Hyperliquid Policy Center

August 24, 2026

VIA ELECTRONIC SUBMISSION

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

Ms. Vanessa A. Countryman
Secretary of the Commission
U.S. Securities and Exchange Commission
100 F Street, N.E.
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Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (RIN 3038-AF71; File No. S7-2026-21)

Dear Mr. Kirkpatrick and Ms. Countryman:

Hyperliquid Policy Center ("HPC") appreciates the opportunity to respond to the Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (the "RFC")[1] issued by the U.S. Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC" and, together with the SEC, the "Commissions"). HPC is an independent research and advocacy organization dedicated to advancing a clear, regulated path for Americans to access onchain markets, including those available on Hyperliquid.[2]

The RFC is the correct next step in a program of coordination and markets modernization that the Commissions' leadership set in motion a year ago. In 2025, SEC and CFTC leadership observed that "[j]urisdictional and definitional constraints" had limited the use of perpetual contracts in the United States, and stated that "[t]he agencies could consider concurrent steps to onshore perpetual contracts that meet investor and customer-protection standards, potentially allowing these products to trade across SEC- and CFTC-regulated platforms."[3] The agencies' March 2026 memorandum of understanding committed to "clarifying product definitions through joint interpretations and rulemakings."[4] The CFTC's May 29, 2026 order (the "BTCPERP Order") approved the first perpetual contract to list on a U.S. exchange, as a futures contract, and the accompanying policy statement (the "Policy Statement")

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1 Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, 91 Fed. Reg. 37,873 (June 24, 2026) (RIN 3038-AF71; File No. S7-2026-21) [hereinafter RFC].

2 *See* Hyperliquid Policy Center, *About*, https://hyperliquidpolicy.org/about (last visited Aug. 23, 2026).

3 *Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC* (Sept. 5, 2025), https://www.sec.gov/newsroom/speeches-statements/joint-statement-atkins-pham-090525 (the "Joint Statement").

4 SEC & CFTC, Memorandum of Understanding Regarding Harmonization in Areas of Common Regulatory Interest (Mar. 11, 2026), https://www.sec.gov/files/mou-sec-cftc-2026.pdf.

identified equity-based perpetual contracts as products that "would benefit from review by the [CFTC] and the U.S. Securities and Exchange Commission."[5]

This comment letter addresses the treatment of perpetual contracts under the swap, security-based swap ("SBS"), and security future definitions, and proceeds in five parts:

- **Part I** provides background on Hyperliquid and the perpetual contract markets it supports.
- **Part II** describes the design of a perpetual contract, including the funding rate convergence mechanism, and recounts the interpretive questions that prior enforcement activity has raised.
- **Part III** explains that whether a derivative is a futures contract or a swap turns on the contract's economic characteristics and how it trades, while the reference asset determines only the allocation of regulatory jurisdiction over the product (*i.e.,* whether the product is regulated by the SEC, the CFTC, or both of the Commissions). A perpetual contract referencing crude oil and a perpetual contract referencing a single stock are one and the same type of derivative instrument, and the Commissions should maintain a consistent taxonomy that treats like products alike to promote innovation and fair competition among trading venues.
- **Part IV** describes the statutory exclusion of futures contracts from the swap definition, the historical fluidity of the two product categories, and the listing processes through which exchanges bring products in both categories to market.
- **Part V** explains that a cash-settled perpetual contract referencing an equity security, when it bears the recognized characteristics of a futures contract, should be classified as a security future consistent with the applicable statutory text and legal precedent, and describes some potential benefits of that classification.

I. Background on Hyperliquid

Hyperliquid is a general-purpose layer-one blockchain that supports onchain financial activity, including the trading of derivatives such as perpetual contracts.[6] A distributed validator set participates in a proof-of-stake consensus mechanism, HyperBFT, that confirms and finalizes transactions with one-block finality, and the chain's native execution environment, HyperCore, matches orders on its native, fully onchain central limit order books and executes the margin, funding, clearing, and settlement logic for every Hyperliquid market. A trade on Hyperliquid executes, clears, and settles in a single state transition against collateral that is pre-funded and posted onchain. Every order, trade, funding payment, liquidation, and settlement is recorded near-instantly and immutably on a public ledger that any user, researcher, or regulator can independently verify.

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5 Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33,160, 33,161 n.5 (June 3, 2026), https://www.govinfo.gov/content/pkg/FR-2026-06-03/pdf/2026-11020.pdf; Order Approving KalshiEX LLC BTCPERP Futures Contract, *In re Request for Approval by KalshiEX LLC of the BTCPERP Futures Contract* (CFTC May 29, 2026), https://www.cftc.gov/filings/documents/2026/orgdcmkexbtxperporder26601.pdf.

6 Hyperliquid Documentation, *About Hyperliquid*, https://hyperliquid.gitbook.io/hyperliquid-docs/about-hyperliquid (last visited Aug. 23, 2026). Protocol mechanics described in this Part are drawn from the protocol's public documentation as of August 23, 2026.

Hyperliquid Improvement Proposal 3 ("HIP-3") is the framework through which independent market operators ("deployers") design and deploy their own perpetual contract markets.[7] The protocol provides for, and the deployer cannot modify, trade execution, order matching in price-time priority, automatic enforcement of deployer-set margin requirements, funding payment transfers, clearing, and settlement functionality. The deployer configures the assets listed, contract specifications, oracle sources, leverage limits, and risk limits such as open interest caps. In this way, HIP-3 divides market functions typically split across several intermediaries (*i.e.,* exchange, broker, clearinghouse) between the protocol and independent teams.

The perpetual contract markets operating on Hyperliquid now span most major asset classes. Hyperliquid's validator-deployed markets include perpetual contracts referencing digital commodities such as bitcoin and ether. HIP-3 deployers, including trade[XYZ], have deployed markets, available to persons outside the United States, referencing crude oil, gold and other precious metals, foreign exchange pairs, equity indices, individual equities, and exchange-traded funds.[8] In the ten months since HIP-3 launched, HIP-3 markets have accrued over $480 billion in cumulative notional trading volume and maintain approximately $4 billion in open interest.[9] In total, Hyperliquid markets accounted for nearly $3 trillion in notional trading volume in 2025, and over $1.5 trillion so far in 2026.[10]

Despite this rapid growth, Hyperliquid is not currently available to persons in the United States. The liquidity, products, and infrastructure described above developed entirely offshore, during a period when no workable pathway existed for Americans to trade perpetual contracts of any type. CFTC Chairman Selig has acknowledged this dynamic, remarking that absent a compliant pathway, "perpetual trading activity has predictably occurred offshore," leaving "liquidity fragmented" while "U.S. market participants were effectively barred from accessing these markets." The question, as the Chairman framed it, "was never whether crypto asset perpetual contracts would exist," but "whether they would exist under American oversight, American standards and American rule of law."[11] Through harmonization and a consistent classification taxonomy, the Commissions can bring this activity onshore and extend the benefits of these innovations to American market participants.

II. Perpetual Contracts

A. *Contract mechanics and design features*

A perpetual contract is a standardized, cash-settled derivative with no predetermined expiration date. In lieu of a fixed expiration date to force final settlement, the design features a different, continuous settlement mechanism to tether the contract's price to the price of the asset it references, known as a

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7 Hyperliquid Documentation, *HIP-3: Builder-Deployed Perpetuals*, https://hyperliquid.gitbook.io/hyperliquid-docs/hyperliquid-improvement-proposals-hips/hip-3-builder-deployed-perpetuals (last visited Aug. 23, 2026).

8 *See, e.g.,* trade[XYZ], *Asset Directory*, https://docs.trade.xyz/asset-directory (last visited Aug. 23, 2026); Markets by Kinetiq, *Available Assets*, https://markets.xyz/docs/available-assets (last visited Aug. 23, 2026); Paragon, *Markets: Equities*, https://docs.paragon.trade/markets/equities (last visited Aug. 23, 2026).

9 *See* ASXN, *HIP-3 Markets Overview*, ASXN Hyperliquid Dashboard, https://hyperscreener.asxn.xyz/hip3markets/overview (last visited Aug. 23, 2026) (reporting cumulative trading volume and open interest across HIP-3 markets).

10 *See* ASXN, *Hyperliquid Analytics*, ASXN Hyperliquid Dashboard, https://hyperscreener.asxn.xyz/home (last visited Aug. 23, 2026).

11 Michael S. Selig, Chairman, CFTC, *What American Crypto Asset Perpetuals Mean for the Future of Crypto*, CoinDesk Op-Ed (May 29, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement052926; *see also* Joint Statement, *supra* note 3.

"funding rate," discussed below. The terms of a perpetual contract are uniform for every participant: a fixed unit quantity, a specified reference asset and price source, a specified settlement currency, and defined margin parameters. Contracts within a listing are fungible. A trader enters a position by purchasing a long or short position in a perpetual contract on a central order book and exits by offset, entering the opposite position in the same contract. On Hyperliquid, positions are margined continuously and may be held indefinitely so long as adequate margin is maintained. Prices are publicly disseminated in real time. Holding the contract conveys synthetic price exposure to the reference asset.[12]

The funding rate mechanism is a perpetual contract's distinctive feature. At fixed intervals, the premium or discount of the contract's trading price is measured against the price of the reference asset. If the contract trades above the reference price, holders of long positions pay holders of short positions a funding amount proportional to the gap; if the contract trades below, shorts pay longs.[13] Funding payment obligations are calculated based on a published formula and settled at regular intervals throughout the life of the contract. For a given contract, there must be an equal number of long and short positions. Funding payments are collected and distributed on an aggregate basis, such that they do not flow bilaterally between any identified participants. The payments create a continuous incentive structure that pulls the contract price toward the price of the reference asset, which is why the contract requires no terminal settlement date.[14]

These design choices give perpetual contracts a market profile distinct from dated futures in ways that can serve to expand product choice for U.S. market participants. The principal benefits include:

- **Accessible contract sizes.** Contract sizes are typically tied to a single unit of the reference asset, *e.g.*, one barrel of crude oil rather than one thousand, which can broaden access for participants whose desired exposures do not fit benchmark contract denominations.[15]

- **Concentrated liquidity.** Liquidity on a given venue concentrates in a single contract per reference asset rather than spreading across successive, dated contract tenors.

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12 For a contract referencing an equity security, the holder typically receives no ownership interest, no voting rights, no dividend entitlements, and no claim against the issuer. *See, e.g.*, trade[XYZ], *Specification Index*, https://docs.trade.xyz/consolidated-resources/specification-index (last visited Aug. 23, 2026).

13 In trade[XYZ] markets, for example, funding is computed hourly from a premium index measuring the gap between the contract's order book price and the oracle reference price. trade[XYZ], *Funding*, https://docs.trade.xyz/perp-mechanics/funding (last visited Aug. 23, 2026).

14 The concept of a funding rate predates today's perpetual futures markets by decades. The Hong Kong Gold and Silver Exchange Society offered undated gold contracts in the early 1980s that could be deferred from day to day, with a daily "interest" payment paid between longs and shorts that functioned as an early analogue to a modern funding rate. *See* Adam K. Gehr, Jr., *Undated Futures Markets*, 8 J. Futures Mkts. 89 (1988), https://gwern.net/doc/economics/1988-gehr.pdf. In 1993, Robert Shiller formalized the concept academically, proposing cash-settled perpetual futures with periodic payments as a means of extending futures markets to assets that lack continuously observable spot prices. Robert J. Shiller, *Measuring Asset Values for Cash Settlement in Derivative Markets: Hedonic Repeated Measures Indices and Perpetual Futures*, 48 J. Fin. 911 (1993). BitMEX implemented the modern funding-rate perpetual for digital assets in 2016, and perpetual futures with that design now account for most global digital asset derivatives volume. *See* Songrun He et al., *Fundamentals of Perpetual Futures* (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4301150.

15 Standard contract sizes are often too large for smaller market participants and the introduction of "micro"- and "mini"-sized versions of benchmark contracts reflects the demand for smaller ticket sizes. *See* Hyperliquid Policy Center, *Perpetual Futures as Complements to Dated Futures* (Aug. 21, 2026), https://hyperliquidpolicy.org/blog/perpetual-futures-as-complements-to-dated-futures ("HPC Study").

- **No mandatory rolls.** A hedger maintaining exposure over a long horizon holds one position continuously, without mandatory rolls and the transaction costs, timing risk, and operational overhead they carry.[16]

- **Simplified position management.** A single contract with no expiration calendar reduces the operational decisions a position requires, with no tenor selection at entry and no expiry monitoring over the life of the position.

Perpetual contracts, and their distinct features, fit comfortably within the trajectory of derivatives product innovation in U.S. markets, which adopted currency futures in 1972, interest rate futures in 1975, stock index futures in 1982, and bitcoin futures in 2017. The introduction of each of these products broadened participation in our markets and expanded the range of instruments and exposures available for investment and risk management, and each delivered those benefits to Americans under federal oversight. Innovation of this kind also promotes competition among trading venues, which can benefit market participants through higher trading volumes, tighter spreads, and lower fees.[17]

B. *The funding rate as a convergence mechanism*

Every futures market requires a mechanism that tethers the price of the contract to the price of the underlying asset. Physical delivery was the original design: the approach of a delivery obligation forces contract and cash prices together at expiration. As futures markets began to standardize, however, most futures positions were settled by offset or cash-settled rather than settled by physical delivery. The Supreme Court recognized as much in 1905, observing that at least three-quarters of the transactions in the Chicago Board of Trade's grain pits involved "no physical handing over of any grain," and that "[s]et-off has all the effects of delivery."[18] A futures contract, in other words, has always been capable of satisfaction by delivery *or* by offset.

Exchanges later dispensed with delivery altogether for some contracts, listing futures on intangible financial instruments that necessarily settle entirely on a cash basis,[19] and the CFTC has long recognized that "delivery" may be accomplished through "cash" or "financial" settlement.[20] Each of these settlement designs exists to converge the contract price and the spot price of the underlying asset. A perpetual contract's funding rate is the next step in that evolution. It performs the convergence function

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[16] A hedger maintaining a one-year exposure through monthly dated contracts executes twelve round-trip rolls per year, each incurring venue fees and calendar-spread cost, with roll-timing variance that can multiply the cost of an identical hedge several times over. *See id.*

[17] *See* Comments of the U.S. Dep't of Justice, Review of the Regulatory Structure Associated with Financial Institutions, Dkt. No. TREAS-DO-2007-0018, at 3 (Jan. 31, 2008), https://www.justice.gov/sites/default/files/atr/legacy/2008/02/06/229911.pdf (describing competition among exchanges following the multiple listing of options contracts as "spurring trading volume, increasing innovation, and significantly reducing trading costs in options").

[18] *Bd. of Trade of City of Chi.* v. *Christie Grain & Stock Co.*, 198 U.S. 236, 246–48 (1905); *see id.* at 250 ("A set-off is, in legal effect, a delivery.").

[19] *See* CFTC, *History of the CFTC: The 1980s*, https://www.cftc.gov/About/HistoryoftheCFTC/history_1980s.html (noting the CFTC's 1981 approval of "the first futures contract settled in cash at expiration, the Eurodollar contract on the Chicago Mercantile Exchange"). The Commissions jointly adopted cash settlement procedures for security futures in 2002. *See* Cash Settlement and Regulatory Halt Requirements for Security Futures Products, 67 Fed. Reg. 36,740 (May 24, 2002).

[20] *See* CFTC, *CFTC Glossary*, https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm (defining "Delivery" to include "the cash value of the commodity"); *see also id.* (defining "Cash Settlement" and "Financial Settlement").

continuously, disciplining the contract toward the cash market at every funding interval, for the life of the position, rather than once at expiration.

The funding rate's performance as a convergence mechanism has been studied in digital commodity markets, where perpetual contracts have traded in large volumes for nearly a decade. Peer-reviewed literature has examined the funding mechanism, producing formal pricing analyses that derive no-arbitrage prices for perpetual contracts and demonstrate that the funding rate pricing formula "is closely related to [c]overed [i]nterest [p]arity used to price futures and forwards."[21] Further empirical work finds that deviations from no-arbitrage prices in digital commodity perpetual contract markets "diminish over time as crypto markets develop and become more efficient."[22] Recent market data shows the same behavior in perpetual contracts referencing traditional assets. One report measured trade[XYZ]'s perpetual contracts that reference equities, commodities, and foreign exchange against their reference prices while the underlying markets were open, and found a median deviation of 4.31 basis points, tighter than some of the most liquid digital commodity perpetual contract markets over the same period.[23] HPC's own research reaches a consistent conclusion. Studying how perpetual contract markets interact with benchmark dated futures markets, the study found that funding-rate behavior during off-hours trading was consistent with price discovery rather than untethered drift, that perpetual contract prices formed while benchmark markets were closed predicted the benchmarks' reopening prices, that simulated weekend hedges materially reduced reopening exposure net of funding and transaction costs, and that perpetual contract trading showed no statistically significant evidence of market quality degradation in the analyzed incumbent dated futures markets.[24]

Perpetual contract markets have also demonstrated resilience under stress. Studying nearly a decade of trading data, researchers found that perpetual contracts hold their liquidity better than dated futures during large price movements and track spot prices more closely through them, concluding that perpetual contracts "may enhance financial stability by improving crisis-time liquidity and substantially reducing the drawdowns of arbitrage strategies."[25] Evidence from the most severe stress event on record points the same way. An empirical study of the October 10, 2025 liquidation event, the largest in the history of the digital asset markets across all trading venues, found that pricing on Hyperliquid recovered quickly, with "intraday recovery well under way by end of day" and "the spread dimension of execution

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21 Damien Ackerer et al., *Perpetual Futures Pricing: Basic Formula*, https://www.epfl.ch/labs/sfi-jh/wp-content/uploads/2024/10/Perp_price_one_page.pdf; *see also* Damien Ackerer et al., *Perpetual Futures Pricing*, Mathematical Finance (2025), DOI: 10.1111/mafi.70018. Covered interest parity is the no-arbitrage relationship that prices traditional futures and forwards: the forward price must equal the spot price adjusted for the cost of carrying the position to expiration, because any gap between the two would permit riskless profit. *See* Falk Bräuning & Kovid Puria, *Uncovering Covered Interest Parity: The Role of Bank Regulation and Monetary Policy* (Fed. Rsrv. Bank of Bos., Current Policy Perspectives No. 17-3, June 2017), https://www.bostonfed.org/publications/current-policy-perspectives/2017/uncovering-covered-interest-parity-the-role-of-bank-regulation-and-monetary-policy.aspx.

22 He et al., *supra* note 14.

23 Shaunda Devens, *Weekend Trading: Price Discovery in Hyperliquid's Weekend Markets*, Blockworks Research (Aug. 3, 2026), https://app.blockworksresearch.com/unlocked/weekend-trading-evidence-of-price-discovery-in-hyperliquid-s-weekend-markets.

24 HPC Study, *supra* note 15. RFC Question 11 also asks what effects the introduction of cash-settled equity perpetual contracts could have on liquidity formation, price discovery, and hedging activity in the derivatives and underlying cash equity markets; the HPC Study's findings are informative as to those effects. *See* RFC, 91 Fed. Reg. at 37,876.

25 Will Gornall et al., *Perpetual Futures and Basis Risk: Evidence from Cryptocurrency* (last revised May 19, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5036933.

quality [being] substantially restored within a month."[26] That recovery speed is atypical, as existing literature suggests that in most markets "stress-event spread widening persists for extended periods."[27]

C. *Prior enforcement activity has raised interpretive questions that the Commissions can now resolve*

Perpetual contracts present interpretive questions under the Commodity Exchange Act ("CEA") and the federal securities laws that enforcement history has raised but not resolved. Market participants would benefit from the Commissions' views on the application of the swap and security-based swap definitions to these instruments, and on the application of the exclusion for futures and security futures products.[28]

The CFTC's enforcement actions during the prior administration characterized perpetual contracts as swaps under CEA Section 1a(47), analyzing the swap definition's affirmative prongs without addressing whether the contracts fell within the exclusion for contracts of sale of a commodity for future delivery.[29] The SEC's complaint arising from the Mango Markets exploit used the "perpetual futures" nomenclature throughout while disclaiming futures status.[30] In other actions, the prior CFTC treated perpetual-style instruments as leveraged or margined retail commodity transactions, subject to the CEA's exchange-trading requirement "as if" they were futures contracts.[31] No enforcement action, and no court, however, has analyzed the threshold question of whether these instruments qualify as futures contracts or security futures excluded from the swap definition.[32] The result has been persistent uncertainty for market participants.

The CFTC has begun to address this uncertainty. After opening the classification question to public comment in April 2025,[33] the CFTC on May 29, 2026, approved the listing of a perpetual contract referencing bitcoin "as a futures contract—a contract for sale of a commodity for future delivery,"[34] and its accompanying Policy Statement advised that perpetual contracts referencing other asset classes be

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26 Boon Chuan Lim, *Two-Regime Liquidity Recovery After a Perpetual Futures Liquidation Cascade: Evidence from Hyperliquid and the October 10, 2025 Event* (Apr. 23, 2026), https://ssrn.com/abstract=6636998.

27 *Id.*

28 *See* RFC, 91 Fed. Reg. at 37,875 (Question 1).

29 *See, e.g.*, Complaint, *CFTC* v. *HDR Global Trading Ltd.*, No. 20-cv-8132 (S.D.N.Y. Oct. 1, 2020); Complaint, *CFTC* v. *Zhao*, No. 23-cv-1887 (N.D. Ill. Mar. 27, 2023); Complaint, *CFTC* v. *Mek Global Ltd.*, No. 24-cv-2255 (S.D.N.Y. Mar. 26, 2024); Complaint ¶ 23, *CFTC* v. *Eisenberg*, No. 23-cv-173 (S.D.N.Y. Jan. 9, 2023); *In re Opyn, Inc.*, CFTC No. 23-40 (Sept. 7, 2023); *In re Deridex, Inc.*, CFTC No. 23-42 (Sept. 7, 2023).

30 Complaint ¶ 26, *SEC* v. *Eisenberg*, No. 23-cv-503 (S.D.N.Y. Jan. 20, 2023) ("While the crypto asset industry refers to these arrangements as a future, in fact these are not futures contracts offered and sold on regulated futures exchanges or in compliance with laws applicable to futures transactions."). The SEC's complaint, however, did not specify whether the SEC concluded that the MNGO-USDC Swaps were security-based swaps.

31 *See, e.g.*, *In re ZeroEx, Inc.*, CFTC No. 23-41 (Sept. 7, 2023); *In re Universal Navigation Inc. d/b/a Uniswap Labs*, CFTC No. 24-25 (Sept. 4, 2024). *See also* 7 U.S.C. §§ 2(c)(2)(D)(iii), 6(a).

32 7 U.S.C. § 1a(47)(B)(i).

33 CFTC Divisions of Market Oversight, Clearing and Risk, and Market Participants, Request for Comment on the Trading and Clearing of "Perpetual" Style Derivatives (Apr. 21, 2025) (Question 13).

34 BTCPERP Order, *supra* note 5.

submitted for CFTC review under CFTC Regulation 40.3.[35] The CFTC has since sought comment on perpetual contracts referencing physically delivered energy commodities.[36]

For perpetual contracts referencing equity securities, the Policy Statement contemplated review by both Commissions. RFC Question 11 now asks whether a cash-settled perpetual contract referencing an equity security could be treated as a security future, and the remainder of this comment letter offers HPC's views on that question.

III. Product Classification Should Be Consistent Across Underliers

Classification of a derivative as a futures contract or a swap does not turn on the asset the contract references. The CEA and the federal securities laws use the reference asset to divide regulatory authority within each category of derivative product.[37] Within the futures category, a contract on a single security or narrow-based security index (except for an exempted security) is a security future, regulated by both Commissions and subject to the Commodity Futures Modernization Act's ("CFMA") notice-registration framework; a contract on a broad-based index or any other commodity is a futures contract within the CFTC's exclusive jurisdiction.[38] Within the swap category, an instrument based on a single security, loan, or narrow-based index is an SBS regulated by the SEC; an instrument based on a rate, a broad-based index, or a non-security commodity is a swap regulated by the CFTC; and an instrument with both characteristics is a mixed swap, regulated by both.[39] It follows from this taxonomy that a derivative's underlier is relevant to the allocation of regulatory authority between the Commissions but not to the threshold determination of what type of product it is. That threshold determination rests on the statutory text of the CEA and the Exchange Act, as understood in the applicable case law and the Commissions' interpretations.[40]

Two perpetual contracts that share the common features of futures contracts—namely, standardization, fungibility, futurity, and the ability to exit the contract via offset—should receive the same threshold classification whether the contracts reference bitcoin, crude oil, or a single stock. Divergent classification of substantively identical products would create additional uncertainty for market participants, because of the significant differences in the regulatory regimes that attach to futures products versus swaps products, from reporting and margin obligations to where and how each product may list, trade, and reach retail investors. Divergent classification also invites arbitrage by classification and risks fragmenting liquidity and weakening U.S. competitiveness in financial market innovation.[41] The President's Working Group warned in 1999 that legal uncertainty over the treatment of derivatives "could discourage innovation and growth of these important markets and damage U.S. leadership in these arenas

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35 Policy Statement, 91 Fed. Reg. at 33,161.

36 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).

37 This Part is responsive to Questions 1 and 2 of the RFC. *See* RFC, 91 Fed. Reg. at 37,875.

38 *See* 7 U.S.C. § 1a(44) (defining "security future"); 15 U.S.C. § 78c(a)(55) (defining "security future"); *see also* 7 U.S.C. § 2(a)(1)(A) (granting the CFTC exclusive jurisdiction over transactions involving contracts of sale of a commodity for future delivery and swaps); *id.* §2(a)(1)(C)–(D) (allocating jurisdiction over security futures between the Commissions).

39 15 U.S.C. § 78c(a)(68); 7 U.S.C. § 1a(47)(D).

40 *See infra* Part IV.A.

41 *See* Michael S. Selig, Chairman, CFTC, Keynote Remarks at the ISDA 40th Annual General Meeting (Apr. 30, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig5 (discussing the "fragmentation that exists today across SEC and CFTC-regulated product markets," where "economically similar instruments" are "subject to different regulatory regimes" and "liquidity is fragmented across venues, investor types, and financial instruments.").

by driving transactions off-shore."[42] The same is true today. An inconsistent taxonomy for perpetual contracts also risks reviving the jurisdictional conflicts that occupied the Commissions and market participants for decades.[43]

HPC views a consistent taxonomy as central to onshoring these novel markets in a way that promotes innovation and fair competition among trading venues. We urge the Commissions to affirm that they will treat like products alike and avoid inconsistent approaches to product classification based solely on the derivative's underlier. That affirmation need not await rulemaking. Joint interpretive guidance, a policy statement, or other staff-level guidance can provide this clarity promptly, and the Commissions can codify the approach in due course.

IV. The Line Between Futures Contracts and Swaps

A. Futures contracts are excluded from the swap definition

Section 1a(47)(A) of the CEA defines "swap" broadly to include executory contracts that provide for the exchange of payments based on the value of assets, rates, or occurrences.[44] Section 1a(47)(B) then categorically excludes ten categories of instruments from the definition.[45] An instrument within one of the exclusions is *per se* not a swap, no matter how many features it shares with the definition's affirmative prongs. The excluded instruments include "[a]ny contract of sale of a commodity for future delivery (or option on such a contract)," as well as any security futures product.[46] A contract is accordingly a futures contract or a swap; it cannot be both.

The federal securities laws incorporate this same structure. The Securities Exchange Act of 1934 (the "Exchange Act") defines a security-based swap as "any agreement, contract, or transaction that is a swap," as the CEA defines that term notwithstanding the exclusion for any SBS in Section 1a(47)(B)(x), that is based on a single security or loan, a narrow-based security index, or the occurrence of an event that directly affects the financial statements, financial condition or financial obligations of an issuer of securities.[47] The SBS definition therefore inherits the CEA's swap definition along with its exclusion for futures contracts and security futures products. An instrument statutorily excluded from the "swap" definition cannot be an SBS. The determination that a contract is a "contract of sale . . . for future delivery," whether of a commodity- or security-underlier, accordingly resolves its status on both sides of the jurisdictional line, removing the instrument from the swap definition under the CEA and from the SBS definition under the Exchange Act.

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42 President's Working Group on Financial Markets, *Over-the-Counter Derivatives Markets and the Commodity Exchange Act* (Nov. 1999) (transmittal letter), *available at* https://home.treasury.gov/system/files/236/Over-the-Counter-Derivatives-Market-Commodity-Exchange-Act.pdf.

43 *See, e.g., Bd. of Trade of City of Chi.* v. *SEC*, 677 F.2d 1137 (7th Cir.) (GNMA options), *vacated as moot*, 459 U.S. 1026 (1982); *Chi. Mercantile Exch.* v. *SEC*, 883 F.2d 537 (7th Cir. 1989) (index participations); *Bd. of Trade of City of Chi.* v. *SEC*, 187 F.3d 713 (7th Cir. 1999) (Dow Jones index futures); *Cboe Futures Exch., LLC* v. *SEC*, 77 F.4th 971 (D.C. Cir. 2023) (volatility-index futures).

44 7 U.S.C. § 1a(47)(A).

45 *Id.* § 1a(47)(B).

46 7 U.S.C. § 1a(47)(B)(i); *see* RFC, 91 Fed. Reg. at 37,876 (Question 11). A "security futures product" is defined as "a security future or any put, call, straddle, option, or privilege on any security future." 7 U.S.C. § 1a(45); 15 U.S.C. § 78c(a)(56).

47 15 U.S.C. § 78c(a)(68)(A). The Exchange Act incorporates the CEA's swap definition "without regard to paragraph (47)(B)(x) of such section," the exclusion that removes security-based swaps themselves from the "swap" definition; that carve-out avoids circularity and does not affect the exclusion for futures contracts and security futures products in Section 1a(47)(B)(i), which the SBS definition incorporates in full.

B. Futures and swaps can share economic features, and products have historically moved between categories

Futures contracts and swaps can be economically similar, and entire product complexes have moved from one category to the other. In October 2012, as the Dodd-Frank swap definition took effect, the major exchanges converted their cleared over-the-counter energy swaps into futures contracts with identical economic terms.[48] The Intercontinental Exchange ("ICE") converted its entire cleared energy swap complex to futures the same day, citing "customers seeking the regulatory certainty of futures markets amid the continued evolution of new swap rules."[49] CME Group made the same transition for its cleared energy swaps, and its NYMEX exchange simultaneously established block trading thresholds across hundreds of energy futures and options contracts to "enable energy market participants to negotiate transactions in these products as futures."[50] These OTC swap products, their economic terms unchanged, moved from one statutory category to the other at the stroke of a pen. The CFTC convened a staff roundtable on this "futurization" the following January, and Commissioner Chilton observed that some of the migrating instruments were "very standardized swaps that probably should have always been futures contracts in the first place."[51]

The historical lines between these categories have run through how contracts are structured and traded: standardized, fungible contracts, traded on exchanges and able to be exited by offset, have been futures, while bespoke, bilateral, credit-intermediated instruments have been swaps.[52] The Commissions have recognized the fluidity between the categories and have permitted trading venues to list products based on the venues' own classification analysis. In the 2012 Product Definitions Adopting Release, the Commissions declined to adopt a bright-line test for distinguishing futures from swaps, confirming that "[i]f a DCM has a view that a particular product is a futures contract, it may self-certify the contract consistent with that view."[53]

C. Exchanges make listing determinations under the existing frameworks

Trading venues make product listing determinations in the first instance, under frameworks the Commissions oversee. A designated contract market ("DCM") may self-certify a new futures contract or exchange-traded swap under CFTC Regulation 40.2, or may submit a novel or complex product for voluntary Commission approval under CFTC Regulation 40.3, the path Kalshi chose for its BTCPERP

48 *See* Scott D. O'Malia, Comm'r, CFTC, *Keynote Address: Impact of the Dodd-Frank Act on Commodity Futures and Swaps Markets* (Mar. 21, 2014), https://www.cftc.gov/PressRoom/SpeechesTestimony/opaomalia-33 ("To avoid compliance with burdensome and costly swaps regulations, customers of both CME and ICE demanded that the commodity markets move to listed futures instead of swaps. In response, on October 15, 2012, ICE converted its cleared energy swaps into futures and CME began listing energy futures contracts.").

49 Press Release, ICE, ICE Completes Transition of Energy Swaps to Futures (Oct. 16, 2012), https://ir.theice.com/press/news-details/2012/ICE-Completes-Transition-of-Energy-Swaps-to-Futures/default.aspx.

50 NYMEX & COMEX Submission No. 12-292R to the CFTC (Sept. 27, 2012), https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul092712nymexandcomex001.pdf.

51 Bart Chilton, Comm'r, CFTC, *Futurization and Swapification* (Jan. 31, 2013), https://www.cftc.gov/PressRoom/SpeechesTestimony/chiltonstatement013113; *see* CFTC Staff Roundtable on the Futurization of Swaps (Jan. 31, 2013).

52 *See, e.g.,* Policy Statement Concerning Swap Transactions, 54 Fed. Reg. 30,694 (July 21, 1989); Exemption for Certain Swap Agreements, 58 Fed. Reg. 5,587 (Jan. 22, 1993).

53 Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208, 48,303, 48,311 (Aug. 13, 2012) (the "Product Definitions Release").

product and the path the Policy Statement now advises for perpetual contracts on new asset classes.[54] Security futures products list through a parallel process that runs through both agencies: the exchange, whether a DCM or a notice-registered national securities exchange ("NSE"), certifies to the CFTC that the product satisfies the statutory listing criteria, and the listing standards it applies are exchange rules filed with the SEC.[55] And for instruments raising questions that cross the agencies' jurisdictional bounds, any person may request a joint interpretation of an instrument's status under CFTC Regulation 1.8 and SEC Rule 3a68-2, and the Commissions have adopted joint, conditions-based classification rules before.[56]

These frameworks give trading venues flexibility to make product listing determinations, and that flexibility should be preserved. Supplemental guidance on the application of the historical features demarcating futures from swaps would aid market participants in making those determinations. The Commissions can provide clarity of this kind through interpretive guidance, policy statements, or other staff-level action, giving market participants prompt clarity while preserving the Commissions' flexibility to refine the framework over time. Together, that flexibility and that guidance would support competition among exchanges in bringing new products to market, expanding both product choice and venue choice for market participants.

V. Cash-Settled Equity Perpetual Contracts Can Be Classified as Security Futures[57]

A. *The security future definition incorporates the established understanding of futures contracts*

The CEA has never defined a "futures contract." The operative statutory phrase is "contract of sale of a commodity for future delivery," and "future delivery" is defined only by exclusion.[58] Courts and the CFTC have supplied the phrase's meaning through five decades of decisions and interpretations. When Congress lifted the Shad-Johnson ban on single-stock futures in 2000, it defined the new category of security futures products by adopting the CEA's operative phrase. The CFMA added identical definitions to the CEA and the Exchange Act: a security future is "*a contract of sale for future delivery* of a single security or of a narrow-based security index, including any interest therein or based on the value thereof . . . ."[59] The natural reading is that a contract qualifying as a futures contract under the established understanding in the context of commodity derivatives, when written on a single security or narrow-based index, is a security future. The securities-specific analysis related to the categorization of a product concerns the underlier, which forms the distinction between a futures contract and a security future; whether the contract is a "contract for future delivery" at all is determined the same way it historically has been under the CEA.

Familiar tools of statutory interpretation support this construction. Congress is presumed to know settled administrative and judicial constructions of statutory language and to adopt them when it

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54 17 C.F.R. §§ 40.2, 40.3; Policy Statement, 91 Fed. Reg. at 33,161.

55 *See* 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. §§ 41.21–41.23 (product certification filed with the CFTC); 15 U.S.C. § 78f(h)(2)–(3) (listing standards requirements); 15 U.S.C. § 78s(b)(7) (filing of security futures listing standards with the SEC); *see also* 7 U.S.C. § 7b-1 (notice registration of NSEs as DCMs for security futures trading).

56 17 C.F.R. § 1.8; 17 C.F.R. § 240.3a68-2; 15 U.S.C. § 8306; *see* Product Definitions Release, 77 Fed. Reg. at 48,296–300 (adopting 17 C.F.R. § 1.3 and 17 C.F.R. § 240.3a68-5, a joint rule prescribing conditions under which futures contracts on certain foreign sovereign debt will not constitute security-based swaps).

57 This Part is responsive to Question 11 of the RFC. *See* RFC, 91 Fed. Reg. at 37,876.

58 7 U.S.C. § 1a(27) ("The term 'future delivery' does not include any sale of any cash commodity for deferred shipment or delivery.").

59 7 U.S.C. § 1a(44); 15 U.S.C. § 78c(a)(55)(A) (emphasis added).

reenacts that language.[60] Identical words in statutes with similar purposes presumptively carry the same meaning, a presumption at its strongest where, as here, the definitions are verbatim identical, enacted simultaneously, and regulated under a single joint scheme.[61] Congress then used the phrase a third time in 2010, drafting the swap exclusions of Dodd-Frank in the same words after the leading modern futures-definition cases were decided;[62] the construction of the phrase as it stood in 2000 and 2010 is the construction Congress intended.[63]

B. *Perpetual contracts exhibit the recognized characteristics of futures contracts*

Shortly after the CFTC was created, it characterized futures contracts as "standardized contracts for the purchase or sale of commodities" that provide for future delivery, "are directly or indirectly offered to the general public," are "generally secured by earnest money, or 'margin,'" and are "entered into primarily for the purpose of assuming or shifting the risk of change in value of commodities, rather than for transferring ownership of the actual commodities."[64] The Ninth Circuit added in *Co Petro* that no bright-line definition governs and that each transaction "must be viewed as a whole with a critical eye toward its underlying purpose."[65]

The modern cases determining product categorization questions as applied to derivatives on intangible commodities focus on trading "in the contract." In *Chicago Mercantile Exchange* v. *SEC*, Judge Easterbrook, writing for the Seventh Circuit, observed that "[a] futures contract, roughly speaking, is a fungible promise to buy or sell a particular commodity at a fixed date in the future. . . . Trading occurs in 'the contract', not in the commodity."[66] The Seventh Circuit in *Zelener* and the Sixth Circuit in *Erskine* identified the characteristic attributes of a futures contract as standardization and fungibility, evidenced by fixed unit quantities, the ability to exit by offset, and terms uniform across participants.[67] Central clearing further evidences trading in the contract, because novation to a central counterparty is what makes contracts fungible in cleared markets.[68] Centralized clearing, however, is a supporting factor and not dispositive to the analysis; as the Commissions recognized in 2012, given Dodd-Frank's grant of

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60 *Lorillard* v. *Pons*, 434 U.S. 575, 580–81 (1978); *Bragdon* v. *Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well.").

61 *Smith* v. *City of Jackson*, 544 U.S. 228, 233 (2005) (plurality opinion); *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 85–86 (2006).

62 7 U.S.C. § 1a(47)(B)(i); *see, e.g., CFTC* v. *Zelener*, 373 F.3d 861 (7th Cir. 2004); *CFTC* v. *Erskine*, 512 F.3d 309 (6th Cir. 2008).

63 The complaint in *Chicago Mercantile Exchange* v. *Selig*, No. 26-cv-2157 (D.D.C. June 18, 2026), criticizes the BTCPERP Order for resting on case law that predates the Dodd-Frank Act. The reenactment canon inverts that argument—the settled pre-enactment construction of "contract of sale of a commodity for future delivery" is precisely what Congress is presumed to have adopted when it carried the phrase, unchanged, into the CFMA in 2000 and the swap exclusions in 2010.

64 *In re Stovall*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC Dec. 6, 1979).

65 *CFTC* v. *Co Petro Mktg. Grp., Inc.*, 680 F.2d 573, 581 (9th Cir. 1982).

66 *Chi. Mercantile Exch.* v. *SEC*, 883 F.2d 537, 542 (7th Cir. 1989), *cert. denied*, 496 U.S. 936 (1990).

67 *Zelener*, 373 F.3d at 865–67; *Erskine*, 512 F.3d at 325 ("the distinction . . . turns on the standardization and fungibility of the contract, and . . . whether there is 'trading in the contract,' rather than trading only in the underlying commodity").

68 *See Chi. Mercantile Exch.*, 883 F.2d at 542.

authority to the CFTC to mandate central clearing for swaps, clearing no longer necessarily separates the categories.[69]

A perpetual contract's indefinite duration also does not defeat categorization as a "contract of sale for future delivery." Courts have held that the fact that a contract "fail[s] to have a specified future delivery date is not determinative,"[70] because "[w]hile futures contracts generally have a specified future delivery date, or settlement date, that date is not always specified thus allowing some futures contracts to be of 'indefinite duration.'"[71] Moreover, the Seventh Circuit, in *Chicago Mercantile Exchange*, concluded that contracts having indefinite duration may have the "futurity" required of futures contracts where they contain future executory payment obligations.[72]

The instruments at issue in *Chicago Mercantile Exchange*, index participations, are similar in many respects to modern perpetual contracts. Index participations were cash-settled instruments that referenced the value of a securities index, with continuing quarterly payment obligations approximating dividends of the index paid out during the prior quarter. No predetermined settlement date bound both parties. The contracts instead continued indefinitely unless a long-side holder exercised its cash-out privilege, which most holders would never exercise, and the Seventh Circuit held that they were futures contracts within the CFTC's exclusive jurisdiction.[73] Robert Shiller himself recognized index participations as the closest analogue to the perpetual futures he proposed in 1993.[74]

Cash-settled equity perpetual contracts, if permitted to trade in the United States, would comfortably share these historically recognized characteristics of futures contracts. As implemented on Hyperliquid's HIP-3 markets, for example, contract terms are standardized within a listing, contracts are fungible, and unit quantities are fixed. Positions open and close by offset on a central limit order book, margin is maintained continuously, and prices are publicly disseminated. Participants enter the contract to assume or shift the risk of changes in the price of the referenced security, receive or owe future executory payment obligations in the form of funding payments, and the contract conveys no ownership interest in the underlying security. The one feature distinguishing a perpetual contract from a traditional dated future, continuous funding-based convergence in place of terminal settlement, goes to how the contract converges, and the case law does not condition futures status on any particular convergence mechanism. A contract with these characteristics, written on a single security, is a "contract of sale for future delivery of a single security" as that phrase has historically been understood.

C. ***Classification flexibility should be preserved***

Nothing in the foregoing analysis, however, requires every instrument bearing the economics of a perpetual contract and referencing a security underlier to be a security future. An instrument replicating a perpetual contract's payoff profile through a bilateral, individually negotiated structure, with no fungible contract class, no guaranteed right of offset, counterparty creditworthiness as a material consideration, and no multilateral execution, can be appropriately treated as a swap or SBS.[75] Trading venues should retain classification flexibility that reflects the specifics of their contracts. An exchange that structures an equity perpetual future with the characteristics described above should be able to list it as a security future

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69 Product Definitions Release, 77 Fed. Reg. at 48,303 ("Prior distinctions that the CFTC relied upon (such as the presence or absence of clearing) to distinguish between futures and swaps may no longer be relevant.").

70 *CFTC* v. *Int'l Foreign Currency, Inc.*, 334 F. Supp. 2d 305, 312 (E.D.N.Y. 2004).

71 *CFTC* v. *Int'l Fin. Servs. (N.Y.), Inc.*, 323 F. Supp. 2d 482, 498 (S.D.N.Y. 2004) (quoting *CFTC* v. *Standard Forex, Inc.*, 1996 WL 435440, at *10 (E.D.N.Y. 1996)).

72 *Chi. Mercantile Exch.*, 883 F.2d at 546.

73 *Id.* at 539–40, 546–50.

74 Shiller, *supra* note 14.

75 *See supra* note 52.

through the ordinary listing processes, and participants who structure perpetual-economics exposure bilaterally should retain the swap and SBS pathways.

The current uncertainty weighs only on the first of these paths, discouraging venues from listing equity perpetual contracts as security futures even where the instrument bears every characteristic of the category. The Commissions should consider issuing guidance consistent with the analysis above, confirming that the path to security futures classification for perpetual contracts on equities remains open.

D. *Security futures classification would open an existing framework built for both Commissions*

Classification carries practical consequences for whether and how a product reaches the market and trades, particularly for retail participants. An SBS may be offered or sold to retail persons (*i.e.*, non-eligible contract participants) only under an effective Securities Act registration statement, with the ordinary registration exemptions unavailable, and such transactions must be effected on a registered NSE.[76] That pathway exists, but it is demanding, and no retail SBS market has developed in the more than fifteen years since Title VII's enactment; the retail-facing SBS activity to date consists solely of unregistered offerings that became the subject of enforcement actions.[77] No comparable burden applies to listed options or security futures, neither of which requires Securities Act registration despite similarly providing derivative exposure to securities. Security futures products reach retail investors through registered exchanges under jointly administered listing standards.[78] The single-stock futures market has been commercially dormant since OneChicago closed in 2020, but the statutory framework remains in place, and U.S. exchanges have recently returned to it with new security futures listings.[79]

The security futures framework assigns both Commissions an oversight role and is conducive to cross-registrant competition. A DCM may list security futures by notice-registering with the SEC under the Exchange Act; an NSE may do the same by notice-registering with the CFTC under the CEA; and intermediaries likewise cross over through parallel notice registration.[80] Security futures are the one product category that can trade on both exchange types, alongside futures and exchange-traded swaps on a DCM and alongside SBS and exchange-listed equities on an NSE. Swaps and SBS have no equivalent; no retail-accessible venue may list both.

The Commissions' leadership has endorsed precisely the type of competition that security futures treatment would facilitate. SEC Chairman Atkins has stated that "securities intermediaries should be able to offer a broad range of products and services under one roof with a single license," and that the SEC should develop a framework allowing non-security assets and securities "to be traded side-by-side on SEC-regulated platforms."[81] CFTC Chairman Selig has made the parallel commitment that "market

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76 *See* 15 U.S.C. § 77e(e); 15 U.S.C. § 78f(l).

77 *See* Press Release, SEC, SEC Announces Enforcement Action for Illegal Offering of Security-Based Swaps (June 17, 2015), https://www.sec.gov/newsroom/press-releases/2015-123 (charging violations of Securities Act Section 5(e) and Exchange Act Section 6(l)); Press Release, SEC, SEC Charges App Developer for Unregistered Security-Based Swap Transactions (July 13, 2020), https://www.sec.gov/newsroom/press-releases/2020-153.

78 *See* 15 U.S.C. § 78f(h); 7 U.S.C. § 2(a)(1)(D).

79 *See* Press Release, CME Group, CME Group to Launch Single Stock Futures on July 27 (June 30, 2026), https://www.cmegroup.com/media-room/press-releases/2026/6/30/cme_group_to_launchsinglestockfuturesonjuly27.html.

80 *See* 15 U.S.C. § 78f(g), (h); 7 U.S.C. § 7b-1. A registered futures commission merchant may notice-register as a broker-dealer for security futures activity, and a registered broker-dealer may notice-register as a futures commission merchant (or introducing broker, as applicable). *See* 15 U.S.C. § 78o(b)(11); 7 U.S.C. § 6f(a)(2).

81 Paul S. Atkins, Chairman, SEC, *American Leadership in the Digital Finance Revolution* (July 31, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125.

participants should be able to offer multiple products through a single platform without navigating an inefficient patchwork of registrations and overlapping regulatory regimes."[82] The security futures framework already implements that model: a registrant primarily regulated by one Commission satisfies the other's requirements through notice registration and tailored obligations.

Equity perpetual contracts have found persistent demand on offshore venues, and U.S. entities have shown renewed interest in listing security futures products.[83] Where existing listing standards may require adaptation to accommodate cash-settled perpetual structures or additional underliers, the Commissions hold joint authority to modify those standards by order, as they did for American Depositary Receipts in 2001, ETFs and closed-end fund shares in 2002, and debt securities in 2006.[84]

VI. Conclusion

HPC respectfully urges the Commissions to take four steps. First, issue guidance confirming that the security future definition incorporates the established hallmarks of futures contracts, and that a cash-settled equity perpetual future bearing those hallmarks may be listed as a security future. Second, preserve the flexibility trading venues have today in making product listing determinations. Third, maintain a consistent taxonomy for perpetual contracts across both agencies. Fourth, consider the potential competitive benefits that security futures classification offers, and how the framework can be modernized to revitalize security futures and accommodate novel product structures. Each of these steps is available today through interpretive guidance, policy statements, or staff-level action, without the delay of a formal rulemaking. Prompt guidance would allow new products to come to market expeditiously, and the Commissions can codify the framework as experience develops.

The Commissions' leadership has recognized the benefits of these markets and expressed support for onshoring perpetual contracts that meet investor- and customer-protection standards. Additional clarity on the treatment of novel derivative products such as perpetual contracts would facilitate their listing and trading in the United States, allowing these products to trade across SEC- and CFTC-regulated platforms. HPC would welcome the opportunity to discuss these comments with the Commissions and their staffs, and to provide market data, technical documentation, or other assistance.

Respectfully submitted,

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82 Michael S. Selig, Chairman, CFTC, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (Jan. 29, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1; *see also* Selig, *supra* note 41 (describing substituted and alternative compliance as a path to what "SEC Chairman Paul Atkins has referred to as 'super-apps' where a wide range of cross-jurisdictional financial products and services can be offered within a single platform without two agency registrations.").

83 *See* CME Group, *supra* note 79.

84 Joint Order Modifying the Listing Standards Requirements Under Section 6(h) of the Exchange Act and the Criteria Under Section 2(a)(1) of the CEA, Exchange Act Release No. 34-44725 (Aug. 20, 2001) (ADRs); 67 Fed. Reg. 42,760 (June 25, 2002) (ETFs, trust issued receipts, and closed-end fund shares); 71 Fed. Reg. 39,534 (July 13, 2006) (debt securities).