



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight
Division of Clearing and Risk

Re: Supplemental Staff Letter Regarding No-Action Position for Commission Regulations 38.8(b), 38.10, 38.951 (In Part), and 39.20(b)(2), and Parts 43 and 45, for Contracts Traded On or Pursuant to the Rules of KalshiEX LLC and Cleared by LedgerX LLC and Kalshi Klear LLC

Introduction

The Division of Market Oversight (“DMO”) and the Division of Clearing and Risk (“DCR” and, together with DMO, the “Divisions”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) are issuing this letter in response to a request (the “Request”)¹ from KalshiEX LLC (“Kalshi”) and Kalshi Klear LLC (“Klear”). Kalshi and Klear jointly requested, on their own behalf and on behalf of their participants, to amend Staff Letter 21-11,² which provided a no-action position with respect to Kalshi and LedgerX LLC (“LedgerX”), related to 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”). Kalshi is a designated contract market (“DCM”) and both LedgerX and Klear are registered derivatives clearing organizations (“DCOs”). Kalshi and Klear have requested that the Divisions “modify the scope of [Staff Letter 21-11] to include Klear as a DCO covered by the NAL, such that Kalshi may clear Kalshi Contracts through Klear, and so that Klear is subject to the same reporting and recordkeeping no-action position as LedgerX.”³ The Divisions have considered the Request and are granting a supplemental no-action position subject to conditions, as described below.

Background

On April 22, 2021, the Divisions issued Staff Letter 21-11, which provided Kalshi and LedgerX a no-action position related to the swap data reporting and recordkeeping requirements under the Relevant Regulations for the “Kalshi Binary Options” described therein and herein

¹ KalshiEX LLC and Kalshi Klear LLC – Request to Modify NAL 21-11(August 29, 2024).

² CFTC Letter No. 21-11 (Apr. 22, 2021), available at <https://www.cftc.gov/csl/21-11/download>.

³ Request at 3.

referred to as the “Kalshi Contracts.”⁴ The no-action letter contained certain conditions, including that “Kalshi will clear all Kalshi Binary Options through LedgerX and LedgerX will clear all Kalshi Binary Options.”⁵

However, Kalshi has now submitted a request to modify Staff Letter 21-11 because Klear was registered as a DCO on August 28, 2024, and “Kalshi intends to cease clearing contracts through LedgerX and clear contracts exclusively through Klear.”⁶

In the Request, Kalshi represents that the Kalshi Contracts “are binary option contracts on the outcome of various events” and “are swaps under the Commodity Exchange Act (‘CEA’).”⁷ Kalshi represents that the Kalshi Contracts “provide for a payment that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence, and therefore are swaps.”⁸

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.⁹ When promulgating Commission regulation 32.2, the Commission stated that “the swap definition . . . includes options . . . (whether or not traded on a DCM)[.]”¹⁰ 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.¹¹

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹² amended the CEA by adding a definition of “swap.”¹³ 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

⁴ Staff Letter 21-11 at 3-5.

⁵ *Id.* at 3.

⁶ Request at 2.

⁷ *Id.* at 1. Kalshi also states that Kalshi Contracts “are 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.” *Id.*

⁸ *Id.* CEA section 1a(47)(A) defines the term “swap,” in relevant part, to be “any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery . . . that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”

⁹ 7 U.S.C. 6c(b).

¹⁰ Commodity Options, 77 FR 25320, 25321, n.6 (Apr. 27, 2012).

¹¹ 17 CFR 32.2.

¹² Public Law 111–203, 124 Stat. 1376 (2010).

¹³ CEA section 1a(47), 7 U.S.C. 1a(47).

Commissions stated that “the statutory swap definition explicitly provides that commodity options are swaps[.]”¹⁴

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.

Request

Kalshi and Klear requested that the Divisions “modify the scope of [NAL 21-11] to include Klear as a DCO covered by the NAL, such that Kalshi may clear Kalshi Contracts through Klear, and so that Klear is subject to the same reporting and recordkeeping no-action position as LedgerX.”¹⁵ Thus, Kalshi requests that the Divisions not recommend the Commission take enforcement action against Kalshi, Klear, or their participants for failure to report Kalshi Contracts to a swap data repository (“SDR”) or to fulfill any of the other requirements of the Relevant Regulations. In support of their position, Kalshi and Klear represented, among other things, that:

- Kalshi Contracts will be fully collateralized;
- Kalshi will clear the Kalshi Contracts only through Klear after transitioning from LedgerX, which is currently clearing Kalshi Contracts;
- Kalshi will publish time and sales data for all Kalshi Contracts transactions on its website promptly after execution of the transactions;
- Kalshi will provide transactional information to the Commission pursuant to Commission regulation 16.02.

Kalshi further represented that “potential market participant exposures associated with the Kalshi Contracts are anticipated to be far lower than those associated with traditional swaps and with swaps market participants.”¹⁶ Kalshi also represents that “in the context of the relatively small scale of the Kalshi Contracts,” “the cost of reporting to SDRs . . . would be uneconomical.”¹⁷

No-Action Position and Related Conditions

The Divisions have decided to take a no-action position consistent with the request, subject to certain conditions described below, based largely on Kalshi’s and Klear’s statements in support of the Request. The Divisions will not recommend that the Commission initiate an

¹⁴ 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 . . .”).

¹⁵ Request at 3.

¹⁶ Request at 4.

¹⁷ *Id.* at 5.

enforcement action against Kalshi, Klear, 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 Contracts, subject to the following conditions:¹⁸

- (1) Kalshi and Klear will require all Kalshi Contracts to be fully collateralized positions, as defined by Commission regulation 39.2;¹⁹
- (2) After the transition from LedgerX to Klear, Kalshi will clear all Kalshi Contracts through Klear and Klear will clear all Kalshi Contracts;
- (3) Kalshi will publish on its website the following information on all Kalshi Contracts 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, LedgerX, and Klear 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 Contract through a third-party clearing member; and
- (7) Kalshi, LedgerX, and Klear shall 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 the producing party (Kalshi, LedgerX, or Klear) to any representative of the Commission upon request. The producing party (Kalshi,

¹⁸ Some of these conditions regarding no-action positions 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.

¹⁹ 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.

LedgerX, or Klear) 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 Contracts or the conduct of any person covered by the letter.²⁰ 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.²¹ 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, including the representations made by Kalshi and Klear that are described herein. Any different, changed, or omitted material facts or circumstances may render this letter void. To the extent this Supplemental Staff Letter modifies Staff Letter 21-11, the no-action position provided in this letter supersedes Staff Letter 21-11. In all other respects, Staff Letter 21-11 continues to be in effect. 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 position provided herein.

If you have any questions concerning this letter, please contact Paul Chaffin, Assistant Chief Counsel, Division of Market Oversight, at (202) 418-5185 or pchaffin@cftc.gov; Chase Lindsey, Assistant Chief Counsel, Division of Market Oversight, at (202) 740-4833 or clindsey@cftc.gov; Owen Kopon, Associate Chief Counsel, Division of Market Oversight, at (202) 418-5360 or okopon@cftc.gov; or Brian Baum, Special Counsel, Division of Clearing and Risk, at 202-418-5654 or bbaum@cftc.gov.

Sincerely,

Vincent McGonagle
Director
Division of Market Oversight

Clark Hutchison
Director
Division of Clearing and Risk

²⁰ For the avoidance of doubt, this letter is not intended to address whether any of the Kalshi Contracts 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.

²¹ See 17 CFR 140.99(a)(2) (“A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.”).