# Blockchain for Europe View on the Regulatory Classification of Crypto Perpetuals

## 1. Introduction

This document is submitted as a constructive contribution to ESMA's ongoing consideration of crypto perpetuals in a retail investor-protection context. We would welcome the opportunity to discuss the points we outline in this note with ESMA staff and to contribute to a proportionate approach that addresses retail concerns while preserving the conditions for supervised onshore activity.

We understand that ESMA is exploring whether product-intervention style measures used for retail CFDs could be considered as a reference point for crypto perpetuals. The industry strongly supports high levels of investor protection. However, we believe that applying uniform measures such as leverage caps to perpetuals for retail users is likely to achieve exactly the opposite outcome. Such an approach risks driving users towards offshore and less supervised venues and undermines the EU's ambition to onshore crypto markets. This is particularly critical as other jurisdictions, such as the U.S. is moving to onshore this activity, recognizing that perpetual contracts will soon expand to cover tokenized traditional financial assets.

Perpetuals can be offered responsibly to informed users including retail investors within a well-controlled framework and under specific conditions. A tailored regulatory approach should therefore reflect their exchange-style market structure, automated risk controls and loss absorption standards as well as existing governance safeguards including robust appropriatenesses assessments and cooling off periods. Instead of relying on restrictive calibrations, such as uniform leverage caps, policy efforts should focus on strengthening proportionate product-governance measures that directly address retail risk drivers while preserving supervised EU market activity.

This submission is complemented by the attached BC4EU Perpetuals Best Practices, which consolidates cross-venue best-practice indicators on market structure, margining, liquidation, loss absorption, disclosures, and governance.

## 2. Perpetuals address many of the structural risks that led to CFD intervention

Perpetuals allow users the opportunity to gain exposure to the price movements of an underlying asset without ownership and without a fixed expiration or settlement date. They are highly-standardised derivative contracts traded on regulated centralised exchanges, rather than bilateral OTC models such as for CFDs and binary options. Unlike OTC CFD models, where providers may generate revenue when clients incur losses, exchange-style perpetual markets typically operate on transparent, transaction-fee models with multilateral execution, reducing structural conflicts of interest. This distinction supports a supervisory approach grounded in industry best practices and proportionate product-governance measures rather than prescriptive intervention tools designed for structurally different products.

Building on these structural differences, perpetuals are traded on transparent order-book venues with pre-defined matching rules, where prices are formed through multilateral market interaction rather than provider-determined quotations. This structure supports observable price discovery, deep liquidity, and a more neutral counterparty framework.

Risk management is embedded directly into market infrastructure through transparent margining and liquidation processes and automated, rules-based mechanisms designed to crystallise risk early and limit losses to posted collateral. In addition, many trading venues have introduced safeguards such as negative balance protection alongside insurance funds and structured loss-absorption arrangements, to further mitigate adverse retail outcomes and reduce systemic spillovers during periods of market stress. Taken together, these mechanisms illustrate how risk containment is delivered through market design and governance practices, differentiating crypto perpetual markets from several of the conduct risks historically associated with OTC CFD distribution models.

We understand that ESMA's main concerns are centered around the economic exposure of retail investors and therefore the outcomes they receive. We want to emphasize that risks to retail investors are different from the risks posed by CFDs that justified the ESMA 2018 intervention and more importantly, risks specific to perpetuals can be significantly mitigated by applying the best practices already followed by most trading venues (see Annex A for details). Therefore, we encourage ESMA in its analysis to make a distinction between such risks and structural risks that justified the intervention on CFDs considering market integrity implications of intervention in a product that functions as a primary liquidity and hedging tool in crypto markets.

We further understand that ESMA's concerns are not limited to trading infrastructure safeguards, but also extend to retail behavioural risks, including repeated risk-taking and loss-chasing dynamics. Retail participation in crypto perpetual contracts does not appear to mirror the widespread loss patterns seen in CFD markets. A meaningful share of users realise gains, while only a minority experience significant capital loss, suggesting that structural features of perpetual

markets may mitigate risks targeted by past CFD interventions. At a minimum, ESMA should therefore undertake a dedicated evidence-gathering exercise, consistent with MiFIR Article 40 proportionality requirements, before applying CFD-based assumptions. We believe policy calibration should therefore focus on reducing severe outcomes and repeated loss-chasing behaviour, rather than treating "any loss" as the relevant proxy for harm. We support a policy approach that combines exchange-style safeguards with proportionate product governance measures that directly target behavioural drivers, including standardised risk warnings and disclosures, robust risk acknowledgements, cooling-off mechanisms after defined risk triggers, and consistent governance expectations across venues.

## 3. A product governance led approach is the most effective

Evidence from ESMA's own CFD impact assessments (ESMA50-162-214 and ESMA50-162-215) shows that when restrictive measures are applied to products with high offshore substitutability, retail users migrate to unregulated venues, reducing supervisory visibility and consumer protection. Applying a uniform leverage cap to perpetuals, a product already widely accessible offshore, would likely replicate this displacement effect.

Instead, we encourage ESMA to prioritise a proportionate product governance led approach grounded in industry best practices. These include:

- **Appropriateness:** Users have to pass a strict suitability and knowledge test before gaining access to this product to ensure the product is being offered to the correct user segment. The questions should be non-gameable and with sufficient cooling off periods in between limited retries.
- **Retail engagement controls and dynamic risk calibration:** A retail approach built around transparent risk communication and proportionate friction. Controls include structured cooling-off periods following liquidations or rapid loss events, staged confirmations for higher-risk actions (e.g., increasing effective leverage or concentration), and enhanced scenario disclosures grounded in liquidation dynamics. These measures are paired with risk-based, dynamically adjusted margining and robust close-out mechanics designed to contain losses and reduce contagion during volatility spikes.
- **Loss containment and negative outcomes**: enforceable mechanisms that prevent negative balance outcomes for retail through early liquidation design and independently governed loss-absorption layers, with clear governance and stress testing.
- **Distribution discipline and inducements**: marketing aligned with "fair, clear and not misleading"; restrictions on incentives that drive excessive trading intensity; and clear product labelling and risk disclosures grounded in scenario examples.
- **Governance and monitoring:** documented product-governance frameworks, target-market definition, outcome monitoring (including liquidation incidence/severity and appropriateness filtering effectiveness), and structured engagement with NCAs.

## 4. A strategic opportunity to bring perpetuals under EU supervision

Perpetuals play a central role in liquidity provision, hedging, and price discovery across digital asset markets. A restrictive retail intervention could unintentionally push EU users toward less supervised offshore environments or decentralised exchanges, weakening both investor protection and supervisory oversight. Such displacement would directly undermine MiCA's objective of onshoring crypto-asset activity into supervised EU markets.

By contrast, an appropriately calibrated framework would allow EU-licensed venues and intermediaries to offer perpetual trading within a regulated environment, enabling real-time monitoring, consistent governance standards, and stronger consumer safeguards. Other jurisdictions including the United States, where the CFTC treats perpetuals as futures and has signalled support for regulated onshoring rather than retail exclusion, are actively pursuing supervised pathways for crypto derivatives markets, reinforcing the importance of maintaining EU competitiveness.

We encourage ESMA to adopt a risk-based, outcome-focused approach consistent with its proportionality mandate and the principles underpinning its 2018 CFD intervention: namely, that measures must be targeted, evidence-based, and directed at identified sources of investor detriment. Perpetuals, as currently structured and supervised across EU-facing venues, do not exhibit the structural or behavioural risk factors that prompted the CFD intervention.

# Annex A

# BC4EU Perpetuals Industry Best Practices

## Category 1: Market Structure & Transparency

**Best-Practice Indicator:** Perpetuals should be traded on transparent, non-discretionary execution venues with open price visibility, deterministic matching, and no principal trading by the platform, ensuring neutral price discovery and materially lower conflicts of interest than OTC derivatives.

**Aggregated Market Practice:** Respondents consistently emphasise that best practice for perpetuals is a centralised, rules-based exchange model, typically operating a central limit order book (CLOB). All participants trade against the same publicly visible bids and offers, with no dealer intervention, no re-quotes, and no discretionary price setting.

Across responses:

- Platforms do not act as principal to client trades.
- Matching engines operate deterministically, based on price-time priority.
- Liquidity provision is competitive and continuous, avoiding internalised spreads.
- Execution quality during volatility is safeguarded through transparent queues and automated risk controls, not human discretion.
- Alignment with spot markets is maintained through objective indices and funding mechanisms, not bilateral pricing.

This structure is repeatedly contrasted with CFDs, which are OTC, dealer-driven, and principal-based, and therefore structurally distinct.

## Category 2: Linear Payoff Structure (Product Integrity)

**Best-Practice Indicator:** Perpetuals should provide clean, linear economic exposure to an underlying asset, with no embedded optionality, predictable P&L mechanics, and risk explanations grounded in concrete, scenario-based disclosures.

**Aggregated Market Practice:** All respondents confirm that their perpetuals deliver 1:1 linear exposure to the underlying price movement, scaled solely by user-selected leverage. Profit and loss move proportionally with price changes, without path dependency or payoff convexity.

Common best practices include:

- Transparent mark-to-market pricing
- Rule-based funding calculations

- Symmetric treatment of long and short positions
- Liquidation engines designed to preserve solvency, not generate profit

Risk explanations rely on numerical examples, showing how leverage amplifies gains and losses, how funding payments work, and how liquidation thresholds operate in volatile conditions.

## Category 3: Margin Framework & Leverage Best Practices

**Best-Practice Indicator:** Margin and leverage frameworks should be risk-based, proportionate, and dynamically calibrated, explicitly differentiated between retail and professional clients, and designed to prevent negative outcomes rather than maximise trading intensity.

**Aggregated Market Practice:** Respondents converge on a model where:

- Retail leverage is capped conservatively
- Retail access is conditional and controlled
- Initial and maintenance margins adjust dynamically based on volatility, liquidity, and stress scenarios
- Liquidation is automated and rules-driven, not discretionary

Negative balance protection for retail clients is treated as a baseline requirement, achieved through a combination of early liquidation, insurance funds, and platform-level loss absorption.

Collateral eligibility is restricted to high-quality, liquid assets, with explicit reference to regulatory authorisation (including MiCA-compliant stablecoins where applicable).

## Category 4: Systemic Risk Controls & Loss-Absorption Standards

**Best-Practice Indicator:** Perpetuals platforms should implement multi-layered, independently governed loss-absorption mechanisms, stress-tested regularly and structured to protect both individual users and overall market stability.

**Aggregated Market Practice:** Across respondents, best practice is described as a defence-in-depth model, typically comprising:

- Risk-based margining
- Automated liquidation
- A dedicated insurance fund
- Auto-deleveraging (ADL) as a last resort

Insurance funds are pre-funded, transparently governed, and used exclusively to prevent loss contagion. Loss socialisation, where present, is explicitly positioned as a remote fallback, subject to predefined, transparent rules.

## Category 5: Funding Rate Integrity & Price Convergence

**Best-Practice Indicator:** Funding rates should be formula-based, publicly verifiable, and structurally neutral, serving exclusively as a convergence mechanism between perpetual and spot prices.

**Aggregated Market Practice:** Respondents uniformly describe funding as:

- Calculated from transparent indices using Time-Weighted Average Price (TWAP) or Exponential Moving Average (EMA)
- Independently verifiable by users
- Designed to incentivise convergence, not extract revenue

Fallback mechanisms rely on multi-venue indices, and divergence events are addressed through mechanical adjustments rather than discretionary intervention.

## Category 6: Investor Protection & MiFID Appropriateness

**Best-Practice Indicator:** Retail access to perpetuals should be conditional on a robust but proportionate MiFID-style appropriateness assessment, combined with:

- Standardised, prominent risk warnings
- Clear explanations of leverage, liquidation, and funding risk
- Ongoing post-warning behaviour monitoring

**Aggregated Market Practice:** Respondents consistently apply multi-step appropriateness testing, covering:

- Prior trading experience
- Scenario-based comprehension of leverage and margin
- Risk tolerance and financial situation
- Alignment with defined target markets

Failure leads to cool-off periods, educational prompts, and retesting, rather than immediate access. A significant share of retail users fail initial assessments, which respondents view as evidence of effective filtering, not exclusion.

This category is repeatedly highlighted as the clearest point of distinction from CFDs, where suitability and appropriateness controls are often weaker or structurally conflicted

## Category 7: Regulatory Engagement & Governance Best Practices

**Best-Practice Indicator:** Perpetuals should be subject to formal product-governance frameworks, including documented approval processes, ongoing outcome monitoring, and structured engagement with regulators.

**Aggregated Market Practice:** Respondents operating under MiFID frameworks highlight:

- Formal product approval committees
- Ongoing product review and client-outcome monitoring
- Independent control functions
- Active engagement with NCAs and EU institutions

Perpetuals are viewed as conditionally suitable for retail, provided strong governance, capped leverage, negative balance protection, and appropriateness testing are in place.

## Conclusion:

Taken together, the aggregated responses show that EU-facing perpetuals are predominantly offered on exchange-like, non-discretionary market infrastructures, with transparent order books, participant-to-participant matching, and no principal dealing, materially reducing conflicts of interest that are structurally embedded in OTC CFD models.

From a product perspective, perpetuals exhibit a linear payoff profile with no embedded optionality, objective mark-to-market pricing, and formula-based funding rates whose sole function is price convergence with the underlying spot market, rather than revenue extraction through discretionary spreads.

From a risk-control standpoint, margining, leverage caps, liquidation mechanics, and insurance funds are governed by predefined, auditable rules and dynamically calibrated to volatility and liquidity, with negative balance protection and loss-absorption layers explicitly designed to shield retail users and prevent systemic spillovers.

From a regulatory perspective, platforms apply MiFID-style product governance, including ex-ante appropriateness testing, target-market definition, post-warning behaviour monitoring, and alignment of marketing with “fair, clear, and not misleading” standards, resulting in demonstrable filtering of unsuitable retail participation.

Empirically, these combined structural, product, and governance features indicate that perpetuals, as implemented by EU-regulated or EU-facing venues, function closer to standardised exchange-traded derivatives with embedded investor-protection controls than to OTC CFDs, and that supervisory outcomes are primarily driven by governance design rather than by the perpetual contract form itself.

# Annex B

## Comparison between perpetuals and CFDs

| | Perpetuals | OTC CFDs |
|---|---|---|
| Transparency & governance | ETD-style discipline that is structurally different from OTC CFDs; Core elements of the trading environment are rule-based and transparent; Contract specifications, margin methodologies, liquidation and close-out processes, and governance arrangements are defined and applied constantly; Pricing is formed through multilateral market interaction rather than provider quotation, and risk management operates through systematic margining and pre-defined close-out logic.<br><br>This structural discipline is key for investor protection because it reduces reliance on discretionary execution and mitigates certain conduct risks associated with bilateral dealing models. | CFDs embed a different set of governance and transparency characteristics than perpetuals. CFDs are characterised by bilateral execution and pricing models, where spreads, financing charges, and execution outcomes can depend on the provider's internal methodologies. Investor protections in the EU have therefore focused heavily on distribution controls and on limiting the retail harm dynamics associated with high leverage, incentives, and recurring conduct issues.<br><br>This is the context in which the CFD product-intervention toolkit was developed and subsequently onshored across Member States. |
| Risk profile | Perpetuals are designed to prevent debt outcomes through real-time margining, early and automated close-out logic and layered backstops such as insurance funds and, where applicable, auto-deleveraging controls. | Retail OTC CFDs have historically operated through bilateral close-out and financing models where outcomes depend more directly on the provider's execution and risk management practices, which is one reason EU safeguards have focused heavily on leverage limits, standardise close-out predictions and negative balance protection as regulatory requirements. |