UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CAPITAL MARKETS ALLIANCE ASSOCIATION, Plaintiff, v. COMMODITY FUTURES TRADING COMMISSION, et al., Defendants.	Case No. 1:26-cv-09608

BRIEF FOR *AMICI CURIAE*
COINBASE, INC., KALSHI INC., PAYWARD, INC., DRW HOLDINGS, LLC, JUMP TRADING, LLC, AND PARADIGM OPERATIONS LP
IN SUPPORT OF THE CFTC'S OPPOSITION TO
CAPITAL MARKETS ALLIANCE ASSOCIATION'S
MOTION FOR A PRELIMINARY INJUNCTION

CORPORATE DISCLOSURE STATEMENT

Counsel for Coinbase, Inc. certifies that Coinbase, Inc. is wholly owned by Coinbase Global, Inc., which is a publicly held corporation. Coinbase Global, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of Coinbase Global, Inc.'s stock.

Counsel for Kalshi Inc. certifies that Kalshi Inc. has no parent corporation, and no publicly held corporation owns 10% or more of Kalshi Inc.'s stock.

Counsel for Payward, Inc. certifies that Payward, Inc. has no parent corporation. No publicly held corporation owns 10% or more of Payward, Inc.'s stock.

Counsel for DRW Holdings, LLC certifies that DRW Holdings, LLC has no corporate parent, and no publicly held corporation owns 10% or more of DRW Holdings, LLC's stock.

Counsel for Jump Trading, LLC certifies that Jump Trading, LLC is wholly owned by Jump Trading Holdings, LLC, which is wholly owned by Jump Financial, LLC. Jump Financial, LLC has no corporate parent, and no publicly held corporation owns 10% or more of Jump Financial, LLC's stock.

Counsel for Paradigm Operations LP certifies that Paradigm has no parent corporation and that no publicly held corporation owns more than 10% of Paradigm's stock. Paradigm reserves the right to supplement this disclosure if needed.

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CFTC v. Int'l Fin. Servs. (New York), Inc.,
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CFTC v. Int'l Foreign Currency, Inc.,
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CFTC v. Standard Forex, Inc.,
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CFTC v. Zelener,
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Lachmund v. ADM Investor Servs., Inc.,
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Leist v. Simplot,
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Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran,
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Strobl v. N.Y. Mercantile Exch.,
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United States v. Bein,
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United States v. Phillips,
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Commodity Futures Modernization Act,
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Commodity Futures Trading Commission Act,
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Grain Futures Act,
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17 C.F.R. § 40.5(d)(1) 12

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17 C.F.R. § 242.403 23

77 Fed. Reg. 48,208 (Aug. 13, 2012) 24

91 Fed. Reg. 33,160 (Jun. 3, 2026) 27

91 Fed. Reg. 37,873 (Jun. 24, 2026) 11

91 Fed. Reg. 57,944 (Sept. 11, 2026) 26

91 Fed. Reg. 60,448 (Sept. 23, 2026) 26

Other Authorities

Paul S. Atkins, Chairman, SEC, *Prepared Remarks Before SEC Speaks* (Mar. 19, 2026), https://bit.ly/4iKHVUc 3

CFTC, *Basics of Futures Trading* (last visited Nov. 9, 2026), https://bit.ly/48I5J6e 5, 6

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CFTC, *Economic Purpose of Futures Markets and How They Work* (last visited Nov. 9, 2026), https://bit.ly/48GY08x 5, 9, 20

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Cong. Research Serv., *Introduction to Derivatives and the Commodity Futures Trading Commission* (Mar. 13, 2025), Appx. A 6

GAO, *CFTC and SEC: Issues Related to the Shad-Johnson Jurisdictional Accord* (Apr. 2000) 7

Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC (Sept. 5, 2025), https://bit.ly/4BX2S7a 11

Kalshi Brings Single Stock Perpetual Futures To The U.S., Kalshi News (Nov. 5, 2026), https://bit.ly/4AlWfJY 26

Walter L. Lukken, Comm'r, CFTC, Testimony Before the Committee on Agriculture, U.S. House of Reps. (Apr. 27, 2006) 16

Michael S. Selig, Chairman, CFTC, *Statement on Equity Perpetual Futures* (Nov. 3, 2026), https://bit.ly/48GGMrV 3

Lynn A. Stout, *Derivatives and the Legal Origin of the 2008 Credit Crisis* 1 Harv. Bus. L. Rev. 1 (2011) 8

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Webull to Debut Crypto-Linked Perpetual Futures in November, Reuters (Oct. 20, 2026), https://bit.ly/4iI90qK 10

Why Continuous Futures, Cboe, https://bit.ly/4z6BiSh 20

INTERESTS OF *AMICI CURIAE*[1]

Coinbase, Inc. (along with its affiliates, "Coinbase") operates the largest digital-asset trading platform in the United States. Founded in 2012, Coinbase's mission is to create a more open, inclusive, and efficient financial system by leveraging digital assets and blockchain technology. Coinbase's "Everything Exchange" gives customers access to a wide range of assets on a single platform, as part of the company's effort to build a financial system that is always on, more efficient, and accessible to everyone. To that end, on September 18, 2026, Coinbase affiliate Coinbase Derivatives LLC filed an application with the CFTC to list equity perpetuals tied to individual large-cap U.S. stocks. That application was deemed approved on November 2, 2026.

Kalshi Inc. ("Kalshi") wholly owns KalshiEX LLC ("KalshiEx"), a CFTC-licensed derivatives exchange. KalshiEx is a peer-to-peer market exchange where users buy and sell event contracts based on the outcomes of real-world occurrences. KalshiEx has also been at the forefront of bringing perpetual futures on-shore to regulated markets under federal oversight. In May 2026, the CFTC approved Kalshi's perpetual Bitcoin contracts as futures tradable on a CFTC-licensed exchange. On September 18, 2026, KalshiEx filed an application with the CFTC to list perpetual futures tied to individual large-cap U.S. stocks. That application was deemed approved on November 2.

Payward, Inc. is the parent company behind Kraken and NinjaTrader, a CFTC-registered futures commission merchant. It owns and operates a global family of businesses

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* made any monetary contribution to its preparation or submission.

offering a variety of products and services in trading, custody, payments, lending, onchain finance, and benchmarks. Earlier this year, Payward acquired Bitnomial, LLC, the parent company of Bitnomial Exchange, LLC (a CFTC-registered designated contract market) ("Bitnomial"), Bitnomial Clearinghouse, LLC (a CFTC-registered derivatives clearing organization), and Bitnomial Clearing, LLC (a CFTC-registered futures commission merchant). On September 18, 2026, Bitnomial applied to the CFTC to list perpetual futures on individual large-cap U.S. stocks. That application was deemed approved on November 2.

In this case, the Capital Markets Alliance Association ("CMAA") challenges the CFTC's non-action on Coinbase's, Kalshi's, and Bitnomial's applications, which resulted in approval by operation of law. The preliminary injunction that CMAA seeks would irreparably harm Coinbase, Kalshi, and Bitnomial by preventing them from listing equity perpetuals that the CFTC has deemed approved.

DRW Holdings, LLC (along with its affiliates, "DRW"), Jump Trading, LLC (along with its affiliates, "Jump"), and Paradigm Operations LP ("Paradigm") are proprietary trading firms, investors, and other participants in the futures, options, equities, and digital assets markets. These firms provide liquidity for a number of instruments and asset classes, including futures. These firms participate or are exploring participation in the market for equity perpetuals. Amici therefore have a direct interest in the outcome of this case.

INTRODUCTION

Earlier this year, the SEC and the CFTC undertook a joint effort to clarify how an increasingly popular product available only offshore—the equity perpetual—could be offered to U.S. investors. That effort answered a question that, in SEC Chairman Paul Atkins's words, had long stymied financial innovation: "[W]hose rules apply?"[2] After months of public comment and engagement, equity perpetuals were deemed approved as security futures, subject to the oversight of both agencies, and cleared to begin trading last week. As CFTC Chairman Michael Selig put it, both agencies are committed to "delivering regulatory clarity" for these innovative products and creating "a clear path to market."[3] For the first time, American investors will be able to trade equity perpetuals on U.S. exchanges, under U.S. supervision.

The Capital Markets Alliance Association ("CMAA") now asks this Court to unwind that work on an emergency basis, claiming that the CFTC usurped the SEC's authority. But the SEC (and CMAA's members) were at the table from the very start. The agencies jointly sought public comment on whether perpetual contracts should be classified as security futures. The exchanges listing equity perpetuals registered with the SEC and filed their listing standards with both agencies. CMAA weighed in. The two agencies CMAA says are at odds have treated equity perpetuals the same way: as security futures.

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[2] Paul S. Atkins, Chairman, SEC, *Prepared Remarks Before SEC Speaks* (Mar. 19, 2026), https://bit.ly/4iKHVUc.

[3] Michael S. Selig, Chairman, CFTC, *Statement on Equity Perpetual Futures* (Nov. 3, 2026), https://bit.ly/48GGMrV ("Selig Statement on Equity Perpetual Futures").

It is easy to see why. Equity perpetuals are close cousins of traditional security futures. Both let investors gain exposure to a stock's future price without owning it. Both are cash settled, fungible, exchange-traded, centrally cleared, and trade on margin. And both are subject to the same investor protections, jointly administered by the CFTC and the SEC. The one difference is an improvement: equity perpetuals do not expire. A funding-rate mechanism keeps their price tethered to the stock's, so investors who want continuous exposure need not roll into new contracts—and pay new fees—each time the old ones expire.

That improvement is the whole of CMAA's case. In CMAA's view, because equity perpetuals do not expire on a set date, they are not futures at all, but "security-based swaps" that cannot be listed on CFTC-regulated exchanges. CMAA takes that position even though the CFTC and SEC have treated equity perpetuals as security futures, even though equity perpetuals share all the core characteristics of security futures, and even though one of CMAA's own members has acknowledged that "[p]erpetual futures" in general "simply represent another futures instrument." CFTC Opp. 1 (quoting Dkt. 31-2, at 4). On CMAA's theory, the very feature that makes equity perpetuals better for investors is the one that disqualifies them as futures. CMAA's members could offer that better product themselves; instead, CMAA sued and sought emergency relief to keep it off the market.

CMAA has not come close to justifying that extraordinary relief. Its lead argument, that equity perpetuals fit the definition of a swap, asks the wrong question. When Congress brought swaps under federal oversight after the 2008 financial crisis, it targeted a previously unregulated over-the-counter market; it did not disturb the established regime for

on-exchange products like security futures. The Commodity Exchange Act ("CEA") says so expressly: A security future—by definition—cannot be a swap. *See* 7 U.S.C. § 1a(47)(B)(i).

The question, then, is not whether equity perpetuals resemble security-based swaps, but whether they are security futures—and they are. Equity perpetuals are "contract[s] of sale for future delivery of a single security." 7 U.S.C. § 1a(44). Each references a single stock, and each provides for delivery through cash settlement whenever the holder closes out the position. At a minimum, their periodic funding payments deliver an "interest … based on the value" of the stock, which is all the CEA requires. *Id.* And CMAA's insistence on a fixed expiration date finds no footing in the text. The CEA requires delivery in the "future," *id.*, not on a "specific future date"—a phrase Congress used elsewhere when it meant to require one. *See id.* § 1a(24). CMAA's contrary rule would produce indefensible results: A contract expiring in a thousand years would be a future, while an economically identical perpetual would be a swap.

Nor can policy concerns rescue CMAA's atextual theory. CMAA insists that equity perpetuals could affect underlying stock prices and invite manipulation and regulatory arbitrage. But this case is not about whether equity perpetuals should be regulated. They are, under a joint CFTC-SEC framework that addresses the very risks CMAA invokes. Reclassifying them as security-based swaps—a category the SEC has never adapted for exchange trading by retail investors—would not make investors safer. It would send equity perpetuals back offshore. CMAA's motion should be denied.

BACKGROUND

A. Futures Contracts Allow Trading Based On Projections About The Future Price Of An Asset.

Futures contracts—a type of derivative—allow buyers and sellers to hedge against the risk of shifting prices.[4] A trader who expects an asset's price to exceed the market's projection can agree in a futures contract to *buy* the asset at the projected price (the "long" position). If the price ends up being higher than the market predicted, the holder of the long position pockets the difference. Cong. Research Serv., *Introduction to Derivatives and the Commodity Futures Trading Commission* (Mar. 13, 2025), Appx. A. On the other side, a trader who expects the price to fall short of the projection can agree to *sell* the asset at the projected price (the "short" position). *Id.* Of course, one of the traders will end up financially better off—a feature that has long attracted speculative investors. *See Basics of Futures Trading*, *supra* n.4.

A traditional (or "dated") futures contract usually obligates one of the parties to deliver the referenced asset (*e.g.*, wheat or gold) by a date certain. But in practice, actual delivery almost never occurs. Parties either settle in cash at the expiration date—the economic equivalent of delivering the asset—or enter into offsetting transactions that effectively result in cash settlement. *In re Amaranth Nat. Gas Commodities Litig.*, 730 F.3d 170, 173-74 (2d Cir. 2013). And for investors who want continuous exposure to the future price of an asset, the expiration date creates inefficiencies. Those investors must

[4] *See* CFTC, *Economic Purpose of Futures Markets and How They Work* (last visited Nov. 9, 2026), https://bit.ly/48GY08x ("*Economic Purpose*"); CFTC, *Basics of Futures Trading* (last visited Nov. 9, 2026), https://bit.ly/48I5J6e ("*Basics of Futures Trading*").

continuously roll their positions into new futures contracts, incurring additional transaction costs and hassle each time.

B. Congress Built A Comprehensive Framework For Futures, Including Joint CFTC And SEC Oversight Over Security Futures.

Today's futures markets reflect more than a century of interaction among exchanges, Congress, and federal regulators—including the CFTC and the SEC.

Congress has regulated futures trading for more than a century. It began in 1922 with the Grain Futures Act, which centralized trading of grain futures on federally approved "contract markets." Pub. L. No. 67-331, 42 Stat. 998, 1000-02 (1922). Congress expanded federal oversight in the Commodity Exchange Act of 1936 ("CEA"), Pub. L. No. 74-675, 49 Stat. 1491. And in 1974, Congress overhauled the CEA and created the CFTC, giving the new agency jurisdiction over futures traded on designated exchanges and broad authority to oversee those markets. *See* Commodity Futures Trading Commission Act, Pub. L. No. 93-463, § 201(b), 88 Stat. 1389, 1395 (1974) (codified at 7 U.S.C. § 2(a)(1)(A)). Since then, futures trading in the United States has been governed by a "comprehensive regulatory structure" under a unified federal scheme. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356, n.1 (1982) (internal quotation marks omitted).

Security futures entered that framework at the turn of the century, on terms that gave the SEC a central role alongside the CFTC. Until 2000, the CFTC had jurisdiction over futures linked to the value of stock indexes like the S&P 500 or Nasdaq-100, but futures on individual stocks were banned. *See* GAO, *CFTC and SEC: Issues Related to the Shad-Johnson Jurisdictional Accord* 5-7 (Apr. 6, 2000). The Commodity Futures Modernization Act lifted that ban, expressly authorizing security futures based on individual stocks and

placing them under the joint jurisdiction of the CFTC and the SEC. *See* Pub. L. No. 106-554, 114 Stat. 2763A-366, 2763A-437 (2000) (codified at 7 U.S.C. § 2(a)(1)(D)). Under that framework, security futures are regulated both as futures under the CEA and as securities under the federal securities laws, and the two agencies coordinate surveillance of the futures and stock markets to detect cross-market manipulation. Any CFTC-regulated exchange that lists security futures (including equity perpetuals) must notice-register with the SEC as a national securities exchange, in addition to submitting the product to the CFTC. 15 U.S.C. § 78f(g). And the SEC, after consulting with the CFTC, may "summarily abrogate" the exchange's security-futures rules within 60 days of the CFTC's approval of the product and require that they be refiled under a different statutory procedure. *Id.* § 78s(b)(7).

In 2010, Congress again returned to the CEA in the Dodd-Frank Act, this time targeting swaps. Before 2008, banks, hedge funds, and insurers could take positions on the performance of a company's stock by finding another bank, hedge fund, or insurer to take the opposite position. Those security-based swaps were traded almost exclusively among large institutions, customized to each deal, transacted outside registered exchanges, and backed by no central clearinghouse—so almost no one could see how large the positions had become. With no close federal oversight, the swaps market ballooned beyond control, eventually contributing to the 2008 financial collapse. *See* Lynn A. Stout, *Derivatives and the Legal Origin of the 2008 Credit Crisis*, 1 Harv. Bus. L. Rev. 1, 22, 29 (2011).

In response, Congress enacted Dodd-Frank, which established a comprehensive new regulatory framework for swaps and charged the SEC with jurisdiction over security-

based swaps, in particular. 15 U.S.C. § 8302(a). Congress's goal, in the aftermath of the 2008 financial crisis, was to bring the previously unregulated over-the-counter swaps market under federal oversight, not to reclassify well-regulated, on-exchange products like futures. Congress in Dodd-Frank therefore defined "swap" broadly to encompass a "whole world of potentially dangerous financial instruments." *Coinbase Fin. Mkts., Inc. v. Raoul*, 2026 WL 2969682, at *9 (N.D. Ill. Oct. 2, 2026) (internal quotation marks omitted). But to avoid interference with the existing regulatory regime for futures, Congress explicitly *excluded* "security futures" from Dodd-Frank's security-based-swaps regime, leaving the 2000 framework undisturbed. *See* pp. 14-15, *infra*.

C. Perpetuals Build On Dated Futures By Removing Their Expiration Date.

Dated futures, including security futures, have served markets well for more than a century. But they also generate friction and transaction costs. For one thing, a futures contract's value is certain to match—or "converge" with—the underlying asset's value only as the delivery date nears. Indeed, given that physical delivery is so rare, the only "purpose of the delivery provision is to ensure convergence." *Economic Purpose*, *supra* n.4. Until the delivery date is imminent, the futures contract's value is driven by the market's projection of the asset's future price. For another, futures contracts expire, so traders who want to maintain their positions must keep buying new contracts—paying fees to clearinghouses and exchanges each time.

Perpetuals solve those problems. Like dated futures, perpetuals allow investors to gain exposure to the future price of an asset, whether to hedge against risk or to speculate on future price changes. But unlike dated futures, perpetuals do not expire on a fixed

date—that is, there is no pre-determined date on which the holders of long and short positions must settle in cash or buy offsetting positions. *See* Dkt. 1-2, at 3 ("Equity Perpetual Applications"). With perpetuals, traders can cash settle their positions on *any* future date they choose, without having to continually roll them into new contracts (and pay new fees for that privilege).

Perpetuals accomplish this through an innovative funding-rate mechanism. *See* Equity Perpetual Applications, at 3. Specifically, at pre-determined intervals (typically once or more daily), each side makes (or receives) a payment depending on the relationship between the price of the perpetual and the price of the underlying asset. If the underlying asset's price is higher than the perpetual contract's price, the short position pays the long position—and vice versa if the price is lower. For example, if the perpetual is trading at $100 and the asset at $102, holders of the short position pay holders of the long position, encouraging traders to buy long positions—driving up the perpetual's price toward $102.

The price of the perpetual thus continually converges with the price of the underlying asset, whereas a dated future converges only as the delivery date nears. *See* p. 9, *supra.* In that way, perpetuals solve both problems associated with dated futures: Their price stays tethered to the underlying asset's price throughout the contract's life, and they spare traders the repeated fees and operational burdens of rolling into new contracts. That reduced friction has made them popular with traders worldwide; the annual international trading volume of perpetuals exceeded $90 trillion in 2025.[5]

[5] *Webull to Debut Crypto-Linked Perpetual Futures in November*, Reuters (Oct. 20, 2026), https://bit.ly/4iI90qK.

D. Coinbase, Kalshi, and Bitnomial Apply To List Equity Perpetuals.

Until recently, Americans could not trade perpetuals on domestic exchanges. But the CFTC, the SEC, and market participants have worked to change that.

The two agencies laid the groundwork together. First, in April 2025, the CFTC staff issued a request for comment asking whether perpetual derivatives should be classified as swaps or futures contracts.[6] Then, in September 2025, SEC Chairman Atkins and then-Acting CFTC Chairman Pham jointly proposed that the agencies "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."[7]

In May 2026, Kalshi asked the CFTC for approval to offer perpetual futures contracts that reference the spot price of Bitcoin. Following its previous months of deliberation and feedback from market participants regarding perpetuals in general, the CFTC recognized that perpetuals "that reference the spot price of bitcoin or other digital commodities that have deep, active, and continuous spot market trading" are futures under the CEA. *See* Order Approving KalshiEX LLC BTCPERP Futures Contract, at 8 (May 29, 2026).[8]

The CFTC and SEC then turned to single-stock perpetual contracts, *i.e.*, equity perpetuals. In June 2026, the two agencies issued a joint request for comment "on potential

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[6] 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).

[7] Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC (Sept. 5, 2025), https://bit.ly/4BX2S7a.

[8] The Chicago Mercantile Exchange has separately challenged the CFTC's decision to allow digital-asset perpetuals. *See Chi. Mercantile Exch. v. Selig*, No. 26-cv-2157 (D.D.C.).

ways to draw clearer regulatory lines with respect to innovative products that may implicate both SEC and CFTC regulatory interests," including if "there is a need for greater clarity regarding whether a cash-settled 'perpetual' contract referencing an equity security could be treated as a security future." 91 Fed. Reg. 37,873, 37,873, 37,876 (Jun. 24, 2026). Exchanges, trading firms, and other market participants submitted comments on that question during a comment period that closed on August 24, 2026.

In September 2026, Coinbase, Kalshi, and Bitnomial applied to the CFTC for permission to list equity perpetuals and notice-registered the same with the SEC. *See* Equity Perpetual Applications; *see also id.* at 4, 18, 56 (referencing the parallel filings with the SEC under Rule 19b-7). By operation of law, each application was deemed approved upon the CFTC's non-action by November 2. 17 C.F.R. §§ 40.3(d)(1), 40.5(d)(1).

The next day, CMAA sued the CFTC. *See* Dkt. 1 ("Compl."). CMAA did not name the SEC as a defendant, even though the exchanges filed the same rule changes with the SEC and the SEC has not abrogated them. CMAA claims that the CFTC acted arbitrarily and capriciously by allowing the filings to take effect, and that the deemed approvals are contrary to law. Its theory is that equity perpetuals are not security futures eligible for listing on CFTC-regulated exchanges; they are security-based swaps, regulated by the SEC alone. CMAA moved for a temporary restraining order, which the Court denied, *see* Dkt. 11, and a preliminary injunction.

ARGUMENT

CMAA's claims turn on a question of statutory classification: whether equity perpetuals are "security futures" under the CEA. They are, and both agencies Congress charged with regulating security futures—the CFTC and the SEC—have treated them that way.

CMAA contends that equity perpetuals are instead "security-based swaps," for which the SEC has yet to build out a regulatory framework that allows retail trading. But Congress excluded "security futures" from that definition, so the only relevant question is whether equity perpetuals are "security futures"—that is, "contract[s] of sale for future delivery of a single security … including any interest therein or based on the value thereof." 7 U.S.C. § 1a(44). Equity perpetuals squarely satisfy that definition, and their economic features confirm the point: They possess the core characteristics of futures contracts. That leaves CMAA's policy concerns, which weigh against, not in favor of, the extraordinary relief it seeks.[9]

I. THE ONLY RELEVANT STATUTORY QUESTION IS WHETHER EQUITY PERPETUALS ARE SECURITY FUTURES.

CMAA starts on the wrong foot by asking the wrong statutory question. CMAA makes much of the fact that the perpetual contracts approved by the CFTC here "satisfy each part of the security-based swap definition." Dkt. 4-1 ("Mot."), at 22. But it makes no difference—and it is unsurprising—that equity perpetuals fall within the broad definition of "security-based swap," read in isolation. As discussed, Congress defined "swap" broadly in Dodd-Frank. *Coinbase Fin. Mkts.*, 2026 WL 2969682, at *9; *see* pp. 8-9, *supra*. Standing alone, that broad definition would capture a wide range of undisputed futures—including

[9] CMAA also argues that the CFTC's non-action that resulted, by operation of law, in the approval of certain equity perpetuals was arbitrary and capricious under the APA. *See* Mot. 16-22. But even if the CFTC's non-action were a final agency action, the CEA provides that the CFTC "shall approve" a new contract so long as it complies with the CEA and CFTC's regulations. 7 U.S.C. § 7a-2(c)(5)(B); 17 C.F.R. § 40.3(b). Thus, if this Court holds that equity perpetuals are security futures, the CFTC was obligated to approve them, and there would be no basis for this Court to preliminarily enjoin the CFTC's deemed approval.

cash settled interest-rate futures, stock-index futures, livestock futures, bitcoin futures, and many others.

That is why Congress in Dodd-Frank expressly *excluded* "security futures" from the definition of "security-based swap" (and commodity futures from the definition of "swap"). In enacting Dodd-Frank, Congress targeted the *unregulated* over-the-counter swaps market, not CFTC-regulated products. *See* S. Rep. No. 111-176, at 29; *see* p. 8, *supra*. So Congress took care to exclude security futures, which were already subject to joint CFTC and SEC oversight, from Dodd-Frank's reach. Specifically:

- The CEA gives "'security-based swap' … the meaning given the term in" the Securities Exchange Act. 7 U.S.C. § 1a(42).
- The Securities Exchange Act (as amended by Dodd-Frank) puts the ball back in the CEA's court by defining a "security-based swap" as "a swap, as that term is defined under section 1a of the" CEA, which "is based on," as relevant here, a "single security." 15 U.S.C. § 78c(a)(68).
- Section 1a of the CEA defines "swap" capaciously, *see* 7 U.S.C. § 1a(47)(A), but then excludes from that broad definition "any … security futures product," *id.* § 1a(47)(B)(i).
- The CEA defines a "security futures product" to include "a security future." 7 U.S.C. § 1a(45).

That reticulated scheme places security futures under the shared oversight of the CFTC, the expert agency on futures markets, and the SEC, the expert agency on securities markets, so that the agencies can work together to guard against manipulation on both ends.

This case therefore comes down to a single question of statutory interpretation: Is an equity perpetual a "security future"? If so, the equity perpetuals at issue are properly listed as security futures under the joint CFTC-SEC framework, and CMAA's claims fail.

II. EQUITY PERPETUALS ARE SECURITY FUTURES UNDER THE CEA.

The CEA defines a security future as a "contract of sale for future delivery of a single security … including any interest therein or based on the value thereof." 7 U.S.C. § 1a(44). Equity perpetuals satisfy that statutory definition—unsurprisingly, since they share the core features of the security futures the CFTC and the SEC have jointly regulated for decades.

A. Equity Perpetuals Are Contracts Of Sale For Future Delivery Of A Single Security.

As explained above, perpetuals are cash-settled futures contracts that have "no fixed expiration date" and instead rely on a funding-rate mechanism, rather than the arrival of a prefixed delivery date, to "drive[] convergence between the perpetual future price and the underlying spot price." Equity Perpetual Applications at 3; pp. 9-10, *supra*. Because the specific perpetuals at issue in this litigation are based on the price of a single stock, they are known as "[e]quity perpetuals." Equity Perpetual Applications, at 3.

Such equity perpetuals satisfy the CEA's definition of a "security future" because they are contracts of sale of a "single security" for "delivery" in the "future," "including any interest therein or based on the value thereof." 7 U.S.C. § 1a(44). Indeed, all parties agree that the asset underlying each equity perpetual at issue is a "single security." *Id.*; *see* Dkt. 1-1, at 1 (approving "perpetual futures contracts on individual equity securities"); Mot. 14

(conceding that the perpetuals provide exposure to "the price of an individual stock"). The only dispute is whether perpetuals provide for "delivery" in the "future." They do.

Delivery. For the equity perpetuals at issue here, the underlying "security … including any interest therein or based on the value thereof" is "deliver[ed]" via cash settlement when the holder's position is closed out—and independently through periodic funding-rate payments. 7 U.S.C. § 1a(44).

"[N]o one … doubts that a contract may be a futures contract even though it provides for cash settlement" rather than physical delivery. *Chi. Mercantile Exch. v. SEC*, 883 F.2d 537, 549 (7th Cir. 1989). That is because taking cash settlement at expiration is economically equivalent to receiving an asset and immediately selling it in the spot market for cash. *See N.Y. Mercantile Exch., Inc. v. IntercontinentalExchange, Inc.*, 497 F.3d 109, 111 (2d Cir. 2007); p. 6, *supra*. Indeed, CMAA concedes that "[i]nstead of physical delivery, the parties" to a futures contract "may agree to settle in cash" in an amount "equivalent" to the "good." Mot. 6, 25. And that is how nearly all futures contracts work in today's marketplace: "Across all futures markets, less than one percent of open futures positions are settled by [actual] delivery." Walter L. Lukken, Comm'r, CFTC, Testimony Before the Committee on Agriculture, U.S. House of Reps. 14 (Apr. 27, 2006); *see also CFTC v. Int'l Fin. Servs. (New York), Inc.*, 323 F. Supp. 2d 482, 496 (S.D.N.Y. 2004) ("The parties to a futures contract seldom, if ever, actually deliver or receive the commodity.").

The CEA's text confirms that cash settlement not only *can* serve as delivery, but sometimes *must*. The CEA expressly contemplates cash settlement of security futures, imposing specific additional requirements for circumstances in which a security future is

not cash settled. *See* 7 U.S.C. § 2(a)(1)(D)(i)(II); *see also Chi. Mercantile Exch.*, 883 F.2d at 542 (explaining that futures "based on financial instruments … do not allow delivery"). Congress, moreover, has been explicit when it means to exclude cash settlement. For example, the CEA exempts from its provisions governing certain contracts in foreign currency and other commodities "a contract of sale that … results in *actual* delivery." 7 U.S.C. § 2(c)(2)(D)(ii)(III)(aa) (emphasis added); *see also id.* § 2(c)(2)(C)(i)(II)(bb)(AA).

Perpetuals likewise provide for delivery through cash settlement. Instead of a fixed expiration date that forces customers to extend (*i.e.*, roll) their position or take delivery, a perpetual allows a customer to choose when to take final delivery by trading out of the position. In addition, equity perpetuals also achieve delivery through periodic funding payments. A perpetual's funding-rate mechanism pulls its price toward the underlying asset's spot price at every funding interval throughout the contract's life, not just as a specific expiration date approaches. *See* p. 10, *supra*. So whenever a holder closes out a perpetual position through an offsetting transaction, the holder receives the economic equivalent of delivery. Closing out a perpetual at any time is thus equivalent to cash-settling a dated future—which is undisputedly a form of delivery.

For security futures specifically, it is even clearer that perpetuals provide for delivery. The CEA defines a "security future" as a "contract of sale for future delivery of a single security … including any interest … *based on the value thereof*." 7 U.S.C. § 1a(44) (emphasis added). The regular funding-rate payments associated with a perpetual are themselves delivery of an "interest … based on the value" of the underlying security. *Id.* As explained above, at specified intervals, the holders of long or short positions in an equity

perpetual pay (or receive) an amount based on the "gap between the contract's price and a reference price that tracks the prevailing spot price of the underlying security." Equity Perpetual Applications, at 3; p. 10, *supra*. Equity perpetuals thus deliver an "interest … based on the value" of the security each time a funding-rate payment is made—in addition to the delivery that occurs when the holder closes out the position through an offsetting transaction.

"Future" delivery. A perpetual's cash settlement also plainly occurs in the "future": The holder makes (or receives) funding-rate payments, and ultimately closes out the position, after entering into the contract. 7 U.S.C. § 1a(44). CMAA does not dispute that cash settlement of perpetuals occurs in the future, after the contract is entered. It argues instead that perpetuals cannot be futures because they "do not expire and do not contemplate delivery or final settlement on any future date." Mot. 23.

That argument has no basis in the statutory text. The CEA requires only "delivery"—including through cash settlement—in the "future," 7 U.S.C. §§ 1a(44), (47)(B)(i), not delivery on a specific date. When Congress wanted a CEA definition to require a fixed expiration date, it said so explicitly. For example, the CEA defines the phrase "foreign exchange forward" as a "transaction that solely involves the exchange of 2 different currencies on a *specific future date*." *Id.* § 1a(24) (emphasis added). The definition of a "foreign exchange swap" likewise refers to a "transaction" involving "an exchange … on a *specific date*." *Id.* § 1a(25) (emphasis added). Congress included no comparable language in the definition of a security future. That omission counsels against "inferring the same

limitation" there. *State Farm Fire & Cas. Co. v. U.S.* ex rel. *Rigsby*, 580 U.S. 26, 34 (2016) (internal quotation marks omitted).

Courts have thus consistently recognized that "[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.'" *CFTC v. Standard Forex, Inc.*, 1996 WL 435440, at *10 (E.D.N.Y. July 25, 1996) (citation omitted).[10] Indeed, Judge Lynch rejected the very argument CMAA makes here in *International Financial Services*, where the defendants "argue[d] at length that without a fixed date for future delivery, a transaction cannot be a futures contract within the [CFTC's] jurisdiction." 323 F. Supp. 2d at 498. Judge Lynch reasoned that the defendants "wrongly characterize[d]" a fixed expiration date as an "essential featur[e]" of a future and "cite[d] no authority for this proposition." *Id.* He thus held the contracts at issue "remain 'futures contracts' within the Commission's jurisdiction notwithstanding the absence of a fixed delivery date." *Id.*

CMAA responds that these cases "pre-date the Dodd-Frank Act." Mot. 26. That is irrelevant. Dodd-Frank did not reclassify as swaps any products previously treated as futures; it targeted the previously unregulated over-the-counter swaps that contributed to the financial crisis. *See* pp. 8-9, *supra*. And to remove any doubt, Congress expressly excluded security futures from the definition of security-based swap. *See* pp. 13-14, *supra*.

[10] *Accord CFTC v. Int'l Foreign Currency, Inc.*, 334 F. Supp. 2d 305, 312 (E.D.N.Y. 2004) (quoting *Standard Forex*); *Chi. Mercantile Exch.*, 883 F.2d at 539-40 ("index participations" were futures even though they included an "option … to roll over the contract to the next [delivery] date," making them futures of "indefinite duration").

Nor would Congress have had any reason to treat futures differently simply because they lack a preset expiration date. As Judge Lynch recognized, even futures with expiration dates can be rolled over indefinitely. *Int'l Fin. Servs.*, 323 F. Supp. 2d at 498; *see also Chi. Mercantile Exch.*, 883 F.2d at 540. And contrary to CMAA's assertion, Mot. 24-25, a fixed expiration date is not necessary for a perpetual to serve the same economic function as a dated future. Dated futures contracts generally have expiration dates because an expiration date ensures convergence between the value of a futures contract and the spot price of the reference asset. *See Economic Purpose*, *supra* n.4. A perpetual's funding-rate mechanism achieves the same convergence in a different way, making an expiration date unnecessary. *See* Equity Perpetual Applications, at 3; pp. 9-10, *supra*. CMAA is therefore wrong that perpetuals lack "important guardrails." Mot. 25. The same "critical" function of futures that CMAA cites—convergence—is built into perpetuals through the funding rate.

Products offered by CMAA's own members demonstrate the point. Cboe Global Markets offers "Continuous Futures," which it describes as "long-dated, cash-settled futures contracts designed to provide continuous, long-term exposure to the price of bitcoin and ether in U.S. dollars." *Why Continuous Futures*, Cboe, https://bit.ly/4z6BiSh. Those self-described "perpetual-style futures" have "expirations extending up to 120 months" and employ a "funding mechanism that keeps futures prices closely aligned with their respective underlying reference rates." *Id.* They are economically indistinguishable from the equity perpetuals CMAA challenges here. Yet on CMAA's theory, equity perpetuals are swaps, while otherwise identical contracts with delivery dates more than a decade—or even

a thousand years—away are futures. CMAA does not explain "why Congress would draw such seemingly arbitrary distinctions" that "would yield incoherent results." *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 720 (2018). And that CMAA's rule could be evaded by such a technicality confirms that Congress did not adopt it.

CMAA also relies on dicta in cases describing how futures contracts *generally* work. *See* Mot. 24. But none of those cases held that a fixed delivery date is essential to a future, or that its absence turns a future into a swap. In *Leist v. Simplot*, the Second Circuit addressed whether the CEA contains an implied private cause of action. 638 F.2d 283, 296-322 (2d Cir. 1980), *aff'd sub nom. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982). The derivatives at issue in the case were futures, and the court's observation that futures normally work by "[t]he seller of the contract commit[ting] himself to deliver[ing] the commodity at a fixed date in the future," and "the buyer commit[ting] himself then to accept delivery and pay the agreed price" was unremarkable and had nothing to do with the court's holding. *Id.* at 286.

United States v. Phillips, 155 F.4th 102 (2d Cir. 2025), does not help CMAA either. There, the Second Circuit observed that "[c]ontrary to futures and traditional options, which contemplate delivery of or performance related to a commodity at some future time, swaps are pure financial instruments based on the difference between two fluctuating values." *Id.* at 112 (internal quotation marks and ellipsis omitted). But the question in *Phillips* was whether the CEA's criminal anti-manipulation provisions—which all agree covered both futures and swaps—applied extraterritorially. *See id.* at 108; *see also United States v. Phillips*, 2024 WL 1300269, at *1 (S.D.N.Y. Mar. 27, 2024) (listing the relevant criminal

provisions). And even the dicta on which CMAA relies does not suggest that the "future time," *Phillips*, 155 F.4th at 112, must be fixed in advance on a specific expiration date.[11]

Finally, even if CMAA were correct, and a fixed date of delivery were required, equity perpetuals have one. As explained, a payment made pursuant to an equity perpetual's funding-rate mechanism constitutes delivery of an "interest … based on the value" of the security. 7 U.S.C. § 1a(44). Those payments are made at predetermined intervals. So, even on CMAA's misreading of the CEA, equity perpetuals are security futures.

B. Equity Perpetuals Possess The Core Characteristics Of Futures Contracts.

Courts have also identified a number of functional and structural features "that tend to establish the existence of a futures contract." *Int'l Fin. Servs.*, 323 F. Supp. 2d at 494. Equity perpetuals share those features: They are fungible, so that trading occurs in the contract, rather than the underlying asset; they require initial deposits; and they allow holders to speculate on price changes. *See id.*

First, the perpetuals at issue here—like other "futures contracts traded over a regulated exchange"—are standardized, centrally cleared, and "fungible." *Merrill Lynch*, 456 U.S. at 389; *see also CFTC v. Zelener*, 373 F.3d 861, 864 (7th Cir. 2004); Equity Perpetual Applications, at 4-6 (Coinbase's perpetuals have standardized terms and are cleared by a

[11] The other Second Circuit decisions on which CMAA relies are no different. *See* Compl. ¶¶ 93-94. Like *Leist*, which arose from the 1970s potato futures market, *Strobl v. N.Y. Mercantile Exch.*, 768 F.2d 22, 24 (2d Cir. 1985), was antitrust litigation over the 1970s potato futures market, and *United States v. Bein*, 728 F.2d 107, 110-11 (2d Cir. 1984), concerned a 1970s precious metals options fraud. In none of those cases was expiry in question. The courts were merely describing the physically settled framework of their era as background to wholly unrelated legal questions.

derivatives clearing organization). Traders can therefore exit a position at any time by entering an offsetting trade, so that "[t]rading occurs in 'the contract,' not in the commodity"—a core characteristic of futures. *Chi. Mercantile Exch.*, 883 F.2d at 542; *see* Equity Perpetual Applications, at 22.

Second, equity perpetuals—like other futures contracts—involve "the initial deposit and maintenance of 'margin' or like payments." *Int'l Fin. Servs.*, 323 F. Supp. 2d at 494; *see Chi. Mercantile Exch.*, 883 F.2d at 542 ("[T]he markets and clearing house will set margin to protect their own interests.").[12] Each perpetual here is cleared by a CFTC-registered derivatives clearing organization, which sets margin requirements. *See* Equity Perpetual Applications, at 11, 28, 33-34; CFTC Opp. 4, 18 (discussing margin system).

Third, holders of perpetuals have "a purpose to speculate on the intervening price changes without having to acquire the underlying [asset]." *Int'l Fin. Servs.*, 323 F. Supp. 2d at 494. As CMAA acknowledges, the perpetuals here allow investors to "speculate on the price movements of individual stocks." Compl. ¶ 1. That is a fundamental characteristic of futures contracts—they "represent speculative ventures" in the underlying asset where "delivery was not an expectation." *CFTC v. Co Petro Mktg. Grp., Inc.*, 680 F.2d 573, 581 (9th Cir. 1982); *cf. Lachmund v. ADM Investor Servs., Inc.*, 191 F.3d 777, 789 (7th Cir. 1999) (contracts were not futures in part because contractual terms reflected intent to execute "actual delivery," not to "engage in price speculation").

[12] Those margin requirements must meet minimum levels that the CFTC and the SEC set through joint rulemaking. The SEC thus has a direct hand in limiting the leverage available on equity perpetuals, *see* 17 C.F.R. §§ 41.45, 242.403, contrary to CMAA's suggestion that it has no role.

C. CMAA Misreads The Regulatory History.

Finally, CMAA points to the "[r]egulatory history," which it contends shows that the CFTC and the SEC have previously treated perpetuals and similar products as swaps. Mot. 27. CMAA misreads that history.

CMAA first points to prior CFTC enforcement actions concerning perpetuals. *See* Mot. 27. Those cases did not turn on whether perpetuals were properly classified as swaps or futures. Instead, they generally involved claims that a defendant was unlawfully offering *both* futures and swaps, with the CFTC drawing no meaningful distinction between the two. *CFTC v. Zhao* is illustrative. *See* No. 23-cv-1887 (N.D. Ill.). There, the CFTC claimed that Binance was unlawfully offering both Binance "quarterly futures," which the CFTC categorized as futures, and "perpetual contracts," which the CFTC characterized as swaps. *See* Compl. ¶¶ 60-68, *CFTC v. Zhao*, No. 23-cv-1887 (N.D. Ill. Mar. 27, 2023), Dkt. 1. The CFTC's theory—that Binance was offering these products off registered exchanges—did not depend on whether the products were futures or swaps. The consent order that resolved the case similarly drew no relevant distinction between quarterly futures and perpetual contracts. *See* Consent Order at 8, *CFTC v. Zhao*, No. 23-cv-1887 (N.D. Ill. Dec. 14, 2023), Dkt. 80.

Next, CMAA points to the SEC's 2012 position that "contracts for difference" are swaps. Mot. 27-28. But "contracts for difference" bear little resemblance to equity perpetuals. Contracts for difference "generally are traded over-the-counter," meaning each contract is customized and traded between two parties. 77 Fed. Reg. 48,208, 48,260 (Aug. 13, 2012). Unlike perpetuals and dated futures, they are neither standardized nor centrally

cleared, and therefore not listed or traded on any U.S. exchange. Because they are not fungible and cannot be offset through an opposite trade on an exchange, contracts for difference lack the features that allow perpetuals to provide for future delivery through an offsetting transaction—the economic equivalent of physical delivery.

III. POLICY CONCERNS ARE IRRELEVANT AND, IN ANY EVENT, WEIGH DECISIVELY AGAINST THE EXTRAORDINARY RELIEF CMAA SEEKS.

With the text against it, CMAA falls back to policy concerns, warning that a parade of horribles will follow if equity perpetuals are properly classified as futures. But "policy concerns cannot trump the best interpretation of the statutory text." *Patel v. Garland*, 596 U.S. 328, 346 (2022). And CMAA's concerns fail on their own terms. Congress built the modern regulatory framework for security futures to guard against precisely the risks CMAA identifies, and it made joint oversight by the CFTC and the SEC the cornerstone of that framework. CMAA's suit would remove equity perpetuals from that framework—*undermining* those statutory and regulatory protections. The public interest, and the very policy concerns CMAA invokes, therefore weigh decisively against the extraordinary relief CMAA seeks.

CMAA warns, for example, that "perpetuals trading could influence underlying stock prices, facilitate cross-market manipulation, and invite regulatory arbitrage." Compl. ¶ 7. But those concerns are not unique to perpetuals. Any derivative referencing a single stock—whether a dated future, an option, or a security-based swap—can affect the underlying market and create opportunities for manipulation, and CMAA's members list and trade such products every day. Congress confronted those risks when it authorized security futures in the Commodity Futures Modernization Act, and it chose to address them

through a regulatory regime administered jointly by the CFTC and the SEC. *See* pp. 7-8, *supra*. Under that regime, security futures may trade only if they comply with an exchange's listing standards, which must satisfy statutory requirements designed to guard against those risks. 15 U.S.C. § 78f(h)(2), (3).

Those listing standards must provide, for instance, that "trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security," 15 U.S.C. § 78f(h)(3)(H). The market on which the security future is traded must also have in place "audit trails necessary or appropriate to facilitate [] coordinated surveillance," *id.* § 78f(h)(3)(J), and "procedures to coordinate trading halts," *id.* § 78f(h)(3)(K), with the underlying securities market. These requirements are designed to keep the two markets from interacting in ways that facilitate manipulation or arbitrage, while joint regulation and coordinated surveillance ensure that both agencies maintain visibility into trading.

As the statutory scheme contemplates, the SEC has been directly involved from the start in bringing equity perpetuals to market. Each of *amici*'s exchanges registered with the SEC as a national securities exchange for security futures, and the SEC acknowledged those registrations. *See, e.g.*, 91 Fed. Reg. 57,944, 57,944, 57,947-49 (Sept. 11, 2026); 15 U.S.C. § 78f(g). Each exchange also filed its security futures listing standards with the SEC, which published them for public comment. *See, e.g.*, 91 Fed. Reg. 60,448 (Sept. 23, 2026); 15 U.S.C. § 78s(b)(7). That process gave interested parties, CMAA included, an opportunity to raise concerns directly with the agencies, and CMAA did so. *See* 15 U.S.C. § 78s(b)(7)(A);

Letter from CMAA to SEC and CFTC (Nov. 2, 2026), https://bit.ly/4zaADiI. The SEC, like the CFTC, has authority to abrogate the exchanges' filings, *see* 15 U.S.C. § 78s(b)(7), but it has not done so—allowing equity perpetuals to enter the market. *See Kalshi Brings Single Stock Perpetual Futures to the U.S.*, Kalshi News (Nov. 5, 2026), https://bit.ly/4AlWfJY.

The SEC's role continues now that equity perpetuals are trading. As security futures, they are "subject to the applicable requirements of the [CEA], the U.S. [f]ederal securities laws, and the regulatory frameworks of both the CFTC and the SEC." Selig Statement on Equity Perpetual Futures, *supra* n.3; *see* CFTC Opp. 27. Because security futures are securities, *see* 15 U.S.C. § 78c(a)(10), the SEC can police fraud and manipulation in equity perpetuals just as it does in the underlying stocks, *see id.* § 78j(b). The SEC—the very regulator CMAA claims is being sidestepped here, *see* Compl. ¶¶ 1, 24-27, 32-33—thus has a direct and continuing role in overseeing equity perpetuals.

That is as it should be: Equity perpetuals are standardized, exchange-traded derivatives on a single stock, available to retail investors—precisely the kind of product Congress placed under the joint oversight of the CFTC and the SEC under the security-futures framework.

The alternative CMAA proposes is no alternative at all. Under Dodd-Frank, a security-based swap—which CMAA says equity perpetuals are—may be offered to retail customers only if it is registered under the Securities Act and listed on a national securities exchange. *See* 15 U.S.C. §§ 77e(e), 78f(*l*). Yet the SEC has never developed a framework under which an exchange-traded, retail-accessible security-based swap could operate, and

no such market exists. Reclassifying equity perpetuals, as CMAA urges, would thus foreclose retail access in U.S. markets altogether. Retail traders would keep buying equity perpetuals—just on offshore platforms beyond the reach of either agency. *See* 91 Fed. Reg. 33,160, 33,161-62 (Jun. 3, 2026) (CFTC explaining that a clarified domestic landscape would allow these products to "develop responsibly within regulated U.S. markets rather than migrating to less regulated jurisdictions"). That would leave U.S. regulators with less oversight—the opposite of what Congress designed the framework to achieve.

Stripped bare, the relief CMAA seeks would not protect investors; it would eliminate a lower-cost, lower-friction alternative to dated security futures. CMAA's members could offer their own perpetual contracts, as the CFTC itself has observed. *See* CFTC's Mem. in Supp. of Mot. to Dismiss, *Chi. Mercantile Exch. v. Selig*, No. 26-cv-2157 (D.D.C. Sept. 2, 2026), Dkt. 30-1, at 2. CMAA's preference that these products be removed from U.S. markets altogether cannot justify departing from the statutory scheme Congress enacted to classify complex derivatives—much less granting extraordinary relief.

CONCLUSION

The Court should deny CMAA's motion for an emergency preliminary injunction.

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Respectfully submitted,

*/s/ Steven A. Engel**
Steven A. Engel
Carl E. Kennedy (*pro hac vice* forthcoming)
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
(212) 698-3512
steven.engel@dechert.com
carl.kennedy@dechert.com

Counsel for Kalshi Inc.

*/s/ Haimavathi V. Marlier**
Haimavathi V. Marlier
MORRISON & FOERSTER LLP
250 West 55th Street
New York, NY 10019
(212) 468-8000
HMarlier@mofo.com

Counsel for Payward, Inc.

*/s/ Joshua S. Levy**
Joshua S. Levy
Chelsea Pizzola (*pro hac vice* pending)
A. Kristina Littman (*pro hac vice* forthcoming)
WILLKIE FARR & GALLAGHER LLP
1875 K St. NW
Washington, DC 20006
(202) 303-1147
JLevy@willkie.com

Counsel for DRW Holdings, LLC and Jump Trading, LLC

/s/ Jordan Estes
Jordan Estes
Yaira Dubin (*pro hac vice* pending)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
YDubin@gibsondunn.com

Nick Harper (*pro hac vice* pending)
1700 M Street, N.W.
Washington, DC 20036
(202) 955-8500
NHarper@gibsondunn.com

Counsel for Coinbase, Inc.

*/s/ Samson A. Enzer**
Samson A. Enzer
Gary E. Kalbaugh (*pro hac vice* pending)
CAHILL GORDON & REINDEL LLP
32 Old Slip
New York, NY 10005
(212) 701-3505
GKalbaugh@cahill.com

Counsel for Paradigm Operations LP

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