



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 with Respect to Commission Regulations 38.8(b), 38.10, 38.951 (in Part), 39.20(b)(2), and Parts 43 and 45, for MIAxdx Contracts

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”) from LedgerX LLC d/b/a MIAxdx Derivatives Exchange LLC (“MIAxdx”).¹ MIAxdx requested, on its own behalf and on behalf of its participants, to amend Staff Letter 24-12.² Staff Letter 24-12 granted MIAxdx’s request for a no-action position from the swap data reporting and recordkeeping requirements of sections 38.8(b), 38.10, 38.951 (to the extent that regulation 38.951 requires compliance with Part 45 of the Commission’s regulations), 39.20(b)(2), and Parts 43 and 45 of the Commission’s regulations (collectively, the “Relevant Regulations”). MIAxdx has now requested that the Divisions modify the no-action position granted in Staff Letter 24-12 to remove condition 6,³ which provides that “[n]o MIAxdx participant clears a MIAxdx Contract through a third-party clearing member.”⁴

Background

MIAxdx is a designated contract market (“DCM”) and a derivatives clearing organization (“DCO”).⁵ MIAxdx lists for trade “binary options on the outcomes of various economic or commercial events” (the “MIAxdx Contracts”).⁶ MIAxdx 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

¹ Letter from M. Bailey to R. Varma and R. Haynes re: Request for Amended No-Action Relief from Certain Swap Data Reporting and Recordkeeping Requirements (July 1, 2025).

² CFTC Letter No. 24-12 (Sept. 3, 2024), *available at* <https://www.cftc.gov/csl/24-12/download>.

³ Request at 1.

⁴ CFTC Letter No. 24-12 at 5.

⁵ MIAxdx is also registered as a swap execution facility (“SEF”), but it has not requested a no-action position on behalf of its SEF in the Request.

⁶ Request at 2. MIAxdx stated that it has “listed cash-settled binary options on cryptocurrencies,” but “expects to offer other types of binary options in the future.” Request at 2 n.5.

counterparty, depending on the occurrence or non-occurrence of the event that is the subject of the contract.”⁷

As options, binary options fall within the Commission’s plenary options authority under Commodity Exchange Act (“CEA”) section 4c(b).⁸ 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. 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 MIAXdx represents that its binary options “are swaps within the meaning of the [Commodity Exchange Act (‘CEA’)]” because “Section 1a(47) of the CEA expressly defines ‘swaps’ to include options as well as any contract 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.”¹⁴

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. In particular, Parts 43 and 45 require, respectively, real-time reporting of swap transaction and pricing data to swap data repositories (“SDRs”) for purposes of public dissemination and reporting of broader swap data to SDRs for the CFTC’s use in fulfilling its surveillance and market analysis missions.

On September 3, 2024, the Divisions issued Staff Letter 24-12, which provided MIAXdx a no-action position related to swap data reporting and recordkeeping requirements under the

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”).

¹⁴ Request at 2; *see also* 7 U.S.C. § 1(a)(47)(A)(i)-(ii).

Relevant Regulations for the MIAxdx Contracts.¹⁵ In granting that request, the Divisions noted that the no-action position taken in Staff Letter 24-12 was similar to and consistent with previous no-action positions taken with respect to reporting certain binary options transactions.¹⁶ The no-action position taken in Staff Letter 24-12 contained several conditions, including condition 6, which conditions the no-action position on MIAxdx prohibiting futures commission merchants (“FCMs”) from intermediating clearing for MIAxdx Contracts.¹⁷

No-Action Position Requested

MIAxdx requested that the Divisions modify the no-action position granted in Staff Letter 24-12 to remove condition 6, which specifically provides that “[n]o Participants shall clear MIAxdx Contracts through any third-party clearing member.”¹⁸

Condition 6 ties back to MIAxdx’s Order of Designation as a DCM, which states that “[MIAxdx] shall not permit any FCM to clear trades executed on, or pursuant to the rules of, the contract market on behalf of third-party customers, unless [MIAxdx] first notifies the Commission of its intent to do so and submits any applicable rule changes pursuant to 17 C.F.R. Part 40.”¹⁹ At the time the Divisions issued Staff Letter 24-12, MIAxdx’s rulebook did not authorize FCMs to intermediate clearing of MIAxdx Contracts.²⁰ On May 30, 2025, MIAxdx submitted rulebook amendments to the Commission that set out rules and procedures for FCMs to clear trades executed on or pursuant to the rules of MIAxdx.²¹ In connection with those rulebook amendments, MIAxdx has now requested that the Divisions modify the no-action position granted in Staff Letter 24-12 to remove condition 6.²² The requested modification would enable MIAxdx to rely on the no-action position taken in Staff Letter 24-12 when reporting MIAxdx contracts that MIAxdx participants and customers clear through third-party clearing members.

MIAxdx stated that the Divisions have previously granted similar no-action positions with respect to the Relevant Regulations for similar contracts, without including a non-intermediation condition prohibiting FCMs from clearing the contracts subject to the no-action position.²³ MIAxdx also stated that, following its rulebook amendments to set its rules and procedures for

¹⁵ See CFTC Letter No. 24-12.

¹⁶ See *id.* at 4; 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>.

¹⁷ CFTC Letter No. 24-12 at 5.

¹⁸ Request at 1, 4.

¹⁹ In the Matter of the Application of LedgerX LLC for Designation as a Contract Market, Order of Designation (June 24, 2019), available at <https://www.cftc.gov/sites/default/files/filings/documents/2019/orgledgerxcdmorder190624.pdf>.

²⁰ See Request at 1.

²¹ See Letter from M. Bailey to C. Kirkpatrick re: Commission Regulation 40.6(a) – Rule Certification, LedgerX LLC Submission No. 25-20 (May 30, 2025).

²² Request at 1.

²³ See Request at 1; see also CFTC Letter No. 24-09 (July 12, 2024), available at <https://www.cftc.gov/csl/24-09/download> and CFTC Letter No. 25-02 (Jan. 31, 2025), available at <https://www.cftc.gov/csl/25-02/download>.

FCMs to clear trades executed on or pursuant to the rules of MIAXdx, removing condition 6 from the no-action position would be consistent with MIAXdx's Order of Designation as a DCM and Order of Registration as a DCO, which permit FCM intermediation of clearing if appropriate rulebook amendments and other changes are made to facilitate such intermediation.²⁴ In support of their request, MIAXdx also reiterated representations made in its request for the no-action position granted in Staff Letter 24-12, excluding its representation that no participants shall clear MIAXdx Contracts through any third party clearing member:

- MIAXdx will require that all MIAXdx Contracts be fully collateralized;
- MIAXdx will clear the MIAXdx Contracts solely through MIAXdx;
- MIAXdx will publish on its website the following time and sales data for all MIAXdx Contracts transactions promptly after execution thereof – trade timestamp, contract, quantity, and price (in USD);
- MIAXdx shall provide DMO with transactional information as described in Commission regulation 16.02;
- MIAXdx shall continue to comply with all SDR 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 CFTC's regulations (the records described in this Undertaking 5 are referred to below as the "Required Records");
- MIAXdx 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 MIAXdx to any representative of the Commission upon request. MIAXdx 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 MIAXdx's Request, subject to certain conditions described below, based largely on MIAXdx's representations and statements in support of the Request, because the Divisions believe, based on MIAXdx's representations, that the justifications underlying Staff Letter 24-12 continue to apply. Given that MIAXdx has made rulebook amendments to allow FCM participation in clearing intermediation, consistent with the requirements of its DCM Order of Designation and DCO Order of Registration, the Divisions have determined it is appropriate to remove the corresponding condition in Staff Letter 24-12, condition 6, prohibiting third-party clearing by participants. The Divisions also believe that removing condition 6 is consistent with the approach taken in Staff Letters 24-09 and 25-02, which do not contain a condition prohibiting third-party clearing by

²⁴ Request at 1-2.

participants.²⁵ The Divisions will not recommend that the Commission initiate an enforcement action against MIAxdx 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 MIAxdx Contracts, subject to the following conditions:²⁶

- 1) MIAxdx will require all MIAxdx Contracts to be fully collateralized positions, as defined by Commission regulation 39.2;²⁷
- 2) MIAxdx will clear all MIAxdx Contracts through MIAxdx and MIAxdx will clear all MIAxdx Contracts;
- 3) MIAxdx will publish on its website the following information for all MIAxdx transactions promptly after execution thereof: trade timestamp, contract quantity, and price;
- 4) MIAxdx will provide the Commission with all transactional information as described in Commission regulation 16.02;
- 5) MIAxdx 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) MIAxdx 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 MIAxdx, as applicable, to any representative of the Commission upon request. MIAxdx, as applicable, shall provide copies of the Required Records either by electronic means, in hard copy, or both, as requested

²⁵ See CFTC Letter No. 24-09 (July 12, 2024), available at <https://www.cftc.gov/csl/24-09/download> and CFTC Letter No. 25-02 (Jan. 31, 2025), available at <https://www.cftc.gov/csl/25-02/download>.

²⁶ 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 position 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.

²⁷ CFTC 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.

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 MIAxdx Contracts or the conduct of any person covered by the no-action position.²⁸ 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.²⁹ 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 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 Eric Schmelzer, Division of Clearing and Risk, at (202) 836-0567 or eschmelzer@cftc.gov.

Sincerely,

Rahul Varma
Acting Director
Division of Market Oversight

Richard Haynes
Acting Director
Division of Clearing and Risk

²⁸ For the avoidance of doubt, this letter is not intended to address whether any of the MIAxdx 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.

²⁹ 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.”).