

Via comments.cftc.gov

May 21, 2025

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request for Comment on the Trading and Clearing of “Perpetual” Style Derivatives¹

Dear Mr. Kirkpatrick,

dYdX Trading Inc. (“dYdX Trading”) is pleased to submit this letter in response to the request for comment issued by the staff (“Staff”) of the Commodity Futures Trading Commission (“Commission”) regarding the trading and clearing of “perpetual” style derivatives.

The fully U.S.-based team at dYdX Trading has been a global pioneer in the development of software facilitating trading of crypto-asset based derivatives on decentralized finance (“DeFi”) rails. dYdX Trading has been engaged with the Staff regarding these products since prior to the launch of the first dYdX protocol in October 2018. We welcome the opportunity to continue that discussion and wholeheartedly share Acting Commissioner Pham’s goal to “promote responsible innovation and fair competition in our markets.”²

We support the letter from Blockchain Association, dated May 21, 2025, and contribute the following additional points specific to the use of perpetual derivatives in DeFi. As detailed below, in addition to the comparative advantages inherent generally in perpetual derivatives, DeFi perpetual derivatives offer investors even greater benefits in terms of security, self-custody and transparency. While these products were invented in the U.S., U.S. investors have been cut off from accessing them to date, in part due to the Commission’s historical enforcement posture with respect to DeFi markets. As the Commission assesses the future of perpetual derivatives in the U.S., we urge it to consider ways to bring DeFi perpetuals innovation back onshore by

¹ See CFTC Release No. 9068-25.

² Acting Chairman Pham: Time For CFTC to Get Back to Basics (January 21, 2025)
<https://www.cftc.gov/PressRoom/PressReleases/9036-25>.

providing clear guidance to protocol developers and permitting access by U.S. investors who wish to use them.

DeFi & Perpetual Contracts Taxonomy

DeFi refers to financial services that operate on blockchain technology, permit users to participate peer-to-peer in a wide array of financial activities while maintaining self-custody over their assets, eliminating reliance on intermediaries that are required in the “traditional” finance sphere such as banks, brokers or clearing houses. The dYdX protocol, for example, runs on audited, fully open-sourced software code, and allows for self-custodial, peer-to-peer trading of crypto-asset based perpetual contracts, with every transaction transparently validated and recorded on a public blockchain.³

A growing share of perpetual derivatives are traded using DeFi protocols, accounting for over \$1.5 trillion in notional volume in 2024 compared to \$647.6 billion in 2023.⁴

A perpetual derivative permits a trader to open a cash-settled long or short position with respect to a referenced asset, with the trade counterparty assuming the opposite position. The contract has no settlement date and positions may be closed by either counterparty at any time, or kept open indefinitely.

A perpetual derivative traded on a DeFi protocol generally involves the following components:

- ***Reference Asset.*** A perpetual derivative must reference an underlying asset. The vast majority of currently traded perpetual derivatives reference crypto-assets, with the bulk of market activity occurring in contracts referencing BTC, ETH or SOL, but a perpetual derivative can be designed to reference virtually any asset.
- ***Collateral.*** A trader must possess sufficient collateral to open the position. All payments, profits or losses in connection with the position will be paid in the form of that collateral. Crypto-asset perpetual contracts are typically collateralized using a fiat-currency pegged stablecoin such as USDC.
- ***Margin Mechanisms and other Protections.*** If a trader wishes to employ leverage, the DeFi protocol will typically enforce an initial margin limit (the amount of margin the trader may access with their initial collateral) and a maintenance margin limit (the amount of collateral relative to the market value of the position that the trader must maintain in order to keep the position open). If a trader’s collateral falls below their maintenance margin limit, all or part of a trader’s position will be liquidated to enforce and maintain margin limits. DeFi perpetual derivatives protocols typically also include additional protections to ensure solvency in the event of extreme market volatility events.

³ The documentation and public codebase for the dYdX protocol are available at: <https://docs.dydx.exchange>.

⁴ CoinGecko: State of Perpetuals 2024 (March 14, 2025), available at <https://www.coingecko.com/research/publications/state-of-crypto-perpetuals-2024>.

These include (1) auto-deleveraging, which generally prevents an account from reaching a negative balance by allocating to it unrealized profit from offsetting profitable positions; (2) cross-margining to limit the aggregate leverage an account may hold across its positions; and (3) insurance funds, which may be funded through protocol fees or the position liquidations noted above, and which can serve as an additional backstop for users.

- **Funding Payments.** To maintain an open position, the counterparties must exchange funding payments according to a set cadence (generally ranging from every hour to every several hours, though the cadence of any particular perpetual derivative can vary). The direction and amount of each funding payment is based on the divergence (if any) between the price of a perpetual contract and that of its reference asset; *e.g.* if the USD-BTC perpetual contract is trading at a premium above the spot price of BTC, then traders holding long positions will pay funding to traders holding short positions, and *vice versa* if the USD-BTC perpetual is trading below the spot price of BTC. This mechanism ensures that perpetual contract prices generally closely track the price of their reference asset.
- **Price Oracles.** Price oracles are automated data feeds that collect, calculate and disseminate real-time, aggregated market pricing information to the DeFi protocol, which is used by the protocol to, among other uses, calculate the value of traders' open positions for the purposes of margining or liquidation.
- **Protocol Smart Contracts.** All of the features described above operate without human intervention based on pre-programmed smart contracts; *i.e.* computer programs that automatically execute, control or document events and actions once predefined conditions are met.

Advantages Offered by DeFi Perpetual Derivatives

Perpetual derivatives offer several comparative advantages as compared to existing futures products.

- **Flexibility and Efficiency.** Perpetual derivatives give traders a seamless tool to gain, or hedge, exposure to a reference asset, with reduced basis risk due to close correlation with the underlying spot price. The absence of a maturity date means traders can hold positions for the duration of their choice rather than having to constantly roll over maturing futures contracts, improving capital efficiency and reducing transaction costs. Perpetual derivatives also reduce operating costs by allowing market participants to gain or hedge exposure to a reference asset without the prospect of physical delivery, and facilitate hedging of risk associated with illiquid or restricted spot assets not available in traditional futures markets.
- **Liquidity and Price Discovery.** While the trading of perpetual derivatives reflects fully synthetic exposure and therefore does not directly impact supply and demand of the spot

reference asset, the balance of long or short interest in the perpetual derivatives market can provide powerful market information signals. In addition, unlike the fragmentation of liquidity in traditional futures among contracts with different maturities, only one perpetual derivative contract is required for each reference asset, thereby consolidating liquidity and further improving price discovery. Finally, the funding payment mechanism further fosters liquidity by incentivizing market makers to fill gaps in available liquidity.

Perpetual derivatives based on DeFi rails offer additional advantages, such as:

- ***Even Lower Transaction Costs.*** The elimination of custodians and other intermediaries means that DeFi-based perpetual derivatives incur lower transaction costs as compared to traditional futures venues and centralized perpetual derivatives exchanges.
- ***Self-Custody.*** By maintaining custody over their own assets, traders of DeFi perpetual derivatives are not exposed to counterparty, clearing-house or exchange bankruptcy risk. Risks of protocol solvency are managed by automated margining, liquidation and deleveraging mechanisms described above.
- ***Transparency.*** All transactions in DeFi-based perpetual derivatives are public and recorded on the blockchain, giving market participants and regulators unparalleled visibility into emerging market trends or the activity of any specific blockchain address.⁵ DeFi protocols based on open-source software further empower the public with full visibility into, and ability to audit, the protocol's underlying mechanics to ensure they function as promised.

Risks and Mitigations

DeFi-based perpetual derivatives have been available to the non-U.S. investing public for at least 5 years. Remarkably, given the multi-trillion dollars of notional volume traded during that time and their operation outside of clearly defined regulatory parameters, user losses arising from exploits or the malfunctioning of a DeFi perpetuals contract protocol have been limited, particularly compared to the track record of centralized crypto-asset and traditional financial market participants over the same time period.

Various mitigating factors have contributed to the safety and reliability of DeFi perpetual derivative protocols to date. By ensuring self-custody of user funds, DeFi protocols eliminate the risk that user funds held with an intermediary are diverted to improper purposes or lost in a cyber-attack. The built-in automated liquidation and deleveraging mechanisms described above address insolvency risk and shield traders from exposure to defaulting counterparties.

⁵ For example, any transaction occurring on dYdX Chain can be viewed on the Mintscan blockchain explorer, available at <https://www.mintscan.io/dydx>.

In addition, by open-sourcing their codebases to public scrutiny, DeFi perpetual derivatives protocols provide the public a means to ensure they are designed as intended and do not include flaws or vulnerabilities that could harm users. dYdX Trading and many other protocol developers supplement this baseline transparency by publishing independent software audits and offering bug bounty programs with robust financial incentives for third parties who identify and report vulnerabilities.

The transparency offered by blockchains also lends protection against improper conduct by manipulators or other bad actors. Any improper trading activity that occurs on a DeFi protocol is eternally reflected on the public blockchain, giving injured users and regulatory authorities potent tools to detect and trace activity by bad actors, as exemplified by the successful prosecution related to manipulation on Mango Markets.⁶

DeFi perpetual derivatives do involve the same risks inherent to DeFi writ large: the irreversibility of transactions recorded on blockchain and the responsibility of users to secure their private keys to maintain control over their blockchain-based assets. These are necessary trade-offs for users to be empowered to engage in complex financial activities on a self-custodied and disintermediated basis, and are best addressed via robust disclosures and educational resources to ensure users understand the technological tools they are accessing.⁷

Need for Regulatory Clarity Regarding DeFi and Perpetual Derivatives

DeFi perpetual derivatives have demonstrated utility and longevity based on their trillions of dollars of volume outside the United States. To date, U.S. investors have been cut off from accessing these innovative products, and the difficult U.S. regulatory landscape has contributed to the growing heft of protocols developed overseas and that threat that U.S. markets and investors will be left behind.

As described above, DeFi protocols operate through transparent, publicly available smart contracts that encode operation of key market functions and enable trading and clearing without reliance on traditional financial intermediaries. DeFi protocols are transparent, as orders and transaction execution occur on-chain. Protocol governance may be decentralized such that no person or affiliated group of persons can control protocol design or operation, and some aspects of the protocol may be immutable. Users can interact with DeFi protocols directly using their own software, or they can use self-custody wallet applications or passive front-end interfaces.

These characteristics of DeFi protocols offer significant benefits and protections to users. Most notably, the ability to self-custody margin eliminates a key customer protection risk present when

⁶ United States Department of Justice, Press Release No. 24-471 (February 6, 2025), available at <https://www.justice.gov/archives/opa/pr/man-convicted-110m-cryptocurrency-scheme>.

⁷ Digital asset market innovators also have introduced technological solutions to many of these risks as well, including various forms of cold storage for private keys and MPC or multi-sig wallets to enhance safety and security.

trading through traditional market intermediaries (*i.e.*, futures commission merchants and derivatives clearing organizations). The Commission’s policy objectives, such as pre- and post-trade market transparency, impartial access, conflicts of interest mitigation, and risk mitigation can be addressed natively through protocol and governance design and need not involve those intermediaries. Use of resilient and scalable blockchains to process and settle transactions can mitigate operational risks as well.

Notwithstanding these benefits and protections, developers of DeFi perpetual derivative protocols in the U.S. face difficult hurdles presented by the Commission’s prior enforcement precedents, which we urge the Commission to review and reconsider. The Commission has previously alleged that different DeFi protocol activities (including operating a front-end interface, developing and maintaining the protocol, and/or governing the protocol through a decentralized autonomous organization) triggered Commission registration requirements.⁸ Those registration requirements, however, are incompatible with DeFi protocols, whose main purpose is to facilitate disintermediated trading.

Furthermore, certain statutory requirements and aspects of the Commission’s regulatory regime pose challenges to the use of DeFi protocols. For example, Section 2(e) of the Commodity Exchange Act (“CEA”) requires swaps with non-eligible contract participants (“ECPs”) (*i.e.*, retail users) to be entered into on or subject to the rules of a designated contract market. Section 4(a) of the CEA likewise imposes an exchange-trading requirement on all futures contracts, for ECPs and non-ECPs alike. Section 2(c)(2)(D) of the CEA applies Section 4(a) to retail or leveraged commodity transactions offered or entered into with non-ECPs as though those transactions were futures contracts. These statutory requirements hinder the ability to use DeFi protocols by preventing non-intermediated trading.

As the Commission considers the path forward for perpetual commodity derivatives in U.S. markets, we urge it to adopt a framework that permits interested investors to access DeFi-based perpetual derivatives, consistent with President Trump’s Executive Order to support “innovation in digital assets, permissionless blockchains, and distributed ledger technologies.”⁹ The Commission should clarify that regulatory requirements aimed at traditional, centralized intermediaries do not apply to DeFi perpetual derivatives protocols that satisfy the CEA’s policy objectives by meeting baseline standards for self-custody, neutrality, security and transparency.

⁸ See *In the Matter of ZeroEx, Inc.*, CFTC Docket No. 23-41 (Sept. 7, 2023), *In the Matter of Universal Navigation Inc. d/b/a Uniswap Labs*, CFTC Docket No. 24-25 (Sept. 4, 2024), *In the Matter of Blockratize, Inc. d/b/a Polymarket.com*, CFTC Docket No. 22-09 (Jan. 3, 2022), *In the Matter of Deridex, Inc.*, CFTC Docket No. 23-42 (Sept. 7, 2023), *In the Matter of Oryn, Inc.*, CFTC Docket No. 23-40 (Sept. 7, 2023), *CFTC v. Ooki DAO*, No. 3:22-CV-05416-WHO, 2023 WL 5321527 (N.D. Cal. June 8, 2023).

⁹ Strengthening American Leadership in Digital Financial Technology (January 23, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/>

Specifically, the Commission should provide guidance clarifying that merely developing and releasing smart contract code, developing or providing self-custody wallet or front-end application software, or participating in decentralized protocol governance, does not require registration with the Commission. The Commission should also provide exemptions from CEA Sections 2(e) and 4(a) for trading taking place over DeFi protocols that satisfy appropriate conditions, such as the characteristics and standards summarized above and other safeguards (e.g., smart contract code testing and audit).

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We appreciate the opportunity to provide feedback and would be pleased to engage with the Commission further on these topics.

Respectfully submitted,



Antonio Juliano
Founder & CEO, dYdX Trading



Daniel Lasko
Associate General Counsel,
dYdX Trading

cc: Colin D. Lloyd, Sullivan & Cromwell LLP