kraken

Small Exchange, Inc.
222 N. LaSalle Street, Suite 400
Chicago, IL 60601

December 9, 2025

VIA ELECTRONIC MAIL (dmoletters@cftc.gov)

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

Re: Request for Time-Limited No-Action Relief from Commission Regulations 40.1 and 38.3(b)

Dear Acting Director Varma:

Small Exchange, Inc. ("**Small Exchange**" or "**Small**") respectfully requests that staff of the Division of Market Oversight ("**Division**") issue a no-action letter stating that it will not recommend that the Commodity Futures Trading Commission ("**Commission**") take enforcement action (i) to the extent Small Exchange would otherwise be deemed "dormant" under Commission Regulation 40.1 and (ii) for failure to comply with the reinstatement provisions of Commission Regulation 38.3(b), such that, if Small Exchange lists products for trading after the 365th day without having reinstated its designation, staff will not recommend enforcement action against Small or any participant that trades on Small Exchange during the Relief Period (as defined below), in each case subject to the facts and conditions described herein.

I. Background

Small Exchange is a Delaware corporation and has been designated by the Commission as a contract market since March 2020.[1] Prior to October 15, 2025, Small Exchange was a wholly-owned subsidiary of Market Data Limited ("**Seller**"), a limited company formed under the laws of England and Wales.

[1] *In re* Application of Small Exchange, Inc. for Designation as a Contract Market (Mar. 10, 2020).

Payward, Inc. (d/b/a Kraken) ("**Kraken**") is a Delaware corporation formed in 2011 with its principal place of business in Cheyenne, Wyoming. Kraken operates a number of trading and markets businesses in the U.S. and internationally, including Ninjatrader Clearing, LLC, a Commission-registered futures commission merchant.

On October 15, 2025, Kraken entered into a transaction with Seller where Seller, pursuant to a stock purchase agreement, transferred 100% of the issued and outstanding shares of capital stock of Small Exchange to Kraken. As a result, Small Exchange became a wholly-owned subsidiary of Kraken. The transaction was both signed and closed on October 15, 2025.

The last trade executed on Small Exchange occurred on January 10, 2025. Absent intervening trading, Small Exchange would meet the definition of a "dormant" DCM on January 10, 2026. Moving forward, Small Exchange intends to certify and list products in coordination with the Division and as permitted under the Commodity Exchange Act (the "**Act**") and CFTC rules.

At the time of the October 15 transaction, the Commission was in the midst of a lapse in appropriations that began on October 1, 2025. As a result of the lapse in appropriations, Small Exchange could not engage in discussions with Division staff regarding the transaction or its intended future product listings. Small Exchange has diligently engaged with Division staff once the lapse in appropriations concluded on November 13, 2025.

II. Applicable Law

Commission Regulation 40.1 defines a dormant DCM 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] In concert with the dormant DCM definition, Commission Regulation 38.3(b) requires in relevant part that:

> Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraphs (a)(1) and (2) of this section….

The Commission adopted the dormancy and reinstatement framework to address concerns that prolonged inactivity may affect a registered entity's ability to remain in full compliance with

[2] Small Exchange's initial and original order of designation occurred on March 10, 2020. Therefore, the 1,095 day period for an initial and original order of designation has passed.

evolving statutory and regulatory requirements and with self-regulatory best practices.[3] In the adopting release to Commission Regulation 38.3, the Commission recognized the need to ensure that a previously inactive platform can implement rules and list products in a manner consistent with current market conditions and Commission regulations at the time trading resumes.

III. Request for No-Action Relief

Small Exchange requests that, in advance of January 10, 2026, 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 Relief Period, subject to the conditions described below. For these purposes, "Relief Period" would be time-limited to the earlier of the following: (i) October 10, 2026; or (ii) the close of business on the date in which a trade is executed on or pursuant to the rules of Small Exchange. Any trading activity occurring during this Relief Period would, consistent with Regulation 40.1, reset the 365-day inactivity period that underlies the dormancy definition.

We believe that the requested relief is narrowly tailored and consistent with the Act's objective to promote responsible innovation and fair competition. Time-limited relief would allow Small Exchange to resume trading promptly in coordination with the Division while continuing to comply with Part 38 and other applicable Commission regulations. This request accords with Regulations 38.3(b) and 40.1 and the Commission's dormancy policy, which recognizes dormancy as a proxy for potential compliance drift.

Here, Kraken's acquisition of Small Exchange was intended to grow Kraken's presence in the U.S. regulated derivatives markets and to bring new activity to the contract market after several months of non-activity under its previous owners. In furtherance of this intention, 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. To that end, Small Exchange intends to fully cooperate and communicate with the Division regarding all activities undertaken to ensure Small Exchange remains an active DCM in good standing with the Commission.

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[3] *See Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations*, 67 FR 62873, 62874 (Oct. 9, 2002) (stating : "[t]he Commission proposed to amend parts 37, 38, 39 and 40 of its rules to clarify that, when a registered entity that has become dormant determines to list or relist an initial product for trading…it must demonstrate that it continues to satisfy the criteria for designation or registration"); *see also Amendments Pertinent to Registered Entities and Exempt Commercial Markets*, 73 FR 8599, 8600 (Feb. 14, 2008) (stating: "[t]he Commission recognizes that a significant period 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").

Commission staff has provided similar types of relief in the past. In Commission Letter No. 20-29, staff issued no-action relief to Tassat Derivatives LLC ("Tassat"), a swap execution facility ("**SEF**"), from the Commission Regulation 37.3(d) SEF reinstatement requirements, allowing Tassat to continue facilitating certain product trading prior to the completion of the reinstatement process and despite its then status as a dormant SEF.[4] In granting relief, staff noted that Tassat "with the exception of a lack of trading on its platform, maintained an active SEF in compliance with all regulatory requirements…."[5] The SEF and DCM reinstatement/dormancy rules are substantively similar to one another and Small Exchange intends to take a similar approach adopted in Commission Letter No. 20-29 by complying with all applicable statutory and regulatory obligations during any possible dormancy period, as well as fully engaging the Division throughout this process to ensure continued DCM compliance. Moreover, from the date of Small Exchange's last trade, it has engaged with Commission staff regularly and has continued to meet its regulatory obligations under the Commission's regulations, including submitting its quarterly financial filings and maintaining capital and liquid assets necessary to comply with CFTC Regulation 38.1101.

Finally, we believe that granting the requested relief would be consistent with Section 3 of the Act which states in part that an underlying purpose of the Act is to "promote responsible innovation."[6] By permitting Small Exchange to continue to operate and develop new offerings (in coordination with Division staff) without requiring it to also undergo the lengthy reinstatement process after just completing a 100-percent ownership change complicated by an unprecedented lapse in appropriations for Commission operations, this objective will be achieved. In addition, granting the requested relief would further the public interest by allowing a recently recapitalized registered entity to remain and grow within U.S. derivatives markets, increasing competition and promoting robust trading and product innovation.

IV. Proposed Conditions

To ensure that the requested relief protects market participants and the public interest, Small Exchange proposes that any no-action position be conditioned on the following:

1. Duration. The relief would remain in effect until the end of the Relief Period.

2. Scope of Products. During the Relief Period, Small Exchange would list for trading only those products individually certified to the Commission under Part 40 of the Commission's Regulations and identified to the Division in advance of listing, with

[4] Commission Letter No. 20-29 (Sept. 15, 2020), available at https://www.cftc.gov/csl/20-29/download.

[5] *Id.* at 8.

[6] 7 U.S.C. § 5(b).

at least two business days' prior notice to the Division of each initial listing during the Relief Period.

3. Mandatory Clearing. Pursuant to 17 CFR § 38.601, all trading activity executed on Small Exchange will be cleared by a Commission-registered derivatives clearing organization ("**DCO**").

4. Compliance Representations. Small Exchange would maintain compliance with the Act and all applicable Commission regulations, including the DCM Core Principles and Part 38 of Commission regulations and continue to engage with Division staff regarding modifications to the Small Exchange as a result of the October 15 transaction. With the exception of the relief granted under this letter under both Parts 40.1 and 38.3(b), Small Exchange would certify to continued compliance with applicable rules, procedures, and self-regulatory programs.

5. Reinstatement Backstop. If active trading has not commenced by October 10, 2026, Small Exchange would either (i) file a materially complete application for reinstatement under Commission Regulation 38.3(b) or (ii) request an extension of relief with an updated factual showing.

These conditions are designed to ensure transparency, accountability, and an orderly resumption of trading, while preserving the Commission's oversight. We acknowledge that the Commission has emphasized, in adopting dormancy-related amendments, that prolonged inactivity could negatively affect an entity's ability to operate in a manner consistent with current Commission regulations and market conditions. The conditions proposed above would directly and effectively mitigate this concern.

IV. Conclusion

For the reasons set forth above, Small Exchange respectfully requests that staff not recommend an enforcement action against Small Exchange or against any participant that trades on Small Exchange during the Relief Period from both (i) the definition of "dormant" in Commission Regulation 40.1 and (ii) the reinstatement requirement in Commission Regulation 38.3(b), subject to the conditions described above.

Small Exchange appreciates the Commission's time and attention to this matter. If you have any questions or require further information or documentation, please contact the undersigned at donald.roberts@kraken.com with copies to Nicolette Kmiecik at nicolette.kmiecik@kraken.com, Jonathan Jachym at jonathan.jachym@kraken.com, and David Seidler at david.seidler@kraken.com.

Respectfully,

/s/ Donald Roberts
Donald Roberts
President and Chief Executive Officer
Small Exchange, Inc.

CC: Ryne Miller
Trevor Levine

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Certification and Undertaking

I hereby certify that the material facts set forth in this letter dated December 9, 2025 are true and complete to the best of my knowledge.

/s/ Donald Roberts
Donald Roberts
President and Chief Executive Officer
Small Exchange, Inc.
December 9, 2025

On behalf of Small Exchange, Inc., the signatory above undertakes that, if at any time prior to the Division's issuance of a response to this request any material representation made herein ceases to be true and complete, Small Exchange will promptly inform Commission staff in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of a staff response, Small Exchange will promptly so inform Commission staff.

Sincerely,

/s/ Donald Roberts
Donald Roberts
President and Chief Executive Officer
Small Exchange, Inc.