



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 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 Supplemental Staff Letter 24-15.² Supplemental Staff Letter 24-15 expanded the scope of Staff Letter 21-11³ to include Klear as a derivatives clearing organization (“DCO”) covered by a no-action position 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 and Klear have requested that the Divisions: “(i) modify the scope of the NAL to include Kalshi Contracts described in [the] request that do not have a binary payout structure, and (ii) remove condition 6 from the NAL to permit the NAL to apply even if participants clear contracts through third-party clearing members.”⁴ The Divisions have considered the Request and are granting the requested 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 LLC d/b/a MIAX Derivatives Exchange LLC (“MIAXdx”) a no-action position related to the swap data reporting and recordkeeping requirements under the Relevant Regulations for “Kalshi Binary

¹ KalshiEX LLC and Kalshi Klear LLC – Request to Modify NAL 24-15 (January 17, 2025).

² CFTC Letter No. 24-15 (Oct. 4, 2024), available at <https://www.cftc.gov/csl/24-15/download>.

³ CFTC Letter No. 21-11 (Apr. 22, 2021), available at <https://www.cftc.gov/csl/21-11/download>.

⁴ Request at 4.

Options.”⁵ These 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.⁶ Kalshi and Klear now request the Divisions to expand the scope of contracts subject to the no-action position “to include contracts with a binary payout structure and additionally contracts with a variable payout structure, as described in the request.”⁷ The Request states that “Kalshi and Klear now intend to list and clear contracts that have a settlement structure that (i) can result in a payout to both counterparties to the contract (although by definition, only one side of the contract can profit, meaning receive a payout in excess of basis) and (ii) whose settlement obligations vary based on the amplitude by which the price at expiration exceeds the strike or strike price.”⁸ Kalshi represents that these contracts will be fully collateralized and will have preset price caps and floors that limit potential profits and losses.

Additionally, Staff Letter 21-11 and Supplemental Staff Letter 24-15 qualified the no-action position with the condition that “[n]o Kalshi participant clears a Kalshi Contract through a third-party clearing member.”⁹ A similar condition was included in Kalshi’s original Order of Designation as a DCM prohibiting futures commission merchants (“FCMs”) from intermediating transactions or carrying accounts for customers executing trades on Kalshi’s exchange.¹⁰ On January 17, 2025, the Commission issued an Amended Order of Designation for Kalshi as a DCM, which removed this intermediation prohibition.¹¹ Kalshi and Klear now request that the Divisions remove this condition from the no-action position “to permit the NAL to apply even if participants clear contracts through third-party clearing members.”¹²

In the Request, Kalshi represents that Kalshi Contracts¹³ “are swaps under the Commodity Exchange Act (‘CEA’).”¹⁴ 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.”¹⁵

⁵ Staff Letter 21-11 at 3-5.

⁶ *See id.* at 1; Request at 2.

⁷ Request at 2.

⁸ *Id.*

⁹ Staff Letter 21-11 at 3; Supplemental Staff Letter 24-15 at 4.

¹⁰ *See* Order of Designation, In the Matter of the Application of KalshiEX LLC for Designation as a Contract Market, at 2 (Nov. 3, 2020).

¹¹ *See* Amended Order of Designation, In the Matter of the Request by KalshiEX LLC to Amend Its Order of Designation as a Contract Market, at 1-2 (Jan. 17, 2025).

¹² Request at 4.

¹³ “Kalshi Contracts,” as referred herein, covers the contracts described in the Request and in this no-action letter, which includes contracts with a binary payout structure as well as contracts with a variable payout structure.

¹⁴ *Id.* at 1.

¹⁵ *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,

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.¹⁶ When promulgating Commission regulation 32.2, the Commission stated that “the swap definition . . . includes options . . . (whether or not traded on a DCM)[.]”¹⁷ 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.¹⁸

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹⁹ amended the CEA by adding a definition of “swap.”²⁰ 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[.]”²¹

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: “(i) modify the scope of the NAL to include Kalshi Contracts described in this request that do not have a binary payout structure, and (ii) remove condition 6 from the NAL to permit the NAL to apply even if participants clear contracts through third-party clearing members.”²² Thus, Kalshi requests that the Divisions not recommend that 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:

nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”

¹⁶ 7 U.S.C. 6c(b).

¹⁷ Commodity Options, 77 FR 25320, 25321, n.6 (Apr. 27, 2012).

¹⁸ 17 CFR 32.2.

¹⁹ Public Law 111–203, 124 Stat. 1376 (2010).

²⁰ CEA section 1a(47), 7 U.S.C. 1a(47).

²¹ 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 . . .”).

²² Request at 4.

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

In the Request, Kalshi reaffirmed that the facts that gave rise to the original no-action position continue to justify this no-action request. For example, Kalshi 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.”²³ Kalshi also represented that “in the context of the relatively small scale of the Kalshi Contracts,” “the cost of reporting to SDRs . . . would be uneconomical.”²⁴

Comparing this request to no-action letters issued for other DCMs, Kalshi notes that Staff Letter 24-09, issued in response to a request from ForecastEx, did not include a condition prohibiting participants from clearing through a third-party clearing member, and Kalshi also noted that the ForecastEx Order of Designation did not include an intermediation prohibition.²⁵ Additionally, Kalshi represented in the request that “Kalshi Contracts that do not have a binary payout structure are similar to the ‘spread contracts’ that were included in the no-action relief granted to Nadex in NAL 17-31,” which did not have a binary payout structure and also included defined price caps and floors.²⁶

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, because the Divisions believe, based on Kalshi’s and Klear’s representations, that the justifications underlying Staff Letters 21-11 and 24-15 continue to apply. Given that the Amended Order of Designation for Kalshi as a DCM removed the intermediation prohibition, the Divisions have determined it is appropriate to remove the corresponding condition prohibiting third-party clearing by participants. Further, the variable payout contracts described in Kalshi’s Request are comparable and structured in a similar way to the “spread” contracts covered by Staff Letter 17-31, and as such, should be treated similarly.

Therefore, the Divisions will not recommend that the Commission initiate an 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

²³ Request at 4-5.

²⁴ *Id.* at 5.

²⁵ *Id.* See CFTC Letter No. 24-09 (July 12, 2024), available at <https://www.cftc.gov/csl/24-09/download>.

²⁶ Request at 5.

which the Relevant Regulations were promulgated, with respect to Kalshi Contracts, subject to the following conditions:²⁷

- (1) Kalshi and Klear will require all Kalshi Contracts to be fully collateralized positions, as defined by Commission regulation 39.2;²⁸
- (2) 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, MIAXdx,²⁹ 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) Kalshi, MIAXdx, 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, MIAXdx, or Klear) to any representative of the Commission upon request. The producing party (Kalshi, MIAXdx, 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.

²⁷ 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.

²⁸ 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.

²⁹ Although not a party to the Request, MIAXdx is a named entity in Staff Letter 21-11, which includes conditions identical to conditions 5 and 6 in this supplemental staff letter.

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.³⁰ 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.³¹ 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 or Supplemental Staff Letter 24-15, the no-action position provided in this letter supersedes Staff Letter 21-11 and Supplemental Staff Letter 24-15. In all other respects, Staff Letter 21-11 and Supplemental Staff Letter 24-15 continue 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,

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³⁰ 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.

³¹ See 17 CFR 140.99(a)(2) (“A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.”).