U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000
www.cftc.gov

Division of Market Oversight
Division of Clearing and Risk

Re: No-Action Position with Respect to Commission Regulations 38.8(b), 38.10, 38.951 (Only to the Extent it Requires Compliance with Part 45 of the Commission's Regulations), 39.20(b)(2), and Parts 43 and 45, for Certain Contracts Traded on or Pursuant to the Rules of Railbird Exchange, LLC and Cleared by QC Clearing 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 from Railbird Exchange, LLC ("Railbird") and QC Clearing LLC ("QC Clearing"). Railbird and QC Clearing 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 Regulations 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"). Railbird and QC Clearing request a no-action position with respect to binary options contracts and variable payout contracts with the features described in this letter traded and cleared pursuant to Railbird and QC Clearing's rules. Railbird is a designated contract market ("DCM") and QC Clearing is a registered derivatives clearing organization ("DCO").

Background

On June 13, 2025, Railbird was designated as a DCM, and on December 16, 2024, QC Clearing was registered as a DCO. Railbird and QC Clearing stated in the Request that Railbird lists for trading "certain binary options contracts" ("Railbird Binary Options") and "variable payout contracts . . . based on the outcomes of various events" ("Railbird Variable Payout Contracts," and, collectively, the "Railbird Contracts").[2] Railbird Binary Options "are

[1] Letter from A. Loranger and M. Childers to R. Varma and R. Haynes re: Railbird Exchange, LLC and QC Clearing LLC Request for No-Action Relief from Commission Regulations 38.8(b), 38.10, 38.951 (only to the extent it requires compliance with Part 45 of the Commission's Regulations), and Parts 43 and 45, for Certain Contracts Traded on or Pursuant to the Rules of Railbird Exchange, LLC and Cleared by QC Clearing LLC (June 17, 2025).
[2] Request at 1.

characterized by the settlement of a contract at expiration, including the payment of an absolute amount to the holder of one side of the contract and no payment to the counterparty, depending on the occurrence or non-occurrence of the event that is the subject of the contract."[3] Railbird Variable Payout Contracts "settle based upon a numerical value of an underlying event such as the percentage increase in average monthly temperature within a given city."[4] Railbird Variable Payout Contracts "can result in a payout to both counterparties to the contract (although by definition only one side of the contract can receive a payout in excess of basis), and the settlement obligations for such contracts vary based on the expiration value of the contract."[5] Additionally, Railbird Variable Payout Contracts "are fully collateralized and therefore have preset price caps and floors that limit potential profit and loss."[6]

In the Request, Railbird and QC Clearing state that "[t]he Railbird Contracts for which Railbird and QC Clearing request relief constitute 'swaps' as defined in Section 1a(47) of the CEA and, as such, the Relevant Regulations would apply to the trading in those contracts."[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.

---

[3] *Id.* at 2.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[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").

No-Action Position Requested

Railbird and QC Clearing requested that the Divisions not recommend the Commission take enforcement action against Railbird or QC Clearing or their participants for failure to report Railbird Contracts to an SDR or to fulfill any of the other requirements of the Relevant Regulations. Railbird 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, and 24-09.[14] Railbird and QC Clearing make the following representations:

- Railbird and QC Clearing will require all Railbird Contracts to be fully collateralized positions, as defined by Commission Regulation 39.2;

- Railbird will clear all Railbird Contracts through QC Clearing and QC Clearing will clear all Railbird Contracts;

- Railbird will publish on its website the following information on all Railbird Contracts transactions promptly after the execution of such transactions: trade timestamp, contract, quantity, and price;

- Railbird will fully comply with its end-of-day reporting requirements pursuant to Parts 16 and 39 of the Commission's regulations, including providing transactional information to the Commission pursuant to Commission Regulation 16.02;

- Railbird and QC Clearing 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 Commission's regulations (the "Required Records");

- No Railbird market participant clears a Railbird Contract through a third-party clearing member; and

- Railbird and QC Clearing will 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 Railbird or QC Clearing, as applicable, to any representative of the Commission upon request. Railbird or QC Clearing, as applicable, shall provide copies of the Required Records either by electronic means, in hard copy, or both, as requested by the Commission,

[14] *See* 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. *See also* 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; and CFTC Letter No. 25-23 (Jul. 22, 2025), *available at* https://www.cftc.gov/csl/25-23/download.

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 Railbird and QC Clearing's Request, subject to certain conditions described below, based on Railbird and QC Clearing'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 transactions.[15] The Divisions will not recommend that the Commission initiate an enforcement action against Railbird, QC Clearing, 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 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 Railbird Contracts, subject to the following conditions:[16]

1) Railbird will require all Railbird Contracts to be fully collateralized positions, as defined by Commission Regulation 39.2;[17]

2) Railbird will clear all Railbird Contracts through QC Clearing and QC Clearing will clear all Railbird Contracts;

3) Railbird will publish on its website the following information for all Railbird transactions promptly after execution thereof: trade timestamp, contract, quantity, and price;

4) Railbird will provide the Commission with all transactional information as described in Commission Regulation 16.02;

5) Railbird and QC Clearing will comply with all reporting and recordkeeping requirements of the CEA and Commission regulations applicable to them in their respective capacities as a DCM and a DCO, other than the Relevant Regulations, including, but not limited to, the applicable requirements of Parts 38 and 39 of the

[15] *See id.*

[16] 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.

[17] 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 C.F.R. § 39.2.

Commission's regulations (the records required to be retained by this condition (5) are referred to below as the "Required Records");

6) No Railbird market participant clears a Railbird Contract through a third-party clearing member; and

7) Railbird and QC Clearing 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 Railbird and QC Clearing to any representative of the Commission upon request. Railbird and QC Clearing 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 Railbird Contracts or the conduct of any person covered by the no-action position.[18] 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.[19] 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 its 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.

[18] For the avoidance of doubt, this letter is not intended to address whether any of the Railbird 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.

[19] *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.").

Sincerely,

_____
Rahul Varma
Acting Director
Division of Market Oversight

_____
Richard Haynes
Acting Director
Division of Clearing and Risk