



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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Division of Clearing and Risk

May 3, 2021

Mr. Nolan Glantz  
Chief Operations Officer  
CX Clearinghouse, L.P.  
499 Park Avenue  
New York, NY 10022

**RE: Request for Relief from Certain Derivatives Clearing Organization Regulations**

Dear Mr. Glantz:

This no-action letter responds to your request dated February 11, 2021 (“Request”) for relief from certain provisions of Commodity Futures Trading Commission (“Commission”) regulations applicable to registered derivatives clearing organizations (“DCOs”). According to the Request, CX Clearinghouse, L.P. (“CX”) seeks relief from certain provisions of part 39<sup>1</sup> of the Commission’s regulations due to the nature of CX’s fully collateralized clearing model. The Division of Clearing and Risk (“Division”) has determined to grant CX no-action relief.<sup>2</sup> The specific provisions from which CX seeks relief and the responsive no-action relief granted by the Division are discussed below.

**I. Overview of CX**

CX is registered with the Commission pursuant to Section 5b of the Commodity Exchange Act (“the Act”)<sup>3</sup> to clear fully collateralized futures, options on futures, and swaps for which there is an underlying commodity, as such term is defined in Section 1a(9) of the Act.<sup>4</sup> CX is a fully collateralized DCO, meaning that a participant must provide CX with eligible

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<sup>1</sup> 17 C.F.R. pt. 39.

<sup>2</sup> Under Regulation 140.99(a)(2), the Division, acting under delegated authority from the Commission, may issue a written statement that it will not recommend enforcement action to the Commission for failure to comply with specific provisions of the Commodity Exchange Act or of a rule, regulation or order issued thereunder by the Commission. Only the party requesting a no-action letter may rely on the letter. Commission regulations referred to herein are found at 17 C.F.R. Ch. I (2021).

<sup>3</sup> 7 U.S.C. § 7a-1.

<sup>4</sup> 7 U.S.C. § 1a(9). See CFTC Amended Order of Registration (Aug. 3, 2018), available at <https://www.cftc.gov/sites/default/files/2018-08/AmendedOrderofDCORegistrationforCXclearinghouse8-3-18.pdf>.

collateral sufficient to cover the maximum potential loss of the contract before the trade can be executed.<sup>5</sup> CX performs a pre-trade credit check to ensure each participant has sufficient eligible collateral at CX to cover the maximum potential loss that a participant could incur upon liquidation or expiration. CX accepts U.S. dollars as eligible collateral.

CX has rules that require all of its participants to self-clear. The CX rules do not permit its participants to clear through a futures commission merchant (“FCM”). CX only clears trades executed on its affiliated designated contract market, Cantor Futures Exchange, L.P. CX participants must satisfy certain eligibility criteria before they can clear contracts through CX.

Section 5b(c)(2)(A)(i) of the Act<sup>6</sup> provides that to be registered and to maintain registration with the Commission as a DCO, a DCO must comply with the Act’s core principles applicable to DCOs and with the Commission’s implementing regulations (*i.e.*, part 39). CX requests relief from certain provisions of part 39 due to CX’s fully collateralized clearing model, as further discussed below.

## II. Specific Provisions of Part 39

### A. Treatment of Funds

*Regulation 39.15(d)*. Regulation 39.15(d) requires a DCO to have rules providing that the DCO will promptly transfer all or a portion of a customer’s portfolio of positions and related funds as necessary from the carrying clearing member of the DCO to another clearing member of the DCO, without requiring the close-out and re-booking of the positions prior to the requested transfer, subject to certain conditions.<sup>7</sup> CX rules only permit its participants to clear positions for their respective proprietary accounts on a non-intermediated basis. CX rules do not permit FCMs to clear for customers. Accordingly, CX seeks relief from Regulation 39.15(d).

### Relief

It is the Division’s understanding that CX does not permit FCM participants or clearing on behalf of customers. Accordingly, the requirements of Regulation 39.15(d) do not apply to CX under the present circumstances, as the purpose of the transfer provision is to permit a customer to move positions and funds from one FCM to another without having to close out and re-book those positions. Based on the facts presented and representations made by CX, the Division will not recommend that the Commission take enforcement action against CX for not complying with the requirements of Regulation 39.15(d). In the event that CX amends its rules

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<sup>5</sup> As defined in Regulation 39.1, a “fully collateralized position” means “a contract cleared by a [DCO] that requires the [DCO] 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 C.F.R. § 39.1. Fully collateralized positions prevent a DCO from being exposed to credit risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital. This limited exposure and full collateralization of that exposure renders certain provisions of part 39 inapplicable or unnecessary.

<sup>6</sup> 7 U.S.C. § 7a-1(c)(2)(A)(i).

<sup>7</sup> 17 C.F.R. § 39.15(d).

to permit clearing through an FCM and adds only one FCM participant, then that participant would not have another FCM to which it could transfer the positions of its customers. In the event that CX adds more than one FCM participant, however, the Division would expect CX to comply with Regulation 39.15(d) as it pertains to those participants.

*B. Public Information*

*Regulation 39.21(c)(3), (4), and (7).* Regulation 39.21(c) requires a DCO to make certain information readily available to the general public, in a timely manner, by posting such information on the DCO's website, unless otherwise permitted by the Commission.<sup>8</sup> Regulation 39.21(c)(3) requires a DCO to publicly disclose information concerning its margin-setting methodology. CX has indicated that, due to its fully collateralized clearing model, it does not use a margin methodology. Thus, CX seeks relief from Regulation 39.21(c)(3) as long as its full-collateralization requirement is disclosed.

Regulation 39.21(c)(4) requires a DCO to publicly disclose the size and composition of the financial resource package available in the event of a clearing member default, updated as of the end of the most recent fiscal quarter or upon Commission request and posted as promptly as practicable after submission of the report to the Commission under Regulation 39.11(f)(1)(i)(A). CX represents that, due to its fully collateralized model, a default by a clearing participant would not result in any financial shortfall to CX, and CX's participants would not be exposed to risk emanating from a default by another CX participant as risk is not mutualized between its clearing participants. Thus, CX does not have a mutualized default fund and it therefore seeks relief from Regulation 39.21(c)(4). CX believes such relief would be consistent with Regulation 39.16(e), which provides that a DCO may satisfy the default rules and procedures requirements in paragraphs (a), (b), and (c) of Regulation 39.16 by having rules that permit the DCO to clear only fully collateralized positions.

Regulation 39.21(c)(7) requires a DCO to publicly disclose a current list of all of its clearing members. CX seeks relief from Regulation 39.21(c)(7), as all of its participants self-clear and such disclosure would require CX to publish identifying information of each its participants. CX believes such relief would protect the privacy of its clearing members while not compromising the purpose or policy of Regulation 39.21(c)(7), which provides market participants with sufficient information to enable them to identify and evaluate the risks and costs associated with using the DCO's services.

*Relief*

In CFTC Interpretative Letter No. 14-05,<sup>9</sup> the Division expressed its view that a DCO's full-collateralization requirement satisfies the requirements of Regulations 39.11(a)(1) (the requirement to have sufficient financial resources to withstand a clearing member default) and 39.13(g) (the requirement to have a risk-based margin methodology). In a recent rulemaking, the

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<sup>8</sup> 17 C.F.R. § 39.21(c).

<sup>9</sup> See CFTC Interpretative Letter No. 14-05 (Jan. 16, 2014) (responding to a request from North American Derivatives Exchange, Inc. for an interpretation of certain Commission regulations applicable to registered DCOs).

Commission stated that the 2014 interpretative guidance was not impacted by the recent amendments to part 39.<sup>10</sup> The Commission also amended Regulation 39.16(e), which provides that a DCO may satisfy the default rules and procedures requirements in paragraphs (a), (b), and (c) of Regulation 39.16 by having rules that permit the DCO to clear only fully collateralized positions.<sup>11</sup> In light of the related staff interpretation in CFTC Interpretative Letter No. 14-05, and Commission statement and rulemaking consistent with that interpretation, the Division clarifies that CX's full-collateralization requirement satisfies Regulation 39.21(c)(3) and (4).

The Division understands that CX's participants are not FCMs. The Division agrees that the purpose of publishing a list of clearing members is to provide market participants with sufficient information to enable them to identify and evaluate the risks and costs associated with using the DCO's services. Because each CX participant must fully collateralize its own trades, and CX does not have a mutualized default fund, participants do not face the risk of needing to cover fellow participant losses. Therefore, based on these facts and representations, the Division will not recommend that the Commission take enforcement action against CX for not complying with Regulation 39.21(c)(7).

### **III. Conclusion**

This letter is based upon the representations of CX, as well as applicable laws and regulations. The Division believes that granting the Request would not be contrary to the public interest or to the purposes of those provisions of the Commission's regulations from which CX has sought relief. However, any new, different or changed material facts or circumstances could change the Division's position and render this letter void. Moreover, this letter represents the position of the Division only and does not necessarily represent the views of the Commission or those of any other division or office of the Commission.

If you have any questions, please do not hesitate to contact Abigail Knauff, Special Counsel, at (202) 418-5123.

Sincerely,

Clark Hutchison  
Director

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<sup>10</sup> Derivatives Clearing Organization General Provisions and Core Principles, 85 Fed. Reg. 4800, 4804 n.14 (Jan. 27, 2020).

<sup>11</sup> 17 C.F.R. 39.16(e).