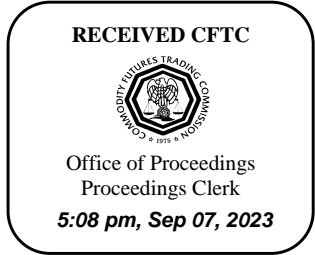


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____)
In the Matter of:)
)
Oryn, Inc.)
)
Respondent.) CFTC Docket No. 23-40
)
)
)
)
)
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_____)

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that, from at least approximately January 11, 2022 to approximately June 2023 (the “Relevant Period”), Oryn, Inc. (“Oryn” or “Respondent”) violated Sections 4(a), 4d(a)(1) and 5h(a)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6(a), 6d(a)(1), 7b-3(a)(1), and Commission Regulations (“Regulations”) 37.3(a)(1) and 42.2, 17 C.F.R. §§ 37.3(a)(1), 42.2 (2022). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding, including a proceeding in which the registration of Respondent may be affected, brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Respondent developed and deployed a blockchain-based digital asset trading platform (the “Opyn Protocol”) that offered trading of digital asset derivatives based in part on the price of ether to traders in the United States and abroad. By accessing the Opyn Protocol, users could enter into long and short derivative positions in so-called “power perpetuals,” derivative products whose values were based on an index created by Opyn that tracked the price of ether, a commodity in interstate commerce, squared (i.e., to the power of two), relative to the stablecoin USDC.

In doing so, Respondent—who has never registered with the Commission—unlawfully engaged in activities that could only lawfully be performed by Commission registrants and registered entities. Respondent violated Section 5h(a)(1) of the Act, 7 U.S.C. § 7b-3(a)(1), and Regulation 37.3(a)(1), 17 C.F.R. § 37.3(a)(1) (2022), by operating a facility for the trading or processing of swaps without being registered as a swap execution facility (“SEF”) or as a designated contract market. Respondent violated Section 4(a) of the Act, 7 U.S.C. § 6(a), by offering to enter into, entering into, executing, and/or confirming the execution of leveraged or margined retail commodity transactions with U.S. customers who were not eligible contract participants or eligible commercial entities.² Respondent also operated as an unregistered futures commission merchant (“FCM”) in violation of Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1), by soliciting and accepting orders for swaps and leveraged or margined retail commodity transactions and accepting money or property to margin those transactions. In addition, Respondent violated Regulation 42.2, 17 C.F.R. § 42.2 (2022), by failing to conduct know-your-customer (“KYC”) diligence on its customers as part of a customer identification program (“CIP”), as required of FCMs.

In accepting the Offer, the Commission recognizes Respondent’s substantial cooperation with the Commission’s Division of Enforcement. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with this matter. The Commission’s recognition of Respondent’s substantial cooperation and remedial efforts is reflected in the form of a reduced civil monetary penalty.

B. RESPONDENT

Opyn, Inc. is a Delaware corporation with its principal place of business in California. Opyn has never been registered with the Commission in any capacity.

receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

² Eligible commercial entities and eligible contract participants (collectively, ECPs”) are defined in Sections 1a(17) and (18) of the Act, 7 U.S.C. §§ 1a(17), (18), respectively.

C. FACTS

During the Relevant Period, the Oryn Protocol was a collection of smart contracts on the Ethereum blockchain relating to the creation, purchase, sale, and trading of a blockchain-based derivative called oSQTH.³ oSQTH is an ERC20 token whose value was based on an index created by Oryn that tracked the price of ether squared—i.e., to the power of two—called “Squeeth” (“Squeeth Index”).⁴

Respondent developed and deployed the Oryn Protocol, which it launched on the Ethereum blockchain in January 2022. Respondent also operated a website, <https://opyn.co/>, to, among other things, solicit orders for, and facilitate access to, the Oryn Protocol. Oryn referred to oSQTH tokens as “power perpetuals” that were “similar to a perpetual swap,” provided “options-like” exposure without strike prices or expiries, and “effectively consolidat[ed] much of the options market liquidity into a single ERC20 token.”

The Oryn Protocol was accessible to users in the United States and abroad in three ways: through Oryn’s website; by accessing the Oryn Protocol through Decentralized Exchange 1; and by accessing the Oryn Protocol directly through a blockchain explorer. To enter into long or short positions in oSQTH, a user would access the Oryn Protocol and connect their digital asset wallet. To ensure that the price of oSQTH remained tethered to the price of the Squeeth Index, the Oryn Protocol employed an in-kind funding rate mechanism, which impacted the value of long and short positions, as determined by the difference between the Squeeth Index price and the price of oSQTH.

Users of the Oryn Protocol could enter into a long oSQTH position by buying oSQTH through Oryn’s website, Decentralized Exchange 1, or a blockchain explorer. To enter into a short position, users minted⁵ new oSQTH tokens, either through Oryn’s website or a blockchain explorer, and then sold those tokens through Oryn’s website, Decentralized Exchange 1, or a blockchain explorer. Entering into short positions required users to deposit a minimum of the greater of 6.9 ether or 150% of the value of the short position as collateral into the Oryn Protocol; these amounts were held in custody by Oryn Protocol smart contracts until the short position was closed. If a user’s collateralization ratio on a short position dropped below 150%, its position was subject to liquidation by third party liquidators. Users could add collateral to their short position to increase their collateralization ratio; if the collateralization ratio of a

³ A blockchain is a distributed, shared, immutable ledger that facilitates the process of recording transactions and tracking digital assets in a consensus-based network. A smart contract is a piece of computer code that is deployed on a blockchain to automatically execute pre-programmed actions when predetermined conditions are met, and is often intended to contain all terms of a contract—meaning the software can execute the agreement contained in the contract without additional input from the parties. A digital asset is anything that can be stored and transmitted electronically and has associated ownership or use rights. Digital assets include virtual currencies, which are digital representations of value that function as mediums of exchange, units of account, and/or stores of value. The ERC20 technical standard allows any individual to develop new digital asset tokens that can be traded on the Ethereum blockchain.

⁴ The Squeeth Index tracked the price of ether squared relative to USDC.

⁵ “Minting” refers to the process of creating digital assets on a blockchain network.

position fell below 150% but was subsequently increased to above that threshold, the position would no longer be subject to liquidation.

Although Respondent took certain steps to exclude U.S. persons from accessing the Opyn Protocol, such as blocking users with U.S. internet protocol addresses, those steps were not sufficient to actually block U.S. users from accessing the Opyn Protocol. Respondent also did not maintain a CIP and did not require that any user of the Opyn Protocol provide any identifying information as would have been a necessary precondition for Respondent to implement KYC and anti-money laundering procedures.

Opyn developed and deployed the fully automated smart contracts that held custody of users' assets in the Opyn Protocol. Opyn retained a degree of control over the Opyn Protocol by retaining the ability to impose transaction fees on the minting of oSQTH, as well as the ability to effect a shutdown of the protocol, which would unwind all transactions. Opyn touted the security of its smart contracts and customer assets, stating that the protocol was "safe and dependable, and is audited" During the Relevant Period, Opyn never imposed any transaction fees or effected a shutdown of the Opyn Protocol.

During the Relevant Period, the Opyn Protocol minted over 675,000 oSQTH tokens and executed over 4 million oSQTH transactions with a total notional volume of \$540 million at the time of execution. Respondent earned no fees on those transactions.

After the Division began an inquiry into Opyn's unregistered activity, Opyn promptly took remedial action and provided substantial cooperation with the Division of Enforcement's investigation, which materially assisted the investigation. In particular, Opyn took additional steps to block U.S. users' access to the Opyn Protocol and voluntarily provided relevant information to Division staff.

III. LEGAL DISCUSSION

A. Ether and USDC are Commodities

Ether and stablecoins such as USDC are encompassed in the definition of "commodity" in Section 1a(9) of the Act, and are subject to the applicable provisions of the Act and Regulations. *See, e.g., CFTC v. Laino Group Ltd.*, No. 4:20-CV-03317, 2021 WL 4059385, at *6 (S.D. Tex. June 30, 2021) ("[B]itcoin, ether, and litecoin are 'commodities' pursuant to 7 U.S.C. § 1a(9)."); *United States v. Reed*, No. 20-cr-500 (JGK), 2022 WL 597180, at *3-5 (S.D.N.Y. Feb. 28, 2022); *CFTC v. McDonnell*, 287 F. Supp. 3d 213, 228-29 (E.D.N.Y. 2018); *CFTC v. My Big Coin Pay, Inc.*, 334 F. Supp. 3d 492, 498 (D. Mass. 2018); *In re Coinflip, Inc.*, CFTC No. 15-29, 2015 WL 5535736, at *2 (Sept. 17, 2015); *In re Tether Holdings Ltd.*, 2021 WL 8322874, CFTC No. 22-04 (Oct. 15, 2021); *see also* Retail Commodity Transactions Involving Certain Digital Assets, 85 Fed. Reg. 37,734-01, at 37,741 (June 24, 2020) ("As a commodity, virtual currency is subject to applicable provisions of the CEA and Commission regulations, including CEA section 2(c)(2)(D).").

B. Oryn Operated as an Unregistered Swap Execution Facility in Violation of Section 5h(a)(1) of the Act and Regulation 37.3(a)(1)

The SEF registration requirement applies to “multiple-to-multiple” platforms. Section 1a(50) of the Act, 7 U.S.C. § 1a(50), defines a SEF as “a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that: (A) facilitates the execution of swaps between persons; and (B) is not a designated contract market.”

Section 5h(a)(1) of the Act establishes the SEF registration requirement. The Act prohibits any person from operating a “facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market [‘DCM’]” 7 U.S.C. § 7b-3(a)(1). Regulation 37.3(a)(1) similarly requires any “person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform” to register as a SEF or DCM. 17 C.F.R. § 37.3(a)(1) (2022).

During the Relevant Period, utilizing the Oryn Protocol and Oryn’s website, Respondent operated a multiple-to-multiple trading platform designed to facilitate the trading of perpetual contracts whose value was based on the Squeeth Index, which in turn tracked the price of ether squared relative to USDC. Digital asset commodities include virtual currencies such as ether and USDC, which are commodities under Section 1a(9) of the Act, and the perpetual contracts are “swaps” under Section 1a(47) of the Act. However, Oryn did not register the platform as a SEF or DCM. Accordingly, Oryn violated Section 5h(a)(1) of the Act and Regulation 37.3(a)(1).

C. Oryn Engaged in Unlawful, Off-Exchange Leveraged or Margined Retail Commodity Transactions in Violation of Section 4(a) of the Act

Pursuant to Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii), any agreement, contract, or transaction in any commodity that is entered into with or offered to (even if not entered into with) non-ECPs on a leveraged or margined basis, or financed by the offeror, counterparty, or a person acting in concert with the offeror or counterparty is, with certain exceptions, subject to Section 4(a) of the Act, 7 U.S.C. § 6(a), “as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.”⁶

Section 4(a) of the Act makes it unlawful for any person to offer to enter into, enter into, execute, confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, or accepting any order for, or otherwise dealing in any transaction in, or in

⁶ Section 2(c)(2)(D)(ii)(III)(aa) of the Act, 7 U.S.C. § 2(c)(2)(D)(ii)(III)(aa), provides an exception for contracts of sale that result in actual delivery within 28 days. That exception is inapplicable to the perpetual contracts on the Oryn Protocol, because (i) the transactions were not physically settled contracts of sale of the underlying commodities, but rather involved leveraged financially-settled positions; (ii) the positions did not require delivery of the underlying commodities within 28 days, but rather the positions could exist perpetually; and (iii) certain of the positions were subject to potential forced liquidation. *See* Retail Commodity Transactions Involving Certain Digital Assets, 85 Fed. Reg. 37,734-01 at 37,743-37,744 (June 24, 2020).

connection with, a commodity futures contract, unless such transaction is made on or subject to the rules of a board of trade that has been designated or registered by the CFTC as a contract market for the specific commodity.

During the Relevant Period, utilizing the Opy Protocol and Opy's website, Respondent offered to enter into, entered into, executed, and/or confirmed the execution of leveraged or margined retail commodity transactions with non-ECP persons, in the form of perpetual contracts whose value was based on the Squeeth Index, which did not result in actual delivery within 28 days. Opy conducted an office or business in the United States for the purpose of soliciting, accepting, or otherwise dealing in such transactions. These leveraged or margined retail commodity transactions were not conducted on or subject to the rules of a board of trade that has been designated or registered by the CFTC as a contract market and therefore Opy violated Section 4(a) of the Act.

D. Opy Unlawfully Engaged in Activities That Could Only Lawfully Be Performed by Registered FCMs in Violation of Section 4d(a)(1) of the Act

Section 1a(28) of the Act, 7 U.S.C. § 1a(28), in relevant part, defines an FCM as any individual, association, partnership, corporation or trust that engages in soliciting or in accepting orders for or acting as a counterparty in "a swap . . . [or] any agreement, contract, or transaction described in . . . section (2)(c)(2)(D)(i)" and, in connection therewith, "accepts any money . . . or property (or extends credit in lieu thereof) to margin . . . trades or contracts that result or may result therefrom." Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1), in pertinent part, makes it unlawful for any person to act as an FCM unless registered with the Commission as an FCM.

As described above, Opy, while not registered as an FCM, acted during the Relevant Period as an FCM as defined in Section 1a(28) of the Act by soliciting and accepting orders for swaps via the Opy Protocol. Additionally, by creating and deploying smart contracts that were designed and intended to allow users of the Opy Protocol to contribute collateral and establish perpetual contract positions, Opy accepted property to margin these transactions. Therefore, Respondent violated Section 4d(a)(1) of the Act.

E. Opy Failed to Adopt a CIP in Violation of Regulation 42.2

Regulation 42.2, 17 C.F.R. § 42.2 (2022), provides that every FCM shall comply with the Bank Secrecy Act and related regulations, which require the FCM to adopt a CIP to facilitate KYC diligence on the FCM's customers. Regulation 42.2 applies to individuals and entities acting as unregistered FCMs. *See, e.g., CFTC v. HDR Global Trading Limited*, No. 1:20-cv-08132, 2021 WL 3722183 at ¶ 39 (S.D.N.Y. Aug. 10, 2021) (consent order) (finding defendant who acted as an unregistered FCM liable for failing to adopt a CIP as required by Regulation 42.2); *In re bZeroX, LLC*, CFTC No. 22-31, 2022 WL 4597664 (Sept. 22, 2022) (same).

During the Relevant Period, by acting as an unregistered FCM, Opy was required to adopt a CIP but failed to do so. In so doing, Respondent violated Regulation 42.2.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Sections 4(a), 4d(a)(1) and 5h(a)(1) of the Act, 7 U.S.C. §§ 6(a), 6d(a)(1), 7b-3(a)(1), and Regulations 37.3(a)(1) and 42.2, 17 C.F.R. §§ 37.3(a)(1), 42.2 (2022).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2022), relating to, or arising from, this proceeding;
 - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Acknowledges that the Commission is the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act and the Small

Business Regulatory Enforcement Fairness Act of 1996, specified in subparts 6 and 7 of Paragraph C of this Section;

- E. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- F. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Respondent violated Sections 4(a), 4d(a)(1) and 5h(a)(1) of the Act, 7 U.S.C. §§ 6(a), 6d(a)(1), 7b-3(a)(1), and Regulations 37.3(a)(1) and 42.2, 17 C.F.R. §§ 37.3(a)(1), 42.2 (2022);
 - 2. Orders Respondent to cease and desist from violating Sections 4(a), 4d(a)(1) and 5h(a)(1) of the Act, and Regulations 37.3(a)(1) and 42.2;
 - 3. Orders Respondent to pay a civil monetary penalty in the amount of two hundred and fifty thousand US dollars (\$250,000), plus post-judgment interest in the event such civil monetary penalty is not paid within ten days of the date of entry of this Order; and
 - 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Opyn, Inc., and its successors and assigns shall cease and desist from violating Sections 4(a), 4d(a)(1) and 5h(a)(1) of the Act, 7 U.S.C. §§ 6(a), 6d(a)(1), 7b-3(a)(1), and Regulations 37.3(a)(1) and 42.2, 17 C.F.R. §§ 37.3(a)(1), 42.2 (2022).
- B. Respondent shall pay a civil monetary penalty in the amount of two hundred and fifty thousand US dollars (\$250,000) ("CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid portion of the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above email address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581;

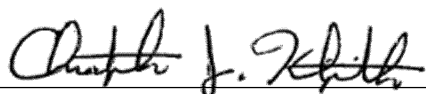
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of Opy, Inc.'s successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and any of its successors and assigns shall comply with this agreement and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
 2. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
 3. **Change of Address/Phone:** Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
 4. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings, or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the

United States Code or other applicable law with respect to such insolvency, receivership, bankruptcy, or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 7, 2023