

Perpetual Futures Come Onshore: The CFTC's New Regulatory Framework

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After years of regulatory ambiguity that pushed perpetual futures trading offshore, the CFTC has finally drawn a clear line in the sand and is encouraging the industry to step inside.

The Commodity Futures Trading Commission (CFTC or Commission) established the first affirmative US regulatory framework for crypto asset perpetual futures contracts (also known as "perpetuals" or "perps") through three coordinated actions taken on May 29. On that day, the Commission:

1. approved a bitcoin perpetual futures contract for listing on a registered designated contract market (DCM) (Order);¹
2. issued a policy statement setting expectations for future perpetual contract submissions (Policy Statement);² and
3. through its Market Participants Division (MPD), provided interpretive and no-action relief enabling a registered futures commission merchant (FCM) to intermediate customer access to foreign-listed perpetual futures products (CFTC Letter 26-17).³

These actions mark a dramatic turning point in the CFTC's posture toward perpetual derivatives and signal an effort to bring one of the most liquid segments of global crypto markets within the US regulatory perimeter. They also build on industry momentum. In April 2025, Bitnomial Exchange, LLC became the first CFTC-registered DCM to self-certify a perpetual futures contract under Regulation 40.2, launching BTC/USD perpetual futures for trading on a US exchange.⁴ The May 29 actions go further: the Commission itself approved a crypto asset perpetual contract for the first time and articulated a policy framework to govern future listings.

Chairman Michael S. Selig described the actions as "responsible innovation requires regulatory clarity."⁵ In a *CoinDesk* op-ed published the same day, he called the approval of perpetual futures "historic" and emphasized that the CFTC's oversight of commodity derivatives, designed to curb excessive leverage and systemic risk, will now extend to perpetual contracts "rather than pushing

those risks offshore to unregulated venues."⁶ But what exactly are perpetuals, and why has their regulatory status been so contested?

Perpetual Futures and Their Regulatory Classification

The path to regulatory clarity begins with understanding the product itself. Perpetual futures are derivatives that, unlike traditional futures, have no scheduled expiration. First theorized by Nobel Prize-winning economist Robert Shiller in a 1992 paper, perpetual contracts have become a cornerstone of risk management and price discovery in global crypto markets. Instead of converging toward spot price through a settlement date, perpetual futures use a periodic funding rate: a payment exchanged between long and short position holders. When the contract's price exceeds the underlying asset's spot price, longs pay shorts; when it trades below spot, shorts pay longs.

Whether perpetual contracts qualify as "futures" under the Commodity Exchange Act (CEA) has been debated. Neither the CEA nor CFTC regulations define "futures," so courts have historically assessed transactions by evaluating characteristics common to futures: (i) standardization, (ii) fungibility, and (iii) offset.⁷ The central question for perpetuals has been whether an instrument without a fixed termination date can satisfy the "futures" requirement traditionally associated with futures. The Order addressed this question directly.

The BTCPERP Order

The Order represents the first time the CFTC approved a perpetual futures contract for listing under the voluntary CFTC Regulation 40.3 process, establishing the analytical framework for future submissions. In the Order, KalshiEX LLC, a registered DCM, argued (citing Seventh Circuit precedent in *Chicago Mercantile Exchange v. SEC* and other federal decisions) that futurity depends on whether a contract creates ongoing payment obligations determined in the future, not on whether the contract terminates on a set date. Futurity, KalshiEX argued, means "value that is set in the future."⁸ The CFTC reviewed this analysis and approved the BTCPERP Contract for listing as a futures contract.

The CFTC grounded its approval in the characteristics of the bitcoin spot market: depth, broad distribution across venues, active participation and round-the-clock trading. These features support the effective operation of the funding rate mechanism. Because bitcoin trades continuously across globally distributed venues, the BTCPERP Contract's reference price remains observable at all times, reducing the risk that funding payments will be calculated against stale or manipulated price data. The depth and liquidity of bitcoin spot trading also raise the cost of moving the reference price, making it harder for participants with large perpetual positions to manipulate the funding mechanism profitably.⁹

The Order's scope is limited to the BTCPERP Contract and similarly structured perpetual futures referencing bitcoin or other "digital commodities" (as defined in the March 2026 SEC–CFTC joint guidance) with deep, active and continuous spot market trading.¹⁰ It does not extend to perpetuals with other underlying asset classes, such as agricultural products. For those products, the CFTC issued a separate Policy Statement.

The Policy Statement on Perpetual Futures Listings

The Policy Statement complements the Order by providing guidance for perpetuals outside its scope. Perpetual futures referencing other asset classes must be submitted for review under the voluntary approval process in CFTC Regulation 40.3. This process, unlike self-certification under CFTC Regulation 40.2, involves prior Commission review and staff engagement during product development.¹¹ The Policy Statement notes that perpetual contracts on other asset classes — including agricultural products, precious metals, equity securities, and narrow-based security indexes — each merit independent analysis based on their unique characteristics.¹² Although CFTC Regulation 40.2 permits registrants to self-certify new products, the CFTC concluded that perpetual futures' novel characteristics, such as their indefinite duration and the market-structure and customer-protection questions they raise, make prior agency review preferential. On the same day, MPD addressed another critical question: how US customers can access foreign-listed perpetuals.¹³

The Coinbase No-Action Letter: Foreign Perpetuals and Customer Fund Protections

The no-action letter addresses an important gap in the domestic framework. On May 29, MPD issued CFTC Letter No. 26-17, an interpretive and no-action letter responding to requests from Coinbase Financial Markets, Inc. (CFM), a registered FCM. CFM sought confirmation of three points:

- (i) that it may categorize the Deribit Perpetuals — listed on Deribit FZE, a Virtual Asset Service Provider regulated by the Dubai Virtual Assets Regulatory Authority and a CFM-affiliated foreign board of trade — as foreign futures under CFTC Regulation 30.1;
- (ii) that the CFTC would not recommend enforcement action against CFM for posting customer-owned digital commodities and payment stablecoins (together, "Customer Digital Assets") with an affiliated foreign broker to margin customers' foreign futures and options positions, where the foreign broker has a right of re-use over those assets; and
- (iii) that the CFTC would not recommend enforcement action against the affiliated foreign broker for taking title to, or exercising a right of re-use over, Customer Digital Assets.

MPD addressed each request in turn.

Classification of Deribit Perpetuals as Foreign Futures

MPD confirmed that the Deribit Perpetuals qualify as "foreign futures" under CFTC Regulation 30.1 when customers transact through CFM. This interpretation relies on the CFTC's analysis in the BTCERP Order, which determined that perpetual contracts structured with a periodic funding rate mechanism and referencing a digital commodity's spot price qualify as futures contracts. MPD also noted that, under the rules of the Dubai Virtual Assets Regulatory Authority (VARA), perpetual contracts are classified as exchange-traded derivatives. Importantly, VARA's rules do not characterize perpetuals as swaps or otherwise contradict their categorization as futures. As with the Order, this interpretation is limited to perpetual futures on digital commodities with deep, active, and continuous spot market trading; it does not extend to other asset classes. The classification question resolved, MPD then turned to the more complex issue of customer fund protections.

No-Action Relief for Digital Asset Margin Under a Right of Re-Use

MPD also provided no-action relief permitting CFM to post Customer Digital Assets with its foreign broker affiliate, Coinbase Bermuda Limited (CBBM), to margin customers' foreign futures and options positions on Deribit, where CBBM obtains a right of re-use over those assets. This relief extends the interpretive framework from prior staff letters — Staff Letter 26-05 (acceptance of digital assets as margin collateral)¹⁴ and Staff Letter 25-38 (transfer of customer securities to foreign intermediaries under a right of re-use) — to cross-border digital asset arrangements.

The no-action relief is subject to nine conditions designed to enhance customer protection.¹⁵ These requirements include:

- (i) CFM, CBBM, and Deribit must remain wholly owned subsidiaries of Coinbase Global, Inc.;
- (ii) CBBM and Deribit must execute an agreement substantively consistent with the Acknowledgment Letter required for CFTC Regulation 30.7 Customer Funds accounts;
- (iii) Deribit's audited financial statements and SOC 2 reports must be made available to customers;
- (iv) neither Deribit nor CBBM nor their affiliates may be subject to criminal disqualification;
- (v) robust information security controls must be integrated at the consolidated entity level for handling Customer Digital Assets;
- (vi) the right of re-use must be authorized or required under the applicable local regulatory regime;

- (vii) Customer Digital Assets may only be used or re-used for margining or securing customer obligations arising from foreign futures or foreign options;
- (viii) CFM must provide customers with enhanced disclosure describing the transaction flow, the role of each Coinbase Global affiliate, and Deribit's default management framework; and
- (ix) CFM must comply with the conditions of CFTC Staff Letter 26-05, including those relating to valuing Customer Digital Assets and segregation calculations.¹⁶

With the regulatory framework now in place, the industry can begin to assess its practical implications.

Market Impact

The practical significance of these actions cannot be overstated. The Order and Policy Statement establishes that perpetual futures on digital commodities can be offered as futures contracts under existing law. For years, the CFTC had treated perpetual contracts as swaps in enforcement actions, and the resulting ambiguity, as Chairman Selig noted, "predictably" forced perpetual trading offshore, disadvantaging US crypto firms and effectively barring American participants from these markets. By declaring that perpetual contracts are futures, the CFTC has cleared the path for DCMs, clearing organizations and FCMs to develop and offer these products domestically.

The CFTC has also clarified the boundaries of its initial approval. Perpetual futures contracts referencing assets other than digital commodities with sufficiently deep, liquid, and continuous spot markets are not covered by the Order and, under the Policy Statement, are encouraged to be submitted through the voluntary Regulation 40.3 process for case-by-case review.

Separately, CFTC Letter 26-17 provides a template for using customer digital assets as margin collateral in cross-border arrangements among affiliated entities. It also signals the Commission's willingness to facilitate access to perpetual futures meeting the Order's analytical framework. Notably, the relief carries substantial customer-protection conditions, including parent-company public-reporting obligations and Sarbanes-Oxley internal controls, reflecting the Commission's stated approach of enabling innovation while maintaining "principled oversight."

These actions should be read in the broader context of the CFTC's evolving crypto asset framework, including a same-day staff advisory (Advisory Letter No. 26-16) addressing operational, surveillance, clearing, and margin expectations for registrants considering 24/7 trading and clearing, which are closely linked to perpetual contracts given the continuous nature of crypto spot markets.¹⁷ Both actions form part of Chairman Selig's "Future-Proof" initiative, a comprehensive review of agency rules aimed at modernizing requirements for new entrants and incumbents alike.

More broadly, these developments build on the March 2026 joint SEC-CFTC guidance, which classified most crypto assets as non-securities and digital commodities, confirming that Bitcoin, Ether, XRP, Solana, and others fall within the CFTC's commodity jurisdiction. Market participants should assess how these developments interact with the broader regulatory landscape, including the pending CLARITY Act (which would establish a CFTC registration framework for digital commodity exchanges, brokers, and dealers), the GENIUS Act's framework for permitted payment stablecoins, and the CFTC's continuing work on tokenized collateral and prediction markets.

¹ CFTC, *Order Approving KalshiEX LLC BTCPERP Futures Contract* (May 29, 2026), https://www.cftc.gov/media/14071/DMO_KalshiBTCPERPOrder052926/download.

² Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33,160 (June 3, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-06-03/pdf/2026-11020.pdf>.

³ CFTC Letter 26-17 (May 29, 2026), <https://www.cftc.gov/csl/26-17/download>.

⁴ See Katten's announcement of Bitnomial's launch of the first ever perpetual futures contract in the United States, [here](#).

⁵ Michael S. Selig, Chairman, CFTC, *CoinDesk Op-Ed: What American Crypto Asset Perpetuals Mean for the Future of Crypto* (May 29, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement052926>.

⁶ *Id.*

⁷ *Supra* note 1 at 5.

⁸ *Id.*

⁹ *Id.* at 6-8.

¹⁰ See Katten's client advisory on the SEC-CFTC Joint Guidance, [here](#).

¹¹ Policy Statement, *supra* note 2, at 3.

¹² *Id.* at 3 n.5.

¹³ *Id.* at 5-6.

¹⁴ See Katten's client advisory on Staff Letter 25-40, [here](#), which was subsequently revised by Staff Letter 26-05.

¹⁵ *Supra* note 3 at 14-15.

¹⁶ *Id.*

¹⁷ See Katten's coverage of Advisory Letter No. 26-16, [here](#).

CONTACTS

For more information, please contact your Katten attorney or any of the following [Financial Markets and Funds](#) or [Financial Markets Litigation and Enforcement](#) attorneys.



Daniel J. Davis
+1.202.625.3644
daniel.davis@katten.com



Carl E. Kennedy
+1.212.940.8544
carl.kennedy@katten.com



Matthew F. Kluchenek
+1.312.902.5500
matt.kluchenek@katten.com



Robert Bourret
+1.312.902.5568
robert.bourret@katten.com



Alexander C. Kim
+1.212.940.6535
alexander.kim@katten.com



Alexa Warner
+1.704.344.3206
alexa.warner@katten.com

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