crypto.com

May 11, 2022

Via CFTC's Comments Online

Mr. Christopher J. Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1151 21 Street NW
Washington, DC 20581

Re: Request for Comment on FTX's Request for Amended DCO Registration Order [Industry Filing 22-001]

Dear Mr. Kirkpatrick:

Crypto.com appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") request for comment on FTX's Request for Amended DCO Registration Order.[1] We understand that LedgerX LLC, d/b/a FTX US Derivatives ("FTX") has requested an amendment to its order of registration as a derivatives clearing organization ("DCO") (the "Proposed Amendment"). The Proposed Amendment would permit FTX to clear margined products for retail participants using a non-intermediated model, whereby participants would clear directly, rather than through future commission merchants ("FCMs").

Crypto.com was founded in 2016 on a simple belief: it is a basic human right for everyone to control their money, data and identity. With over 50 million users on its platform today, Crypto.com provides a powerful alternative to traditional financial services, turning its vision of "cryptocurrency in every wallet" into reality, one customer at a time. As part of its mission related to the CFTC-regulated derivatives markets, Crypto.com recently acquired Small Exchange, Inc., a CFTC-registered designated contract market ("DCM"), and the North American Derivatives Exchange, Inc. ("NADEX"), a CFTC-registered DCM and DCO. In addition, Crypto.com recently filed an application with the CFTC to register as an FCM to provide customers with access to the exchange-traded futures markets regulated by the CFTC.

We believe that thoughtful consideration and measured responses to innovative proposals will ultimately improve the function and structure of the markets, reduce risk, and lead to greater transparency and customer protection.

[1] Request for Comment on FTX's Request for Amended DCO Registration Order, Industry Filing 22-001 (March 10, 2022) available at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7254.

As discussed below, Crypto.com is supportive of innovative models for the clearing of derivatives, provided that such innovation promotes fair competition and is introduced in a thoughtful manner. Generally, we support a non-intermediated model because it would increase innovation in digital asset markets and advance the cryptocurrency derivatives market. However, we believe further consideration to the launch and timing of such models is necessary to ensure adequate protections.

This letter discusses how non-intermediated models will advance the CFTC's stated goal of increasing innovation in the digital asset markets. However, before such models can be launched there is a need for continued industry dialogue on non-intermediated models. This dialogue will lead to the promotion of fair competition while balancing the requirements of the Commodity Exchange Act ("CEA") and the regulations of the CFTC ("CFTC Regulations"). In order to achieve the goal of innovation, we propose a provisional approval process to permitting non-intermediated models that will encourage fair competition.

We appreciate the Commission's thoughtful approach to fostering innovation in the derivatives markets, including providing meaningful opportunities for industry participants to engage with the CFTC on this significant shift in traditional clearing models.

1. Approval of Non-Intermediated Models Would Advance the CFTC's Stated Goal of Increasing Innovation in the Digital Asset Markets

In the CFTC's 2020-2024 Strategic Plan, the CFTC emphasized that one of its strategic goals was to encourage innovation and enhance the regulatory experience for market participants, specifically "promoting responsible innovation in digital assets."[2] Further, the Commission highlighted the need for market regulation to "keep pace and even lead" the digital transformation in derivatives markets, as the CFTC's "mandate to encourage responsible innovation is important to the Nation."[3]

Currently, a significant portion of the global trading volume of digital asset derivatives takes place outside of the United States. In March 2022, over $1.32 trillion of Bitcoin futures traded across cryptocurrency exchanges globally, with more than 90% of the trading volume in Bitcoin futures transacting on non-U.S. exchanges.[4] Non-intermediated models will increase the volume of digital asset derivative transactions taking place in the United States, on CFTC-regulated marketplaces and within the safeguards of the CEA and CFTC Regulations, rather than in offshore marketplaces that are unregulated or less regulated.

[2] https://www.cftc.gov/media/3871/CFTC202024_2024StrategicPlan/download.
[3] https://www.cftc.gov/media/3871/CFTC202024_2024StrategicPlan/download.
[4] https://www.theblockcrypto.com/data/crypto-markets/futures/volume-of-bitcoin-futures-monthly.

2. Market Participants Need Meaningful Dialogue with the CFTC on Non-Intermediated Models

While we support non-intermediated models, we also believe that more dialogue between industry participants and the Commission is necessary for new and innovative models with far-reaching implications and consequences. We applaud the CFTC's recent announcement of a public roundtable, set for May 25, 2022, on issues related to intermediation in derivatives trading and clearing. We believe this should be the first of several roundtables (similar to the Dodd-Frank rulemaking process). We would welcome further opportunities for engagement on the details and specifications of non-intermediated models.

3. The CFTC Must Promote Fair Competition for Non-Intermediated Models

We support the CFTC's approval of non-intermediated models, but approving FTX's non-intermediated model (and only FTX's model) may give rise to serious anti-competition concerns. Instead, the CFTC should grant provisional approval to multiple DCOs to clear cryptocurrency derivatives in such a manner.

Section 15(b) of the CEA requires the Commission to consider the public interest and the protection afforded by the antitrust laws. The Commission is also required to take the least anticompetitive means of achieving the purposes of the CEA in issuing any order or adopting any Commission rule or regulation.[5] CFTC Regulation 39.4(d) states that "[a]n applicant for registration <u>or a registered derivatives clearing organization may request that the Commission issue an order concerning whether a rule or practice of the organization is the least anticompetitive means of achieving the objectives, purposes, and policies of the Act</u>."[6] Absent a provisional approval process, this requirement will not be achieved.

Currently, some market observers estimate that more than 90% of exchange-traded derivatives are facilitated by only one exchange group[7] and market commentators, including the Department

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[5] 7 U.S.C. 19(b).

[6] *See* 17 C.F.R. §39.4(d) (emphasis added).

[7] *See* Better Markets and Open Markets, "Competitive Implications of Potential Merger or Acquisition between the CME Group and Cboe Global Markets, and Request for Study on Existing Concentration Problems at Derivatives Exchanges", Letter to Acting Assistant Attorney General Powers, Chair Khan, Acting Chair Behnam, and Chair Gensler (November 8, 2021) available at https://bettermarkets.org/wp-content/uploads/2021/11/Better-MarketsOpen-Markets-CME-Cboe-Joint-Letter-Final.pdf.

of Justice[8] and non-profit watchdogs[9], have already expressed concern about such concentration If the CFTC permits only one DCO to partake in a cutting-edge non-intermediation model that is a new interpretation of CFTC Regulations, before any others, the result may lead to a concentrated risk that would introduce unnecessary material risk to U.S. financial ecosystem. This approach will also result in inconsistent development of the cryptocurrency marketplace given the role of DCOs. We believe a better approach would be to enable multiple DCOs to clear cryptocurrency derivatives in such a manner at the same time. This approach would avoid concentrated activity within a single DCO and would decrease the overall risk to the market.

To promote competition, the CFTC should consider the provisional approval of non-intermediated models, such as the FTX proposal, and others. As part of this process, the CFTC should set forth the requirements for the filing for provisional approval of a non-intermediated model. These requirements could include amended rules and exhibits to the Form DCO to allow the CFTC to evaluate the models on a level playing field. Once these requirements are published by the CFTC, DCOs seeking to use a non-intermediate model would have 180 days to file for an amended DCO order. This clear process would provide adequate time for all DCOs with an interest in pursuing a non-intermediated clearing model to provide the CFTC with the information needed for provisional approval. After a 90-day review period during which the CFTC has the opportunity to evaluate the filings for completeness, the CFTC could provisionally approve all non-intermediated models on the same date certain.

There is recent, substantial and successful precedent for this provisional approval approach. For example, in the swap execution facility ("SEF") rule proposal, the Commission stated that, "upon the effective date of this Part 37, it may receive a large number of applications for SEF registration from entities that currently provide a marketplace for the listing and trading of swaps. The Commission notes that it would be difficult to carry out and complete…a comprehensive review of all such applications." As a result, the Commission permitted temporary relief upon the request of applicants to continue operating during the pendency of their SEF application review. The current state of the cryptocurrency derivatives market is no different than the pre-SEF market where many platforms were poised to compete, but the CFTC chose not to pick one winner in the

[8] *See* "[T]he Department believes that the control exercised by futures exchanges over clearing services . . . has made it difficult for exchanges to enter and compete in the trading of financial futures contracts. . ." Comments, U.S. Dep't of Justice Before the Dep't of the Treasury, Regulatory Structure Associated with Financial Institutions, at 1 (Jan. 31, 2008), available at http://www.justice.gov/atr/public/comments/229911.htm, as cited by Alexander P. Okuliar, "Financial Exchange Consolidation and Antitrust: Is There a Need for More Intervention?" Antitrust Magazine, Vol. 28, No. 2, Spring 2014.

[9] *See* Better Markets and Open Markets, " Competitive Implications of Potential Merger or Acquisition between the CME Group and Cboe Global Markets, and Request for Study on Existing Concentration Problems at Derivatives Exchanges", Letter to Acting Assistant Attorney General Powers, Chair Khan, Acting Chair Behnam, and Chair Gensler (November 8, 2021) available at https://bettermarkets.org/wp-content/uploads/2021/11/BetterMarkets-Open-Markets-CME-Cboe-Joint-Letter-Final.pdf.

race to registration. In addition to the SEF provisional registration process, swap dealers were and continue to be registered with the CFTC on a provisional basis until such time that the Commission's applicable regulations are effective. The provisional approval approach for SEFs and swap dealers was very successful for the derivatives industry and allowed all interested market participants the opportunity to compete on a level playing field.

The provisional approval process will promote competition and protect the public interest. As a result, the CFTC will not choose the market winner, the market will do so and, we believe, there will be many successful DCOs providing cryptocurrency derivative transactions on CFTC-regulated marketplaces within the safeguards of the CEA and CFTC Regulations.[10]

In the event that the Commission determines not to move forward with a provisional approval process or other phased-in approach, Crypto.com would urge the CFTC to instead engage in a substantive review. The review would follow a formal request from FTX in order for the CFTC to determine that the approval of the Proposed Amendment is the least anticompetitive means of achieving the CEA's objectives, consistent with Section 15(b) and CFTC Regulation 39.4(d).

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[10] To the extent that the CFTC decides to approve the Amended Order before the consideration of other non-intermediated clearing models, it should still provide for a phase-in period that limits the number or participants or limits the amount of risk the DCO can permit through a non-intermediated model. This approach will benefit the public interest by reducing the concentrated risk at one DCO. This phase-in period should also consider the submission of regular reports to the CFTC on the participants and risk.

Crypto.com is supportive of innovative models for the clearing of derivatives, and believes that markets are most secure when innovation promotes fair competition. Accordingly, we believe that a provisional approval approach will afford the CFTC and the industry with the opportunity to promote competition, improve the function and structure of the markets, reduce market risk, lead to greater transparency and higher levels of customer investor protection.

We welcome the opportunity to discuss our comments and the provisional approval approach in further detail.

Sincerely,

Nick Lundgren

Nick Lundgren
EVP, Head of Legal
Crypto.com

cc: The Honorable Rostin Behnam, Chairman
The Honorable Kristin N. Johnson, Commissioner
The Honorable Christy Goldsmith Romero, Commissioner
The Honorable Summer K. Mersinger, Commissioner
The Honorable Caroline D. Pham, Commissioner