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Client Alert

Commodities, Futures & Derivatives Group

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CFTC Staff Seeks Public Feedback on Perpetual Contracts and 24/7 Trading

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On April 21, 2025, the Commodity Futures Trading Commission's (CFTC) Divisions of Market Oversight, Clearing and Risk, and Market Participants issued two requests for comments soliciting public feedback related to the potential uses, benefits, and risks of perpetual contracts on CFTC-regulated derivatives markets and trading on a 24/7 basis.

Perpetual Contracts

CFTC staff recognizes that perpetual contracts – contracts that are designed such that prices and associated payments are derived from an associated cash or spot market price – have become increasingly popular, in part because of the reduced need to roll over a contract from one expiration to another. However, as with any innovation, there is a need to understand the complexities and risks involved. As a result, CFTC staff has requested comments on the following key areas of interest, among others, relating to perpetual derivatives contracts:

- What is a working definition of "perpetual derivative"?
- Should perpetual derivatives be considered swaps or futures contracts?
- Are there advantages for market participants trading perpetual derivatives over traditional futures contracts or spot market products?
- Are there unique risks related to perpetual derivatives?
- Are there concerns about susceptibility to manipulation, and should additional protections or safeguards be adopted by the CFTC?
- What are the potential arbitrage opportunities between futures and cash markets?
- Do perpetual derivatives raise unique issues in the event of a futures commission merchant's (FCM) or a derivatives clearing organization's (DCO) insolvency under Part 190 of CFTC regulations?

Trading and Clearing on a 24/7 Basis

Technological advancements and market demand have prompted certain designated contract markets (DCMs) and swap execution facilities (SEFs) to provide or explore providing trading services on a 24/7 basis. CFTC staff has requested comments relating to the risks and considerations of a 24/7 trading model, including questions regarding system resilience, market integrity, and DCMs' or SEFs' abilities to fulfill core regulatory obligations. CFTC staff noted in its request its concerns that a 24/7 trading market could heighten the risk of unplanned outages, complicate patch management, and require live change deployments and rollback mechanisms. An additional concern is whether DCMs and SEFs will be able to maintain adequate market surveillance for abusive trading practices and other manipulative or disruptive trading practices in contravention of the Commodities Exchange Act.

CFTC staff believes DCMs and SEFs are well suited to provide comments on what governance frameworks, exchange staffing models, and technologies would be necessary to ensure compliance with all core principles under a continuous trading model because they are already required to comply with these regulatory obligations regardless of what their trading hours are. Considerations include:

- Whether a 24/7 trading market could present challenges to DCMs and SEFs in performing system safeguards testing
- Whether DCMs and SEFs will need to enhance their approach to business continuity/disaster recovery planning
- Whether capacity and performance planning and configuration of surveillance systems need to be adjusted to detect anomalous activity across variable conditions of trading activity and liquidity
- Whether internal staffing and vendors/service providers can support 24/7 trading

From a clearing perspective, CFTC staff notes that the ability of DCOs to clear derivatives contracts on a 24/7 basis may present challenges to their risk management procedures. Specifically, setting and collecting margin and maintenance of sufficient financial resources to withstand a default under a continuous trading model may be difficult given the limited ability to collect additional margin, if needed.

Based on the foregoing, CFTC staff has requested comments on several questions, including:

- What are the risks related to clearing for 24/7 trading posed to DCO and FCM clearing members beyond those faced during traditional business hours?
- Is auto-liquidation of customer positions an acceptable and prudent risk mitigant for FCMs that hold open positions for customers during weekends and other periods when customers cannot make margin deposits?
- How do the risks associated with 24/7 trading differ from the risks currently experienced by FCMs and DCOs from holding customer positions open during weekends or overnight?
- Are there product types that are more reasonably suited to a 24/7 model?
- Are there any current CFTC regulations that would hinder 24/7 markets?
- What changes in market structure or operational capabilities (e.g., broader abilities to source and exchange collateral over weekends) could potentially mitigate risks associated with 24/7 markets?

Next Steps

CFTC market participants should consider commenting in response to CFTC staff's requests. The requests reflect the fact that as more markets globally begin to offer perpetual contracts and 24/7 trading environments, the CFTC will continue to evaluate its existing standards and rules to ensure market participants may continue to innovate compliantly. Lowenstein Sandler has significant experience advising CFTC-registered entities and market participants across a broad range of regulatory matters. Please contact one of the listed authors of this client alert or your regular Lowenstein Sandler contact if you have any questions or seek to submit a public comment in response to these requests for comments. See the CFTC's press release for the request for comment relating to perpetual contracts here and 24/7 trading here for additional information.

Contacts

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