

BY ELECTRONIC SUBMISSION

October 27, 2025

Commissioner Hester M. Peirce and Members of the SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-021

RE: Crypto Task Force Meeting with Wintermute – Follow-Up Topics

Dear Commissioner Peirce and Members of the SEC Crypto Task Force:

Wintermute Trading Ltd. (“**Wintermute**”) is grateful to the U.S. Securities and Exchange Commission’s (the “**Commission**”) crypto task force (the “**Task Force**”) for the constructive meeting between the parties on September 16, 2025. As a follow-up to this meeting, we are happy to provide the Task Force with additional feedback on the topics raised during the call.

Dealer Self-Custody, Clearance and Settlement of Tokenized Securities

As we described in our initial submission to the Task Force, the Commission should empower dealers to use their discretion to develop their own processes and procedures for on-chain clearance and settlement of tokenized securities using key management and wallet software.¹ Dealer clearance and settlement procedures for tokenized securities may include certain risk mitigation and efficiency measures when trading directly with counterparties on-chain. For example, the dealer may require counterparty delivery before dealer delivery as a risk mitigation measure. As discussed during our meeting, a dealer’s receipt of tokenized securities from a counterparty in satisfaction of the counterparty’s delivery obligations pursuant to an agreed tokenized securities transaction during an on-chain settlement cycle should not subject the dealer to Rule 15c3-3² under the Securities Exchange Act of 1934 (the “**Customer Protection Rule**”).

¹ Marina Gurevich, Wintermute Trading Ltd., RE: Request for Comment on There Must Be Some Way Out of Here (Sept. 3, 2025) (the “**Wintermute Feedback**”), *available at*: <https://www.sec.gov/files/wintermute-response-sec-090325.pdf>.

² See 17 CFR 240.15c3-3.

Requiring counterparty delivery prior to dealer delivery for a bilateral tokenized securities transaction is consistent with the exemptions to the Customer Protection Rule. Under paragraph (k)(2)(i), a dealer is exempt from the provision of the Customer Protection Rule if it “carries no margin accounts, promptly transmits all customer funds and delivers all securities received in connection with its activities as a broker or dealer, does not otherwise hold funds or securities for, or owe money or securities to, customers and effectuates all financial transactions between the broker or dealer and its customers through one or more bank accounts, each to be designated as ‘Special Account for the Exclusive Benefit of Customers of (name of the broker or dealer).’” The Commission should clarify that a dealer fits within the paragraph (k)(2)(i) exemption for bilateral on-chain settlement of tokenized securities if the following conditions are met:

1. The dealer solely trades with counterparties for its own account;
2. The dealer does not otherwise provide its counterparties brokerage services, including, hosting a wallet, crypto asset balance or other ledger balance for the counterparty;
3. The counterparty is able to independently clear and settle a transaction on-chain using its own key management and wallet software; and
4. The dealer fulfills its delivery obligations promptly³ following the completion of counterparty delivery.

The Commission should also clarify that the maintenance of a “Special Account for the Exclusive Benefit of Customers” with a bank is not a requirement in order for a broker-dealer to utilize the exemption in paragraph (k)(2)(i) of the Customer Protection Rule as it has done in the past in the context of traditional securities.⁴ Rather, in the context of traditional securities, the Commission's Division of Trading and Markets has clarified that the establishment of this account is dependent on the nature of a broker-dealer's business activities and if the dealer comes into possession of customer funds or securities.⁵ When a counterparty satisfies its delivery obligations on-chain by sending a dealer tokenized securities, it is not depositing assets with the

³ The term “promptly transmit” as used in paragraph (k)(2)(i) of the Customer Protection Rule requires a broker-dealer to transmit customer funds and securities by noon of the next business day after receipt or by noon of the next business day following settlement date, whichever is later. *See* NYSE Interpretation Memo 95-3, May 1995.

⁴ Division of Trading and Markets, SEC, Frequently Asked Questions Concerning the July 30, 2013 Amendments to the Broker-Dealer Financial Reporting Rule, (Updated July 1, 2020), *available at*: <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions-4>.

⁵ *Id.*

dealer or expecting the dealer to safeguard those assets, it is selling securities to the dealer.⁶ The only expectation of the counterparty is that the dealer will satisfy its delivery obligation in return. Once that delivery obligation is satisfied, the dealer has no further obligations to the counterparty in connection with the transaction. In the context of a traditional securities businesses, there are cases where a broker-dealer may receive customer funds or securities and it may still utilize the paragraph (k)(2)(i) exemption so long as it promptly transmits such cash or securities to a “Special Account for the Exclusive Benefit of Customers.” In the case of a tokenized securities dealer, there is no reason to transfer counterparty assets to such an account, so long as the dealer promptly satisfies its delivery obligations. Similar to the Commission guidance for traditional securities and use of the paragraph (k)(2)(i) exemption, if the dealer did not promptly satisfy its delivery obligations, the receipt of tokenized securities would be considered an exception that management would be required to describe in its exemption report.

Furthermore, imposing a bank, and legacy infrastructure, into a blockchain based settlement cycle would completely undermine and eliminate the benefits and efficiencies of a dealer’s on-chain settlement process using its own wallet and key management software. One of the principal benefits of blockchain technology is its potential to eliminate unnecessary layers of intermediation. The Commission can support the benefits of digital infrastructure without compromising investor protection by taking the reasonable position above, which is consistent with the approach it has taken on similar traditional securities matters.

Finally, the purpose of the Customer Protection Rule is “to give specific protection to customer funds and securities, in effect forbidding broker-dealers from using customer assets to finance any part of their businesses unrelated to servicing securities customers.”⁷ The risk the rule was intended to protect against is not relevant to a dealer’s bilateral transactions with counterparties when the dealer does not offer any type of account for the safekeeping of assets and promptly satisfies its delivery obligations. The nature of this type of relationship is an arm’s length contractual relationship with a shared goal of completing a security transaction pursuant to agreed terms.

⁶ A dealer’s receipt of stablecoins or other non-security crypto assets are not subject to paragraph (b) the Customer Protection Rule. *See* Statement of Commissioner Hester M. Peirce, An Incremental Step Along the Journey: The Division of Trading Markets’ Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technologies (May 15, 2025) (the “**May 2025 FAQ**”), *available at*: <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology>.

⁷ SEC, Daily Computation of Customer and Broker-Dealer Reserve Requirements under the Broker-Dealer Customer Protection Rule, Release No. 34-102022; File No. S7-11-23.

Dealer Financial Responsibility Requirements

In our initial submission to the Task Force, we proposed that the Commission should build upon its guidance in its May 2025 FAQ and confirm a broker-dealer can take a 20% haircut for all non-security crypto assets that have a ready market for net capital purposes.⁸ We believe the Commission should clarify that broker-dealers have the discretion to determine if a crypto asset has a ready market, pursuant to reasonable policies and procedures that consider the following factors:

1. If the asset is traded on at least one of the top 5 global centralized exchanges accessible to US dealers, as defined by volume traded over the past 12 months.
2. If the asset is traded on at least three different decentralized protocols accessible to U.S. dealers over the past 6 months.
3. If there are over-the-counter liquidity providers, brokers or similar intermediaries, which offer continuous bids and offers in the asset and are connected to the exchanges and protocols described above which can offer similar liquidity.

The Trader/Dealer Distinction on DeFi Trading Protocols for Tokenized Securities

As we discussed and to build upon our last submission to the Task Force, we propose that the Commission clarify through guidance or other means that a proprietary trader, including one that acts as a liquidity provider, on a decentralized finance (“**DeFi**”) trading protocol is not acting as a “dealer” under the Securities Exchange Act of 1934 (“**Exchange Act**”) if such firm adheres to the following conditions: it (i) trades solely for its own account; (ii) does not solicit or develop a clientele or otherwise hold itself out as willing to buy and sell securities for others; (iii) has no binding market-making, quoting, or “stand ready” obligations; (iv) does not provide advice, distribution, order-handling, or other customer services; (v) does not handle customer funds or securities; and (vi) structures any token loans or incentive arrangements as ordinary-course proprietary financing without creating customer-facing intermediation commitments. This position is supported by the historical statutory framework and recent judicial developments, including the vacatur of the Commission's 2024 Dealer Rule (as defined below), which have consistently reaffirmed that proprietary trading—even if frequent or sizable—does not, by itself, trigger dealer registration requirements absent customer-facing activity.

Historical Statutory Framework

⁸ See The Wintermute Feedback and the May 2025 FAQ.

The Exchange Act established a comprehensive regulatory framework for the U.S. securities markets, including the registration and oversight of brokers and dealers. The statutory definition of “dealer” is set forth in Section 3(a)(5)(A) of the Exchange Act: “any person engaged in the business of buying and selling securities (not including security-based swaps, other than with or for persons that are not eligible contract participants) for such person’s own account through a broker or otherwise.”⁹ This definition captures persons who function as market intermediaries by regularly buying and selling securities for their own account as a business. Importantly, however, the Exchange Act expressly carves out an exception for persons who buy and sell securities for their own account, but not as part of a regular business.¹⁰ This is commonly referred to as the “trader exemption” or “trader exception.” This exemption distinguishes between professional market intermediaries—dealers—and ordinary proprietary traders who buy and sell securities for their own trading purposes, but not as a business of providing liquidity or market-making *services to others*.¹¹

The distinction between a “dealer” and a “trader” has been recognized since the Exchange Act’s inception. For example, in *Schafer v. Helvering*, the Supreme Court addressed the distinction between a “dealer” and a “trader” in the context of federal tax law, a framework that has informed the interpretation of similar terms under the securities laws.¹² The case involved Schafer Brothers, a partnership engaged in the general stock brokerage business and a member of the New York Stock Exchange. While the firm executed trades for customers, it also engaged in buying and selling securities for its own account, with these proprietary transactions recorded in what was called the “Error Account.” The central question was whether the partnership could treat these proprietary securities as inventory and value them at cost or market, whichever was lower, a privilege reserved for “dealers in securities” under the applicable Treasury regulations.

⁹ 15 U.S.C. § 78c(a)(5)(A).

¹⁰ Section 3(a)(5)(B) provides that the term “dealer” does not include “a person that buys or sells securities . . . for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.” *Id.* § 78c(a)(5)(B).

¹¹ See *Nat’l Ass’n of Priv. Fund Managers v. SEC*, No. 4:24-CV-00250-O, 2024 WL 4858589, at *7 (N.D. Tex. Nov. 21, 2024) (“This Court has previously held that a firm that trades for ‘its own best interest,’ and ‘not [to] provide advice or services to other investors,’ ‘cannot be considered a dealer.’ *Chapel Invs., Inc. v. Cherubim Ints., Inc.*, 177 F. Supp. 3d 981, 991 (N.D. Tex. 2016). Other courts have recognized/held the same. See, e.g., *Radzinskaia v. NH Mountain, LP*, 2023 WL 6376457, at *4 (S.D. Fla. Sept. 29, 2023) (following *Chapel Investments*’s holding that dealers ‘transact securities on behalf of clients’); *Discover Growth Fund, LLC v. Camber Energy, Inc.*, 602 F. Supp. 3d 982, 989 (S.D. Tex. 2022) (similar); *Discover Growth Fund, LLC v. Beyond Commerce, Inc.*, 561 F. Supp. 3d 1035, 1040 (D. Nev. 2021) (similar); *In re Immune Pharm. Inc.*, 635 B.R. 118, 124 (Bankr. D.N.J. 2021) (similar); *In re Scripsamerica, Inc.*, 634 B.R. 863, 872 (Bankr. D. Del. 2021) (similar).”).

¹² *Schafer v. Helvering*, 299 U.S. 171 (1936).

The Supreme Court upheld the findings of the Board of Tax Appeals and the lower court, which concluded that Schafer Brothers was not a “dealer” with respect to the securities it bought and sold for its own account. The Court emphasized that the term “dealer in securities,” as defined in the controlling regulation, was limited to “one who as a merchant buys and sells securities to customers for the profit thereon” (emphasis added).¹³ The Court found that the securities in question were purchased by the firm solely in anticipation of a rise in the market, for resale to any buyer at a profit, and not to create a stock of securities to meet customer demand or future buying orders. In other words, the firm was acting as a trader or investor with respect to these securities, seeking speculative gains rather than engaging in the business of buying and selling securities to customers as a market intermediary.

Over time, courts and the Commission have developed a facts-and-circumstances approach to distinguishing dealers from traders under the Exchange Act. A trader buys and sells securities solely for their own account and does not hold themselves out as a market intermediary or make a market in securities, and does not have a regular clientele or provide services to others in connection with securities transactions. The “trader exemption” is thus a foundational principle of the Exchange Act’s regulatory scheme, ensuring that only those engaged in the business of dealing in securities (i.e., market intermediaries) are subject to dealer registration and regulation, while proprietary traders and investors who buy and sell for their own account, without engaging in a regular business of providing liquidity to customers or market-making services, are excluded from the definition of “dealer” and the attendant regulatory requirements. This distinction has been consistently recognized by courts, the SEC, and market participants for nearly a century.¹⁴

Recent Judicial Developments: The SEC “Dealer Rule” and Its Vacatur

In 2024, the SEC adopted a new rule (the “**Dealer Rule**”) that sought to expand the scope of who would be considered a “dealer” under the Exchange Act, particularly targeting certain proprietary trading firms and liquidity providers.¹⁵ The Dealer Rule introduced new qualitative tests that would have required registration by persons engaging in regular

¹³ *Id.* at 174.

¹⁴ See *supra* note 11. Although the SEC in *Nat’l Ass’n of Priv. Fund Managers* argued that two Eleventh Circuit decisions in *SEC v. Almagarby*, 92 F. 4th 1306 (11th Cir. 2024) and *SEC v. Keener*, 102 F.4th 1333 (11th Cir. 2024), stood for the proposition that “dealers” are not required to have customers, the district court found that neither case “held that merely regularly buying and selling securities renders someone a dealer.” *Nat’l Ass’n of Priv. Fund Managers*, 2024 WL 4858589, at *8.

¹⁵ Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer in Connection With Certain Liquidity Providers, 89 Fed. Reg. 14,938 (Feb. 29, 2024).

liquidity-providing activities, even if they did not have customers in the traditional sense. However, as Commission Pierce stated in her statement following the enactment of the Dealer Rule, the Commission had never previously taken the position “that liquidity provision alone by a person trading for its own account constitutes dealing activity or that trading activity becomes dealing activity merely because it has the effect of providing liquidity.”¹⁶ The Dealer Rule’s overreach was quickly vacated in November 2024 by the U.S. District Court for the Northern District of Texas, when the court held that the Commission had exceeded its statutory authority.¹⁷ The court emphasized that the Exchange Act’s text, history, and structure draw a clear distinction between “dealers” and “traders.” Specifically, the court reaffirmed that a “dealer” is someone engaged in the business of buying and selling securities to customers or as a market intermediary, while a “trader” is someone who buys and sells for their own account, not as part of a regular business of providing liquidity to others.¹⁸ The court ruled that the Dealer Rule impermissibly collapsed this distinction by focusing solely on the effect of trading activity on market liquidity, rather than the nature of the business and the presence of customer-facing activity.¹⁹

The decision confirmed that the “trader exemption” remains a vital and meaningful limitation on the scope of dealer regulation. The court held that merely engaging in frequent or high-volume trading, or even providing liquidity, does not by itself make a person a “dealer” absent the indicia of operating a regular business as a market intermediary and providing services to customers. Specifically, the court found that the act of providing liquidity—such as regularly expressing trading interest or capturing bid-ask spreads—does not transform a proprietary trader into a dealer unless it is accompanied by holding oneself out as a market intermediary, maintaining a clientele, or otherwise engaging in activities that serve

¹⁶ Hester M. Peirce, Comm’r, SEC, Statement, Dealer, No Dealer? Statement on Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer in Connection with Certain Liquidity Providers (Feb. 6, 2024), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-dealer-trader-020624-dealer-no-dealer-state-ment-further-definition-part-regular-business-definition-dealer-government>.

¹⁷ *Nat’l Ass’n of Priv. Fund Managers*, 2024 WL 4858589; see also *Crypto Freedom All. of Texas v. SEC*, No. 4:24-CV-00361-O, 2024 WL 4858590 (N.D. Tex. Nov. 21, 2024).

¹⁸ *Nat’l Ass’n of Priv. Fund Managers*, 2024 WL 4858589, at *5.

¹⁹ *Id.*

customers.²⁰ As a result, the Dealer Rule was vacated in its entirety, and the longstanding dealer-trader distinction under the Exchange Act remains intact.²¹

Application to Proprietary Trading and the Provision of Liquidity on DeFi

As an initial matter, we propose the Commission consider the following guiding principles when distinguishing tokenized securities DeFi trading protocols from centralized trading platforms:

- **Non-custodial:** Users keep control of their assets, either directly or by a decentralized consensus mechanism. Funds are not held by the protocols like on centralized trading platforms.
- **Smart contract-based:** Use of smart contracts to automate and enforce trading logic, including, in some cases, automated market maker logic.
- **Infrastructure:** Built around decentralized infrastructure.
- **Permissionless:** Anyone with a wallet can use the protocol.
- **Transparent:** Transactions are visible on-chain and auditable.

Proprietary trading and the provision of liquidity on a DeFi trading protocol, as described above, would fall within the trader exemption and not trigger registration requirements under the Exchange Act because it is absent of the key indicia that triggers dealer registration - (i) it does not involve trading for customers; (ii) it does not involve solicitation or developing a clientele or holding oneself out as willing to buy and sell securities for others; (iii) it does not require any binding market-making, quoting, or “stand ready” obligations; (iv) it does not involve providing advice, distribution, order-handling, or other customer services; and (v) it does not involve handling customer funds or securities. While it may involve the provision of liquidity, which is

²⁰ *Id.* (“‘Once [a] liquidity provision—not in the form of a service provided to market participants but as an effect of one’s trading activity—turns a person into a dealer, the dealer-trader distinction becomes unintelligible.’ Congress defined the term “dealer” against a pre-existing historical backdrop . . . [T]his history is indicative of an understanding that dealers have customers. The [Exchange] Act’s text only bolsters this interpretation.”) (quoting SEC Commissioner Hester Peirce’s dissenting statement to the adoption of the Dealer Rule); *see* Hester M. Peirce, Comm’r, SEC, Statement, Dealer, No Dealer? Statement on Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer in Connection with Certain Liquidity Providers (Feb. 6, 2024),

<https://www.sec.gov/newsroom/speeches-statements/peirce-statement-dealer-trader-020624-dealer-no-dealer-statement-further-definition-part-regular-business-definition-dealer-government>.

²¹ The SEC appealed the district court’s decision on January 17, 2025, but subsequently moved to withdraw the appeal on February 20, 2025.

one of many factors that may weigh in favor of dealer activity, the recent vacatur of the Commission's 2024 Dealer Rule and the district court's analysis in vacating the Dealer Rule further reinforces that mere liquidity provision and/or high-frequency principal trading, without more, does not collapse the dealer-trader distinction or compel dealer registration. In the DeFi context, acting as a liquidity provider solely entails trading exclusively for one's own account. The very nature of the DeFi trading environment excludes other activities like, carrying customer accounts, providing agency brokerage services, and/or soliciting or, aside from trading on-chain, interacting directly with other DeFi participants. Rather, in the context of DeFi, a proprietary trader and liquidity provider never interacts with its counterparties to trades and all counterparties remain anonymous. Liquidity providers may enter into token sourcing arrangements with issuers or other project sponsors, but these arrangements are often structured as ordinary-course proprietary financing arrangements and, so long as they do not create enforceable obligations to provide liquidity or act as a market intermediary, they would not transform the proprietary trader and liquidity provider into a dealer. As discussed above, courts and the SEC have long treated these characteristics as core distinctions between dealers and traders: dealers operate a customer-facing business of buying and selling to others (often accompanied by quoting, solicitation, advice, handling client funds or securities, or other market-intermediary services), whereas traders transact for their own proprietary investment or speculative purposes without holding themselves out as a market intermediary.

Additionally, guidance from the Commission should affirm that volume and regularity of trading on DeFi trading protocol, standing alone, are also not determinative of dealer activity. Courts assessing "business" under Section 3(a)(5) of the Exchange Act consider the totality of circumstances—particularly whether the firm is engaged in the business of providing dealer services to others.²² Thus, even if a proprietary trader's and/or liquidity provider's trading is frequent and sizable across multiple DeFi trading protocols and tokenized securities, trader status should continue to apply so long as the proprietary trader and/or liquidity provider does not operate a customer-facing intermediation business.

In short, and as set forth above, the Commission should clarify that any proprietary trader, including any liquidity provider, on a DeFi trading protocol should not be deemed a "dealer" under the Exchange Act if it adheres to the following conditions: it (i) trades solely for its own

²² See, e.g., *Eastside Church of Christ v. Nat'l Plan, Inc.*, 391 F.2d 357, 361-62 (5th Cir. 1968) (finding that National Plan, Inc. was a dealer under the Exchange Act because it purchased numerous church bonds for its own account as part of its regular business, sold some of those bonds, and engaged in activities such as assisting churches with legal work concerning bond programs, handling necessary printing and paperwork, acting as fiscal agent and trustee, and directing bond sales programs).

account; (ii) does not solicit or develop a clientele or otherwise hold itself out as willing to buy and sell securities for others; (iii) has no binding market-making, quoting, or “stand ready” obligations; (iv) does not provide advice, distribution, order-handling, or other customer services; (v) does not handle customer funds or securities; and (vi) structures any token loans or incentive arrangements as ordinary-course proprietary financing without creating customer-facing intermediation commitments. If these conditions are met, the activity should remain within the trader exemption and outside the dealer registration regime.

Conclusion

Wintermute appreciates the opportunity to share its views. Please do not hesitate to contact us should you have any additional questions.

Respectfully submitted,

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Wintermute Trading Ltd.

cc: Ron Hammond
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