



38 Greene Street
New York, NY 10013
Floor 5
dydx.exchange

Hon. Michael S. Selig, Chairman
Mr. Michael Passalacqua, Senior Advisor
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

March 24, 2026

Re: Perpetual Derivatives Classification

Dear Chairman Selig and Mr. Passalacqua:

dYdX Trading Inc. (“DT” or “we”) commends you on the formation of an Innovation Task Force dedicated to delivering regulatory clarity for innovators building on the new frontier of finance.¹ We believe this effort is particularly timely and relevant with respect to perpetual derivatives and applaud Chairman Selig’s remarks acknowledging the clear demand for and utility of such derivatives as tools for risk management and price discovery, as well as his commitment to onshoring true perpetuals in a manner that allows them to “flourish across both centralized and decentralized markets, subject to appropriate safeguards.”²

We echo the Blockchain Association’s articulation of the benefits of perpetuals in its recent petition to bring perpetuals onshore.³ As we noted in a comment letter to the Commodity Futures Trading Commission (the “CFTC” or the “Commission”) on perpetuals in May 2025, these products offer “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,” assuring convergence between spot and derivatives prices throughout the life of the contract.⁴ The absence of a maturity date gives traders the flexibility to hold positions as long as they choose without incurring the cost and logistical complexities associated with constantly rolling contracts or making or taking delivery. The lack of a maturity date also consolidates liquidity within one contract rather than splitting it across multiple contracts with differing expiries, as is the case in traditional exchange-traded derivatives products. In addition, the funding rate mechanism further enhances liquidity by incentivizing market maker participation.

¹ CFTC Release No. 9201-26, Chairman Selig Announces Formation of New Innovation Task Force (Mar. 24, 2026), https://www.cftc.gov/PressRoom/PressReleases/9201-26?utm_source=govdelivery.

² Michael S. Selig, Chairman, CFTC, Remarks at CFTC-SEC Event on Harmonization (Jan. 29, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1>.

³ Blockchain Association, Petition for an Order under Section 4(c) of the Commodity Exchange Act: Trading and Clearing of Perpetual Derivatives on Digital Assets (Feb. 24, 2026), <https://theblockchainassociation.org/petition-to-the-cftc-to-bring-perpetual-futures-onshore/>.

⁴ Letter from Daniel Lasko, Associate General Counsel, dYdX Trading, to Christopher Kirkpatrick, Secretary, CFTC, at 3-4 (May 21, 2025), <https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35674>.

The market demand Chairman Selig spoke of bears out this view of the benefits: today, approximately 93% of all cryptoasset derivatives traded globally are perpetuals.⁵ A growing portion of the trade volume of those perpetuals occurs on non-custodial decentralized (“DeFi”) platforms such as the dYdX protocol, and peer-to-peer derivatives trading emerged as one of the primary use cases of DeFi.⁶

In light of these many user and market advantages, we are excited by the prospect of a forthcoming clear regulatory framework for perpetuals. But we believe any such framework must be consistent with Chairman Selig’s vision of allowing perpetuals to flourish across *both* centralized and decentralized markets, with the appropriate safeguards in place.

We agree with the Blockchain Association that the Commission should issue a Section 4(c) exemptive order allowing digital asset perpetual contracts to be offered in compliance with applicable statutory and regulatory requirements for futures rather than swaps, with appropriate modifications for the unique nature of perpetuals. Perpetuals are structured and trade on platforms in a standardized manner quite similar to traditional futures contracts, save for the design advantages of perpetuals noted above. In addition to treating like products alike—a foundational requirement of the Administrative Procedure Act⁷—such an order would relieve perpetuals users from the burdens of swap regulations that were largely designed for the risks and complexities associated with over-the-counter, non-standardized agreements, such as the swap dealer registration and regulatory framework and swap data reporting requirements.

Recent discussions have appeared largely focused on the immediate need for guidance or relief for designated contract market (“DCM”)-traded or “centralized” perpetuals. We agree that is a worthy first step. But to the extent any Commission or staff guidance or relief will involve clarifying the product classification of perpetuals as futures rather than swaps, we urge the Commission not to limit this classification to perpetuals that are centrally cleared, and to leave open the possibility that perpetuals traded peer-to-peer on DeFi rails could also benefit from this relief in the future. Critically, merely treating DeFi-traded perpetuals as futures would *not* in itself open the U.S. market to platforms listing such products. Such platforms would remain subject to Section 4(a) of the Commodity Exchange Act requiring trading of futures contracts to occur on a DCM, absent further relief such as the potential innovation exemption mentioned by Chairman Selig. Thus, the Commission would retain full discretion to impose such guardrails as it sees fit for DeFi perpetuals seeking to enter the U.S. in a future exemptive order or other action. In the meantime, builders and market participants in the DeFi perpetuals space would benefit from such clarity that the applicable regulatory regime is that pertaining to futures and would be better positioned for constructive engagement with the Commission.

We believe limiting perpetuals classification relief to centrally cleared perpetuals contracts would be unwarranted by the differences between such contracts and those trading on dYdX or

⁵ Qihong Ruan & Artem Streltsov, *Perpetual Futures Contracts and Cryptocurrency Market Quality: Insights from Emerging Markets*, Cornell SC Johnson College of Business: Emerging Markets Institute (Feb. 25, 2025), <https://business.cornell.edu/article/2025/02/perpetual-futures-contracts-and-cryptocurrency>.

⁶ For more information about the dYdX protocol, see Letter from Antonio Julianio, Founder and CEO, dYdX Labs and Daniel Lasko, General Counsel, dYdX Labs, to Christopher Kirkpatrick, Secretary, CFTC (Sept. 24, 2025), <https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35724>.

⁷ *E.g.*, *Grayscale Investments, LLC v. SEC*, 82 F.4th 1239, 1244-46 (D.C. Cir. 2023).

similar protocols and would fail to treat like products alike. DeFi perpetuals have the same core hallmarks of futures contracts that DCM-traded perpetuals would: they are standardized and traded via an anonymous order book, and positions can be exited by offset at any time.⁸ Though a DCM's contracts would be centrally cleared by a derivatives clearing organization (“DCO”), the Commission has acknowledged that “the presence or absence of clearing . . . may no longer be relevant” in distinguishing between futures and swaps.⁹ And DeFi protocols can and do have risk management features similar to certain of those offered by clearinghouses, such as insurance funds to backstop liquidations, variable maintenance margin levels, and failsafe mechanisms to ensure solvency.

Federal court precedent has recognized the similarities between DeFi-traded perpetuals and traditional futures contracts. In *United States v. Eisenberg*, the court explained that the DeFi-traded perpetual derivative at issue was “essentially a futures contract,” albeit with the unique features noted above.¹⁰ Though the court rejected Eisenberg’s contention that the contract did not meet the statutory definition of “swap,” Eisenberg did not raise the exclusion from the “swap” definition for futures contracts, but rather relied on *other* definitional arguments unsupported by the statutory text.¹¹

Limiting relief to centrally traded perpetual derivatives would leave DeFi developers and market participants subject to the uncertainty caused by the prior Administration’s enforcement actions indicating—generally without a fulsome explanation—that such products are swaps.¹² This could hamstring Chairman Selig’s previewed initiative to address persistent ambiguity regarding the appropriate regulatory treatment of decentralized technologies under the CFTC’s framework, including by considering an appropriate innovation exemption in certain circumstances or other “unambiguous safe harbors for software developers to ensure that the crypto innovations of today and tomorrow are Made in America.”¹³ As the Commission considers how best to facilitate this outcome for DT and similar DeFi software developers and platforms, it should not at this juncture foreclose any potential avenues of relief.

Picking winners and losers by granting favorable treatment for centralized but not decentralized trading of perpetuals would risk enshrining the very *status quo* that Chairman Selig seeks to reverse, ceding American leadership on DeFi perpetuals and incentivizing builders and market participants in this sector to stay offshore. As a software developer that has been building DeFi derivatives software in the U.S. since 2017, DT hopes to see this dynamic and innovative sector of finance legitimized by U.S. regulators and U.S. traders able to access the benefits of DeFi

⁸ See, e.g., *CFTC v. Co Petro Marketing Group Inc.*, 680 F.2d 573, 579-580 (1982) (identifying standardization and liquidation by offset as the key characteristics of futures contracts); *Grain Land Coop v. Kar Kim Farms, Inc.*, 199 F.3d 983, 991-92 (8th Cir. 1999) (same).

⁹ Further Definition of “Swap” and “Security-Based Swap,” 77 Fed. Reg. 48208, 48303 (Aug. 13, 2012).

¹⁰ Case 1:23-cr-00010-AS, Doc. 220, at *1 (S.D.N.Y. May 23, 2025).

¹¹ For example, the court unsurprisingly rejected as unsupported by statute Eisenberg’s argument that wash trades are not swaps because there is no transfer of risk when the same person is on both sides of the trade. *Id.*

¹² See, e.g., *In re Deridex, Inc.*, CFTC Docket No. 23-42 (Sept. 7, 2023); *In re Opyin, Inc.*, CFTC Docket No. 23-40 (Sept. 7, 2023).

¹³ Selig, *supra* note 2.

perpetuals, subject to appropriate safeguards. As Chairman Selig recognized, American market participants must not be “left on the sidelines” as the new frontier of finance arrives.

DT appreciates the opportunity to provide these comments, and we look forward to continuing to offer what we intend as useful and constructive input on pending and future Commission actions. Please do not hesitate to contact me at danlasko@dydx.exchange if we can be of any further assistance.

Respectfully submitted,

Signed by:

BC82AE053E574D1...
Daniel Lasko
General Counsel
dYdX Trading Inc.