U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Division of
Market Oversight

Rahul Varma
Acting Director

Re: Small Exchange, Inc. – Time-Limited No-Action Position with respect to Certain Provisions under the Commission's Dormancy Framework for Registered Entities

This letter responds to a request received by the Division of Market Oversight ("Division" or "DMO") of the Commodity Futures Trading Commission ("Commission" or "CFTC") from Small Exchange, Inc. ("Small Exchange"), a designated contract market ("DCM").[1] Small Exchange has requested a no-action position with respect to certain provisions under the Commission's dormancy framework for registered entities, in the event that, beginning on January 10, 2026, Small Exchange would be deemed to be a "dormant designated contract market" pursuant to that framework.

I. Regulatory Background

Commission regulation 40.1 defines a "dormant designated contract market" as "any designated contract market on which no trading has occurred for a period of 365 days; *provided*, *however*, no designated contract market shall be considered dormant if its initial and original Commission order of designation was issued within the preceding 1,095 days."[2] Commission regulation 38.3(b) states that "[b]efore listing or relisting products for trading, a dormant designated contract market . . . must reinstate its designation . . .; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions."[3]

Small Exchange's Request Letter recognizes that the Commission's dormancy framework for registered entities is intended to help address potential compliance drift that may arise from an extended period of inactivity.[4] As the Commission has noted, "a significant period

[1] Letter from Small Exchange to Rahul Varma, Acting Director, DMO, dated December 9, 2025 ("Small Exchange's Request Letter").

[2] 17 CFR § 40.1.

[3] 17 CFR § 38.3(b).

[4] Small Exchange's Request Letter, pages 2-3.

of inactivity can potentially have a negative impact on a registered entity's ability to implement rules and list and clear contracts in a manner that remains consistent with current market conditions, the Commission's regulations, and self-regulatory best practices."[5]

II. Request for No-Action Position

Small Exchange has been designated by the Commission as a DCM since March 2020.[6] The last trade executed on Small Exchange occurred on January 10, 2025. Absent any intervening trades Small Exchange will become a "dormant designated contract market," pursuant to Commission regulation 40.1, on January 10, 2026.

On October 15, 2025, Payward, Inc. (d/b/a Kraken) ("Kraken") entered into a transaction with Small Exchange's parent, Market Data Limited, pursuant to which Kraken acquired 100% of the issued and outstanding shares of capital stock of Small Exchange. Small Exchange states that the acquisition "was intended to grow Kraken's presence in the U.S. regulated derivatives markets and to bring new activity to [Small Exchange] after several months of non-activity under its previous owners."[7]

Small Exchange requests that the Division issue a no-action letter "providing relief from both (i) the definition of 'dormant' in Commission regulation 40.1 and (ii) the reinstatement requirement in Commission Regulation 38.3(b), such that, if Small Exchange lists products for trading on or after the 365th day without having reinstated its designation, Division staff will not recommend enforcement action against Small Exchange or against any participant that seeks to trade on Small Exchange during the [r]elief [p]eriod," subject to certain conditions.[8] Small Exchange proposes that the requested no-action position extend until the earlier of (i) October 10, 2026, or (ii) the close of business on the date on which a trade is executed on or pursuant to the rules of Small Exchange. Small Exchange further proposes that any such trading activity during this period "would, consistent with [Commission r]egulation 40.1, reset the 365-day inactivity period that underlies the dormancy definition."[9]

Small Exchange represents that, in furtherance of Kraken's intention to grow its presence in U.S. regulated derivatives markets and to bring new activity to the exchange, "Kraken has committed significant resources to ensure Small Exchange begins active trading as soon as possible, in compliance with all applicable Commission Part 38 requirements."[10] Small

---

[5] Amendments Pertinent to Registered Entities and Exempt Commercial Markets, 73 FR 8599, 8600 (Feb. 14, 2008).

[6] *See* Small Exchange, Inc. Order of Designation (March 20, 2020), *available at* https://www.cftc.gov/sites/default/files/filings/documents/2020/orgdcmsmfeexchangeorder200310.pdf. Since Small Exchange's initial and original Commission order of designation was issued in March 2020, Small Exchange does not qualify for the carve-out, in the definition of a "dormant designated contract market" under Commission regulation 40.1, for a DCM whose "initial and original Commission order of designation was issued within the preceding 1,095 days."

[7] Small Exchange's Request Letter, page 3.

[8] *Id.*

[9] Small Exchange's Request Letter, page 2.

[10] Small Exchange's Request Letter, page 3.

Exchange asserts that, accordingly, the requested no-action position would promote responsible innovation and fair competition "by allowing a recently recapitalized registered entity to remain and grow within U.S. derivative markets," while continuing to comply with Commission regulations.[11]

III. No-Action Position

Based on the foregoing and the representations in Small Exchange's Request Letter, the Division has determined that a conditional and time-limited no-action position is warranted. Specifically, and subject to the terms and conditions set forth below, the Division will not recommend an enforcement action against Small Exchange, or against any market participant that seeks to trade on Small Exchange, if, notwithstanding that Small Exchange would otherwise be deemed to be a "dormant designated contract market" pursuant to Commission regulation 40.1, Small Exchange lists products for trading without having reinstated is designation pursuant to Commission regulation 38.3(b). This no-action position is subject to the following terms and conditions:

A. Duration. The no-action position will remain in effect from the date of issuance of this letter until the earlier of (i) October 10, 2026, or (ii) the close of business on the date on which a trade is executed on or pursuant to the rules of Small Exchange (the "Relief Period"). Any such trading activity occurring during the Relief Period will reset the 365-day inactivity period that underlies the definition of a "dormant designated contract market" as applied to Small Exchange.

B. Certification of Products. During the Relief Period, Small Exchange will (i) only list for trading products that are individually submitted to the Commission in accordance with the requirements and procedures set forth in Part 40 of the Commission's regulations, and (ii) provide the Division with at least two business days' prior written notice of each initial listing of any such product.

C. Compliance Representations.

   i. Throughout the Relief Period, Small Exchange will continue to routinely engage with Division staff regarding any material modifications to its business, operations, systems, policies or programs that occur as a result of the October 15, 2025 acquisition of Small Exchange by Kraken, and will provide any information relating to any such modifications that is reasonably requested by Division staff.

   ii. Small Exchange will provide written notice to the Division at least ten business days prior to the first listing for trading of a product during the Relief Period, and will provide concurrently with such notice a written representation from an authorized representative of Small Exchange that, subject solely to the no-action position provided herein with respect to the "dormant designated

[11] Small Exchange's Request Letter, page 4.

contract market" definition in Commission regulation 40.1 and the requirements of Commission regulation 38.3(b), Small Exchange remains in compliance with all provisions of the Commodity Exchange Act ("CEA") and all requirements set forth in the Commission's regulations that are applicable to DCMs, including clearing-related requirements set forth in Commission regulation 38.601[12] and applicable self-regulatory obligations.

D. Reinstatement Backstop. If trading has not commenced on Small Exchange by October 10, 2026, then in order to list products for trading, Small Exchange must reinstate its designation pursuant to Commission regulation 38.3(b).

****

This letter, and the position taken herein, represent the views of DMO only, and do not necessarily represent the positions or views of the Commission or of any other division or office of the Commission. This letter and the no-action position taken herein are not binding on the Commission or other Commission staff.[13] The positions provided in this letter do not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA, Commission regulations, or any other applicable laws (*i.e.*, securities laws). Further, this letter, and the position taken herein, are based upon the facts and circumstances presented to DMO staff. Any different, changed, or omitted material facts or circumstances may render the position taken in this letter void. Finally, as with all staff letters, DMO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the position herein, in its discretion.

If you have any questions concerning this correspondence, please contact me at (202) 418-5353 or RVarma@CFTC.gov.

Sincerely,

Rahul Varma
Acting Director
Division of Market Oversight

[12] 17 CFR § 38.601.

[13] *See* Commission regulation 140.99(a)(2), 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.")