Payward, Inc. (d/b/a Kraken)
Kraken Derivatives Exchange, Inc.
222 N. LaSalle Street, Suite 400
Chicago, IL 60601

July 20, 2026

VIA ELECTRONIC MAIL (DMOletters@cftc.gov)

Mr. DJ Hennes
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 Extension of Time-Limited No-Action Relief from Commission Regulations 40.1 and 38.3(b)

Dear Acting Director Hennes:

Kraken Derivatives Exchange Inc. (f/k/a "Small Exchange, Inc.") ("**KDE**") respectfully submits to the staff of the Commodity Futures Trading Commission's ("**CFTC**" or "**Commission's**") Division of Market Oversight (the "**Division**"), this request to extend the time-limited no-action relief previously granted by the Division in CFTC Letter No. 25-46, issued on December 11, 2025 ("**CFTC Letter 25-46**"). For the reasons discussed herein, KDE requests that the Division extend the relief beyond the relief period specified in CFTC Letter 25-46 ("**Initial Relief Period**"), to allow KDE to continue pursuing strategic alternatives while preserving its ability to list products for trading without having its designation reinstated pursuant to Commission Regulation 38.3(b).

I. Background

KDE, which has been designated by the Commission as a contract market since March 2020,[1] was acquired by Payward, Inc. (d/b/a Kraken) ("**Kraken**") in October 2025.[2] Kraken is a Delaware corporation formed in 2011 with its principal place of business in Cheyenne, Wyoming. Kraken operates trading and markets businesses in the U.S. and internationally, including NinjaTrader Clearing, LLC, a Commission-registered futures commission merchant. The Request Letter noted that the KDE acquisition was "intended to grow Kraken's presence in the U.S.

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

[2] *See* Letter from Small Exchange, Inc. to Rahul Varma, Acting Director, DMO, dated December 9, 2025 (the "**Request Letter**").

regulated derivatives markets and to bring new activity to [KDE] after several months of non-activity under its previous owners."[3]

Recognizing this period of inactivity, KDE and Kraken sought and obtained (through CFTC Letter 25-46) no-action relief from the Commission's dormancy framework. This time-limited relief remains in effect until the earlier of October 10, 2026 or the date on which a trade is executed on KDE, and permits KDE to list products for trading without having its designation reinstated pursuant to Commission Regulation 38.3(b).[4] Such trading activity would reset the 365-day inactivity period underlying the Commission's dormancy framework. This relief is subject to certain terms and conditions including: (i) a ten-month Initial Relief Period expiring on the earlier of October 10, 2026 or the close of business on the date on which a trade is executed on KDE; (ii) a requirement that KDE submit any products listed for trading in accordance with Part 40 of the Commission's Regulations; (iii) ongoing compliance representations and routine engagement with the Division regarding any material modifications to KDE's business, operations, systems, policies, or programs; and (iv) a reinstatement backstop requiring KDE to reinstate its designation pursuant to Commission Regulation 38.3(b) if trading had not commenced prior to the expiration of the Initial Relief Period. To date, KDE has not yet re-commenced trading.

Since the issuance of CFTC Letter 25-46, Kraken has completed the acquisition of another Commission-registered designated contract market ("**DCM**"), as well as that DCM's affiliated Commission-registered derivatives clearing organization ("**DCO**"). The acquisition provides Kraken with a fully operational derivatives trading and clearing platform capable of supporting Kraken's U.S. regulated derivatives business.

In light of this recent acquisition, Kraken is reevaluating its business plan and the role that KDE will play in the Kraken corporate structure going forward, including potential strategic partnerships and sales opportunities involving KDE that could support renewed trading activity on the exchange under a qualified buyer or other arrangement. As such, were the CFTC Letter 25-46 relief to expire before that process is complete, KDE and Kraken risk limiting future optionality.

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."[5]

[3] *Id.* at 3.
[4] Commission Letter No. 25-46 (Dec. 11, 2025).
[5] KDE'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.

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 evolving statutory and regulatory requirements and with self-regulatory best practices.[6]

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

KDE requests that the Division extend the time-limited no-action relief previously granted in CFTC Letter 25-46, subject to the conditions described herein, for KDE and any market participant that seeks to trade on KDE if, notwithstanding that KDE would otherwise be deemed to be a "dormant designated contract market" pursuant to Commission Regulation 40.1, KDE lists products for trading without having its designation reinstated pursuant to Commission Regulation 38.3(b).

KDE respectfully requests that the extended no-action relief be subject to the following conditions:

A. Duration: The no-action position will remain in effect from the date of issuance of the extension letter until the earlier of (i) ten months after the end of the Initial Relief Period, or (ii) the close of business on the date on which a trade is executed on or pursuant to the rules of KDE (the "**Extended Relief Period**"). Any such trading activity occurring during the Extended Relief Period will reset the 365-day inactivity period that underlies the definition of a "dormant designated contract market" as applied to KDE.

[6] *See Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations*, 67 FR 62873, 62874 (Oct. 9, 2002) (stating 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 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").

B. Certification of Products: During the Extended Relief Period, KDE 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:

a. Throughout the Extended Relief Period, KDE will routinely engage with Division staff regarding any material modifications to its business, operations, systems, policies or programs that might occur as a result of any sales transaction, commercial partnership, or strategic investment involving KDE, and will provide any information relating to any such modifications that is reasonably requested by Division staff.

b. KDE will provide written notice to the Division at least ten business days prior to the first listing for trading of a product during the Extended Relief Period, and will provide concurrently with such notice a written representation from an authorized representative of KDE that, subject solely to the no-action position provided herein with respect to the "dormant designated contract market" definition in Commission Regulation 40.1 and the requirements of Commission Regulation 38.3(b), KDE 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 and applicable self-regulatory obligations.[7]

D. Reinstatement Backstop: If trading has not commenced on KDE prior to the expiration of the Extended Relief Period, then in order to list products for trading, KDE must reinstate its designation pursuant to Commission Regulation 38.3(b).

These conditions are intended to ensure transparency and accountability during KDE's pursuit of sales opportunities and other strategic alternatives, while preserving the Commission's oversight and ensuring an orderly resumption of trading if KDE lists any product during the Extended Relief Period. 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.

[7] 17 CFR § 38.601.

IV. Rationale

We believe that the requested extension is narrowly tailored and consistent with the CEA's objective to promote responsible innovation and fair competition. KDE is pursuing potential strategic partnerships and sales opportunities that could support renewed activity on the exchange under a qualified buyer or other strategic arrangement. If the Initial Relief Period expires before that process is complete, KDE optionality will be limited.

The relief requested herein is consistent with prior no-action relief issued by the Division, including the relief granted in CFTC Letter 25-46, for which KDE is seeking an extension, as well as in a more recent Division no-action letter involving similar facts and circumstances.[8] As in those precedents, the requested relief is conditional, time-limited, and supported by the same underlying policy considerations. Further, KDE and Kraken remain committed to continuing to comply with all applicable statutory and regulatory obligations, and any conditions associated with the requested relief, while maintaining an open and ongoing dialogue with the Division to ensure continued compliance with the CEA and the Commission's Regulations. Since the issuance of the original relief, KDE and Kraken have regularly engaged with staff and have continued to satisfy all applicable regulatory obligations, and remain committed to promptly apprising the Division of any material developments relevant to the requested relief.

Finally, granting the requested extension would further the public interest by allowing a registered entity to remain positioned for renewed activity within U.S. derivatives markets, increasing competition and promoting robust trading and product innovation, without requiring reinstatement during a conditional and time-limited extension period solely as a result of timing.

V. Conclusion

For the reasons set forth above, KDE respectfully requests that Division staff extend the conditional, time-limited no-action position previously granted in CFTC Letter 25-46 and not recommend an enforcement action against KDE, or against any market participant that seeks to trade on KDE, if, subject to the conditions stated above, KDE lists products for trading without having its designation reinstated pursuant to Commission Regulation 38.3(b), notwithstanding that KDE would otherwise be deemed to be a "dormant designated contract market" pursuant to Commission Regulation 40.1.

KDE appreciates the Commission staff's time and attention to this matter. If you have any questions or require further information or documentation, please contact the undersigned at john.palmer@kraken.com.

[8] *See* CFTC Letter No. 26-18 (June 3, 2026).

Respectfully,

/s/ John Palmer
John Palmer
President and Chief Executive Officer
Kraken Derivatives Exchange, Inc.

CC: Trevor Levine
Ryne Miller

* * * * * *

Certification and Undertaking

I hereby certify that the material facts set forth in this letter dated July 20, 2026 are true and complete to the best of my knowledge.

/s/ John Palmer
John Palmer
President and Chief Executive Officer
Kraken Derivatives Exchange, Inc.
July 20, 2026

On behalf of KDE, 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, KDE 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, KDE will promptly so inform Commission staff.

Sincerely,

/s/ John Palmer
John Palmer
President and Chief Executive Officer
Kraken Derivatives Exchange, Inc.
July 20, 2026