November 28, 2025

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Submitted via comments.cftc.gov

Re: Request for Input on Recommendations for the CFTC in the President's Working Group on Digital Asset Markets Report

Dear Secretary Kirkpatrick:

Better Markets[1] appreciates the opportunity to submit this letter to the Commodity Futures Trading Commission ("CFTC" or "Commission") in response to the solicitation for comment on the recommendations in the President's Working Group on Digital Asset Markets report, "Strengthening American Leadership in Digital Financial Technology" (the "PWG Report").[2]

Introduction

Regulators should move cautiously in proposing or adopting rules, guidance or no action letters to effectuate the recommendations in the PWG Report, particularly as it relates to encouraging more retail investment in crypto.[3] Crypto is notoriously volatile, with the price of Bitcoin as of the date of this letter dropping by around one-third since a high early in October 2025. These tremendous price movements are not a recent phenomenon nor are they confined to Bitcoin. As recently as 2022, Bitcoin experienced a decline in price of about 60 percent. The crypto asset Ethereum has dropped by around 25 percent over the last month and alternative crypto assets, or altcoins, "continue to struggle with a lack of liquidity and lack of demand for speculative risk

[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

[2] White House. "President's Working Group on Digital Assets, Strengthening American Leadership in Digital Financial Technology." July 30, 2025, Available at: https://www.whitehouse.gov/wp-content/uploads/2025/07/DigitalAssets-Report-EO14178.pdf

[3] The term "crypto" is used herein to refer to investible and tradeable assets that have the capacity to be transferred using distributed ledger technology.

assets."[4] Given these significant price movements, regulators and crypto firms alike should ensure that retail investors understand the volatility and risk of investing in this asset category.

Crypto also carries with it a heightened risk of hacks, thefts and involvement in illicit finance schemes. The Federal Bureau of Investigation's ("FBI") Internet Crime Report found that $16.6 billion in cyber crime occurred in 2024, 56 percent of which involved crypto.[5] Investors experienced $9.3 billion in total crypto-related losses in 2024, a 66 percent increase year-over-year.[6] Investor complaints about crypto-related fraud also doubled year-over-year from 2023 to 2024, with older Americans being the fastest growing group of complainants.[7]

The surge in crypto-related crime has not been met with a commensurate increase in law enforcement resources. In fact, quite the opposite is true.[8] A view of the CFTC's enforcement action repository makes clear that not a single crypto-related action has been brought since January 2025 (though the Commission has resolved actions initiated in previous years).[9] This gap in federal regulator action has not gone unnoticed. In the words of one crypto investigations firm executive, "law enforcement can't cope with the overwhelming amount of illicit activity in the space… it can't go on like this."[10]

Retail Commodity Transactions in Crypto

Non-Leveraged, Margined, or Financed Spot Crypto Transactions

The CFTC has so far been unclear as to whether the Commission contemplates non-leveraged, margined or financed spot crypto transactions to be traded on Designated Contract

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[4] Knight, Oliver and Omkar Godbole. "Crypto Markets Today: Fear Dominates as Altcoins Lag, Bitcoin Tests Key Levels." *CoinDesk*, November 24, 2025. Available at: https://www.coindesk.com/markets/2025/11/24/crypto-markets-today-fear-dominates-as-altcoins-lag-bitcoin-tests-key-levels

[5] Fischer, Amanda. "Boom Times for Crypto Crime." *Better Markets*, May 6, 2025. Available at: https://bettermarkets.org/wp-content/uploads/2025/05/Better_Markets_Crypto_Crimes_Fact_Sheet-5.6.25.pdf; citing FBI data published in April 2025.

[6] *Id*

[7] *Id*

[8] *Id*, citing declines in civil and criminal law enforcement resources going into policing crypto-related misconduct.

[9] Commodity Futures Trading Commission. "Enforcement Actions." Accessed November 25, 2025. Available at: https://www.cftc.gov/LawRegulation/EnforcementActions/index.htm

[10] Yaffe-Bellany, David, Spencer Woodman and Sam Ellefson. "The Crypto Industry's $28 Billion in 'Dirty Money.'" *New York Times*, November 17, 2025. Available at: https://www.nytimes.com/2025/11/17/technology/crypto-exchanges-dirty-money.html

Markets ("DCMs"), stating only that such trading on DCMs is not prohibited under current law.[11] To the extent the CFTC wants to encourage such trading, it is unclear if existing precedent exists for such an arrangement. What is clear is that such trading would not be regulated by the CFTC under current law and that DCMs would not have the obligation or authority to enforce rulebooks related to such trading. Given the uncertainty of how this would work in practice, and the likely investor confusion about the applicable regulatory framework given overlapping CFTC oversight of the crypto futures market as well as state oversight of spot crypto trading, it is our recommendation that this activity should be forestalled unless and until Congress provides explicit spot authority for crypto trading to the CFTC.

Leveraged, Margined, or Financed Spot Crypto Transactions

Volatility in the underlying crypto market is amplified using leverage. This phenomenon was exemplified by market activity on October 10, 2025, when President Trump impromptu announced another set of proposed tariffs – this time on China at a rate of an additional 100 percent – sending crypto markets spinning.[12] A reported (but unconfirmed) $19 billion in leverage evaporated overnight, with crypto prices falling precipitously, and 1.6 million traders liquidated. Crypto data analytics firm Coinglass reported that the day's market tumble was the "largest liquidation event in crypto history."[13] The CFTC should therefore proceed cautiously in allowing market participants to extend leverage, margin or financed transactions to retail customers.

First, should the CFTC move forward with allowing the extension of leverage to retail traders, the Commission should impose strict and conservative leverage limits. Ideally, leverage should be restricted to similar limits applicable to Regulation T in securities markets, which allows investors to borrow only up to 50 percent of the purchase price of securities. The investors trading in crypto transactions are far more likely to be retail participants compared to those trading in CFTC-regulated futures markets; therefore, leverage limits should be stricter. If the CFTC allows leverage beyond these levels, investors may also be confused about why different borrowing amounts are permitted in different assets trading on the same investment consumer application.

Additionally, the CFTC should oppose the crypto industry importing risky practices from abroad and from the perpetual futures market to the spot crypto market for leveraged, margined or financed transactions. For example, we presume that DCMs will desire to use auto-liquidation mechanisms to wipe out leveraged positions in the crypto market when spot prices fall below certain margin maintenance thresholds. In addition to that, it is unclear if the CFTC or market participants expect the spot market for leveraged crypto transactions to operate 24/7. But in any case, retail traders may be caught off-guard – or even asleep – when liquidation thresholds near,

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[11] Commodity Futures Trading Commission and Securities Exchange Commission. "CFTC-SEC Joint Staff Statement (Project Crypto-Crypto Sprint)." September 2, 2025. Available at: https://www.cftc.gov/PressRoom/SpeechesTestimony/cftcsecjointcryptostatement090225

[12] Fischer, Amanda. "Thin Ice: How October's Crypto Rout Exposes Fragilities in Pending Market Structure Legislation." *Better Markets*, October 29, 2025. Available at: https://bettermarkets.org/wp-content/uploads/2025/10/BetterMarkets_Crypto_Rout_Exposes_Fragilities_10-29-2025.pdf

[13] *Id*

and they may not have a chance to post additional collateral to keep their trades open. We should not double down on the risks created by allowing crypto perpetual futures to trade in the U.S.

High amounts of leverage, auto-liquidation mechanisms and 24/7 trading spell disaster for retail participants in crypto markets. It also creates substantial risks for the wider markets, as leverage amplifies the risks of even small market corrections and auto-liquidations create a cascading effect for the crypto market at large. One need only look at the October 10 market events to see how macroeconomic policy can collide with fragilities in market structure to exacerbate risks across the financial system.

"Super Apps"

The PWG Report recommends that the CFTC and Securities and Exchange Commission ("SEC") move forward to allow platforms to offer a broad range of crypto and other regulated products within a single user interface.[14] This is already occurring and the downstream impact on retail investors does not appear to be positive.[15] Platforms already combine SEC-regulated brokerage in equities, options and bonds with crypto. User interfaces create the visual impression that all products are regulated in the same manner, even though there is no regulatory regime for spot trading of crypto assets and crypto trading does not benefit from certain investor protections such as Securities Investor Protection Corporation insurance. At the same time, the launch of 24/7 trading and perpetual futures have added new, complex products to the mix and the introduction of leveraged spot trading will only add more complexity.

Prediction markets – or thinly disguised gambling – are now coming to retail investing applications, allowing everything from wagering on the results of an election to sports betting. Somehow, the proprietors of these prediction market platforms are, contrary to the clear intention of the Commodity Exchange Act ("CEA"),[16] arguing that same game parlays on whether the Buffalo Bills will win a game, whether Josh Allen will have two or more passing touchdowns and whether James Cook will have over 100 yards rushing somehow represents using the swaps market for legitimate risk mitigating purposes and ought to be overseen by the CFTC rather than state gambling regulators. States are increasingly challenging these claims, creating a patchwork

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[14] *Supra* note 2

[15] *See* Stewart, Emily. "Everything's Casino." *Business Insider*, November 6, 2025. Available at: https://www.businessinsider.com/kalshi-polymarket-fanduel-draftkings-sports-betting-gambling-2025-11; citing growing "nihilism" about the economy among the public and increasing levels of gambling addiction enabled by these consumer applications; see also Tsekova, Denitsa. "Gambling, Prediction Markets Create New Credit Risks, BofA Warns." *Bloomberg*, November 25, 2025. Available at: https://www.bloomberg.com/news/articles/2025-11-25/bank-of-america-warns-of-mounting-credit-risks-as-gambling-booms?srnd=homepage-americas&sref=mQvUqJZj; citing the "behavioral risk" associated with the accessibility of prediction market betting and warning that borrower creditworthiness is deteriorating due to increasing expenditures and debt in these markets.

[16] Dumas, Cantrell. "Stop the Spread: Why the CFTC Must Shut the Door on Gambling in Derivatives Markets." *Better Markets*, May 8, 2025. Available at: https://bettermarkets.org/wp-content/uploads/2025/05/Better-Markets-Event-Contracts-Fact-Sheet-5.8.25.pdf

regulatory environment that further complicates investor understanding of the regulatory regime applicable to these wagers.[17]

If anything, the CFTC, in partnership with the SEC, should endeavor to mitigate the harmful consequences of this blurring of the lines between investing and gambling. The CFTC should work with the SEC and FINRA to ensure more robust disclosures that crypto trading is not subject to the same investor and market protections as trading in securities markets. Further, the CFTC should reaffirm its commitment to its statutory mission and reassert authority under the CEA for prediction markets. It cannot allow itself to become the federal government's gaming commission via inaction and regulatory forbearance.

Derivatives Clearing Organizations

The CFTC in April requested comments on the trading and clearing of derivatives on a 24/7 basis.[18] While the comment file was pending and before the CFTC took action, market participants launched 24/7 trading in certain crypto derivatives.[19] The CFTC the same day put out a request for comment on perpetual futures, seeking perspectives from the public.[20] But just two days after the publication of that request, crypto exchanges began self-certifying the introduction of these contracts, with the exchanges advertising allowable leverage up to 10-to-1.[21] Meanwhile, the Acting Chair has confirmed that the CFTC has plans to allow leveraged, margined or financed retail transactions in crypto on DCMs as early as December 2025,[22] even though this very request for information on the recommendations in the PWG Report has a comment deadline of November

[17] *See* Beyoud, Lydia. "Kalshi Is Subject to Nevada Gaming Regulation, Judge Rules." *Bloomberg*, November 25, 2025. Available at: https://www.bloomberg.com/news/articles/2025-11-25/kalshi-is-subject-to-nevada-gaming-regulation-judge-rules?sref=mQvUqJZj; citing a recent court decision ruling that event contracts based on the outcome of sporting events are not swaps subject to the CFTC's exclusive jurisdiction.

[18] Commodity Futures Trading Commission. "CFTC Staff Seek Public Comment on 24/7 Trading." *CFTC Release 9068-25*, April 21, 2025. Available at: https://www.cftc.gov/PressRoom/PressReleases/9068-25

[19] Coinbase. "24/7 futures trading has arrived." *Coinbase Blog*, May 9, 2025. Available at: https://www.coinbase.com/blog/24-7-futures-trading-has-arrived

[20] Commodity Futures Trading Commission. "CFTC Staff Seek Public Comment Regarding Perpetual Contracts in Derivatives Markets." *CFTC Release 9069-25*, April 21, 2025. Available at: https://www.cftc.gov/PressRoom/PressReleases/9069-25

[21] "Bitnomial Exchange Self-Certifies First Ever U.S. Perpetual Futures Contracts." Press Release, April 23, 2025. Available at: https://www.prnewswire.com/news-releases/bitnomial-exchange-self-certifies-first-ever-us-perpetual-futures-contracts-302435713.html

[22] Post by Acting Chair Caroline Pham on X.com, November 9, 2025. Available at: https://x.com/CarolineDPham/status/1987564125661368366?s=20

28, 2025. At the same time, the CFTC withdrew a Staff Advisory that warned of unique risks associated with crypto clearing.[23]

This is all to say that significant new products are being launched in the U.S. without regard for the risks associated with clearing. In fact, what little guidance that did exist in this area is being withdrawn. This lack of a robust regulatory framework combined with significant volatility, leverage, and the 24/7 and global nature of the crypto market, exacerbates the risks to Derivatives Clearing Organizations ("DCOs") and the wider market. Risks are heightened by the fact that crypto may trade when traditional payments systems, whom market participants or the clearinghouse may need to access, may be closed.

In light of these risks, first, any disintermediated clearing model must be rejected. Futures Commission Merchant ("FCM") capital is the first line of defense during severe market events and loss mutualization provides natural incentives for market participants to manage their own and their customers' risks. Second, the CFTC should require DCOs in crypto markets to establish separate clearing systems and default funds specifically for crypto products. Market participants in the traditional agricultural futures market should not be called upon to replenish DCO reserves if the volatile and speculative crypto market experiences distress. Likewise, crypto markets should not imperil other crucial clearing functions such as for Treasury futures. Third, given the volatility in crypto, the CFTC should require stress testing and tabletop exercises that model out DCO resiliency during extreme market events. The Commission should also require robust counterparty due diligence and should only allow collateral that is highly stable and allowable deposits of crypto as margin should be limited within certain risk exposures. Any use of crypto collateral should be accompanied with CFTC rules around required haircuts given the significant volatility, concentration and illiquidity of crypto assets. Finally, any use of "tokenized" assets as collateral must ensure that the underlying assets are compliant with relevant regulations, represent real ownership of the underlying assets, have clear treatment under bankruptcy law and are subject to strict cybersecurity standards to guard against hacks and theft.

In short, the introduction of perpetual futures in the crypto market along with plans to allow leveraged, margined or financed crypto spot transactions, combined with 24/7 trading, the global nature of crypto and the introduction of crypto being treated as eligible collateral for clearing, creates a series of interconnected and compounding risks. The CFTC has moved forward with permitting these novel products on a piecemeal basis, without fully considering public input. The Commission should use this opportunity to do a holistic review of these changes to understand the risks to investors and the broader markets.

[23] Commodity Futures Trading Commission. "CFTC Staff Withdraws Advisory on Review of Risks Related to Clearing Digital Assets." *CFTC Release Number 9060-25*, March 28, 2025. Available at: https://www.cftc.gov/PressRoom/PressReleases/9060-25

Vertical Integration in Crypto

The PWG Report recommends that the CFTC issue a rulemaking or guidance to "enable firms to provide bundled trading and custody services."[24] This recommendation should be rejected as it contradicts the long-standing distinctions embedded in the CEA between market participants that solicit customers and hold customer funds and the exchange markets on which trading occurs. It would also harm investors and undermine market competition.

It is also unclear how the recommendation to merge trading and custody functions would work in practice, but one assumes that this would involve allowing market participants to combine DCM and FCM responsibilities. This would result in irreconcilable conflicts of interest. For example, DCMs frequently rely upon customer protection rules applicable to, and discharged by, FCMs. Likewise, FCMs act as a buffer if DCMs suffer from operational failures. Combining those functions would leave gaps in oversight and responsibility that have the risk of harming customers.

It is also uncertain how the oversight framework would work in this integrated model. DCMs have self-regulatory responsibilities over FCMs that are their members. How could a DCM both act as a regulator of non-affiliated FCMs and a competitor to those FCM members? Also, how would customers navigate claims against the DCM or FCM? Could a customer avail herself of the National Futures Association's arbitration process if the FCM functions were merged into the DCM?

We need only look to the recent past, with the collapse of crypto firm FTX, to see the risks of housing the full panoply of market intermediation under one roof. Indeed, FTX before its collapse argued that by offering exchange trading, brokerage, margin trading, custody, settlement, market-making and other proprietary trading functions, it would reduce fees paid by customers and somehow democratize access to the crypto market.[25] In reality, FTX's business structure created irreconcilable conflicts of interest that helped enable the theft and fraud that led to FTX customers losing millions of dollars. The Commission need only revisit the comment file from FTX's 2022 application for a "disintermediated" crypto business to see prescient warnings of how these conflicts of interest could hurt investors and wider market integrity.[26]

Eligible Depositories

The PWG Report recommends that the CFTC review the application of eligible depository rules to accounts holding crypto. We agree that crypto custody presents novel risks that require

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[24] *Supra* note 2

[25] Bankman-Fried, Sam. "Changing Market Roles: The FTX Proposal and Trends in New Clearinghouse Models." *Hearing Before the U.S. House Committee on Agriculture*, May 12, 2022. Available at: https://agriculture.house.gov/uploadedfiles/bankman_fried_testimony_package.pdf

[26] Commodity Futures Trading Commission**. "**Comments for Industry Filing 22-001." May 11, 2022. Available at: https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7254&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=1_50

specialized expertise. Transactions that happen "on-chain" are largely irreversible and stories of lost, stolen or hacked private keys are legion. Crypto is also subject to unique custody risks given the ease with which it can be moved globally by illicit actors, making it an attractive honeypot for fraudsters. The FBI recently concluded that "cryptocurrency has become an enticing means to cheat investors, launder proceeds, and engage in other illicit schemes."[27]

To that end, we recommend that the CFTC not expand the list of eligible depositories that can hold crypto for customers. Currently, CFTC rules provide that banks or trust companies, FCMs registered with the CFTC, and DCOs are eligible. If anything, the CFTC should evaluate whether existing registrants have crypto-specific expertise and a good track record of custody. State-chartered trust banks, in particular, should be heavily scrutinized as eligible depositories given the range in quality of state oversight regimes and state regulator expertise, as well as recent examples of insolvency and loss of customer funds at state-chartered trusts.[28]

Regulatory "Sandbox"

The recommendation to establish a regulatory "sandbox" for crypto should be rejected. The PWG Report covered a wide range of activities for which regulators are supposed to create durable rules-for-the-road. Introducing a "sandbox" concept complicates that effort and may separately interfere with legislative efforts pending in Congress. A "sandbox" for certain activities may not even be useful given the continued application of state laws and the ability of private plaintiffs to bring actions for alleged misconduct. Further, such a "sandbox" would not be durable, as a future Administration could simply revoke relief upon which market participants have been relying.

Most importantly, the concept of a "sandbox" implies that a particular set of activities should be a free-for-all exempt from traditional market oversight. This will only result in harm to U.S. investors and the deterioration of trust in crypto markets, which the PWG Report and related efforts are meant to strengthen, not weaken.

Process Concerns

The CFTC has a recent track record of allowing new products to be introduced to the market without meaningful public input. For example, as described previously, the CFTC put out a request for comment on perpetual futures in April 2025, seeking perspectives from the public.[29] But just two days after the publication of that request, crypto exchanges began self-certifying the introduction of these contracts, with the exchanges advertising allowable leverage up to 10-to-1.[30] The CFTC likewise sought comment on 24/7 trading in April 2025, with a comment deadline of

[27] *Supra* note 5

[28] Hassan, Anas. "Nevada Shuts Down Fortress Trust Over Insolvency." *Yahoo! Finance*, October 24, 2025. Available at: https://finance.yahoo.com/news/nevada-shuts-down-fortress-trust-114729119.html

[29] *Supra* note 20

[30] *Supra* note 21

May 21, 2025.[31] On May 9, 2025, before the comment deadline was even reached, Coinbase launched 24/7 trading for margined futures contracts.[32] The CFTC allowed this to go forward without responding to public commenters, including those in the traditional agriculture futures market that opposed such a change.[33]

Meanwhile, the Acting Chair has confirmed that the CFTC plans to allow leveraged, margined or financed retail transactions in crypto on DCMs as early as December 2025,[34] even though this very request for information on the recommendations in the PWG Report has a comment deadline of November 28, 2025. It is hard to imagine the agency will seriously consider comment letters on this topic just days or weeks before the Acting Chair says such products are expected to come to market.

As these examples demonstrate, the CFTC has strayed from traditional processes around notice and comment under the Administrative Procedure Act and stakeholder engagement across the public, beyond just the crypto industry. While the Acting Chair has been "personally guiding exchanges"[35] on the launch of new products, the agency has not been deliberately and comprehensively assessing the merits of these proposals, including and especially the downstream impact on the traditional agricultural futures markets the CFTC oversees. We urge the agency to change course and adopt a process of regular order to consider changes of this magnitude.

Lack of Bipartisan Leadership at the CFTC

Notably, the CFTC has been led by one Commissioner, in an Acting Chair capacity, since September 2025. While a nominee for Chair of the Commission has been considered by the U.S. Senate Committee on Agriculture, he is not yet confirmed by the full Senate.[36] Further, the current Acting Chair has announced her intention to leave the agency upon the permanent Chair's

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[31] *Supra* note 18

[32] *Supra* note 19

[33] National Grain and Feed Association. "NGFA urges CFTC to reject 24/7 agricultural futures trading proposal." Press Release, May 21, 2025. Available at: https://www.ngfa.org/ngfa-urges-cftc-to-reject-24-7-agricultural-futures-trading-proposal/

[34] *Supra* note 22

[35] Hamilton, Jesse. "U.S. Regulator That May Rule Over Digital Assets Pushing Towards Crypto Spot Trading." *CoinDesk*, November 9, 2025. Available at: https://www.coindesk.com/policy/2025/11/07/u-s-regulator-that-may-rule-over-digital-assets-pushing-toward-crypto-spot-trading

[36] Sittu, Hassan. "Trump's CFTC Pick Clears Senate Hurdle — Caroline Pham's Exit Imminent?" *Yahoo! Finance*, November 21, 2025. Available at: https://finance.yahoo.com/news/trump-cftc-pick-clears-senate-113944928.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAKCKx4w3bP5hXHYs7FYhAqAjapbHqXZkKcGETD9jUp60gCtKgFXNlMynunproyUfRLWv9ksjGkTyLntTNmFtVvCyfDcijMcrbl9Xw8pKwzqtT4GCQyaMaxwhF8yRO2jeOos-NpskU6VllPsMNWi8w-4XpG_KHJ-sZgtgpO4OdHn_

confirmation.[37] The CFTC was designed by Congress to be a five-member, bipartisan Commission. The need for a full Commission with genuine bipartisan representation consistent with tradition, history, practice, and precedent is heightened during a time when the White House and some in Congress are considering significantly expanding the remit of the agency. The agency should not move forward with future rulemaking or guidance efforts until the CFTC has both a confirmed Chair and robust bipartisan representation amongst Commissioners.

Conclusion

The CFTC is moving fast and breaking things. While innovations in market structure can be positive for investors and the financial system alike, rapid changes without thoughtful consideration of public input are likely to end in substantial investor losses, threats to financial stability and a deterioration in market confidence. We urge the agency to consider the recommendations we've offered herein.

Sincerely,

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[37] *Id*