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

Division of Market Oversight
Division of Clearing and Risk

Re: Supplemental Request to Modify CFTC Letter No. 25-26 to Replace QC Clearing LLC with Bitnomial Clearinghouse, LLC Under Existing No-Action Relief and to Remove Clearing Member Condition

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")[1] from Railbird Exchange, LLC ("Railbird") and Bitnomial Clearinghouse, LLC ("Bitnomial"). Railbird and Bitnomial jointly requested, on their own behalf and on behalf of their participants, to amend Staff Letter 25-26,[2] which provided a no-action position with respect to Railbird and QC Clearing LLC ("QC Clearing"), related to the swap data reporting and recordkeeping requirements of regulations 38.8(b), 38.10, 38.951 (in part), and 39.20(b)(2), along with Parts 43 and 45 of the Commission's regulations (collectively, the "Relevant Regulations"). Railbird is a designated contract market ("DCM") and both QC Clearing and Bitnomial are registered derivatives clearing organizations ("DCOs"). Railbird and Bitnomial have requested the Divisions modify the scope of CFTC Letter No. 25-26 to include Bitnomial as a DCO covered by the no-action position taken therein, such that Railbird may clear Railbird Contracts through Bitnomial, and such that Bitnomial is subject to the same reporting and recordkeeping no-action position as QC Clearing.[3] Additionally, Railbird and Bitnomial have requested to remove condition 6, which requires that "[n]o Railbird participant clears a Railbird Contract through a third-party clearing member," given that Railbird's DCM order has been amended to permit intermediation.[4] The Divisions have considered the Request and are granting a supplemental no-action position subject to conditions, as described below.

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[1] Letter from M. Saffran and J. Walsh to the Division of Market Oversight and Division of Clearing and Risk re: Supplemental Request to Modify CFTC Letter No. 25-26 to Replace QC Clearing LLC with Bitnomial Clearinghouse, LLC Under Existing No-Action Relief (April 14, 2026) (the "Request").
[2] CFTC Letter No. 25-26 (Aug. 7, 2025), *available at* https://www.cftc.gov/csl/25-26/download.
[3] Request at 1.
[4] *See id.*

Background

On August 7, 2025, the Divisions issued Staff Letter 25-26, which provided Railbird and QC Clearing a no-action position related to the swap data reporting and recordkeeping requirements under the Relevant Regulations for the "Railbird Contracts" described therein and herein referred to as the "Railbird Contracts."[5] The no-action letter contained certain conditions, including that "Railbird will clear all Railbird Contracts through QC Clearing and QC Clearing will clear all Railbird Contracts" and that "[n]o Railbird market participant clears a Railbird Contract through a third-party clearing member."[6]

Railbird and Bitnomial have now submitted a request to modify Staff Letter 25-26. Railbird and Bitnomial stated that Bitnomial will now serve as the DCO clearing Railbird Contracts, and "Railbird intends to clear contracts exclusively through Bitnomial after a transition period."[7] Additionally, because the Commission has amended Railbird's DCM Order to allow futures commission merchants to intermediate transactions and carry accounts for customers executing trades on, or pursuant to the rules of, Railbird,[8] Railbird and Bitnomial have requested to modify Staff Letter 25-26 for consistency with these changes.

The Request "seeks no changes to the scope of contracts" at issue.[9] Railbird previously represented that the Railbird Contracts "are 'swaps' as defined in Section 1a(47) of the CEA."[10] Railbird explained that Railbird Contracts that are binary options are "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 nonoccurrence the event that is the subject of the contract" and that Railbird contracts that are 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."[11] Railbird contracts are fully collateralized and therefore have preset price caps and floors that limit potential profit and loss.[12]

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.[13] When promulgating Commission regulation 32.2, the Commission stated that "the swap definition . . . includes options . . . (whether or not traded on a DCM)[.]"[14] Commission

[5] CFTC Letter No. 25-26 at 4.
[6] *Id.*
[7] Request at 2. During this transition period, both QC Clearing and Bitnomial will be covered by the no-action positions discussed herein and subject to the associated conditions.
[8] *Id.*
[9] *Id.* at 1.
[10] *See* CFTC Letter No. 25-26, at 2.
[11] *Id*. at 2.
[12] *Id.*
[13] 7 U.S.C. § 6c(b).
[14] Commodity Options, 77 Fed. Reg. 25320, 25321, n.6 (Apr. 27, 2012).

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.[15]

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[16] amended the CEA by adding a definition of "swap."[17] The Dodd-Frank Act required the Commission and the Securities and Exchange Commission (together, the "Commissions") 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[.]"[18]

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.

Request

Railbird and Bitnomial requested that the Divisions modify CFTC Letter No. 25-26 to include Bitnomial as a DCO covered by the no-action position taken therein, such that Railbird may clear Railbird Contracts through Bitnomial, and such that Bitnomial is subject to the same reporting and recordkeeping no-action position as QC Clearing, given that Bitnomial will now serve as the DCO clearing Railbird Contracts.[19] Additionally, Railbird and Bitnomial requested the Divisions amend CFTC Letter No. 25-26 to remove Condition 6, which prohibits intermediation, given that Railbird's DCM Order has been amended to permit intermediation. In support of their position, Railbird and Bitnomial represented, among other things, that:

1. Railbird and Bitnomial will require all Railbird Contracts to be fully collateralized positions, as defined by Commission Regulation 39.2.

2. Railbird will clear all Railbird Contracts through Bitnomial and Bitnomial will clear all Railbird Contracts.

3. 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.

4. 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.

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[15] 17 C.F.R. § 32.2.
[16] Public Law 111–203, 124 Stat. § 1376 (2010).
[17] CEA § 1a(47), 7 U.S.C. § 1a(47).
[18] 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 CFTC v. Banc de Binary Ltd., et al.*, Case No. 2:13-cv-00992-MMD-VCF at 18, ¶65, (D. Nev., Feb. 26, 2016) (Consent Order for Permanent Injunction) (noting that "Dodd-Frank defined an option as a swap . . .").
[19] Request at 3-4.

5. Railbird and Bitnomial 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").

6. Railbird and Bitnomial 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 Bitnomial, as applicable, to any representative of the Commission upon request. Railbird or Bitnomial, as applicable, 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 the request, subject to certain conditions described below, based largely on Railbird's and Bitnomial's statements in support of the Request. The Divisions will not recommend that the Commission initiate an enforcement action against Railbird, Bitnomial, 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 CFTC's regulations), and 39.20(b)(2), as well as the applicable provisions of Parts 43 and 45 of the CFTC'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:[20]

(1) Railbird and Bitnomial will require all Railbird Contracts to be fully collateralized positions, as defined by Commission regulation 39.2;[21]

(2) After the transition from QC Clearing to Bitomial, Railbird will clear all Railbird Contracts through Bitnomial and Bitnomial will clear all Railbird Contracts;

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

[20] Some of these conditions regarding no-action positions 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 relief from the Commission. The public is not required to respond to a collection of information that does not have a valid OMB control number.

[21] 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.

price;

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

(5) Railbird, QC Clearing, and Bitnomial 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 CFTC's regulations (the records required to be retained by this condition (5) are referred to below as the "Required Records");

(6) Railbird, QC Clearing, and Bitnomial 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 the producing party (Railbird, QC Clearing, or Bitnomial) to any representative of the Commission upon request. The producing party (Railbird, QC Clearing, or Bitnomial) 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 letter.[22] 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.[23] Except as explicitly provided in this letter, the no-action positions taken herein do 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, is based upon the representations made to the Divisions, including the representations made by Railbird and Bitnomial that are described herein. Any different, changed, or omitted material facts or circumstances may render this letter void. To the extent this Supplemental Staff Letter modifies CFTC Letter No. 25-26, the no-action position provided in this letter supersedes CFTC Letter No. 25-26. In all other respects, CFTC Letter No. 25-26 continues to be in effect. 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.

[22] 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.

[23] *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.").

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 Silverman, Division of Market Oversight, at (202) 418-5219 or asilverman@cftc.gov; Isabella Bergstein, Division of Market Oversight, at (202) 993-1384 or ibergstein@cftc.gov; Owen Kopon, Division of Market Oversight, at (202) 418-5360 or okopon@cftc.gov; or Daniel O'Connell, Division of Clearing and Risk, at (202) 418 - 5583 or doconnell@cftc.gov.

Sincerely,

Joshua Beale	Richard Haynes
Acting Director	Acting Director
Division of Market Oversight	Division of Clearing and Risk