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RULES AND ADMINISTRATION

United States Senate
WASHINGTON, DC 20510-0103

October 29, 2026

The Honorable Paul S. Atkins
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Atkins:

I write regarding the rapid introduction of perpetual derivatives tied to U.S. stocks. While I strongly support responsible financial innovation, it should not come at the expense of protecting investors and the integrity of our securities markets. Recent developments raise important questions about how these products should be classified under existing securities and derivatives laws, whether the proposed regulatory framework provides adequate investor protections, and how the SEC and CFTC will coordinate oversight. Given these questions, I encourage the SEC to work closely with the CFTC to ensure that the regulatory classification of these products is consistent with existing law and that appropriate safeguards are in place before they are offered to retail investors.

In June, the SEC and CFTC issued a Joint Request for Comment, seeking public input on how to draw clearer regulatory lines for innovative products implicating both agencies, including the treatment of perpetual contracts referencing equities. The comment period closed on August 24, and market participants raised significant questions concerning the appropriate regulatory treatment of these products.

On May 29, the Commodity Futures Trading Commission ("CFTC") permitted a designated contract market ("DCM") to list a bitcoin perpetual as a futures contract. The CFTC had historically treated perpetual derivatives as swaps, including in multiple enforcement actions. In permitting a DCM to list a bitcoin perpetual as a futures contract, the CFTC expressly limited that determination to digital commodities and simultaneously issued a nonbinding policy statement recommending case-by-case review of perpetuals referencing other asset classes. The statement specifically recognized that perpetuals referencing equity securities or narrow-based security indexes implicate SEC interests and would benefit from review by both Commissions.

Meanwhile, several DCMs submitted proposals in September to list perpetual contracts tied directly to individual U.S. stocks. Certain filings could become effective as early as November 2, subject to the CFTC's review process and any applicable SEC requirements.

The CFTC's classification of certain digital-asset perpetual contracts as futures is currently being challenged in federal court, raising fundamental questions about the legal basis for these products. This ongoing litigation underscores the importance of resolving threshold classification questions before widespread retail trading begins.

How perpetual derivatives are classified determines which statutory framework governs the products and what trading, transparency, conflicts-of-interest, and market-integrity protections apply. Security futures generally are subject to joint SEC and CFTC oversight, while security-based swaps are subject to the SEC's

exclusive jurisdiction. Before these products become available to retail investors, the SEC should address the following questions in coordination with the CFTC:

- Could trading in a perpetual be used to manipulate or otherwise affect the price of the underlying security?
- Will the SEC, FINRA, and securities exchanges have sufficient information to conduct effective cross-market surveillance?
- How will manipulative trading activity occurring on both a DCM and the underlying securities market be detected?
- What investor protections apply when retail customers obtain synthetic exposure to individual public companies through these products?
- What are the implications for capital formation if investors increasingly obtain economic exposure to public companies through perpetual derivatives rather than investing in an issuer's securities?
- What steps has the Commission taken to consider the potential harm to investors and markets if these products begin trading and a court subsequently determines that they have been improperly classified?

I look forward to working with the SEC to address these questions and, as always, I appreciate your commitment to protecting investors and the integrity of our U.S. securities markets.

Sincerely,

Katie Boyd Britt
United States Senator