U.S. COMMODITY FUTURES TRADING COMMISSION
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Division of Market Oversight
Division of Clearing and Risk

Re: Request for 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 Chicago Mercantile Exchange Inc.

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 from Chicago Mercantile Exchange Inc. ("CME"). CME requested a no-action position, on their own behalf and on behalf of their participants (the "Request"),[1] with respect to the swap data reporting and recordkeeping requirements of sections 38.8(b), 38.10, and 38.951 (only to the extent it requires compliance with Part 45 of the Commission's regulations), 39.20(b)(2), along with Parts 43 and 45 of the Commission's regulations (collectively, the "Relevant Regulations"). CME requests a no-action position with respect to binary options contracts with the features described in this letter traded and cleared pursuant to CME's rules. CME is a designated contract market ("DCM") and a registered derivatives clearing organization ("DCO").

Background

CME stated in the Request that it intends to list for trading certain "binary options"[2] that "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."[3] CME represents that the CME Contracts are "DCM-listed binary options with characteristics similar to other exchange-listed products (i.e., standardized, fungible and centrally traded), with few of the indicia of traditional swaps."[4] CME also represents that the CME Contracts are "subject to premium style margining, which means that a person establishing a long position will pay the full premium amount for each contract," such that "the maximum risk

[1] Letter from J. McKinlay to the Division of Market Oversight and Division of Clearing and Risk re: Request for No-Action Relief 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 Chicago Mercantile Exchange Inc. (May 2, 2025).
[2] Request at 1.
[3] *Id.* at 1-2.
[4] *Id.* at 4.

on a long position in a CME Contract will be the amount of money the market participant pays as the premium for that binary option swap" and "the maximum per contract risk for a short position is $100 minus the premium received for selling the binary option swap."[5] CME states that "[g]iven the risk profile and margining of the CME Contracts, they will have no bearing on systemic risk or potential transmission of risk or contagion among systemically important financial institutions."[6]

In the Request, CME also states that the CME 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."[7]

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

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[11] amended the CEA by adding a definition of "swap."[12] The Dodd-Frank Act required the Commission and the Securities and Exchange Commission 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[.]"[13]

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.

No-Action Position Requested

CME requested that the Divisions not recommend the Commission take enforcement action against CME or their participants for failure to report the CME Contracts to an SDR or to fulfill

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[5] *Id.*
[6] *Id.*
[7] *Id.* at 2.
[8] 7 U.S.C. § 6c(b).
[9] Commodity Options, 77 Fed. Reg. 25320, 25321, n.6 (Apr. 27, 2012).
[10] 17 C.F.R. § 32.2.
[11] Public Law 111–203, 124 Stat. 1376 (2010).
[12] 7 U.S.C. § 1a(47).
[13] Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement;" Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48207, 48236 (Aug. 13, 2012). *See also In re: Blockratize, Inc. d/b/a Polymarket.com*, CFTC Dkt. No. 22-09, at 2, 7 (Jan. 3, 2022) ("binary options . . . constitute swaps under the CFTC's jurisdiction, and therefore can only be offered on a registered exchange in accordance with the Act and Regulations").

any of the other requirements of the Relevant Regulations. CME states that it requests a no-action position that is comparable to the no-action positions concerning reporting of similar contracts provided in CFTC Letters Nos. 17-31, 17-32, 21-11, 24-09, 24-12, and 25-02.[14] CME makes the following representations:

1. CME shall clear the CME Contracts solely through CME's DCO;

2. CME shall publish on its website the following time and sales data for all CME Contract transactions promptly after execution thereof—trade timestamp, contract, quantity, and price (in USD);

3. CME shall provide DMO with transactional information as described in Commission Regulation 16.02;

4. CME shall require all CME Contracts to be fully margined;[15]

5. CME shall continue to comply with all swap data reporting and recordkeeping requirements of the CEA and Commission Regulations, other than the Relevant Regulations, including (without limitation) the applicable requirements of Parts 38 and 39 of the Commission's Regulations (the records described in this Undertaking 4 are referred to below as the "Required Records"); and

6. CME shall keep the Required Records open to inspection upon request by any representative of the Commission, the United States Department of Justice 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 CME to any representative of the Commission upon request. CME 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.

No-Action Position and Related Conditions

The Divisions have decided to take a no-action position consistent with CME's Request, subject to certain conditions described below, based on CME's representations and statements in support of the Request. The Divisions note that this no-action position is similar to previous no-action positions taken with respect to reporting certain binary options transactions and similar

[14] *See id.* at 5; *see also* CFTC Letter No. 17-31 (Jun. 30, 2017), *available at* https://www.cftc.gov/csl/17-31/download; CFTC Letter No. 17-32 (Jun. 30, 2017), *available at* https://www.cftc.gov/csl/17-32/download; CFTC Letter No. 21-11 (Apr. 22, 2021), *available at* https://www.cftc.gov/csl/21-11/download; CFTC Letter No. 24-09 (July 12, 2024), *available at* https://www.cftc.gov/csl/24-09/download; CFTC Letter No. 24-12 (Sept. 3, 2024), *available at* https://www.cftc.gov/csl/24-12/download; CFTC Letter No. 24-15 (Oct. 4, 2024), *available at* https://www.cftc.gov/csl/24-15/download; CFTC Letter No. 25-02 (Jan. 31, 2025), *available at* https://www.cftc.gov/csl/25-02/download.

[15] CME stated that "[f]or purposes of this relief, 'fully margined' means that for each CME Contract CME will hold long option value for the long position holder and the full notional value for the short position holder until contract expiry, covering the maximum exposure under the position." Request at 6 n.24.

transactions.[16] The Divisions will not recommend that the Commission initiate an enforcement action against CME or its 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 Commission's regulations), 39.20(b)(2), as well as the applicable provisions of Parts 43 and 45 of the Commission's regulations, or the requirements of the relevant CEA provisions pursuant to which the Relevant Regulations were promulgated, with respect to the CME Contracts, subject to the following conditions:[17]

1) CME shall require all CME Contracts to be fully margined, meaning that for each CME Contract CME will hold long option value for the long position holder and the full notional value for the short position holder until contract expiry, covering the maximum exposure under the position;[18]

2) CME shall clear the CME Contracts solely through CME solely through CME's DCO and CME's DCO shall clear all CME Contracts;

3) CME shall publish on its website the following time and sales data for all CME Contract transactions promptly after execution thereof—trade timestamp, contract, quantity, and price (in USD);

4) CME shall provide the Commission with transactional information as described in Commission Regulation 16.02;

5) CME shall continue to comply with all swap data reporting and recordkeeping requirements of the CEA and Commission Regulations, other than the Relevant Regulations, including (without limitation) the applicable requirements of Parts 38 and 39 of the Commission's Regulations (the records described in this Undertaking 4 are referred to below as the "Required Records"); and

6) CME shall keep the Required Records open to inspection upon request by any representative of the Commission, the United States Department of Justice 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 CME to any representative of the Commission upon request. CME 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.

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[16] *See id.*

[17] Some of these conditions regarding the no-action position 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 positions from the Commission or its staff. The public is not required to respond to a collection of information that does not have a valid OMB control number.

[18] CME stated that "[f]or purposes of this relief, 'fully margined' means that for each CME Contract CME will hold long option value for the long position holder and the full notional value for the short position holder until contract expiry, covering the maximum exposure under the position." Request at 6 n.24.

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 the CME Contracts or the conduct of any person covered by the no-action position.[19] 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.[20] Except as explicitly provided in this letter, the no-action position taken herein does 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, are 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 position provided herein.

If you have any questions concerning this letter, please contact Paul Chaffin, Division of Market Oversight, at (202) 418-5185 or pchaffin@cftc.gov; Alicia Viguri, Division of Market Oversight, at (202) 418-5219 or aviguri@cftc.gov; Owen Kopon, Division of Market Oversight, at (202) 418-5360 or okopon@cftc.gov; or Elizabeth Arumilli, Division of Clearing and Risk, at (312) 596- 0632 or earumilli@cftc.gov.

Sincerely,

Rahul Varma
Acting Director
Division of Market Oversight

Richard Haynes
Acting Director
Division of Clearing and Risk

[19] For the avoidance of doubt, this letter is not intended to address whether any of the CME 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. 17 C.F.R. § 40.11.

[20] *See* 17 C.F.R. § 140.99(a)(2) ("A no-action letter binds only the issuing Division… and not the Commission or other Commission staff.").