

A large, clear glass hourglass is centered in the frame. It is filled with a vibrant blue sand. The top bulb is partially filled, while the bottom bulb is mostly empty, with a small amount of sand at the very bottom. The narrow neck of the hourglass is visible in the center. The background is a solid, bright blue color.

This webinar will begin shortly.

FIA



Predictions, Perps, Protocols and More

Trends in Market Structure and Product Innovation

May 22, 2025



Reminders

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Agenda

I. Market Structure Developments

- a. 24/7 Trading
- b. Vertical Integration
- c. Direct Clearing
- d. DeFi

II. Product Innovation

- a. Perpetual Futures
- b. Event Contracts and Prediction Markets



I. Market Structure Developments

24/7 Trading

Overview

Cash Markets

- Equity securities markets operate with a 6.5-hour core trading session (plus extended hours trading on each side)
- Spot FX markets generally operate 24/5
- Digital asset markets typically operate 24/7

Derivatives Markets

- Many traditional derivatives markets operate 23/6
- Digital asset derivatives typically trade 24/7 (offshore)

coinbase

24/7 futures trading has arrived

TL;DR: Coinbase launches 24/7 trading for Bitcoin and Ethereum futures. This is the first time 24/7 trading is available for leveraged futures contracts on a CFTC-regulated exchange.

By Coinbase [Product](#), May 9, 2025



CFTC Staff Request for Comment

On April 21, 2025, the staff of the CFTC issued a Request for Comment seeking public feedback on 24/7 trading and clearing.

II. Trading on a 24/7 Basis

Commission staff recognizes that technological advancements and market demand are prompting certain DCMs and SEFs to provide trading services on a 24/7 basis. While transition to such a model may **enhance market access and innovation**, it also raises important questions regarding **system resilience, market integrity, and the ability of the DCM or SEF to fulfill core regulatory obligations**. Specifically, staff is interested in understanding how DCMs and SEFs would ensure the reliability and integrity of trading systems without extended scheduled downtime for maintenance and upgrades. Continuous trading could heighten the risk of unplanned outages, complicate patch management, and require live change deployments and rollback mechanisms. Staff is also examining how DCMs and SEFs would maintain robust market surveillance for abusive trading practices, including front-running, wash trading, pre-arranged trading, and any other manipulative or disruptive trading practices prohibited by the Act.

III. Clearing for 24/7 Trading

Paralleling that of DCMs and SEFs, the Commission has a variety of DCO regulations that address risks that may be relevant to the extension of trading hours to a 24/7 basis. These include **risk management generally** (see Core Principle D(i),³ “Each [DCO] shall ensure that the [DCO] possesses the ability to manage the risks associated with discharging the responsibilities of the [DCO] through the use of appropriate tools and procedures.”), as well as more specific requirements. These latter **include setting and collecting margin** (which “shall be sufficient to cover potential exposures in normal market conditions,” Core Principle D(iv)⁴), and maintenance of sufficient financial resources to withstand a default (Core Principle B).⁵ Extending the ability to clear derivatives contracts to a 24/7 basis raises a set of questions related to what would be needed to ensure that the DCO is satisfying these and other relevant statutory requirements, along with other relevant regulatory requirements set by the Commission. Compliance with these requirements may be especially challenging under 24/7 clearing, given a much more limited ability to collect additional margin, if needed, on non-business days. In addition to questions related to the sourcing of collateral, the risks brought by clearing products that are traded on a 24/7 basis may create an elevated, or at least different, need for liquid resources.

Comment deadline: May 21, 2025 (yesterday).

Key Regulatory Considerations

CFTC rules do not dictate trading hours; many regulations are **principles-based**, rather than prescriptive.

DCMs/SEFs

- Must establish and maintain a **program of risk analysis and oversight** to identify and minimize sources of operational risk, through the development of appropriate controls and procedures. (DCM Core Principle 20; SEF Core Principle 14)
- Business continuity and disaster recovery
- Periodic testing

DCOs

- Must possess the ability to **manage the risks associated with discharging the responsibilities of the DCO** through the use of appropriate tools and procedures (Core Principle D(ii))
- Margin required from each member and participant of a DCO shall be sufficient to cover potential exposures in **normal market conditions**. (Core Principle D(iv))
- Maintenance of sufficient financial resources to withstand a default. (Core Principle B)

FCMs

- Do the **current risk disclosures** provided by FCMs to customers adequately address risks associated with 24/7 trading? Should the Commission's standard customer risk disclosure template required by Regulation 1.55 be revised to explicitly address 24/7 trading? (Question 3, RFC)
- Are the Commission's existing **customer protection, financial integrity, net capital, and financial reporting requirements** for FCM adequate for a 24/7 marketplace? (Question 10, RFC)

Digital Asset Markets: Why 24/7 Derivatives Trading Developed Here First



Spot Digital Asset Markets Operate 24/7

Ensures availability of **pricing data** to price, margin, and settle derivatives 24/7

Increased availability of **liquidity** (including during “off hours” because of the global nature of these markets)



Market Demand from Large Retail Base

Driven by **global retail participation** in digital asset markets across jurisdictions



Market Innovations

Auto-liquidation mechanisms for 24/7 risk management

Margining and settlement using stablecoins and other digital assets (which can be done 24/7)



I. Market Structure Developments

Vertical Integration

Vertical Integration: Overview

“Vertical Integration” refers to a firm’s ownership or control over **multiple market actors/infrastructure components**.

Examples:

- Trading venues (e.g., DCMs) and clearinghouses (e.g., DCOs);
- Trading venues and customer-facing intermediaries (e.g., FCMs);
- Trading venues and market makers/proprietary trading firms; or
- All of the above

Potential Advantages:

- Operational efficiencies
- Lower transaction costs
- Innovation and improved customer experience



Vertical Integration: Potential Concerns

- **Financial Stability/Systemic Risk:** “The traditional market structure contains inherent bumper guards—**market discipline resulting from differing interests of different entities—that promote financial stability**. Expanding to a novel vertically-integrated market structure for example, for clearinghouses raises particular concern because the resilience of our clearing system depends in significant part, on the disciplining effect that clearing members can have on clearinghouses.”
- **Customer Protections:** “Our clearinghouse rules were not set up to protect customers, because they were written with the idea of a separate intermediary that interacted with customers and had regulatory obligations for customer protections. If that intermediary is affiliated with the clearinghouse, **will customers have adequate protection?** Will an affiliated intermediary adequately inform customers about their rights and risks?”
- **Competition:** “Competition helps customers get better service or products at better prices. Customers, particularly **retail customers**, can be harmed by a lack of competition.”
- **Conflicts of Interest:** “The looming specter of conflicts of interest, potential compromises in regulatory impartiality, and compromised oversight due to these affiliations presents formidable challenges.”
 - **Market Integrity:** “When it comes to exchanges, there are other concerns, including the exchange’s ability to fulfill its role as a self-regulatory organization (SRO) with its affiliate, and the impact on market integrity. **Can one hand really watch the other?**”
 - **Trade Execution:** “How do we ensure that an exchange does not **favor its affiliate or their customers**, giving less favorable trade execution for non-affiliates?”
- **Shared Resources:** “Shared resources lead to concerns about **whose interest will dominate when it counts the most**, during times of stress. Shared resources also raises concerns over capacity to fulfill regulatory responsibilities.”

Case Study: Bitnomial



- **December 2023:** the CFTC approved Bitnomial's application for registration as a DCO. Bitnomial already operated a DCM and FCM.
- To mitigate potential conflicts of interest, Bitnomial:
 1. Adopted rules that specifically address potential conflicts associated with having an FCM affiliate as a clearing member;
 2. Enacted a separate, stand-alone policy that addresses potential affiliate conflicts; and
 3. Agreed to make voluntary public disclosures of its affiliate relationships.
- **Chairman Behnam:** "These additional measures, which are not required by the CEA, its implementing regulations, or the Core Principles, were **voluntarily implemented by Bitnomial** in response to issues identified in a request for comment issued by several CFTC operating divisions to better inform the Commission of issues that may arise because of affiliations of CFTC-registered entities with market participants."
- **Commissioner Goldsmith Romero:** "Presumably, clearing through their own affiliate could save Bitnomial money, but **the question for us is at what cost to customers, competition and financial stability.**"

Case Study: CME Group Inc.



- **October 2024:** CME Group announced that it received regulatory approval from NFA to establish an FCM.
- **CME Group Chairman and CEO, Terry Duffy:**

“We are pleased that the NFA has approved our FCM application. We **remain committed to the FCM model and believe in the time-tested risk management benefits it continues to provide.** At the same time, **as our industry continues to evolve,** our FCM will ensure CME Group is in a strong position to quickly adapt to our clients' changing business needs.”



Other Recent CFTC Actions

- **June 2023:** Staff RFC on the “Impact of Affiliations Between Certain CFTC-Regulated Entities” (Release No. 8734-23).
 - “An affiliation between an intermediary or other market participant and a DCM, DCO or SEF raises questions as to **how these supervisory responsibilities** will be carried out with respect to the intermediary or market participant. In addition, an affiliation between an intermediary or market participant and a DCO, DCM or SEF may raise other potential concerns including possible **anti-competitive effects, treatment of nonpublic information, and the adequacy of the applicable financial resources.**”
- **December 2023:** Staff Advisory on Affiliation Among CFTC-Regulated Entities (CFTC Staff Letter 23-16).
 - “The Divisions also wish to advise market participants that staff closely scrutinizes how these types of affiliate relationships are addressed when **reviewing applications for registration or designation, conducting examinations and rule reviews, and through other supervisory means.**”



I. Market Structure Developments

Direct Clearing

Traditional Clearing Model

Participants access clearing through FCMs which are members of DCOs.



Among other things, FCMs:

Are subject to segregation requirements	Participate in loss mutualization at the applicable DCO	Pay intraday margin calls for their customers and can provide collateral transformation services to assist the customer with margin calls	Assess the suitability of the products cleared and level of risk and position concentration taken by a customer using the DCO	On-board customers , including by conducting initial and ongoing AML/KYC checks	Provide data reporting to the CFTC	Provide disclosures to customers
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Direct Clearing Model

- Market participants **clear directly** at a DCO, without going through an FCM.
- Potential Benefits:
 - Disintermediation / direct control; and
 - Lower clearing fees and related costs.
- Potential Concerns: Lack of analogous protections to those afforded to customers of FCMs.



Recent CFTC Actions

Granted registration to several DCOs that clear directly for market participants without the intermediation of FCMs:

- CBOE Clear Digital, LLC; CX Clearinghouse, L.P.; LedgerX, LLC; North American Derivatives Exchange Inc. (d/b/a Crypto.com)
- Registration orders require that disintermediated clearing of futures and cleared swaps be **fully collateralized**
- To the extent that they are permitted to offer clearing for futures, options on futures, or cleared swaps on a margined basis, such clearing **must be intermediated by FCMs**.

December 2023: Notice of Proposed Rulemaking: Protection of Clearing Member Funds Held by Derivatives Clearing Organizations

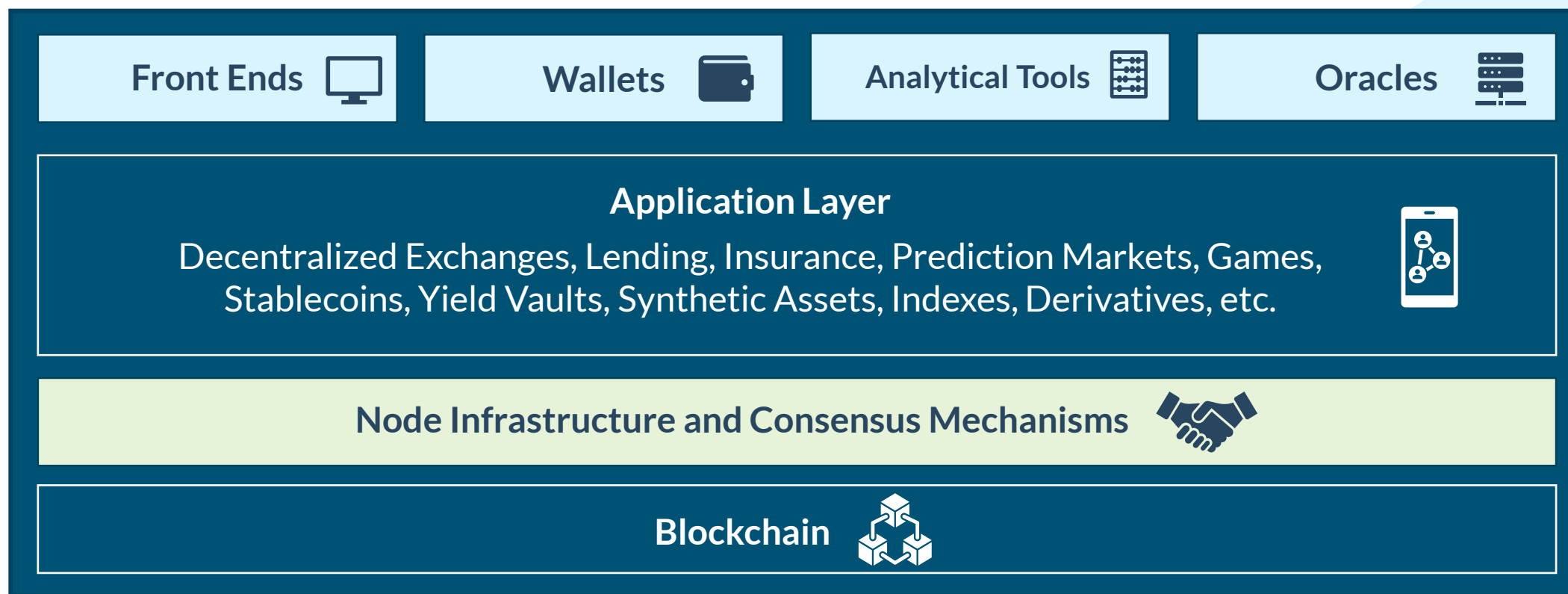
- “The Commission has long maintained regulations providing comprehensive protections for funds belonging to customers of [an FCM]. However, similar protections are not in place for funds belonging to clearing members of a DCO, whether they are individual market participants or FCMs. **The proposed rule would revise existing Regulation 39.15 to provide these protections for clearing member funds.**”
- **Topics addressed:** (1) segregation/commingling of proprietary funds; (2) limitation on use of proprietary funds/permitted investments; (3) daily reconciliation.



I. Market Structure Developments

DeFi

DeFi Market Infrastructure



DeFi generally refers to financial services applications that operate on blockchain technology and enable transactions without reliance on intermediaries.

DeFi Market Participants

Protocol Developers/Contributors

- Individuals or organizations who develop or contribute to **core smart contracts** that underlie DeFi protocols and applications.

Interface/Wallet Providers

- Individuals or organizations who develop and maintain **non-custodial user-facing websites/applications** that allow users to connect and communicate with DeFi protocols.

Miners/Validators

- Participants in the underlying blockchain network who **validate transactions and submit blocks** for publication to the network.

Governance Token Holders

- Individuals or organizations that **participate in the governance of a blockchain or protocol**; typically, voting rights are proportional to token ownership.
- Governance activities may include submitting/approving protocol upgrades, enacting fee structures, determining treasury allocation, etc.

DeFi Regulatory Considerations

Product Characterization

- Which digital assets are commodities/securities/derivatives?
- Innovative products (e.g., perpetuals, NFTs, stablecoins, tokenized RWAs).

Potential Registration Requirements

- Application to innovative technologies (e.g., decentralized finance, smart contracts, etc.)
- Distinction between passive/neutral technology providers and traditional intermediaries.

DeFi Enforcement Examples: Ooki DAO

Ooki DAO (Civil Action No. 3:22-cv-5416 (N.D. Ca. 2022))

- Ooki DAO was an unincorporated “decentralized autonomous organization” operating a decentralized margin trading protocol.
 - Like Uniswap Labs, Ooki DAO offered leveraged retail commodity transactions to U.S. persons without registration as an FCM.
- The CFTC advanced a novel theory, **seeking to impose liability on the Ooki DAO’s governance token holders “who ha[d] voted those tokens to govern” the protocol.**
 - Parallel settlement with bZeroX and its founders for their role in deploying/operating the protocol before transferring control to the Ooki DAO.
- CFTC obtained **default judgment** against the Ooki DAO in 2023.
 - Earlier in the proceedings, the court authorized alternative service on Ooki DAO governance token holders via the DAO’s online chat forum and “help chat box”

Key Issue: CEA liability for protocol governance participants.

DeFi Enforcement Examples: Uniswap Labs

Uniswap Labs (CFTC No. 24-25, 2024)

- Uniswap Labs (based in NY) “offered **leveraged or margined retail commodity transactions** in digital assets” via the Uniswap protocol.
- Labs “**developed and maintained a web interface** that made [the protocol] available to users.”
- Transactions did not result in actual delivery within 28 days, so such leveraged transactions could only be offered to non-ECPs on a DCM (which Uniswap Labs was not).

Key Issue: Liability for developers of decentralized DeFi market infrastructure; distinction between front-end providers and intermediaries.

Shifting Enforcement Environment

Prior SEC Enforcement

Operating a venue for **secondary-market trading** of digital assets.

Operating a front-end interface/wallet application with **integrated “swap” features**.

Provision of **“staking”** services.

Prior CFTC Enforcement

Permitting **U.S. access to an offshore exchange** or prime broker.

Operating a **front-end interface** for a DeFi protocol.

Deploying, developing and maintaining **“smart contract”** computer code.

Participating in **decentralized governance** of a DeFi protocol.

Today

Less focus on potential **registration violations**.

Deprioritizing enforcement (and criminal prosecution) against **software developers**.

DOJ no longer pursuing § 1960 (unlicensed money transmitting business) charge against Tornado Cash developer.

Expect continued enforcement of violations involving **fraud, market manipulation, and other investor/customer harm**.

Recent Regulatory Developments

White House

- “Strengthening American Leadership in Digital Financial Technology” (Executive Order, Jan. 2025)
- Established Presidential Working Group on Digital Asset Markets, which is set to publish recommended regulatory and legislative proposals.

Congress

- Passed joint congressional resolution overturning the Treasury Department’s “DeFi Broker” rule, which would have required certain IRS reporting.
- Actively **considering stablecoin and market structure legislation.**

DOJ

- Prioritizing digital asset enforcement in cases that **“cause financial harm to digital asset investors and consumers”** or involve nexus to other criminal conduct.
- Prohibiting prosecutors from pursuing charges for failure to comply with digital asset-related licensing or registration requirements “unless there is evidence that the defendant knew of the relevant requirement and violated it willfully.” (Apr. 2025)

Recent Regulatory Developments (Cont.)

SEC

- Established “Crypto Task Force,” headed by Commissioner Peirce. (Jan. 2025)
- Repealed SAB 121 (Jan. 2025)
- Staff Guidance re: proof-of-work mining activities. (March 2025)
- Staff Guidance re: offers and sales of “Covered Stablecoins.” (Apr. 2025)
- Staff Guidance re: application of disclosure requirements to offerings and registrations of securities in the digital asset markets. (Apr. 2025)
- Closed several enforcement matters (e.g., Coinbase, Consensus, Robinhood Crypto, Uniswap, PayPal PYUSD, Crypto.com, etc.).

CFTC

- Reorganization of Division of Enforcement Task Forces, including elimination of “Digital Assets” task force. (Feb. 2025)
- Enforcement “sprint” to resolve non-fraud cases. (March 2025)
- Directive to end “regulation by prosecution” of the digital asset industry. (Apr. 2025)

Federal Bank Regulators

- Federal Reserve Board, OCC, and FDIC alignment in no longer requiring banking organizations to provide regulatory notice and receive nonobjection prior to engaging in certain digital asset activities.



II. Product Innovation

Perpetual Futures



Perpetual Futures: Overview

Perpetual futures (“perps”):

- (i) provide for cash-settled, leveraged, “delta-one” exposure to the spot price of an asset and
- (ii) are traded on an exchange or otherwise in an organized market in accordance with standardized terms.

Common terms include:

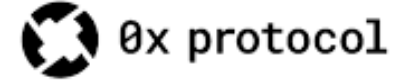
- **Lack of a stated expiry date** (*i.e.*, perpetual), though the term can be long-dated instead (*e.g.*, 50 years; see Bitnomial);
- Presence of a **funding rate that pays out based on the difference between the contract price and the spot price**; and
- **Automatic liquidation processes** triggered when a user’s margin/equity amount declines below a specified level.



Background

- Perps were first conceptualized in the early 1990s to enable derivatives markets for illiquid assets but were **popularized in the digital asset markets** (e.g., BitMEX's creation of the “XBTUSD perpetual swap” in 2016).
- Perps are the dominant derivatives instrument in digital asset markets:
 - “[O]f all the listed futures contracts on Bitcoin traded during the first half of 2023, **75% of the \$27B USD daily average volume** and **94% of the \$8B USD daily average open interests** can be attributed to **perpetual futures**” ([Ackerer et al., Perpetual Futures Pricing, Sept. 3, 2024](#))

Prior Enforcement Examples



ZeroEx (CFTC No. 23-41, 2023)

- ZeroEx developed and deployed the “0x Protocol,” which allowed U.S. persons to trade positions in **leveraged tokens** including 2:1 BTC and ETH exposure, that could **exist perpetually**.
- Such leveraged tokens were offered to non-ECPs and could be traded using “Matcha”—a front-end interface developed by ZeroEx which provided access to the 0x protocol—and did not result in actual delivery within 28 days.
- As a result, the CFTC argued that ZeroEx violated the CEA by offering leveraged and margined retail commodity transactions to U.S. persons without registering as a SEF or DCM.
 - CFTC recognized ZeroEx’s “substantial” cooperation and remediation, including immediate steps to prevent leveraged tokens from being traded through Matcha.

Prior Enforcement Examples

Deridex, Inc. (CFTC No. 23-42, 2023)

- Deridex developed and deployed a blockchain-based digital asset trading protocol—marketed as a “**decentralized on-chain derivatives platform**.”
- Through the protocol, Deridex (1) offered “**perpetual contracts**” to retail and institutional users in the U.S. without registering as a SEF or DCM and (2) acted as an unregistered FCM by soliciting users to deposit assets for leveraged trading
- The “perpetual contracts” were leveraged derivative positions that provided for the exchange of one or more payments based on the relative value of two digital assets.
 - Users could establish positions on a leveraged or margined basis, up to a **maximum leverage ratio of 15x**, meaning that the user’s collateral was required to be worth at least 1/15th (6.6%) of the value of a newly established position

No controls to exclude U.S. persons from accessing the protocol.

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
Deridex, Inc.)
Respondent.) CFTC Docket No. 23-42

RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
5:15 pm, Sep 07, 2023

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

The Deridex Protocol was accessible to retail and institutional users in the United States and abroad through Respondent’s website, and through direct interaction with the smart contracts that constituted the Deridex Protocol. **Respondent did not take any steps to exclude U.S. persons or non-ECs.** Respondent also did not maintain a CIP, and did not require that any user of the Deridex Protocol provide any identifying information as would have been a necessary precondition for Respondent to implement KYC and anti-money laundering procedures.

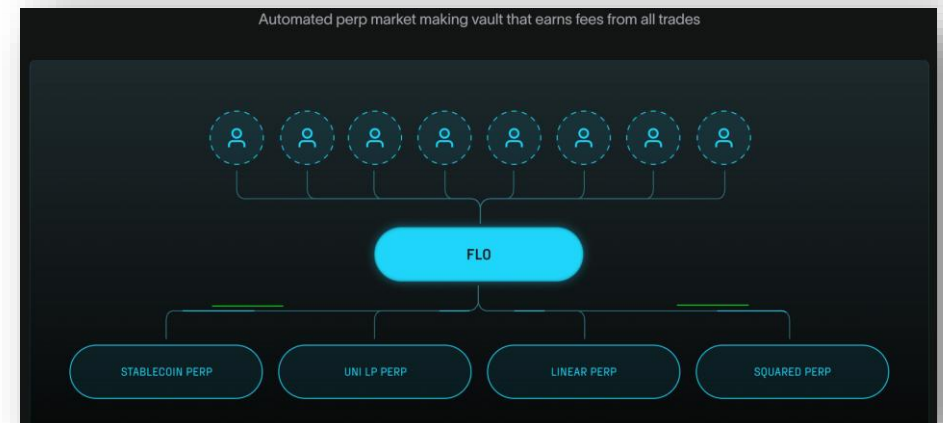
Prior Enforcement Examples

Opyn, Inc. (CFTC No. 23-40, 2023)

- Opyn developed and deployed a similar protocol that allowed users to enter long and short derivative positions in so-called “power perpetuals.”
- The value of the “power perpetuals” was based on an index created by Opyn that tracked the price of ETH, squared (*i.e.*, to the power of two), relative to the stablecoin USDC.
- The CFTC concluded that Opyn **took insufficient steps to block U.S. persons**, despite implementing geoblocking procedures to block U.S. IP addresses.

Key Consideration: What controls does the CFTC view as adequate in excluding U.S. persons?

- No guidance, but Opyn Order indicates that IP-blocking, alone, is insufficient.





CFTC Request for Comment

On April 21, 2025, the staff of the CFTC issued a Request for Comment seeking public feedback on a range of perpetual derivatives topics.

I. Background on Perpetual Contracts

A growing number of contracts traded in financial markets around the world are designed such that prices, and associated payments, are derived from an associated cash or spot market price. In contrast to ‘traditional’ derivatives contracts, where the price benchmarking between the derivative and underlying spot instrument is done at or around the expiration of the derivatives contract, for these newer products the **pricing relationship is monitored and settled on an ongoing basis** – often multiple times a day. Because this benchmarking occurs on an ongoing basis, these contracts have been, in certain cases, described as ‘Perpetual Derivatives’, with less need for a specific termination date associated with the given contract.

Given the often high correlation between a perpetual contract and the associated cash contract, as well as a **reduced need for ‘rolling’** a contract from one expiration to another, perpetual contracts have become increasingly popular as a way of gaining exposure to a given market or product class. However, these distinctions between the structure of existing derivatives contracts and the structure of perpetual contracts may raise **novel questions and concerns related to trading and clearing risk management**. In order to ensure that the Commission adequately understands these novelties, as well as the interactions between these products and current or future relevant regulations, the Commission is requesting comment on the set of questions posed below.

Comment deadline – May 21, 2025 (yesterday).



Key Considerations

Characterization: Are perps properly characterized as futures or swaps? (Question 13)

Potential Benefits:

- **Question 2:** “Would Perpetual Derivative products provide commercial risk management features that cannot be met with existing products?” (e.g., reduced need to roll positions)
- Ability to gain/hedge exposure without the costs of physical ownership
- Bringing perps within the U.S. regulatory framework

Potential Risks:

- **Question 6:** “Do Perpetual Derivatives raise unique concerns about susceptibility to manipulation?”
- **Question 7:** “Do Perpetual Derivatives raise unique surveillance concerns for exchanges listing perpetual products?”
- **Question 8:** “Do Perpetual Derivatives have the potential to adversely impact the liquidity or usefulness for commercial risk management purposes of traditional futures market products?”
- **Question 15:** “Do Perpetual Derivatives increase customer default risk that may expose other customers to potential losses in the event of an FCM insolvency resulting from the customer default?”
 - Also consider the impact of auto-liquidation features
- **Question 16:** “Do Perpetual Derivatives raise unique issues in the event of a futures commission merchant or derivatives clearing organization insolvency under part 190 of the Commission’s regulations or the U.S. Bankruptcy Code?”



II. Product Innovation

Event Contracts and Prediction Markets

Understanding Prediction Markets

- Event contracts are derivative contracts where the underlying “asset” is the outcome of a specified event
- Typically, binary contracts with \$1.00 payout
 - Price = probability
- Event contracts may only be listed for trading by “registered entities”
- Event contracts on **election outcomes** and **sporting events** are particularly prominent examples.




Kalshi

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**How much government spending will Trump and Elon cut this year?**


At least 25 billion	36%	Yes / No
At least 1 billion	35%	Yes / No

\$1,806,242 (+)

**Best AI this month?**


Grok	92%	Yes / No
Claude	6%	Yes / No

\$2,382,510 (+)

**How many trips to Mar-a-Lago will Trump make as President this month?**


4	94%	Yes / No
3	45%	Yes / No

\$316,114 (+)

**The President's 538 approval rating today?**


48% or below	94%	Yes / No
48.1% to 48.5%	4%	Yes / No

\$3,930,983 · Weekly 10h 28m 19s (+)

**Highest temperature in Miami tomorrow?**

82° or above	52%	Yes / No
80° to 81°	42%	Yes / No

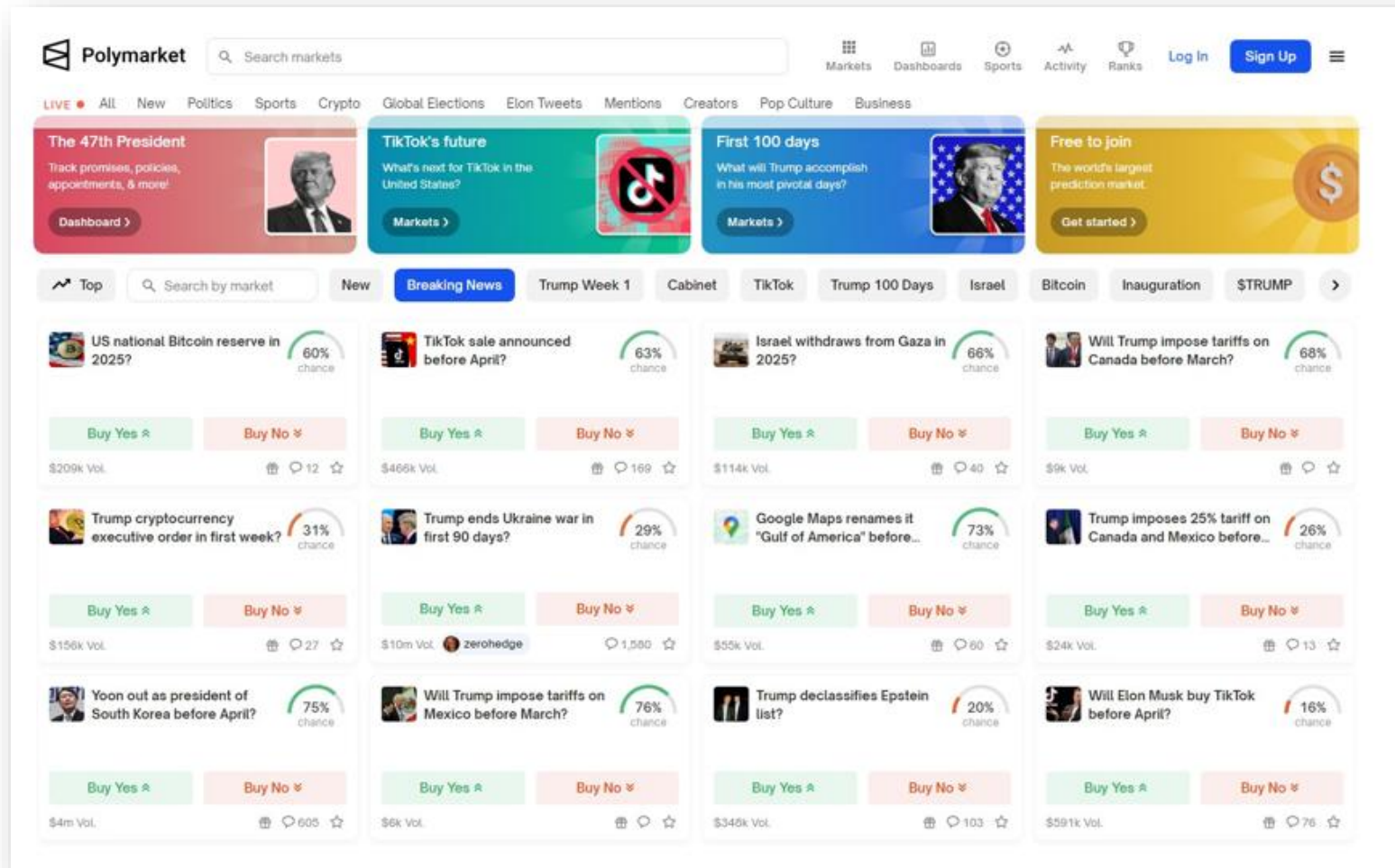
\$18,322,772 · Daily (+)

**Pro Men's Basketball Champion?**

Boston	31%	Yes / No
Oklahoma City	30%	Yes / No

\$2,382,922 (+)

Polymarket





Key Dates in CFTC Oversight of Event Contracts

June 1993 – CFTC issues Iowa Electronic Markets no-action relief

May 2008 – CFTC concept release re: event contract regulation

July 2010 – Dodd-Frank amended the CEA to give the CFTC authority to determine whether event contracts “are contrary to the public interest” if they involve, among other things: unlawful activity under state or federal law; terrorism; assassination; war; gaming; as otherwise determined by the CFTC

July 2011 – CFTC adopts Rule 40.11, implementing Dodd-Frank

April 2012 – CFTC Nadex order: certain political event contracts = gaming, and are thus contrary to public interest.

October 2014 – CFTC issues PredictIt no-action relief

March 2021 – ErisX NFL contracts withdrawn

August 2022 – CFTC withdraws PredictIt’s no-action relief

January 2022 – CFTC settles with Polymarket

May 2024 – CFTC NPR to revise Rule 40.11

October 2024 – D.C. Cir. denies CFTC’s stay pending appeal, ruling in Kalshi’s favor

February 2025 – CFTC announces roundtable on prediction markets

May 2025 – CFTC moves to voluntarily dismiss appeal in D.C. Circuit Kalshi litigation

Prior Enforcement

Polymarket (CFTC No. 22-09, 2022)

- In 2022, the CFTC ordered Polymarket to pay a **\$1.4 million penalty** in connection with its operation of a prediction market platform.
- The contracts available for trading on Polymarket were “**off-exchange event-based binary options contracts**” (i.e., swaps) that could have only been lawfully offered to U.S. persons through a DCM or SEF.
- Polymarket’s platform also relied, in part, on blockchain-based infrastructure—adding to the novelty of the CFTC’s enforcement efforts.

CFTC Orders Event-Based Binary Options Markets Operator to Pay \$1.4 Million Penalty

January 03, 2022

Washington, D.C. — The Commodity Futures Trading Commission today entered an order filing and simultaneously settling charges against Delaware-registered **Blockratize, Inc. d/b/a Polymarket**, based in New York City, for offering off-exchange event-based binary options contracts and failure to obtain designation as a designated contract market (DCM) or registration as a swap execution facility (SEF).

The New York Times

F.B.I. Searches Home of Founder of Polymarket Betting Website

(Nov. 13, 2024)



Pending Litigation

- **Kalshi and Crypto.com** have **challenged state gaming regulators' ability to regulate event contracts** on CEA preemption grounds.
- ***KalshiEx v. Hendrick (D. Nev. 2025)*** – Nevada gaming regulators issued Kalshi a cease-and-desist concerning its election- and sports-based event contracts, alleging that they violate Nevada gaming laws.
 - Kalshi filed suit, seeking emergency injunction and declaratory relief that the CEA preempts application of state gambling laws to event contracts listed on CFTC-registered DCMs.
 - Nevada District Court granted preliminary injunction, finding that Kalshi is likely to succeed on the merits of its preemption claim.
 - Nevada Resort Association filed emergency motion to intervene, arguing that Kalshi's preemption arguments “**would result in the complete upheaval of Nevada's gaming regulations**” and allow Kalshi to “**evade state regulations and pose a direct competitive threat**” to its membership.



Pending Litigation (Cont.)

- ***KalshiEx v. Flaherty (D.N.J. 2025)*** – Challenging New Jersey gaming regulators on identical grounds.
 - New Jersey District Court granted preliminary injunction granted on preemption grounds, adopting the reasoning of the Nevada court.
 - Third Circuit granted New Jersey defendants’ motion for expedited appeal – initial briefs due June 10, 2025.
- ***North American Derivatives Exchange Inc. (d/b/a Crypto.com) v. Martin (D. Md. 2025)*** – Challenging Maryland gaming regulators enforcement authority following receipt of a cease-and desist; motion for preliminary injunction pending.
- **Other Issues:**
 - Whether event contracts predicated on the outcome of sporting events offered on national exchanges violate the Wire Act of 1961’s prohibition on the interstate transmission of “bets or wagers”?
 - Role of the Indian Gaming Regulatory Act, which gives tribes the exclusive right to regulate gaming activity on Indian land.



Questions?



S&C Bios

Lawyer Profiles



- **Colin D. Lloyd**

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- Partner since 2022
Harvard Law School, J.D. 2007
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"He is not only **brilliant** but very **plugged into US regulators, their mindset and industry participants** in general."

"Colin Lloyd has **unparalleled technical knowledge, relationships and commercial acumen** in derivatives matters. He's also **accessible, responsive and easy to work with.**"

Chambers USA, 2023

•Colin Lloyd is a partner in the Firm's Commodities, Futures and Derivatives and Capital Markets Groups. He focuses on advising clients on a broad range of securities and derivatives regulatory, enforcement, transactional, and legislative matters. His clients include U.S. and non-U.S. broker-dealers, swap dealers, banks, exchanges, electronic trading platforms, clearinghouses, private equity funds, investment managers, sovereigns, and derivatives end users. He regularly represents clients before various federal regulatory agencies, including the Commodity Futures Trading Commission, the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, as well as other federal regulatory agencies and self-regulatory organizations.

•Mr. Lloyd is recognized as a leader in his practice by Chambers USA, IFLR1000 and The Legal 500 United States. He has also been named to Bloomberg Law's 2023 "They've Got Next: The 40 Under 40" list, recognized as a "Cryptocurrency, Blockchain, and FinTech Trailblazer" by The National Law Journal, a Law360 "Rising Star" and a "Future Leader" by the Institute of International Finance.

•Mr. Lloyd's work on derivatives and foreign exchange matters has included the development of path breaking derivatives products and transactions, providing regulatory guidance and updates to trade associations and self-regulatory organizations, and developing a comprehensive compliance manual widely used by registered swap dealers as the foundation for their compliance policies and procedures.

•He advises U.S. and non-U.S. broker-dealers and other trading firms on variety of securities market regulatory matters, including compliance with SEC Rule 15a-6, ongoing capital, customer protection, and margin advice for investment banks, market structure issues – including high-frequency trading and market-making strategies – for full-service and proprietary trading firms, as well as advising commercial and custody banks on the permitted scope of securities-related activities.

•He has represented clients in connection with settlements with various regulators, including the Department of Justice and CFTC, on matters involving global foreign exchange and interest-rate benchmarks, Dodd-Frank swap dealer regulations, swap data reporting, wash trading allegations, and segregation, recordkeeping, and reporting.

•[Link](#) to Online Bio

Lawyer Profiles



•Kathleen S. McArthur, co-head of S&C's Securities & Commodities Investigations practice and the Firm's Commodities, Futures and Derivatives practice, has advised some of the world's biggest companies on major matters involving complex financial products and physical commodities, including enforcement inquiries, internal investigations and commercial litigation. Katy has a keen understanding of trading and markets that enables her to advocate effectively for clients facing even the most complex allegations of fraud or market manipulation, including proceedings brought by the CFTC, SEC, FERC and DOJ.

Ms. McArthur has been recognized by leading publications, including Chambers USA and The Best Lawyers in America. She has also been recognized as a "Rising Star" by New York Super Lawyers, Who's Who Legal: Investigations and by The Legal 500 United States, and is a Fellow of the Leadership Council on Legal Diversity. She also was a member of the Sullivan & Cromwell team that was awarded The Legal Aid Society's 2018 Pro Bono Publico Award. She is a native speaker of Spanish and also is fluent in Portuguese.

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- [Link](#) to Online Bio

"Kathleen is a fantastic lawyer
- **whip-smart, strategic and
has immense expertise.**"

"She is **excellent.** A quality
lawyer."

Chambers USA, 2023

Lawyer Profiles



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University of Virginia School
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“He is incredibly responsive
and has great insight into
how regulators think about
issues.”

Chambers USA 2023

• James M. McDonald is a litigation partner and a member of the Firm’s Securities & Commodities Investigations Practice and its Commodities, Futures and Derivatives group. His practice focuses on advising clients on regulatory enforcement matters, white-collar criminal matters, and internal investigations, as well as on regulatory and corporate governance matters related to the securities and commodities laws. In addition, he has represented entities and individuals across the cryptocurrency ecosystem in government investigations, civil litigation, and regulatory matters.

From 2017 to 2020, Mr. McDonald served as Director of Enforcement at the U.S. Commodity Futures Trading Commission, where he had overall responsibility for all aspects of the CFTC’s enforcement program, including its investigations and litigations, market surveillance, and whistleblower office. During his time at the CFTC, Mr. McDonald was responsible for creating the first task forces within the Division of Enforcement focused on manipulation and spoofing; insider trading; foreign corruption; anti-money laundering and the Bank Secrecy Act; and digital assets. He also coordinated the CFTC’s enforcement activities with the Department of Justice, the SEC, and numerous international regulators.

Prior to joining the CFTC in 2017, Mr. McDonald served as an Assistant United States Attorney in the Southern District of New York, where he investigated and prosecuted white-collar criminal offenses, as well as cases involving international narcotics trafficking and violent crime, and tried numerous jury cases.

Mr. McDonald served as a law clerk to John G. Roberts, Jr., Chief Justice of the United States, and Jeffrey S. Sutton, Jr., Judge on the United States Court of Appeals for the Sixth Circuit, and as a Deputy Associate Counsel, in the Office of the White House Counsel, under President George W. Bush.

• Mr. McDonald joined Sullivan & Cromwell as a partner in January 2021.

• [Link](#) to Online Bio

Lawyer Profiles



- **Aaron M. Levine**

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- Associate since 2017
Yale Law School, 2017
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2014

• Aaron is an associate in the Firm's General Practice Group, practicing primarily in its Financial Services and Commodities, Futures and Derivatives Groups. He focuses on advising clients on a broad range of derivatives, securities and bank regulatory, transactional, enforcement and advisory matters. He also advises clients on corporate governance, compensation and governance matters. His clients include U.S. and non-U.S. banks, broker-dealers, swap dealers, exchanges, asset managers, investment managers, trading firms and fintech firms. He serves as a member of the Futures & Derivatives Regulation Committee of the New York City Bar Association and maintains an active pro bono practice.

- **Recent Representations**

- **FTX** in its pending Chapter 11 proceedings, including its sale of LedgerX and in ongoing trading regulatory matters
- **Credit Suisse** in its \$3.2 billion merger with UBS and post-merger integration
- **A digital asset trading platform** in connection with CFTC and SEC investigations
- **Various individual clients and trade associations** in comment letters and other advocacy efforts on proposed legislation and regulations from the CFTC, SEC, FINRA and the prudential banking regulators



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Upcoming Webinar:



Improving the Timeliness of Give-Up Processing
11:00 – 12:00 PM ET

FIA

The image features the letters 'FIA' in a bold, sans-serif font. The 'F' is dark grey. The 'I' is dark grey with a green triangle on its right side. The 'A' is composed of two overlapping triangles: a light blue one in front and a darker blue one behind. The background is a white canvas with large, overlapping geometric shapes in light green, light blue, and light grey, creating a modern, abstract design.