

May 20, 2025

SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0213

Re: Non-Custodial Trading Interfaces Should Not be Considered “Brokers” or
“Exchanges” under Federal Securities Laws

Dear Members of the Crypto Task Force:

We write on behalf of persons who operate non-custodial trading interfaces (“*NTIs*”) that communicate with smart contracts deployed on blockchain networks. We respectfully ask for guidance that operating an NTI does not create an obligation to register as a broker or securities exchange under the Securities Exchange Act of 1934 (the “*Exchange Act*”) where the NTI does not take control or custody of user funds and only helps users draft or optimize transactions, provides related information, and receives payment for those services.¹

For purposes of this letter, an “NTI” is a non-custodial, software-based interface with features that display information and enable users to communicate with autonomous smart contracts deployed to a blockchain network.² These smart contracts may enable peer-to-peer trading of digital assets, including securities. NTIs act solely as technological, deterministic, and non-discretionary tools that enable users to understand and communicate with decentralized trading protocols. NTIs do not in themselves intermediate trades, solicit transactions, control or take custody of user assets, or exercise control over the underlying protocol. By contrast, NTIs may (a) provide the technical functionality to assist users in drafting³ transactions for signature through users’ own wallet applications and (b) display relevant protocol information, without exercising discretion over how or when such transactions are transmitted to the blockchain. Even when an NTI charges a fee (for example, a service fee for drafting a transaction for

¹ See, e.g., *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1338-41 (M.D. Fla. 2011) (concluding defendant was not a broker because, despite receiving a transaction fee, it did not participate in negotiations, analyze financial status of the issuer, promote the investment or possess authority over the accounts of others). Our request echoes some of the thoughts from the recent “Project Open” submission by the Solana Policy Institute, delivered in conjunction with Superstate Inc., and Zagreus Services LLC (dba Orca Creative) and prepared by Lowenstein Sandler LLP. See *Project Open Proposing the Open Platform for Equity Networks*, Submission, Solana Policy Institute et al., April 28, 2025, available at <https://www.sec.gov/files/ctf-written-project-open-wireframe-04282025.pdf> (hereinafter, “Project Open”). Project Open advocated for, *inter alia*, confirmatory guidance that (1) blockchain networks, used as technology tools, do not require SEC registration, (2) peer-to-peer transactions facilitated by smart contract protocols are not the regulatory equivalent of trading on an exchange or ATS, and (3) non- and self-custodial wallets (which we would argue includes certain NTIs) are not broker-dealers. See *id.* For further reading advocating that infrastructure providers on blockchain networks should not be considered securities intermediaries, see Re: *Asset-Based Classification; Decentralization; Regulatory Status of Technology Functions; Treatment of Infrastructure Providers*, Letter by Sidley Austin LLP on behalf of Ava Labs, Inc., April 24, 2025, available at <https://www.sec.gov/files/ctf-written-sidley-austin-ava-labs-04232025.pdf>.

² To use more familiar concepts, we consider things like websites and applications to be examples of NTIs. This includes things like browsers (e.g., Chrome and Safari), browser extensions and other user-facing systems.

³ It is important to note that we include in the concept of “drafting” activities like arranging/organizing and optimizing transactions for users.

the user), the NTI's role remains that of a technology provider: NTIs pull information (such as available prices, order book depth, or available liquidity) and provide a user-friendly and efficient means to construct and broadcast transactions.⁴

Below, we provide a concise legal analysis under the Exchange Act's definitions of "broker" and "exchange" and offer guidelines within which NTIs should not be required to register as the same.⁵

I. Non-Custodial Trading Interfaces Are Not Brokers

Under Section 3(a)(4)(A) of the Exchange Act, a "broker" is defined as "any person engaged in the business of effecting transactions in securities for the account of others."⁶ In essence, a broker is an intermediary that facilitates trades on behalf of clients, typically by soliciting orders, negotiating terms, executing trades, and handling customer funds or securities in the process. The statutory definition necessitates a regular business of intermediating securities trades between third parties.

Courts and the SEC have identified several indicative factors for broker activity (none alone dispositive), including whether an entity acting as a broker: (1) actively solicits investors; (2) receives transaction-based compensation; (3) handles securities or funds of others in connection with securities transactions; (4) processes documents related to the sale of securities; (5) participates in the order-taking or order-routing process; (6) sells, or previously sold, securities of other issuers; (7) is an employee of the issuer; (8) is involved in negotiations between the issuer and the investor; and/or (9) makes valuations as to the merits of the investment or gives advice. In short, a broker typically interposes itself between buyer and seller to facilitate a trade, often handling the order flow and custody in exchange for a fee or commission.⁷

⁴ Most transactions on an NTI progress as follows: a user interacts with an NTI, indicating they would like to initiate a trade, which provides a standardized data object directly to the user's wallet software. The user then decides whether or not to approve the data object for submission. Upon user approval, the wallet incorporates the data object into a transaction request and submits it directly to a Remote Procedure Call node on the blockchain network. The Remote Procedure Call node then forwards the transaction request into the blockchain's mempool (a queue or temporary holding area), where it awaits validation (assuming the blockchain has a mempool). Validators subsequently pick up the transaction from the mempool and execute the associated smart contract logic in the course of validating and including the transaction into a confirmed block. At no point during this transaction lifecycle does the NTI do more than assist in drafting a transaction for the user's ultimate submission.

⁵ Our analysis is limited to considering a narrow set of interface features: (a) information provision and (b) transaction drafting and arranging, and optimization. Any other features offered by NTIs may require a more thorough factual review and analysis. We do not discuss situations where the provider of an interface also has control or upgrade authority over any related, underlying cryptographic software protocol, which we consider to be an entirely separate and distinct regulatory profile. Having common control of user interfaces and related underlying smart contracts upon which securities transactions occur is different from providing an informative interface alongside with transaction construction services.

⁶ 15 USC § 78c(a)(4).

⁷ *See, e.g.*, Neptune Networks Ltd., SEC Staff No-Action Letter, 2020 WL 1042613 (Mar. 4, 2020) (broker-dealer registration not required where data connectivity platform did not execute trades or route orders, handle trade payments or securities); S3 Matching Technologies LP, SEC Staff No-Action Letter, 2012 WL 2948910 (Jul. 19, 2012) (broker-dealer registration not required where electronic order routing platform did not exercise discretion with respect to transaction routing); GlobalTec Solutions, LLP, SEC Staff No-Action Letter, 2005 WL 6395276 (Dec. 28, 2005) (broker-dealer registration not required where trade order management system did not hold or access customer funds or securities; did not participate in execution, settlement or order matching; and did not solicit or recommend transactions or brokers).

Accordingly, an NTI should not be considered a “broker” when it:

- Does not control or custody customer funds or securities or the private keys used to perform transactions with the same;
- Does not solicit or negotiate terms of specific transactions for a particular user;
- Does not provide personalized investment recommendations to a particular user; and
- Charges fees tied to the provision of technical, licensing, or information services, such as data provision or transaction drafting.

We find Judge Failla’s opinion in *SEC v. Coinbase, Inc.*, 726 F. Supp. 3d 260, 306 (S.D.N.Y. 2024), to be instructive: passive web interfaces used for viewing, analyzing, and communicating with blockchain protocols, even when combined with an open-source trade path algorithm, do not give rise to broker activity.⁸ Following Judge Failla’s analysis, the absence of custody means that an NTI cannot “effect” a trade by moving securities for the customer – the user is transacting on their own behalf. In other words, providing a technical conduit for a user’s self-directed transaction is not the same as effecting transactions for the account of others in the broker sense.⁹ The user is effectively executing the trade for their own account via code; the interface is a tool, not an executor. Moreover, providing price information or comparison does not live to the level of “routing”¹⁰ or making investment recommendations.¹¹

Where an interface lacks these characteristics or includes features beyond those described herein, a more detailed analysis would be warranted, but this should not necessitate “broker” status in any respect.¹²

II. Non-Custodial Trading Interfaces Are Not Exchanges

⁸ Uniswap Labs, Wells Submission on Behalf of Uniswap Labs, p.3 (May 21, 2024), <https://blog.uniswap.org/wells-notice-response.pdf>.

⁹ See *Coinbase*, 726 F. Supp. 3d at 306 (finding that the Coinbase wallet product did not provide any “key trading functions of behalf of its users,” where the wallet “ha[d] no control over a user’s crypto assets or transactions . . . which product simply provide[d] the technical infrastructure for users to arrange transactions on other DEXs in the market.”).

¹⁰ See *id.* (citing *SEC v. GEL Direct Tr.*, No. 22 Civ. 9803 (JSR), 2023 WL 3166421, at *3 (finding that the complaint alleged the defendant routed securities orders in part because the broker “exercised discretion” and “provided trading instructions on behalf of its customers,” including directives on “price and volume”). We note that there is a material distinction that ought to be examined with respect to “routing” in the traditional broker context and in the digital asset context. The latter consists of discovering and optimizing efficient transaction pathways for users-submitted transactions through deterministic, technological means. See *Coinbase*, 726 F. Supp. 3d at 306. The former implies custody, and control over the flow of user funds or securities at every step in the transaction process. See *id.* (noting how “Coinbase has no control over a user’s crypto-assets or transactions via Wallet, which product simply provides the technical infrastructure for users to arrange transactions on other DEXs in the market”).

¹¹ See *id.* (citing *Rhee v. SHVMS, LLC*, No. 21 Civ. 4283 (LJL), 2023 WL 3319532, at *8 (S.D.N.Y. May 8, 2023) (“[M]erely providing information . . . do[es] not implicate the objectives of investor protection under the Exchange Act and do[es] not constitute effecting a securities transaction.”)).

¹² To be clear, we believe that NTIs offering features beyond those described herein may still rightfully be operating outside of the scope of the Exchange Act. For purposes of this letter, we are seeking to identify a floor of features that NTI providers can comfortably offer without subjecting themselves to an obligation to register as an exchange or broker under the Exchange Act.

The Exchange Act defines an “exchange” broadly as “any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a marketplace or facilities for bringing together purchasers and sellers of securities or for otherwise performing . . . the functions commonly performed by a stock exchange.”¹³ In plain terms, an exchange is a marketplace that brings together multiple buyers and sellers of securities and provides a mechanism for trades to interact and be executed. The SEC’s functional test in Rule 3b-16 further requires a system that brings together orders of multiple parties and uses established, non-discretionary methods for those orders to interact and result in trades. An NTI as proposed hereunder does not meet these criteria – it is neither a marketplace itself nor does it perform the key functions of an exchange. Rather, NTIs provide one (of many) intuitive access point(s) to communicate information to distributed, cryptographically-secured networks.¹⁴

An NTI should not be considered an “exchange” if it:

- Does not in itself operate an order book;
- Does not in itself match counterparties or cross orders (but the underlying decentralized exchange protocol may do so);¹⁵ and
- Does not set rules for order interaction or trading priority.

The fact that an NTI may display market data or draft transactions for submission and execution by the user does not indicate exchange status where the interface lacks control over trade execution and operates solely as an informational and transactional technological relay. Where an interface lacks these characteristics or includes features beyond those described herein, a more detailed analysis would be warranted, but this should not necessitate “exchange” status in any respect.

III. Conclusion

For the foregoing reasons, we respectfully request that the SEC issue guidance or an interpretive release confirming that NTIs are not “brokers” or “exchanges” under the federal securities laws, even when they charge fees for their services, so long as they operate purely as software tools for user communication with a decentralized protocol. Such guidance would bring much-needed clarity to the industry, ensuring that innovation in noncustodial platforms can proceed without unwarranted legal uncertainty, and allow the SEC to focus enforcement and regulatory resources on truly intermediary-like actors and fraudulent schemes. We believe this clarification aligns with the letter and intent of the Exchange Act and will ultimately benefit both the industry and the investing public by fostering a more open, innovative, and well-understood regulatory environment.

¹³ 15 U.S. Code § 78c.

¹⁴ We note that more sophisticated blockchain network participants do not need to rely on NTIs to communicate with the underlying systems. For example, network participants can communicate directly with nodes using a command-line interface (e.g., a computer’s command terminal).

¹⁵ See Letter from SIFMA to Vanessa A. Countryman, Sec’y, U.S. Sec. & Exch. Comm’n (Apr. 18, 2022), available at <https://www.sifma.org/wp-content/uploads/2022/04/SIFMA-ATS-Proposal-Comment-Letter-4-18-22.pdf> (“The Commission should clarify that systems that simply route orders elsewhere for handling or execution . . . are excluded from the definition of ‘exchange.’ The Commission should make expressly clear that order management systems, execution management systems, smart order routers, algorithms, direct market access or sponsored access offerings, and systems routing to liquidity providers and vendors in response to IOIs and RFQs are out of scope and can rely on the existing exclusion from ‘exchange.’”).

If you have any questions or would like to discuss any of the information presented herein, feel free to contact Brandon H. Ferrick at brandon@dourolabs.xyz. We look forward to the opportunity to engage with the Task Force on these matters.

Sincerely,

A handwritten signature in black ink, appearing to be 'BF', with a horizontal line underneath.

Brandon H. Ferrick
Douro Labs LLC

cc:

Amanda Tuminelli, DeFi Education Fund
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