

May 5, 2025

Via Electronic Mail and Web Submission

Hon. Caroline Pham, Acting Chairman
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: CFTC Consideration of 24/7 Trading in Futures Markets, Including:

- Coinbase Derivatives, Designated Contract Market Rules 55900, File No. 2025-22;¹
- Nodal Clear, Clearing Organization Rules 55898;²
- CFTC Staff Seek Public Comment on 24/7 Trading, Rel. No. 9068-25³

Dear Acting Chairman Pham:

The Healthy Markets Association⁴ writes to urge the Commission to disapprove the unprecedented Coinbase and Nodal Clear Rules Changes, which would generally allow for round-the-clock trading of Bitcoin and Ether-related futures products.

In both cases, the self-regulatory organizations have failed to demonstrate how their self-certifications are consistent with their obligations under the Commodity Exchange Act, much less justified by relevant evidence and analysis. Further, both rules involve significant policy changes that will have ramifications on trading well-beyond the products immediately identified – none of which are addressed.

Because the self-certifications were facially inadequate, and the Commission does not yet have sufficient evidence with which to find the determinations are consistent with the Commodity Exchange Act, the Commission must intervene to disapprove them.

¹ Coinbase Derivatives, Designated Contract Market Rules 55900, April 24, 2025, *available at* <https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationRules/55900> (“Coinbase Rules Changes”).

² Nodal Clear, Clearing Organization Rules 55898, April 24, 2024, *available at* <https://www.cftc.gov/IndustryOversight/IndustryFilings/ClearingOrganizationRules/55898> (“Nodal Clear Rules Changes”).

³ Press Release, *CFTC Staff Seek Public Comment on 24/7 Trading*, CFTC, Rel. No. 9068-25, April 21, 2025, *available at* <https://www.cftc.gov/PressRoom/PressReleases/9068-25> (“Request for Comment”).

⁴ The Healthy Markets Association is a not-for-profit member organization focused on improving the transparency, efficiency, and fairness of the capital markets. Healthy Markets promotes these goals through education and advocacy to reduce conflicts of interest, improve timely access to market information, modernize the regulation of trading venues and funding markets, and promote robust public markets. Its members include public pension funds, investment advisers, broker-dealers, exchanges, and data firms. To learn about HMA or our members, please see our website at <http://healthymarkets.org>.

24 Hour Trading Generally

Nudged forward by the existing digital asset markets, trading venues across asset classes – including U.S. futures and equities markets – have increasingly permitted more extended hours trading.

As a technical matter, modern technology allows for capital markets to – at least theoretically – operate around the clock. Of course, operating around the clock would introduce many new challenges for market participants, only some of which are operational. Systems tend to need “down time” for software and hardware maintenance and updates. Records need to be reviewed, scrubbed, and finalized. Accounts need to be reconciled and the complex processes of clearing and settlement need to occur. And margins need to be calculated for not just trading firms, but for others who may rely upon those prices.

For example, as we previously wrote to the Securities and Exchange Commission on the topic,

Executions in “off” hours of lesser liquidity imposes greater risks for all investors – not just those who execute at those times. Unquestionably, traders who search for liquidity in thin markets may receive poor execution quality, but those executions may also negatively impact non-trading market participants (or regulators) who may look to those trading prices for regulatory compliance, risk monitoring, customer contractual, or other reasons. These impacts may also include additional counterparty risk management.⁵

Some questions for regulators and market participants and experts to consider, many of which are also reflected in the Commission staff’s Request for Comment,⁶ include:

- What products should be permitted for extended hours trading? Less liquid products may be more sensitive to price movements, and may be more easily manipulated.
- Who should conduct surveillance and how should that surveillance occur for extended hours trading?
- How should price bands or other market price swing constraints apply to extended hours trading? Should any bands be adjusted to accommodate the variances in trading volumes?
- What should be the reporting obligations for trading venues and other market participants for orders, messages, and executions? For example, what are the official prices for publication and dissemination to the public, such as daily prices?

⁵ Letter from Tyler Gellach, HMA, to Vanessa Countryman, SEC, June 28, 2024, *available at* <https://healthymarkets.org/wp-content/uploads/2024/07/24X-Application-Comment-Ltr-6-28-24-1.pdf>.

⁶ Request for Comment.

- What, if any, obligations should there be on market participants to monitor and access liquidity in extended hours trading? Is, for example, a commodity pool operator violating its duties by not monitoring or trading overnight?
- How will clearing and settlement function?
- How, specifically, will margin be calculated and when? If a Bitcoin futures price moves 7% overnight in a thinly-traded market, as it easily might, could non-trading market participants find themselves subject to margin calls when they wake up in the morning? What are the firm and market-wide implications of either margin calculation policy path?
- How much time does a venue reasonably need to perform maintenance, testing, and improvements? Is an hour a week “off” enough for the venues and those who connect and depend upon them?
- How can diverse market participants build and test systems in “downtime” or otherwise “safe” environments? Regulators, trading centers, and other market participants frequently coordinate their downtime to ensure they may safely test their systems.

None of that is materially discussed in the paltry three-page filings by each of Coinbase and Nodal Clear. What is the factual basis for any of the answers to any of those questions? We don’t know.

Neither the Coinbase nor Nodal Clear Rules Changes identify many of the relevant facts and issues, much less make a rational connection between those facts and their chosen policies. To the contrary, the self-certifications ignore nearly all of these issues, and further leave most of the operational details unclear.⁷

Notably, the Commission staff is well aware of its lack of essential information on issues related to extended hours trading, and on April 21st released a request for comments related to round-the-clock trading.⁸ While far from exhaustive, the Request for Comment provided a handful of high-level questions that regulators would need to consider before taking action. Question 7, for example, recognizes that the move to a 24/7 trading in the futures markets will not occur in a silo – rather, depending upon the product type, the market structure changes may also have broad operational, security and other issues that impact the functioning of the market participants and adjacent markets.⁹

⁷ A three-sentence footnote in an under-three-page letter on all of systems maintenance and testing is laughably inadequate. See, Coinbase Rules Changes, at 3 n.1 (“Each quarter, CDE will have a weekend maintenance window for system upgrades, lasting a few hours. The maintenance schedule will be shared in advance to give participants ample time to plan any necessary system updates. In addition, ad-hoc maintenance windows may be required, and Exchange participants will be notified ahead of time.”). Additionally, the contemplated treatment of the weekend as a “Bank Holiday” presents not only some market data challenges, but policy considerations of how the publication of weekend trading information is consistent with Core Principle 8 – Daily Publication of Trading Information.

⁸ Request for Comment.

⁹ See Request for Comment, at 4 (asking “Are there product types that are more reasonably suited to a 24/7 model? Are there others for which a 24/7 model would introduce risks which could not be adequately mitigated? What characteristics distinguish the first from the second set of products?”).

Additionally, while the Coinbase and Nodal Clear Rules Changes ostensibly impact only Bitcoin and Ether-related futures products, there are broader implications to other commodity and securities markets that must be considered as well. This consideration is particularly salient here, given that the SEC's approval of spot Bitcoin and Ethereum ETPs was based in part upon CFTC and self-regulatory organizations' market integrity and surveillance mechanisms.¹⁰

We are all very well aware of how quickly and easily trading in a futures product regulated by the CFTC can lead to trading and price volatility in SEC-regulated securities products. The Commission simply can't ignore that reality, and it must coordinate with the SEC on how to thoughtfully address the obvious and sometimes less obvious linkages. Frankly, that was one of the primary lessons from the so-called Flash Crash. The CFTC and SEC-regulated markets needed to have complementary, and not inconsistent, market protections.

The SEC is currently undertaking a parallel exercise regarding extended hours trading in its regulated markets, and your agencies should work together in addressing the issues that arise. The Commission should take comfort from the fact that the SEC's leadership is not unconditionally approving extended hours trading, but rather engaging in a careful process to consider input from diverse market participants.¹¹

We applaud the CFTC staff for releasing the Request for Comment, recognizing that the issues need more vetting and that the agency needs more information and analysis before greenlighting round-the-clock trading. Comments are due May 21st, and we hope the Commission receives robust, valuable feedback.

Coinbase and Nodal Clear Are Seeking to Forestall the Commission's Thoughtful Consideration of All Relevant Facts and Analysis

We have long held concerns that Commission Rule 40.6 does not adequately ensure designated contract markets' adherence to the core principles.¹² Specifically, we are concerned that Rule 40.6 impermissibly affords far too much deference to self-regulatory organizations, and fails to reflect that the Commission has performed its

¹⁰ See *Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units*, SEC, Sec. Exch. Act Rel. No. 99306, at 4-10, (Jan. 10, 2024), available at <https://www.sec.gov/files/rules/sro/nysearca/2024/34-99306.pdf>.

¹¹ See generally, Statement of Hon. Hester Peirce and Hon. Caroline Crenshaw, SEC, Statement on the Commission's Approval of the 24X National Exchange Application for Registration as a National Securities Exchange, Nov. 26, 2024, available at <https://www.sec.gov/newsroom/speeches-statements/peirce-crenshaw-statement-24x-112624>.

¹² See, e.g., Letter from Tyler Gellasch, HMA, to Hon. Heath Tarbert, CFTC, Dec. 11, 2020, available at <https://healthymarkets.org/wp-content/uploads/2020/12/CME-Historical-Data-12-11-2020-4.pdf>; see also, Letter from Tyler Gellasch, HMA, to Hon. Rostin Behnam, CFTC, *Petition for Rulemaking to Amend Rule 40.6*, Nov. 19, 2024, available at <https://healthymarkets.org/wp-content/uploads/2024/11/Ltr-to-CFTC-re-CME-Data-and-Fees-11-19-24-1.pdf>.

obligation to ensure that designated contract market rules comply with the CEA and core principles.

Specifically, the Commission's lack of procedural review and consideration under Rule 40.6 is far more egregious than practices that have already been rejected as insufficient by the Court of Appeals for the District of Columbia Circuit. For example, like the Commission, the Securities and Exchange Commission is required to ensure that its exchanges' rules comply with the law and that Commission's rules. A number of years ago, when the Options Clearing Corporation adopted a rule with limited review and analysis by the Commission, the Court struck it down. In rejecting the SEC's approval of that rule change, the Court explained that to satisfy the "arbitrary and capricious" standard, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made.""¹³ The Court ruled that an agency must make its own independent review and "may [not] ... delegate its responsibility to the regulated party."¹⁴

These fears have been heightened in recent years, as Congress and the Commission have considered expanding this process to cover digital asset markets self-certifying digital asset commodities, and related products.

We now have proof that our fears have been warranted.

The Coinbase and Nodal Clear Rules Changes are another excellent example of why the Commission should act upon our November 19, 2024 petition to revise Commission Rule 40.6 to ensure that the Commission is aware of the substance and impacts of all DCM rules and able to effectively ensure that such rules comply with the substantive requirements of the CEA and Commission rules.¹⁵

Exactly three days **after** the Commission staff released its Request for Comment, Coinbase and Nodal Clear filed with the Commission that they had each self-certified rules changes to trade Bitcoin and Ether-related futures on a round-the-clock basis through the self-certification process with an extremely truncated period for potential regulatory or public intervention.¹⁶

Coinbase's self-certification explains that it may begin trading more than a week **before** comments are due to the Commission staff in response to its far more detailed Request for Comment.

This timing is not an accident.

¹³ *Susquehanna Int'l Group LLP, et al, v. SEC*, 866 F.3d 442, 445 (D.C. Cir. 2017) (quoting *Motor Vehicle Manufacturers Ass'n, v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962))).

¹⁴ *Id.*, at 446 (quoting *Gerber v. Norton*, 294 F.3d 173, 185-86 (D.C. Cir. 2002)).

¹⁵ See Letter from Tyler Gellasch, HMA, to Hon. Rostin Behnam, CFTC, *Petition for Rulemaking to Amend Rule 40.6*, Nov. 19, 2024, available at <https://healthymarkets.org/wp-content/uploads/2024/11/Ltr-to-CFTC-re-CME-Data-and-Fees-11-19-24-1.pdf>.

¹⁶ Coinbase Rules Changes and Nodal Clear Rules Changes.

The Coinbase Rules Changes and Nodal Clear Rules Changes are compelling the CFTC to consider the market-wide impacts of round-the-clock trading, but on an extremely condensed timeline that does not provide for anywhere near the appropriate level of data collection and analysis to reasonably support any agency action – including the inaction of allowing the rules to go into effect.

Further, there is no attempt to limit the potential precedential scope.¹⁷ As a result, the precedential value of the rules changes could reach far beyond just those entities or those products. We would expect Coinbase and other venues to quickly follow up these rule changes with similar ones for other products and markets ... again, all without a full solicitation of facts or reasonable analysis.

How would the Commission justify allowing the Coinbase and Nodal Rules Changes to become effective, and yet block similar trading rules for other products that might also be linked to securities? We see no rational way to make those distinctions, given the utter failures by Coinbase and Nodal Clear to give the Commission the essential information it would need to make these types of determinations.

Conclusion

We urge the Commission to immediately disapprove the Coinbase and Nodal Clear self-certifications and allow the public to address the important questions that the Commission has already made clear should be addressed in advance of 24/7 trading. To do anything less would be to impermissibly delegate its responsibilities to the self-interested and conflicted self-regulatory organizations that it is tasked with overseeing.¹⁸

We are happy to provide additional background.

Thank you for your consideration, and please feel free to reach out to me at (202) 909-6138 or ty@healthymarkets.org with any questions or follow up.

Sincerely,



Tyler Gellasch
President and CEO

Cc: Hon. Kristin N. Johnson, Commissioner, CFTC
Hon. Christy Goldsmith Romero, Commissioner, CFTC
Hon. Summer K. Mersinger, Commissioner, CFTC

¹⁷ We recognize that other futures markets and other products may have extended trading hours. They aren't the same as what's considered here.

¹⁸ See, *Susquehanna Int'l Group LLP, et al.*, at 446 (quoting *Gerber v. Norton*, 294 F.3d 173, 185-86 (D.C. Cir. 2002)).