentrate on the questions most likely to shape the framework that emerges. Four stand out: (1) whether existing cash market data and price indices can support a settlement price that satisfies Appendix C; (2) whether provider-administered price series can be insulated from manipulation; (3) whether DCM surveillance is feasible in a market built on bilateral, non-public transactions; and (4) how perpetual contracts and retail participation should be treated in a commodity of geopolitical significance. Because the Commission has asked for empirical support, responses grounded in transaction data are likely to carry more weight than positions advanced on principle alone.

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If you have any questions regarding this client alert or if we can assist you in preparing or reviewing a comment letter, 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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8 Request for Comment on the Extension of Standard Futures Contracts to 24/7 Trading and on Perpetual Contracts Referencing Physically Delivered or Storable Energy Commodities, 91 Fed. Reg. 38,334 (June 25, 2026).

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 with your matters.

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