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**Via comments.cftc.gov**

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

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

August 24, 2026

**Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance**[1]

Dear Mr. Kirkpatrick,

We write this letter in response to the Commodity Futures Trading Commission's ("**CFTC**") and Securities and Exchange Commission's ("**SEC**") (together, the "**Commissions**") Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (the "**RFC**"). dYdX Trading Inc. dba dYdX Labs ("**dYdX Labs**") is a U.S. based developer of decentralized finance protocols permitting on-chain trading of perpetual futures, including the Cosmos-based dYdX Chain and the recently launched Arcus Protocol.[2]

dYdX Labs commends the Commissions for undertaking this joint initiative to provide clarity regarding the classification and regulatory treatment of innovative financial products. The

[1] Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, Release Nos. 33-11424, 34-105735, File No. S7-2026-21, 91 Fed. Reg. 37873 (June 24, 2026), *available at* https://www.govinfo.gov/content/pkg/FR-2026-06-24/pdf/2026-12743.pdf.

[2] For more information on dYdX Labs and our prior submissions on perpetual futures, which may be relevant to the discussion under Section II of this letter, *see* dYdX Trading Inc., Comment No. 74977, Comment for General CFTC Request for Comment on the Trading and Clearing of "Perpetual" Style Derivatives (May 21, 2025), available at: https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=74977&SearchText=; dYdX Trading Inc., Comment No. 113721, Comment for General CFTC Request Input on All Recommendations for the CFTC in the President's Working Group on Digital Asset (Sept. 9, 2025), available at: https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=113721&SearchText=. Note that dYdX Labs also intends to file a comment letter on the CFTC's latest request for comment related to perpetual contracts. *See* Commodity Futures Trading Commission, Request for Comment on the Extension of Standard Futures Contracts to 24/7 Trading and on Perpetual Contracts Referencing Physically Delivered or Storable Energy Commodities, 91 Fed. Reg. 38334 (June 25, 2026).

recognition that financial markets are evolving rapidly and becoming more interconnected through global technologies, and that the SEC and CFTC have committed to coordinate in areas of common regulatory interest where collaboration can enhance regulatory effectiveness and market integrity, is a welcome and necessary step.

Our responses are focused on two critical areas addressed by the RFC: (1) the benefits of harmonized CFTC and SEC regulatory treatment of innovative products for the strength of U.S. financial markets, and (2) the need for the Commissions to provide clear guidance that cash-settled perpetual contracts referencing equity securities should be treated as futures under the Commodity Exchange Act ("**CEA**"), rather than as swaps or security-based swaps.

## I. Harmonization of CFTC and SEC Regulatory Treatment of Innovative Products Strengthens the U.S. Financial System

dYdX Labs strongly supports the Commissions' decision to issue a joint request for comment and to pursue coordinated regulatory approaches for innovative financial products. The Commissions' commitment to coordinate to reduce regulatory gaps and provide greater clarity regarding jurisdictional lines is essential to ensuring the continued competitiveness of U.S. financial markets on the global stage.

As the RFC acknowledges, new trading models, digital infrastructure, and onchain, automated systems are increasingly blurring traditional jurisdictional lines. This blurring creates significant uncertainty for market participants, particularly those developing novel financial products and trading infrastructure that may not fit neatly within the regulatory categories established by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Title VII"). Market participants have sought clarity from the Commissions regarding the regulatory lines for agency oversight of innovative products and structures and for compliance where products or structures may touch on the regulatory interests of both Commissions.

The consequences of regulatory ambiguity in this space are significant. When innovators cannot determine with reasonable certainty whether a product will be regulated by the CFTC, the SEC, or both, the resulting legal uncertainty acts as a deterrent to innovation and capital formation in the United States. This uncertainty drives talented developers, entrepreneurs, and market participants to foreign jurisdictions with clearer regulatory frameworks, eroding U.S. leadership in financial technology and depriving American investors and market participants of access to innovative financial products.

We believe that harmonized regulatory treatment of innovative products across the CFTC and SEC serves three critical objectives that underpin a strong U.S. financial system. First, harmonization promotes market integrity. When market participants face conflicting or overlapping regulatory requirements from two different agencies, the result is not enhanced protection but rather confusion, compliance gaps, and increased opportunities for regulatory arbitrage. A unified and consistent regulatory approach ensures that all participants in a given market are subject to clear and consistently applied rules, which promotes fair and orderly markets.

Second, harmonization enhances investor and customer protection.  The Commissions' request for principled, objective criteria that could be used to provide additional clarity for innovative products within the Title VII framework recognizes that clear classification of products is a prerequisite for effective investor protection.  When a product's regulatory status is unclear, investors and customers face uncertainty about the protections available to them, including segregation of customer funds, margin requirements, trade reporting, and the availability of regulatory enforcement in the event of misconduct.

Third, harmonization fosters responsible innovation.  The Commissions' stated goal of providing clarity to unlock access to innovative products in U.S. financial markets can only be achieved if innovators can design, build, and deploy new products with confidence that they understand which regulatory framework applies.  A patchwork of overlapping, conflicting, or unclear rules stifles innovation and drives economic activity offshore.

dYdX Labs strongly supports the Commissions' exploration of alternative compliance mechanisms as a practical means of achieving regulatory harmonization.  Question 12 of the RFC asks whether, where trading in economically related or functionally similar product classes implicates both SEC and CFTC regulatory interests, compliance with one Commission's regulatory framework could appropriately satisfy substantially similar requirements of the other Commission.  We believe the answer is yes.

In evaluating "substantially similar" requirements, the Commissions should focus on the functional outcomes of regulation—that is, whether the regulatory objectives of customer protection, market integrity, transparency, and systemic risk mitigation are achieved—rather than requiring strict formal identity between the two agencies' rules.  A substance-over-form approach to alternative compliance would allow market participants to operate under a single, coherent regulatory framework while still satisfying the policy objectives of both Commissions.

dYdX Labs urges the Commissions to adopt the following principles in developing an alternative compliance framework:

1. **Primary Regulator Model.** Where a product is most naturally within the jurisdiction of one Commission, that Commission should serve as the primary regulator, and compliance with its requirements should be deemed to satisfy substantially similar requirements of the other Commission.  This approach minimizes duplicative compliance costs and provides market participants with a single, clear regulatory point of contact.

2. **Joint or Coordinated Notice Registration.** Question 13 of the RFC appropriately asks whether the Commissions should pursue joint or coordinated notice registration, tailored rules, rules of procedure, tailored trade reporting rules, deemed filing, or other joint or coordinated approaches to facilitate alternative compliance.  We support all of these approaches, and particularly encourages the development of a streamlined registration process for platforms that offer products touching both Commissions' jurisdictions.  A single registration filing that is shared between the Commissions would reduce administrative burdens while ensuring both agencies have visibility into market activities.

3. **Coordinated Surveillance and Enforcement.** Effective alternative compliance requires coordinated surveillance, examination, and enforcement, as well as enhanced information and data sharing to help fulfill both Commissions' regulatory mandates. dYdX Labs supports the development of memoranda of understanding and data-sharing protocols that allow the Commissions to jointly monitor cross-market activities and deter market manipulation and trading on material non-public information.

## II. The CFTC and SEC Should Make Clear that Perpetual Contracts Referencing Equity Securities Should Be Treated as Futures

Question 11 of the RFC specifically asks whether there is a need for greater clarity regarding the treatment of futures, including security futures, in the context of innovative markets, and specifically asks whether a cash-settled "perpetual" contract referencing an equity security could be treated as a security future. dYdX Labs submits that the Commissions should make clear that cash-settled perpetual contracts referencing equity securities should be treated as futures (or, where referencing a single equity security or narrow-based security index, as security futures products) under the CEA, and should not be classified as swaps or security-based swaps.

A perpetual contract is, at its core, a futures contract without an expiration date. Like a traditional futures contract, a perpetual contract: (i) provides exposure to the price movements of an underlying asset without requiring ownership or physical delivery of that asset; (ii) is cash-settled based on the difference between the entry price and the exit price (or, in the case of a funding rate mechanism, through periodic payments designed to anchor the contract price to a reference price); (iii) is traded on margin, with frequent mark-to-market and margin requirements; (iv) facilitates price discovery and hedging activity for market participants; and (v) is standardized in its terms and traded on organized platforms (whether centralized exchanges or decentralized protocols).

The main distinguishing feature of a perpetual contract relative to a traditional futures contract is the absence of a fixed expiration date. Rather than settling at a predetermined date, perpetual contracts use a "funding rate" mechanism, which consists of periodic payments between long and short position holders designed to keep the contract price tethered to the spot price of the underlying asset. This mechanism is functionally equivalent to the process of "rolling" a traditional futures position from one expiration to the next but achieves the same economic result in a more capital-efficient and operationally streamlined manner.

The absence of an expiration date does not transform a futures-like product into a swap. The defining characteristics of a swap—the exchange of cash flows over time based on an underlying reference, the existence of a notional amount, and the transfer of risk through periodic payments—are not the primary economic features of a perpetual contract. A perpetual contract is a directional exposure instrument that allows traders to speculate on or hedge against price movements, which is the core function of a futures contract.

Further, the CFTC has already permitted treatment of perpetual contracts referencing the spot price of bitcoin or other digital commodities.[3] Since then, the CFTC has also issued a request for comment that seeks to potentially extend such treatment to other assets, including storable energy commodities.[4] Consistent with these actions by the CFTC and given the comparable characteristics of perpetual contracts with traditional futures contracts, as detailed above, we strongly recommend that the Commissions affirmatively assert that perpetual contracts referencing equity securities should be treated as futures.

The exponential growth of retail equity trading and more recent proliferation of single stock derivatives products demonstrate strong market demand for leveraged exposure to equity securities. Notably, equity securities share various economic characteristics with digital commodities, including incorporeality, negligible transfer and custody costs, and robust, liquid and transparent spot markets. These characteristics could enable perpetual futures referencing equity securities to develop into a leading risk management tool as they have in the digital commodities space.

dYdX Labs appreciates the Commissions' and their staff's consideration of our comments on these important topics regarding the "swap" and "security-based swap" definitions and a potential alternative compliance framework. The questions posed in the RFC reflect a thoughtful and forward-looking approach to the challenges presented by the rapidly evolving financial landscape. We urge the Commissions to seize this opportunity to establish the United States as the global leader in regulated, innovative markets. By harmonizing their regulatory treatment of innovative products, adopting robust alternative compliance mechanisms, and clearly classifying perpetual contracts as futures, the Commissions can promote market integrity, enhance investor protection, foster responsible innovation, and ensure that the United States remains the global financial leader. We welcome further discussion on any of these issues. If you have any questions, please do not hesitate to contact us.

Daniel Lasko
General Counsel, dYdX Labs

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[3] *See* In the Matter of the Request for Approval by KalshiEX LLC of the BTCPERP Futures Contract, Order Approving KalshiEx LLC BTCPERP Futures Contract (May 29, 2026), available at: https://www.cftc.gov/filings/documents/2026/orgdcmkexbtxperporder26601.pdf.

[4] Commodity Futures Trading Commission, Request for Comment on the Extension of Standard Futures Contracts to 24/7 Trading and on Perpetual Contracts Referencing Physically Delivered or Storable Energy Commodities, 91 Fed. Reg. 38334 (June 25, 2026).