CME Group

17 C.F.R. §§ 38.8(b), 38.10, 38.951 (In Part), and 39.20(b)(2), and Parts 43 and 45 of Title 17 of the Code of Federal Regulations

May 2, 2025

Division of Market Oversight and Division of Clearing and Risk
Acting Directors Rahul Varma and Richard Haynes
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

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.

Dear Acting Directors Varma and Haynes:

Pursuant to Commodity Futures Trading Commission (the "CFTC" or "Commission") Regulation 140.99, Chicago Mercantile Exchange Inc. ("CME") hereby requests no-action relief from certain swap data reporting and recordkeeping requirements applicable to binary options traded on or pursuant to the rules of the CME designated contract market ("DCM") and cleared by CME as swaps (the "CME Contracts"). This request is consistent with the stated purpose of the Commission's swap data reporting and recordkeeping rules under the Commodity Exchange Act ("CEA") and with certain no-action relief previously granted by the CFTC's Division of Market Oversight ("DMO") and the Division of Clearing and Risk ("DCR") regarding binary option swaps.[1]

I. Background

In addition to being a DCM, CME is registered as a derivatives clearing organization ("DCO") and in that capacity provides clearing and settlement services for exchange-traded and over-the-counter derivatives transactions.

Section 1a(47) of the CEA expressly defines "swaps" to include any agreement, contract, or transaction "that provides for any purchase, sale, payment, or delivery . . . that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence".[2] The CME Contracts provide for a payment that is dependent on the occurrence, nonoccurrence, or the extent

[1] *See* Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2137 (Jan. 13, 2012) (including systemic risk mitigation and enhanced transparency); Statement of Chairman Heath P. Tarbert in Support of Final Rules on Swap Data Reporting (Sept. 17, 2020), https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement091720c.

[2] *See* 7 U.S.C. § 1(a)(47)(A)(i)-(ii).

of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence, and, therefore, are swaps.

The Commission recognized that certain options are a type of swap when promulgating CFTC Regulation 32.2.[3] Additionally, both DMO and DCR recognized that certain binary options, such as the CME Contracts, are swaps when those divisions issued the no-action relief granted in CFTC Letter No. 25-02 (the "Kalshi No-Action Relief"),[4] CFTC Letter No. 17-31 (the "Nadex No-Action Relief"),[5] CFTC Letter No. 17-32 (the "Cantor No-Action Relief"),[6] CFTC Letter No. 21-11 (the "Joint MIAXdx-Kalshi No-Action Relief"),[7] CFTC Letter No. 24-09 (the "ForecastEx No-Action Relief"),[8] and CFTC Letter No. 24-12 (the "MIAXdx No-Action Relief"),[9] (collectively, along with the Kalshi No-Action Relief, the "Previously Granted Relief").

II. Relevant Swap Data Requirements

A. Relevant Rules and Regulations

Section 727 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") added Section 2(a)(13)(G) to the CEA, which requires all swaps, whether cleared or uncleared, to be reported to swap data repositories ("SDRs").[10] This requirement was implemented in Parts 43 and 45 of the Commission's Regulations. As swaps, the CME Contracts must be reported to an SDR pursuant to Section 2(a)(13)(G) of the CEA.[11] Certain CFTC regulations regarding swap data reporting and recordkeeping also apply to CME in its capacities as a DCM and a DCO. The following are relevant regulations applicable to CME and for which CME seeks relief (collectively, the "Relevant Regulations"):

- CFTC Regulation 38.8(b): "Prior to listing swaps for trading on or through a designated contract market, each designated contract market must obtain from the Commission a unique, alphanumeric code assigned to the designated contract market by the Commission for the purpose of identifying the designated contract market with respect to unique swap

[3] *See* Commodity Options, 77 Fed. Reg. 25320, 25321 n.6 (Apr. 27, 2012).

[4] *See* CFTC Letter No. 25-02 (Jan. 31, 2025), available at https://www.cftc.gov/csl/25-02/download.

[5] *See* CFTC Letter No. 17-31 (June 30, 2017), available at https://www.cftc.gov/csl/17-31/download.

[6] *See* CFTC Letter No. 17-32 (June 30, 2017), available at https://www.cftc.gov/csl/17-32/download.

[7] *See* CFTC Letter No. 21-11 (Apr. 22, 2021), available at https://www.cftc.gov/csl/21-11/download.

[8] *See* CFTC Letter No. 24-09 (July 12, 2024), available at https://www.cftc.gov/csl/24-09/download.

[9] *See* CFTC Letter No. 24-12 (Sept. 3, 2024), available at https://www.cftc.gov/csl/24-12/download.

[10] *See* 7 U.S.C. § 2(a)(13)(G) (requiring that each swap, whether cleared or uncleared, be reported to a registered swap data repository).

[11] *See id.*

identifier creation . . . Each designated contract market must generate and assign a unique swap identifier at, or as soon as technologically practicable following, the time of execution of the swap, in a manner consistent with the requirements of part 45."[12]

- CFTC Regulation 38.10: "With respect to swaps traded on and/or pursuant to the rules of a designated contract market, each designated contract market must maintain and report specified swap data as provided under parts 43 and 45 of this chapter."[13]
- CFTC Regulation 38.951 (only to the extent that regulation 38.951 requires compliance with Part 45 of the CFTC's regulations): "A designated contract market must maintain such records, including trade records and investigatory and disciplinary files, in accordance with the requirements of § 1.31 of this chapter, and in accordance with part 45 of this chapter, if applicable."[14]
- CFTC Regulation 39.20(b)(2): "A derivatives clearing organization that clears swaps must maintain swap data in accordance with the requirements of part 45 of this chapter."[15]
- Part 43 of the CFTC's Regulations: Part 43 sets forth "rules relating to the reporting and public dissemination of certain swap transaction and pricing data to enhance transparency and price discovery pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010."[16]
- Part 45 of the CFTC's Regulations: Part 45 sets forth various swap data recordkeeping and reporting requirements applicable to DCMs and DCOs, among others.

B. Regulatory Purpose

The stated goals of the swap data reporting rules under Parts 43 and 45 of the Commission's Regulations, and the amendments thereto, are to mitigate systemic risk, enhance transparency to the public of pricing and trade data, promote standardization, and improve the regulatory experience for market participants.[17] More specifically, Part 43 of the Commission's Regulations relates to the real-time public reporting of swap pricing and transaction data, which appear on the "public tape", and Part 45 of the Commission's Regulations relates to the regulatory reporting of

[12] 17 C.F.R. § 38.8(b).

[13] 17 C.F.R. § 38.10.

[14] 17 C.F.R. § 38.951.

[15] 17 C.F.R. § 39.20(b)(2).

[16] *See* 17 C.F.R. § 43.1(a).

[17] *See supra* note 1.

swap data to the Commission by swap dealers and other covered entities in the interest of increased transparency into the swaps markets for regulatory oversight. Moreover, the Commission's interests in swap data reporting rules, and the amendments thereto, align with Congress' stated purpose in directing the Commission to adopt real-time public reporting regulations, as well as Congress' intent of improving reporting and transparency under the Dodd-Frank Act.[18]

III. Justification for the Requested Relief

A. The CME Contracts Merit Distinct Treatment

Although the CME Contracts are swaps within the meaning of the CEA, they are not otherwise equivalent to the highly leveraged institutional products attributed to the 2008 financial crisis that necessitated improved reporting and transparency under the Dodd-Frank Act. Namely, the CME Contracts primarily will be traded on a central limit book order by market participants. Like the binary option swaps that are the subject of the Previously Granted Relief, the CME Contracts settle at expiration by 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. While CME will clear the CME Contracts as swaps, they 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. Moreover, potential market participant exposures associated with the CME Contracts will be far lower than those associated with traditional swaps. 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. Thus, the maximum risk 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. Due to the fixed payout feature, the maximum per contract risk for a short position is $100 minus the premium received for selling the binary option swap. Given 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. Thus, the regulatory goals of Part 43 and Part 45 swaps reporting applicable to other swaps have limited-to-negligible application to the CME Contracts.

CME recognizes the important role price transparency plays in fostering price competition and reducing the cost of hedging.[19] As CME intends to fully comply with Part 16 of the

---

[18] *See* 7 U.S.C. 2(13)(B) (stating "[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to *enhance price discovery.*") (emphasis added); *See also* Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Pub. L. 111–203, 124 Stat. 1376 (2010).

[19] *See* Statement of Commissioner Dan M. Berkovitz Regarding Amendments to the Swap Data Reporting Rules (Sept. 17, 2020), https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement091720#.

Commission's Regulations—and publish on its website relevant time and sales data for all transactions promptly after execution thereof—the goals of the swap data reporting rules will continue to be met under the terms of CME's requested relief.

B. Prior Relief Suggests That No-Action Relief is Appropriate

Commission Staff has provided no-action relief to other DCMs and DCOs in similar circumstances. The most recent no-action relief that Staff granted was to KalshiEX LLC and Kalshi Klear LLC on January 31, 2025. The Kalshi No-Action Relief is comparable to the other Previously Granted Relief, which allows DCMs and DCOs to avoid substantial operational and financial burdens while providing rapid and reliable information to market participants and the Commission.[20]

Establishing swap data reporting and recordkeeping requirements for the CME Contracts in accordance with Parts 43 and 45 would require significant engineering resources and impose financial and operational burdens on CME. The regulatory value of such reporting, considering the policy goals of Parts 43 and 45, is negligible, especially given the detailed time and sales data the Commission receives from CME pursuant to Part 16 and CME's commitment to publish relevant time and sales data in real time on its website in connection with this relief. Permitting direct reporting to market participants and the Commission allows CME's resources to be put to better use.

The Previously Granted Relief provides more accurate and rapid reporting of swap data to both market participants and the Commission. Information can be publicly disseminated directly to the market more quickly and reliably by an exchange itself, without using an intermediary in the form of an SDR. The Commission also can obtain such information more quickly and reliably directly from CME through Regulation 16.02 reporting. Thus, the relief previously granted to others would also serve the interests of the Commission and the market in this case, both in reducing burdens and in improving swap data reporting.

IV. CME Undertakings

Should DMO and DCR grant the requested no-action relief, CME undertakes to do the following as it pertains to the CME Contracts while the no-action relief remains in effect:

[20] *See* supra n.4-9.

1. CME's DCM shall clear the CME Contracts solely through CME's DCO;[21]

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);[22]

3. CME shall provide DMO with transactional information as described in Commission Regulation 16.02;[23]

4. CME shall require all CME Contracts to be fully margined;[24]

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");[25] 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

---

[21] This requirement is consistent with requirements imposed in the Previously Granted Relief. *See* CFTC Letter No. 17-31 at 3 (Condition 2); CFTC Letter No. 17-32 at 4 (Condition 2); CFTC Letter No. 21-11 at 3 (Condition 2); CFTC Letter No. 25-02 at 5 (Condition 2); CFTC Letter No. 24-12 at 4 (Condition 2).

[22] This is consistent with the requirement imposed by the MAIXdx No-Action Relief, Kalshi No-Action Relief, Joint MIAXdx-Kalshi Relief and Cantor No-Action Relief. *See* CFTC Letter No. 24-12 at 4 (Condition 3); CFTC Letter No. 25-02 at 5 (Condition 3); CFTC Letter No. 17-32 at 4 (Condition 3); CFTC Letter No. 21-11 at 4 (Condition 3). The Nadex No-Action Relief, by contrast, required publication of the following time and sales data: business date, execution time, instrument type, periodicity, display name, expiration date, price in USD, and volume. *See* CFTC Letter No. 17-31 at 3 (Condition 3). The Nadex No-Action Relief, however, covered both binary options and spread contracts, whereas the Joint MIAXdx-Kalshi Relief and Cantor No-Action Relief are more directly relevant—covering only binary options cleared as swaps.

[23] This is consistent with requirements imposed by the Previously Granted Relief. *See* CFTC Letter No. 24-12 at 4 (Condition 4); CFTC Letter No. 17-31 at 3 (Condition 5); CFTC Letter No. 17-32 at 4 (Condition 4); CFTC Letter No. 21-11 at 4 (Condition 4); CFTC Letter No. 25-02 at 5 (Condition 4).

[24] For 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.

[25] This is consistent with requirements imposed by the Previously Granted Relief. *See* CFTC Letter No. 24-12 at 4 (Condition 5); CFTC Letter No. 17-31 at 3 (Condition 5); CFTC Letter No. 17-32 at 4 (Condition 5); CFTC Letter No. 21-11 at 4 (Condition 5); CFTC Letter No. 25-02 at 5 (Condition 5).

exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only.[26]

V. Conclusion

Granting no-action relief in this instance is consistent with the intent of the Commodity Exchange Act, the Dodd-Frank Act, the Relevant Regulations, and the Commission's position as a principles-based regulator. The material terms of all transactions executed and cleared on CME will continue to be captured and recorded on CME systems, and trade information will be disseminated directly to market participants and the Commission. The requested relief would be consistent to the Previously Granted Relief, alleviating CME of financial and operational burdens. No-action relief would likewise advance the policy goals underlying Parts 43 and 45 reporting and support the Commission's efforts to promote responsible financial technology innovation and fair competition for the benefit of the public particularly as comparable relief has historically been extended to other exchanges and clearing houses for binary option swaps.

If you have any questions or require further information, please do not hesitate to contact the undersigned at (312) 580-6770 or john.mckinlay@cmegroup.com.

Sincerely,

John McKinlay
Chicago Mercantile Exchange Inc.
Senior Director & Associate General Counsel

cc: Owen Kopon, Division of Market Oversight
Paul Chaffin, Division of Market Oversight
Eileen Donovan, Division of Clearing and Risk

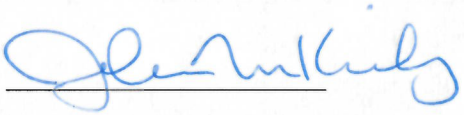
---

[26] This is consistent with requirements imposed by the Previously Granted Relief. *See* CFTC Letter No. 24-12 at 5 (Condition 7); CFTC Letter No. 17-31 at 4 (Condition 7); CFTC Letter No. 17-32 at 4 (Condition 7); CFTC Letter No. 21-11 at 4 (Condition 7); CFTC Letter No. 25-02 at 5 (Condition 6).

Certification and Undertaking Pursuant to Regulation 140.99(c)(3):

I hereby certify that the material facts set forth in the attached letter dated May 2, 2025 are true and complete to the best of my knowledge.

If at any time prior to issuance of a Letter, any material representation made in this request ceases to be true and complete, I will ensure that Commission staff is informed promptly in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to the issuance of this Letter, Chicago Mercantile Exchange Inc. understands that it must promptly so inform Commission staff.



John McKinlay
Chicago Mercantile Exchange Inc.
Senior Director & Associate General Counsel