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

Re: Request for No-Action Relief from Commission Regulations 38.8(b), 38.10, 38.951 (in Part), 39.20(b)(2) and Parts 43 and 45 for Binary Options Traded on or Pursuant to the Rules of, and Cleared by, ElectronX

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 Electron Exchange DCM, LLC ("ElectronX DCM") and Electron Exchange DCO, LLC ("ElectronX DCO," and together with ElectronX DCM, "ElectronX"). ElectronX 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"). ElectronX requests a no-action position with respect to binary options contracts with the features described in this letter traded and cleared pursuant to ElectronX's rules. ElectronX DCM is a designated contract market ("DCM") and ElectronX DCO is a registered derivatives clearing organization ("DCO").

Background

ElectronX DCM is designated as a DCM and ElectronX DCO is registered as a DCO. ElectronX stated in the Request that ElectronX lists for trading "Contracts consisting of cash-settled binary options with underlying commodities relating to electricity and/or power markets (the "ElectronX Contracts").[2] ElectronX stated that its "binary options contracts have a binary outcome that pay[s] a fixed dollar amount of either $0 or $100, depending on whether the price for 1 MWh of power settles above or below the previous day's day ahead market value for a particular

[1] Letter from D. Hoban to the Division of Market Oversight and the Division of Clearing and Risk re: Request for No-Action Relief from Commission Regulations 38.8(b), 38.10, 38.951, 39.20(b)(2) and Parts 43 and 45 for Binary Options Traded on or Pursuant to the Rules of, and Cleared by, ElectronX (Sept. 18, 2025).

[2] Request at 1-2. ElectronX stated that it "also intends to list other contracts outside the scope of [its] request for relief, including but not limited to bounded futures contracts with underlying commodities relating to electricity and/or power markets." *Id.* at 2 n.3.

hourly time period."[3] ElectronX Contracts are fully-collateralized, as "[m]arket participants are not permitted to enter a bid for a Contract unless they deposit and maintain sufficient collateral to fully collateralize (*i.e.*, completely cover) any loss that could be incurred in connection with the Contract resulting from the pairing of any such bid. Collateral transfers made by a market participant are irrevocable and unconditional when effected except in the case of funds transferred to a market participant in the event of fraud or error."[4]

In the Request, ElectronX states that the ElectronX Contracts are "swaps because they are binary options 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."[5]

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.[6] When promulgating Commission regulation 32.2, the Commission stated that "the swap definition . . . includes options . . . (whether or not traded on a DCM)."[7] 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.[8]

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[9] amended the CEA by adding a definition of "swap."[10] 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[.]"[11]

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

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

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[3] Request at 2.
[4] *Id.* at 2.
[5] *Id.*
[6] 7 U.S.C. § 6c(b).
[7] Commodity Options, 77 Fed. Reg. 25320, 25321, n.6 (Apr. 27, 2012).
[8] 17 C.F.R. § 32.2.
[9] Public Law 111–203, 124 Stat. 1376 (2010).
[10] 7 U.S.C. §1a(47).
[11] 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").

to fulfill any of the other requirements of the Relevant Regulations. ElectronX 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.[12] ElectronX made the following representations:

- The ElectronX Contracts will be fully collateralized as defined under Commission Regulation 39.2 and without intermediation;

- ElectronX will publish time and sales data for all transactions in the ElectronX Contracts on its website promptly after execution of the transactions;

- ElectronX will fully comply with Part 16 of Commission regulations, including providing transactional information to the Commission pursuant to Commission Regulation 16.02;

- ElectronX DCM will clear all ElectronX Contracts through ElectronX DCO and ElectronX DCO will clear all ElectronX Contracts;

- ElectronX will comply with all reporting and recordkeeping requirements of the CEA and Commission regulations applicable to it in its 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 Commission regulations (the records required to be retained by this condition are referred to below as the "Required Records"); and

- ElectronX 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 ElectronX to any representative of the Commission upon request. ElectronX 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 ElectronX's Request, subject to certain conditions described below, based on ElectronX'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.[13] The Divisions will not recommend that the Commission initiate an

[12] *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.

[13] *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*

enforcement action against ElectronX 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 ElectronX Contracts, subject to the following conditions:[14]

1) ElectronX will require all ElectronX Contracts to be fully collateralized positions, as defined by Commission regulation 39.2;[15]

2) ElectronX DCM will clear all ElectronX Contracts through ElectronX DCO and ElectronX DCO will clear all ElectronX Contracts;

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

4) ElectronX will provide the Commission with all transactional information as described in Commission regulation 16.02;

5) ElectronX will comply with all reporting and recordkeeping requirements of the CEA and CFTC regulations applicable to it in its 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 Commission's regulations (the records required to be retained by this condition (5) are referred to below as the "Required Records");

6) No ElectronX market participant clears an ElectronX Contract through a third party clearing member; and

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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; CFTC Letter No. 25-23 (Jul. 22, 2025), *available at* https://www.cftc.gov/csl/25-23/download; CFTC Letter No. 25-26 (Aug. 7, 2025), *available at* https://www.cftc.gov/csl/25-26/download; and CFTC Letter No. 25-28 (Sept. 3, 2025), *available at* https://www.cftc.gov/csl/25-28/download.

[14] 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.

[15] 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.

7) ElectronX keeps 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 ElectronX to any representative of the Commission upon request. ElectronX 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 ElectronX Contracts or the conduct of any person covered by the no-action position.[16] 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.[17] 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 Alicia Viguri, Division of Market Oversight, at (202) 418-5219 or aviguri@cftc.gov; Paul Chaffin, Division of Market Oversight, at (202) 418-5185 or pchaffin@cftc.gov; Owen Kopon, Division of Market Oversight, at (202) 418-5360 or okopon@cftc.gov; or Brian Baum, Division of Clearing and Risk, at bbaum@cftc.gov, 202-418-5654.

Sincerely,

Rahul Varma	Richard Haynes
Acting Director	Acting Director
Division of Market Oversight	Division of Clearing and Risk

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

[17] *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.").