CME Group v. CFTC

The Perpetual Problem: A Battle Over Crypto Derivatives Threatens to Redraw the Map of U.S. Market Structure

Case: Chicago Mercantile Exchange Inc. v. CFTC, No. 1:26-cv-02157 (D.D.C.)
Filed: June 18, 2026 — U.S. District Court for the District of Columbia
Prepared: June 24, 2026
Research Method: STORM (Systematic, Thorough, Original-source, Referenced, Multi-perspective)
Sources: Reuters, CNBC, The Block, Courthouse News, Dechert OnPoint, Lowenstein Sandler, De Silva Law, The Defiant, Bloomberg, TD Securities/CoinDesk, CryptoTimes, DeFi Rate, FinanceFeeds

Executive Summary

On June 18, 2026, the Chicago Mercantile Exchange — operating unit of CME Group, the world's largest derivatives marketplace — filed a 42-page complaint in the U.S. District Court for the District of Columbia against the Commodity Futures Trading Commission (CFTC) and its Chairman, Michael Selig. The suit challenges the CFTC's May 29, 2026 order approving prediction market platform Kalshi to list a Bitcoin perpetual futures contract (BTCPERP) — the first of its kind on a U.S.-regulated exchange — and a simultaneous policy statement opening the door for all designated contract markets (DCMs) to self-certify similar contracts.

The legal theory is surgical: CME argues that perpetual contracts, which have no expiration date and instead use a continuous 'funding rate' mechanism to keep prices tethered to spot, meet the statutory definition of a swap under the Dodd-Frank Act — not a futures contract. The consequences of this classification are not cosmetic: swaps carry materially heavier regulatory burdens, different margin regimes, tax treatment, and reporting requirements. By allowing perpetuals to trade as futures, CME contends the CFTC created an unlevel playing field that inflicts 'textbook competitive injury.'

The stakes extend well beyond one Bitcoin contract. CBOE is already considering converting its crypto futures into perpetuals. Energy markets may be next. Hyperliquid — a decentralized on-chain perps platform — has already demonstrated that it can lead price discovery in oil markets ahead of CME's own open. And Kalshi crossed $8.5 billion in perpetual trading volume within weeks of launch. This brief synthesizes the legal arguments, regulatory history, competitive implications, and analytical questions most relevant to AlphaQuery's research and market structure coverage.

I. SITUATION — How We Got Here

The Global Perpetuals Market

Perpetual futures — 'perps' — are derivatives that track the price of an underlying asset without ever expiring. Instead of settling on a fixed date, they use a 'funding rate': when the perp trades above spot, longs pay shorts; when it trades below, shorts pay longs. This mechanism anchors the contract price to the market without requiring delivery or cash settlement at a fixed point.

The product was pioneered by BitMEX in 2016 and has since become the dominant form of crypto derivatives trading globally. Global perpetual futures volume grew 29% in 2025 to $61.7 trillion, according to CryptoQuant — dwarfing the underlying spot crypto markets and most conventional futures products.

Until May 2026, this market lived entirely offshore or on decentralized protocols. U.S. retail traders accessed perps through Binance, Bybit, OKX, or platforms like Hyperliquid — which operates an on-chain order book with no identity verification requirements. The irony flagged by CFTC Chair Selig: an enormous market affecting U.S. price discovery was developing entirely outside U.S. regulatory jurisdiction.

The May 29, 2026 CFTC Actions

In a single day, on a statutory review timeline that would typically require 45 to 90 days — and which took 1,834 days for a prior CME product — Chairman Selig, operating as the CFTC's sole confirmed commissioner out of five statutory seats, executed a sweeping regulatory pivot:

- Approved Kalshi's BTCPERP as a futures contract under the Commodity Exchange Act
- Issued a Policy Statement encouraging all DCMs to self-certify similar perpetual contracts as futures — without requiring prior Commission approval
- Published a staff advisory on 24/7 trading and clearing operations
- Issued a no-action letter to Coinbase permitting it to route U.S. customers to perpetual futures on its foreign affiliate, Deribit

No public comment period. No engagement with 150+ submissions the CFTC had already received on its April 2025 Request for Comment on exactly this classification question. Within one week, Kalshi had self-certified more than a dozen additional cryptocurrency perpetuals. Trading volume crossed $1 billion. A second no-action letter followed, allowing DCMs to convert existing expiring crypto futures into perpetuals simply by removing expiration dates.

KEY FACT	*Selig approved Kalshi's application in one day. A prior CME product approval required 1,834 days of CFTC review. The CFTC's own regulations provide a 45-day review window for new products, with a 45-day extension for 'novel or complex issues.'*

CME's Response and Trajectory

CME CEO Terry Duffy had been publicly critical since early June, calling perpetual futures 'a disaster waiting to happen' and warning of systemic risk from leverage and auto-liquidation mechanics for retail traders. On June 17, Duffy appeared on CNBC's Fast Money and announced CME would file litigation 'tomorrow' — revealing that his board had been preparing the challenge for eight months. The filing came the following day.

The announcement arrived the same day CME named Duffy's successor: CFO Lynne Fitzpatrick, who will become CME's first female CEO when Duffy steps down in March 2027, staying on as executive chairman. The lawsuit thus lands in Fitzpatrick's inbox before she takes the chair.

II. THEORY — The Legal Architecture

The Central Statutory Question

The entire case turns on one definitional fault line in federal commodities law: Is a crypto perpetual contract a 'swap' or a 'contract of sale of a commodity for future delivery' (i.e., a futures contract) under the Commodity Exchange Act (CEA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010?

These are not just regulatory labels. Swaps and futures sit under different sections of the CEA, regulated under different frameworks with different requirements, different margin rules, different tax treatment, and different dealer registration obligations.

CME's Statutory Theory

CME argues that perpetual contracts satisfy the CEA's three-part statutory definition of a swap under 7 U.S.C. § 1a(47)(A)(iii) because they:

- Provide on an executory basis for the exchange of payments (the funding rate) based on the value of a commodity (Bitcoin spot price);
- Transfer financial risk associated with future changes in that commodity's value between the parties; and
- Do so without conveying any current or future ownership interest in the underlying asset.

CME further argues that perpetuals cannot qualify as futures because futures contracts are defined by a fixed expiration date at which settlement — via physical delivery or cash settlement — occurs. A perpetual has no expiration date, no delivery obligation, and no settlement date. CME contends these were not accidental omissions but deliberate congressional distinctions drawn in Dodd-Frank to separate the two instruments.

DUFF Y QUOT E	*Under the Dodd-Frank Act, it clearly defines what a swap is and what a future is, and when there's two parties exchanging payments to each other, that's deemed a swap. — Terry Duffy, CNBC Fast Money, June 17, 2026*

The Enforcement History Argument

CME's strongest factual card: the CFTC's own lawyers previously argued in federal court that perpetuals are swaps. The complaint cites five prior enforcement actions in which the agency took precisely this position:

Enforcement Action	CFTC's Prior Position
KuCoin (2024)	Perpetual contracts classified as swaps
Binance (2023)	Perpetual contracts classified as swaps
Mango Markets (2023)	Perpetual contracts classified as swaps
Deridex (2023)	Perpetual contracts classified as swaps
BitMEX (2020)	Perpetual contracts classified as swaps

This history is pivotal under Administrative Procedure Act (APA) doctrine. An agency that reverses a longstanding and consistently applied legal position without acknowledging or explaining the reversal violates the APA's prohibition on 'arbitrary and capricious' agency action. The CFTC's May 29 Order, CME alleges, does not mention the word 'swap' even once, and does not engage with any of the 150+ public comments submitted on the classification question.

The APA Violation Claim

CME's second major claim is procedural: the CFTC acted arbitrarily and capriciously under 5 U.S.C. § 706(2)(A) by:

- Issuing a major policy reversal without notice-and-comment rulemaking;
- Approving a product the agency's own regulations designate as 'novel or complex' in a single day rather than the required 45-90 day period;
- Effectively 'rubber-stamping' Kalshi's application — the Order, CME alleges, repeats Kalshi's own reasoning verbatim without independent analysis;
- Delegating the Commission's statutory review authority to an automated self-certification process for all future perpetual contracts; and
- Acting as a commission of one — Selig is currently the CFTC's sole confirmed commissioner out of five statutory seats, a situation of questionable administrative legitimacy.

What CME Is Asking For

CME's complaint requests the district court:

- Vacate the CFTC's May 29 Order approving Kalshi's BTCPERP contract;

- Vacate the Policy Statement authorizing other DCMs to self-certify perpetuals as futures;
- Declare that Kalshi's BTCPERP and similar perpetual digital commodity contracts are swaps under the CEA; and
- Declare that CFTC authorization of perpetuals as futures is unlawful.

Precedent: CME's 2012 Lawsuit

This is not the first time CME has litigated against the CFTC. In November 2012, CME sued to block a rule requiring it to report nonpublic swaps data to third-party swap data repositories, arguing the mandate exceeded the CFTC's authority. The CFTC backed down within the month and CME withdrew the suit. That history makes the CFTC's current dismissiveness — calling the suit 'lawfare' and 'frivolous' — strategically interesting: the agency may be betting the courts side with the innovation framing rather than the statutory one.

III. OPPOSITION — The CFTC's Counter and Stakeholder Positions

The CFTC's Rebuttal

The CFTC has declined to mount a detailed statutory defense in public, relying instead on competitive and political framing. A CFTC spokesperson's response to The Block: 'Rather than compete in the marketplace, the CME has decided to undertake lawfare against the agency and the Trump Administration's pro-innovation agenda. Incumbents fear the future and having to compete on a level playing field. We look forward to addressing their claims and dismissing this frivolous lawsuit.'

Chair Selig's public defense rests on three arguments:

- Policy rationale: Perpetuals represent the CFTC's 'statutory obligation to promote responsible innovation' and support President Trump's goal of making the U.S. the 'crypto capital of the world';
- Offshore harm: 'If we don't create a regulated path here in the U.S., then the markets will just split offshore. These markets will develop, they won't develop in the U.S.';
- Leverage misconception: 'The extreme leverage often associated with the perpetual contract structure is a hallmark of the offshore venues where these products have traded since their creation and, importantly, is not in any way inherent to the contract structure itself.'

CFTC COUNTER	*Neither the CFTC nor Kalshi has publicly explained why a contract with no expiration date and no delivery obligation satisfies the CEA definition of 'contract of sale of a commodity for future delivery.' Policy framing is not a statutory defense.*

Kalshi's Position

Kalshi spokesperson Elisabeth Diana: 'This isn't about the law, it's about the fear of competition.' Kalshi argues its perpetuals are not riskier than traditional futures and that the CME's 92% share of U.S. exchange-traded derivatives markets represents anticompetitive concentration, not a market to protect.

Within weeks of launch, Kalshi's perpetuals crossed $8.5 billion in cumulative trading volume. On the day CME filed its suit (June 18), Kalshi's 24-hour BTC PERP volume was $1.22 billion; ETH PERP posted $562.7 million. CME's own perpetual volume that day was reported at under $6 million — less than 1% of Kalshi's.

Coinbase's Position

Faryar Shirzad, Coinbase's chief policy officer: 'Competition and innovation are the bedrock of vibrant financial markets and we commend the CFTC for onshoring modern contract structures that benefit American investors.' Coinbase has plans to launch U.S. equity-index perpetual futures and has already routed U.S. customers to its offshore Deribit affiliate under the no-action letter.

Hyperliquid's Position

The Hyperliquid Policy Center, via X: CME is 'trying to suppress competition' and that perpetual futures are 'the first genuinely new derivatives product to reach U.S.-regulated markets in more than a decade.' Hyperliquid cited CME's ~92% U.S. exchange-traded derivatives market share (per Better Markets) and argued broader exchange competition benefits market users.

Hyperliquid's implicit position in this battle is structurally interesting: it would benefit from a CFTC win (perps stay futures = lighter regulatory burden; broader DeFi pathway) but may also benefit from a CME win if a futures-to-swaps reclassification creates higher barriers for centralized incumbents like Kalshi while Hyperliquid continues operating offshore.

CBOE's Position

CBOE Global Markets, citing Rob Hocking (Global Head of Derivatives), is actively exploring converting its Bitcoin and Ether futures into perpetual contracts. This signals that even incumbent traditional exchanges see the strategic value in the perps framework — and may prefer the CFTC's approach over CME's swap classification, which would impose significantly heavier compliance burdens on their own potential perps offerings.

The Polymarket/Michigan Ruling — Concurrent Context

On the same day CME filed its suit, a federal judge in the Western District of Michigan (Judge Paul L. Maloney) denied Polymarket's request for a preliminary injunction against state regulators and ruled that sports-related prediction market wagers are not swaps and therefore fall outside CFTC jurisdiction. Maloney wrote that the agency's interpretation of its own authority was 'so vast that it would encompass vast swaths of activity never understood to be associated with the financial industry.' The language lands awkwardly for the CFTC as it heads into the CME swap-classification fight.

IV. RISKS & RAMIFICATIONS — Market Structure Implications

Regulatory Arbitrage at Scale

The classification dispute is not merely academic. The difference between futures and swaps determines:

Dimension	Futures vs. Swap Treatment
Tax treatment	Futures: IRC §1256 — 60/40 long/short-term gain, loss carryback available. Swaps: ordinary income treatment.
Margin requirements	Futures: 1-day minimum liquidation time. Swaps: 5-day minimum — substantially higher margin call.
Dealer registration	Futures: no dealer registration required. Swaps: mandatory swap dealer registration above de minimis threshold.
Reporting	Futures: standard exchange reporting. Swaps: comprehensive data reporting under CFTC Parts 43 and 45.
Review process	Futures: self-certification available. Swaps: mandatory CFTC prior approval for new products.
Customer collateral	Different segregation requirements under CEA §4d(a) vs. §6d(f)(2).

By approving perpetuals as futures, the CFTC effectively allowed new entrants to operate under the lighter futures regime — creating a structural competitive advantage over incumbent exchanges subject to stricter oversight on comparable products. CME's complaint describes this as a 'textbook competitive injury.'

The Benchmark License Dimension

CME CEO Duffy disclosed a strategic piece of information often overlooked in coverage: 'We have an exclusive license with every single provider of the benchmarks. All of these would have to go through CME regardless of the perpetual.' This means that even if Kalshi and Coinbase prevail legally, they may still face a contractual chokepoint at the benchmark level — whether their perpetuals reference CME-licensed price feeds for Bitcoin, Ether, and other assets.

Systemic Risk: The Leverage and Liquidation Question

CME's case has both a legal theory and a financial stability concern. Duffy's systemic risk argument: retail users rely on auto-liquidation systems in perpetuals, often without understanding that funding rate costs continuously erode their positions. High leverage — endemic to offshore perps platforms — creates cascade liquidation risk during sharp drawdowns.

Selig's counterargument: CFTC-regulated perpetuals will carry the same margin and leverage requirements as other U.S. futures contracts — extreme leverage is a feature of unregulated offshore venues, not inherent to the perp structure. Regulated perps would be safer, not more dangerous.

Historical evidence cuts both ways. A Hyperliquid SPACEX-USDH perpetual flash-crashed earlier in 2026, wiping out approximately $1.5 million in notional value within 30 minutes when a single large position met thin liquidity — precisely the auto-liquidation cascade dynamic Duffy warned about. However, this occurred on an unregulated decentralized venue.

Market Share Reality Check

CME's competitive position is substantial but the trajectory is concerning. CME holds roughly 92% of U.S. exchange-traded derivatives market share. Its Bitcoin and Ether futures complex, capped at approximately 5-to-1 leverage with quarterly settlement, has been the dominant U.S. crypto derivatives venue. Shares of CME fell approximately 6.2% on May 29 when the CFTC announced approval; ICE fell ~2%. CME shares are down roughly 9% since the ruling.

The competitive threat extends beyond crypto. Coinbase has announced plans to launch perpetuals on U.S. equity indices. The CFTC's June 22 Request for Comment explicitly raises the possibility of perpetuals in physical energy markets — oil, natural gas. TD Securities wrote in early June that Hyperliquid had already led price discovery in WTI crude by approximately 80% during the U.S.-Israel-Iran conflict weekend when CME was closed, with oil-linked perp volume on the platform surging from ~$25 million to over $550 million.

CRITICAL IMPLICATION	*If perpetuals expand into commodities — oil, gold, copper — under the futures framework, CME's near-monopoly on U.S. benchmark derivatives faces a structural, not merely competitive, challenge. The same logic applies to equity index products currently dominated by CME and ICE.*

The 'Commission of One' Problem

Selig is currently the CFTC's sole confirmed commissioner — one of five statutory seats. This is constitutionally and administratively unusual. CME's complaint implicitly targets this: a major regulatory pivot affecting the structure of U.S. derivatives markets was executed by a single unconfirmed appointee without a quorum of commissioners, without public comment, and without engaging with submitted comments. Courts have shown increasing willingness to scrutinize such concentrated agency action.

V. MODELS & ANALYSIS — Analytical Framework

Probability Assessment: Legal Outcome

CME's legal case is stronger than the CFTC's political rhetoric suggests. Several factors favor CME:

- The statutory text of Dodd-Frank's swap definition plausibly encompasses perpetual contracts — and no court has ruled otherwise;
- The CFTC's own five-year enforcement history consistently classified perpetuals as swaps, and the agency's public response has not engaged the statutory argument at all;
- APA arbitrary-and-capricious review is not a high bar for challengers when an agency reverses a longstanding position without explanation;
- The concurrent Polymarket/Michigan ruling — while on a different product — suggests courts are skeptical of expansive CFTC jurisdictional claims;
- The agency's decision was made by a sole commissioner, bypassing normal Commission deliberation.

Factors favoring the CFTC:

- Courts generally defer to agencies on product classification questions within their regulatory expertise (Chevron, though weakened post-Loper Bright);
- The CFTC can argue functional equivalence — the product clears like a future, trades like a future, and is subject to the same exchange oversight;
- Political headwinds: the suit is framed as opposing a Trump administration innovation priority, which may affect judicial temperature in a DC Circuit likely to be conservative-leaning.

Scenario Analysis

Scenario	Implications
CME wins — perps reclassified as swaps	Kalshi's products require swap dealer registration; Coinbase's no-action letter withdrawn; all DCM self-certifications unwound. Major compliance burden on new entrants. CME retains crypto derivatives dominance. Perps development moves back offshore or to DeFi. CFTC's credibility on crypto innovation agenda damaged.
CFTC wins — perps remain futures	Perps proliferate across crypto, then potentially equities and energy. CME faces structural competition from Kalshi, Coinbase, CBOE, and potentially Hyperliquid (if onshored). CME's 92% market share erodes. Benchmark licensing becomes the real competitive moat. Tax benefits of §1256 treatment flow to perp traders.
Partial settlement / consent decree	CFTC agrees to issue formal rulemaking with notice-and-comment; perps remain listed during review; CME withdraws as in 2012. Regulatory uncertainty persists for 12-24 months. Products trade in legal limbo.
Case dismissed on standing	CME lacks standing if court finds competitive harm too speculative. Unlikely given documented volume impact. Would be the most disruptive outcome — no legal clarity on classification question.

AlphaQuery Analytical Angles

For RIA / HNW Investor Context

The §1256 tax treatment distinction is directly relevant to sophisticated investor positioning. Futures contracts under §1256 receive 60% long-term / 40% short-term capital gains treatment regardless of holding period, and allow three-year loss carryback. If perpetuals are reclassified as swaps, that favorable treatment disappears — and positions entered during the perp's 'futures' period may face retroactive tax complexity.

For Market Structure Coverage

The deeper story here is not the Bitcoin perpetual contract. It is whether the CFTC's action has inadvertently opened a pathway for a new class of always-on, no-expiry derivatives to colonize commodities, equities, and private asset markets — with Hyperliquid already demonstrating it can lead price discovery in oil and pre-IPO valuations (SpaceX, Cerebras). CME and ICE's existential concern is that benchmark incumbency, not exchange licensing, becomes the only sustainable moat.

For Crypto-Markets Coverage

The perps market's $61.7 trillion in annual volume dwarfs every other crypto derivatives category. Kalshi's $8.5 billion in first-month regulated volume represents a fraction of what Binance or Hyperliquid process in a day — but the regulatory pathway, once established, is path-dependent and hard to close. The benchmark licensing angle Duffy mentioned may be the most underappreciated competitive dynamic in this dispute.

Conclusion & Research Watch List

CME v. CFTC is a collision between the incumbent financial market infrastructure and the crypto-native instruments that have been quietly eating its addressable market for a decade. The legal case is procedurally and textually serious — whatever the political framing from either side. The APA claim in particular is difficult to defend when the agency ignored 150 public comments, approved a 'novel and complex' instrument in one day, and reversed five years of enforcement precedent without explanation.

But even if CME prevails in court, the underlying market force does not go away. Perpetual futures have $61.7 trillion in annual volume. Hyperliquid led oil price discovery before CME opened. The question is not whether perpetuals matter — it is who regulates them, under what framework, and who owns the plumbing.

Watch List for Ongoing Coverage

- Court scheduling in CME v. CFTC, No. 1:26-cv-02157 (D.D.C.) — preliminary injunction motion timeline
- CFTC June 22 Request for Comment: energy perpetuals and 24/7 trading — comment period and likely rule
- CBOE formal announcement on crypto futures-to-perpetuals conversion

- Hyperliquid regulatory pathway discussions with CFTC — Selig's explicit invitation
- Coinbase equity-index perpetuals launch timeline and CFTC treatment
- CME benchmark licensing disputes with Kalshi and other DCMs
- Congressional action: Digital asset market structure legislation (CLARITY Act) interaction with perps classification
- Lynne Fitzpatrick's posture on the litigation after assuming CEO role in March 2027

Research prepared June 24, 2026. Sources: Reuters, CNBC, The Block, Courthouse News Service, Dechert OnPoint, Lowenstein Sandler LLP, De Silva Law Offices, The Defiant, Bloomberg, CryptoTimes, DeFi Rate, FinanceFeeds, CoinDesk/TD Securities, Incrypted, CryptoPolitan.