



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
[www.cftc.gov](http://www.cftc.gov)

Division of Data  
Division of Market Oversight  
Division of Clearing and Risk

**Re: No-Action Relief from Commission Regulations 38.8(b), 38.10, 38.951 (In Part), and 39.20(b)(2), and Parts 43 and 45, for Binary Options Traded On or Pursuant to the Rules of KalshiEX LLC and Cleared by LedgerX, LLC**

### **Introduction**

The Division of Data (“DOD”), the Division of Market Oversight (“DMO”), and the Division of Clearing and Risk (“DCR” and, together with DOD and DMO, the “Divisions”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) are issuing this letter in response to a request from KalshiEX LLC (“Kalshi”) and LedgerX, LLC (“LedgerX”). Kalshi and LedgerX jointly requested relief, on their own behalf and on behalf of their participants, (the “Request”)<sup>1</sup> from the swap data reporting and recordkeeping requirements of sections 38.8(b), 38.10, 38.951 (in part), and 39.20(b)(2), along with Parts 43 and 45 of the Commission’s regulations (collectively, the “Relevant Regulations”). The Request is for relief with respect to binary options with the features described in this letter traded on or pursuant to Kalshi’s rules and cleared by LedgerX (“Kalshi Binary Options”). Kalshi is a designated contract market (“DCM”) and LedgerX is a registered derivatives clearing organization (“DCO”). The Divisions have considered the Request and additional information provided by Kalshi and LedgerX, and are granting no-action relief subject to conditions, as described below.

### **Background**

Kalshi stated in the Request that it lists for trading Kalshi Binary Options based on the outcomes of various economic or commercial events. Kalshi describes the Kalshi Binary Options as characterized by settlement of a contract at expiration, including the payment of an absolute amount to the holder of one side of the option and no payment to the counterparty, depending on the occurrence or non-occurrence of the event that is the subject of the contract. Kalshi has further stated that the settlement obligations for the Kalshi Binary Options do not vary based on the amplitude by which the price at expiration exceeds the strike or strike price.

---

<sup>1</sup> Joint Request for Relief from Certain Swap Data Repository Reporting and Recordkeeping Requirements (Dec. 4, 2020). Kalshi and LedgerX provided additional information relevant to this letter in response to multiple sets of questions from the Divisions’ staff subsequent to Kalshi and LedgerX filing the Request.

As options, binary options fall within the Commission’s plenary options authority under Commodity Exchange Act (“CEA”) section 4c(b).<sup>2</sup> CEA section 4c(b), in relevant part, prohibits any person from offering, entering into, or confirming the execution of a transaction involving any commodity regulated under the CEA that “is of the character of, or is commonly known to the trade as, an ‘option’ . . .” contrary to any Commission rule prohibiting the transaction or allowing it pursuant to specified terms and conditions. When promulgating Commission regulation 32.2, the Commission stated that “the swap definition . . . includes options . . . (whether or not traded on a DCM)[.]”<sup>3</sup> Commission regulation 32.2 states, in relevant part, that commodity option transactions must be conducted in compliance with the CEA and the Commission’s regulations related to swaps.<sup>4</sup>

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)<sup>5</sup> amended the CEA by adding a definition of “swap.”<sup>6</sup> The Dodd-Frank Act required the Commission and the Securities and Exchange Commission (together, the “Commissions”) to further define jointly the term “swap.” In jointly adopting such further definition, the Commissions stated that “the statutory swap definition explicitly provides that commodity options are swaps[.]”<sup>7</sup>

Pursuant to the Dodd-Frank Act, the Commission promulgated various regulations applicable to swaps, including the Relevant Regulations. The Relevant Regulations apply swap reporting and recordkeeping obligations to DCMs, DCOs, and other market participants.

### **Relief Requested**

Kalshi and LedgerX requested that the Divisions not recommend the Commission take enforcement action against Kalshi, LedgerX, or their participants for failure to report Kalshi Binary Options to a swap data repository (“SDR”) or to fulfill any of the other requirements of the Relevant Regulations.<sup>8</sup> In support of their position, Kalshi and LedgerX stated, among other things, that:

---

<sup>2</sup> 7 U.S.C. 6c(b).

<sup>3</sup> Commodity Options, 77 FR 25320, 25321, n.6 (Apr. 27, 2012).

<sup>4</sup> 17 CFR 32.2.

<sup>5</sup> Public Law 111–203, 124 Stat. 1376 (2010).

<sup>6</sup> CEA section 1a(47), 7 U.S.C. 1a(47).

<sup>7</sup> Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement;” Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48207, 48236 (Aug. 13, 2012). *See also* *CFTC v. Banc de Binary Ltd., et al.*, Case No. 2:13-cv-00992-MMD-VCF at 18, ¶65, (D. Nev., Feb. 26, 2016) (Consent Order for Permanent Injunction), available at <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enforderbancdebinary022916.pdf> (noting that “Dodd-Frank defined an option as a swap . . .”).

<sup>8</sup> The Request stated that Kalshi and LedgerX are seeking the same relief that the Divisions provided to certain other market participants related to binary options, namely the relief provided in No-Action Letters 17-31 and 17-32. No-Action Letters 17-31 and 17-32 are available on the Commission’s website at [https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?field\\_csl\\_letter\\_types\\_target\\_id%5B%5D=636](https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?field_csl_letter_types_target_id%5B%5D=636). The Divisions intend for the relief granted in this letter to match the relief granted in No-Action Letters 17-31 and

- Kalshi Binary Options will be fully collateralized;
- Kalshi will publish time and sales data for all Kalshi Binary Options transactions on its website promptly after execution of the transactions;
- Kalshi will fully comply with Part 16 of the Commission’s regulations, including providing transactional information to DMO pursuant to Commission regulation 16.02; and
- These reporting obligations and undertakings will provide information to the Commission (and the public) similar, but not identical, to that currently required to be provided to an SDR under Parts 43 and 45 of the Commission’s regulations.

### **No-Action Relief and Related Conditions**

The Divisions have decided to grant the requested relief, subject to certain conditions described below, based largely on Kalshi’s and LedgerX’s statements in support of the Request. In addition, the Divisions note that this no-action relief is similar to and consistent with prior no-action relief granted for binary options transactions.<sup>9</sup> The Divisions will not recommend that the Commission initiate an enforcement action against Kalshi, LedgerX, or their participants, for failure to comply with Commission regulations 38.8(b), 38.10, 38.951 (only to the extent that regulation 38.951 requires compliance with Part 45 of the CFTC’s regulations), and 39.20(b)(2), as well as the applicable provisions of Parts 43 and 45 of the CFTC’s regulations, or the requirements of the relevant CEA provisions pursuant to which the Relevant Regulations were promulgated, with respect to Kalshi Binary Options, subject to the following conditions:<sup>10</sup>

- (1) Kalshi and LedgerX will require all Kalshi Binary Options to be fully collateralized positions, as defined by Commission regulation 39.2;<sup>11</sup>
- (2) Kalshi will clear all Kalshi Binary Options through LedgerX and LedgerX will clear all Kalshi Binary Options;

---

17-32 in all material respects. Deviations from the relief granted in No-Action Letters 17-31 and 17-32 in this letter are non-substantive, and reflect the distinct characteristics of Kalshi Binary Options.

<sup>9</sup> See No-Action Letters 17-31 and 17-32, available at [https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?field\\_csl\\_letter\\_types\\_target\\_id%5B%5D=636](https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?field_csl_letter_types_target_id%5B%5D=636).

<sup>10</sup> Some of these conditions regarding no-action relief may constitute a collection of information, as that term is defined in the Paperwork Reduction Act, 44 U.S.C. §§ 3501 et. seq. The Office of Management and Budget (“OMB”)—in accordance with 44 U.S.C. § 3507(d) and 5 C.F.R. §§ 1320.8 and 1320.10—has approved collection 3038-0049, entitled “Procedural requirements for requests for interpretative, no-action and exemptive letters,” for such purposes. This collection would encompass collections made as part of exemptive or no-action relief from the Commission. The public is not required to respond to a collection of information that does not have a valid OMB control number.

<sup>11</sup> Commission regulations define “fully collateralized position” as “a contract cleared by a derivatives clearing organization that requires the derivatives clearing organization to hold, at all times, funds in the form of the required payment sufficient to cover the maximum possible loss that a party or counterparty could incur upon liquidation or expiration of the contract.” 17 CFR 39.2.

- (3) Kalshi will publish on its website the following information on all Kalshi Binary Options transactions promptly after execution thereof: trade timestamp, contract, quantity, and price;
- (4) Kalshi will provide the Commission with all transactional information as described in Commission regulation 16.02;
- (5) Kalshi and LedgerX will comply with all swap reporting and recordkeeping requirements of the CEA and Commission regulations applicable to each in their respective capacities as a DCM or a DCO, other than the Relevant Regulations, including, but not limited to, the applicable requirements of Parts 38 and 39 of the CFTC's regulations (the records required to be retained by this condition (5) are referred to below as the "Required Records");
- (6) No Kalshi participant clears a Kalshi Binary Option through a third-party clearing member; and
- (7) Kalshi and LedgerX keep the Required Records open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the Securities and Exchange Commission, or by any representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided, at the expense of Kalshi or LedgerX, as applicable, to any representative of the Commission upon request. Kalshi or LedgerX, as applicable, shall provide copies of the Required Records either by electronic means, in hard copy, or both, as requested by the Commission, with the sole exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only.

This letter expresses a staff position only with respect to enforcement of the Relevant Regulations. This letter does not state any legal conclusion regarding the characteristics or legality of Kalshi Binary Options or the conduct of any person covered by the relief.<sup>12</sup> This letter and the no-action position taken herein represent the views of the Divisions only, and do not necessarily represent the positions or views of the Commission or of any other Commission division or office. This letter and the no-action position taken herein are not binding on the Commission.<sup>13</sup> Except as explicitly provided in this letter, the no-action positions taken herein do not excuse persons from compliance with any applicable requirements of the CEA or Commission regulations. Further, this letter, and the no-action position contained herein, is based upon the representations made to the Divisions. Any different, changed, or omitted material facts or circumstances may render this letter void. As with all no-action letters, the Divisions retain the authority to, in their discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

---

<sup>12</sup> For the avoidance of doubt, this letter is not intended to address whether any of the Kalshi Binary Options are consistent with any statutory or regulatory requirement, including with respect to the requirements of CEA section 5c(c)(5)(C) or Commission regulation 40.11.

<sup>13</sup> See 17 CFR 140.99(a)(2) ("A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.").

If you have any questions concerning this letter, please contact: Benjamin DeMaria, Special Counsel, DOD at (202) 418-5988 or [bdemaria@cftc.gov](mailto:bdemaria@cftc.gov); David Aron, Special Counsel, DOD at (202) 418-6621 or [daron@cftc.gov](mailto:daron@cftc.gov); Jasmine Lee, Special Counsel, DMO at (202) 418-5226 or [jlee@cftc.gov](mailto:jlee@cftc.gov); or Scott Sloan, Special Counsel, DCR at (312) 596-0708 or [ssloan@cftc.gov](mailto:ssloan@cftc.gov)

Sincerely,

---

Tamara Roust  
Director  
Division of Data

---

Dorothy DeWitt  
Director  
Division of Market Oversight

---

Clark Hutchison  
Director  
Division of Clearing and Risk