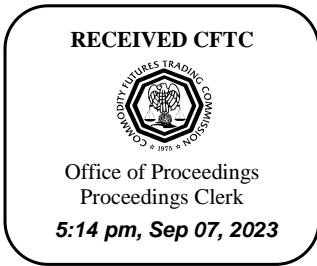


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



In the Matter of:)

ZeroEx, Inc.)

Respondent.)

CFTC Docket No. 23-41

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that, from at least approximately March 2021 to approximately February 2023 (the “Relevant Period”), ZeroEx, Inc. (“0x” or “Respondent”) violated Section 4(a), of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6(a) (2022). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

0x developed and deployed a blockchain-based digital asset protocol (the “0x Protocol”) that offered retail and institutional users in the United States and abroad the ability to trade digital assets through use of various blockchains. 0x users trade on a peer-to-peer basis, meaning, according to 0x, that users “trade directly from [their] Ethereum wallet and retain complete custody of [their] tokens throughout the entire process.” 0x additionally created and operated a front-end user interface called “Matcha,” which utilized the 0x Protocol to enable users to exchange digital assets. Matcha was marketed to retail investors as a decentralized exchange (“DEX”) as well as a DEX aggregator that compiled price data from multiple other DEXs and market makers. By accessing Matcha’s website, users could submit bids and offers, and execute trades on a peer-to-peer basis in various digital assets from multiple sources of liquidity, including market makers and unaffiliated third party DEXs supplying liquidity directly through the Matcha interface.² Such digital assets included certain leveraged tokens, which provided traders approximately 2:1 leveraged exposure to digital assets such as ether (ETH) and bitcoin (BTC), both commodities in interstate commerce.

In doing so, Respondent violated Section 4(a) of the Act, 7 U.S.C. § 6(a), by conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in, off-exchange leveraged or margined retail commodity transactions with customers who were not eligible contract participants or eligible commercial entities³ (collectively, “ECPs”).

In accepting the Offer, the Commission recognizes Respondent’s substantial cooperation with the Commission’s Division of Enforcement. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with this matter. The Commission’s recognition of Respondent’s substantial cooperation and remediation is reflected in the form of a reduced civil monetary penalty.

B. RESPONDENT

ZeroEx, Inc. is a Delaware corporation, with its principal place of business in San Francisco. 0x has never been registered with the Commission in any capacity.

² In addition, during a portion of the Relevant Period, Matcha sourced liquidity for certain digital assets from a market maker wholly-owned by 0x. This wholly-owned market maker did not trade the leveraged tokens at issue in this Order and ceased operations in August 2022.

³ Eligible commercial entities and eligible contract participants and are defined in Sections 1a(17) and (18) of the Act, 7 U.S.C. §§ 1a(17), (18), respectively.

C. FACTS

During the Relevant Period, the 0x Protocol was a collection of smart contracts on the Ethereum blockchain that functioned as a blockchain-based digital asset trading platform.⁴ Respondent developed and deployed the 0x Protocol. Respondent additionally created and operated Matcha, a front-end user interface that was integrated with the 0x Protocol.

By accessing Matcha's website, users could trade on a peer-to-peer basis in thousands of different digital assets trading pairs for settlement on various blockchains.⁵ Among the digital assets that were traded on Matcha were certain leveraged digital assets ("Leveraged Tokens") developed and issued by a third party unaffiliated with 0x ("Issuer 1"), including: BTC 2x Flexible Leverage Index token (BTC2XFLI); ETH 2x Flexible Leverage Index token (ETH2XFLI); ETH 2x Flexible Leverage Index token-Polygon (ETH2XFLI-P); and BTC 2x Flexible Leverage Index token-Polygon (BTC2xFLI-P). By purchasing the Leveraged Tokens through Matcha, users could obtain a fungible token that provided leveraged exposure of approximately 2:1 on, respectively, the price of bitcoin and ether.⁶ For example, buying ETH2XFLI would allow a purchaser to gain approximately a 20% return if the price of ETH (relative to USDC, a stablecoin) rose by 10%. Purchases and sales of the Leveraged Tokens contained no restrictions that would result in, and generally did not result in, actual delivery of the underlying commodities (i.e., bitcoin and ether) within 28 days. Respondent took no steps to restrict access to users who were not eligible contract participants ("ECPs").

0x did not charge trading fees on transactions in Leveraged Tokens. During the Relevant Period, Matcha users transacted a notional value of approximately \$117 million in trades involving Leveraged Tokens.

⁴ A blockchain is a distributed, shared, immutable ledger that facilitates the process of recording transactions and tracking digital assets in a consensus-based network. A smart contract is a piece of computer code that is deployed on a blockchain to automatically execute pre-programmed actions when predetermined conditions are met, and is often intended to contain all terms of a contract—meaning the software can execute the agreement contained in the contract without additional input from the parties. A digital asset is anything that can be stored and transmitted electronically and has associated ownership or use rights. Digital assets include virtual currencies, which are digital representations of value that function as mediums of exchange, units of account, and/or stores of value. Ether ("ETH") is the Ethereum blockchain's native virtual currency. In addition, Ethereum's ERC-20 technical standard allows any individual to develop new digital asset tokens that can be traded on the Ethereum blockchain.

⁵ "Trading pairs" are digital assets that can be traded for each other. For example, a user transacting in the trading pair ETH/USDT can exchange ETH for USDT (Tether, a stablecoin), or vice versa.

⁶ To generate the approximately 2:1 leverage for the Leveraged Tokens, Issuer 1 deployed smart contracts that were designed to automatically borrow stablecoins from third-party blockchain-based lending platforms and then utilize those borrowed stablecoins to engage in automated trading on other third-party decentralized exchanges. The Leveraged Tokens each targeted a leverage ratio of 2x (i.e. 200%) leverage. However, the actual leverage ratio was designed to fluctuate from 1.8x to 2.2x (180% to 220%) for BTC2XFLI and BTC2XFLI-P, and designed to fluctuate between 1.7x to 2.3x (170% to 230%) for ETH2XFLI and ETH2XFLI-P.

After the Division began an inquiry into 0x, Respondent promptly took remedial action and provided substantial cooperation with the Division of Enforcement’s investigation, which materially assisted the investigation. In particular, 0x took immediate steps to prevent Leveraged Tokens from being traded through Matcha.

III. LEGAL DISCUSSION

A. 0x Engaged in Unlawful, Off-Exchange Leveraged or Margined Retail Commodity Transactions in Violation of Section 4(a) of the Act

Pursuant to Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii), any agreement, contract, or transaction in any commodity that is entered into with or offered to (even if not entered into with) non-ECPs on a leveraged or margined basis, or financed by the offeror, counterparty, or a person acting in concert with the offeror or counterparty is, with certain exceptions, subject to Section 4(a) of the Act, 7 U.S.C. § 6(a), “as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.”⁷

Section 4(a) of the Act makes it unlawful for any person to offer to enter into, enter into, execute, confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, or accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity futures contract, unless such transaction is made on or subject to the rules of a board of trade that has been designated or registered by the CFTC as a contract market for the specific commodity.

The Leveraged Tokens were offered to non-ECPs on a leveraged basis by Issuer 1, and subsequently could be traded using Matcha.⁸ During the Relevant Period, utilizing Matcha and the 0x Protocol, Respondent conducted an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in, off-exchange leveraged or margined retail commodity transactions, in the form of transactions in Leveraged Tokens providing leveraged exposure to bitcoin and ether by non-ECP persons, which did not result in actual delivery within 28 days. These leveraged or margined retail commodity transactions were not conducted on or subject to the rules of a board of trade that has been designated or registered by the CFTC as a contract market and therefore 0x violated Section 4(a) of the Act.

⁷ Section 2(c)(2)(D)(ii)(III)(aa) of the Act, 7 U.S.C. § 2(c)(2)(D)(ii)(III)(aa), provides an exception for contracts of sale that result in actual delivery within 28 days. That exception is inapplicable to transactions involving Leveraged Tokens on Matcha, because (i) the Leveraged Token positions were not physically settled contracts of sale that required delivery of the underlying commodities within 28 days, but rather the positions could exist perpetually; and (ii) the positions were subject to the potential of forced liquidation. *See* Retail Commodity Transactions Involving Certain Digital Assets (“2020 Interpretive Guidance”), 85 Fed. Reg. 37,734-01 at 37,743-37,744 (June 24, 2020).

⁸ As the Commission has explained, the term “offeror” in the context of Section 2(c)(2)(D) includes persons or entities that present, solicit, or facilitate the use of margin, leverage, or financing arrangements. *See* 2020 Interpretive Guidance, 85 Fed. Reg. at 37,737 n.63, 37,736 n.164. Section 2(c)(2)(D) encompasses, *inter alia*, any such retail transaction entered into or financed by the offeror or a person acting in concert with the offeror. *Id.* By deploying a decentralized protocol (the 0x Protocol) and operating a front-end user interface (Matcha) that “facilitated” and “provide[d] a purchaser with the ability to source financing or leverage from other users or third parties,” Respondent’s conduct met this standard. *Id.* at 37,742 n.152 & 37,743 n.165.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4(a) of the Act, 7 U.S.C. § 6(a).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2022), relating to, or arising from, this proceeding;
 - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Acknowledges that the Commission is the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act and the Small

Business Regulatory Enforcement Fairness Act of 1996, specified in subparts 6 and 7 of Paragraph C of this Section;

- E. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- F. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Respondent violated Section 4(a) of the Act, 7 U.S.C. § 6(a) (2022);
 - 2. Orders Respondent to cease and desist from violating Section 4(a) of the Act, 7 U.S.C. § 6(a) (2022);
 - 3. Orders Respondent to pay a civil monetary penalty in the amount of two hundred thousand US dollars (\$200,000), plus post-judgment interest in the event such civil monetary penalty is not paid within ten days of the date of entry of this Order; and
- G. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. ZeroEx, Inc., and its successors and assigns shall cease and desist from violating Section 4(a) of the Act, 7 U.S.C. § 6(a) (2022).
- B. Respondent shall pay a civil monetary penalty in the amount of two hundred thousand US dollars (\$200,000) ("CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid portion of the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.

HQ Room 266
Oklahoma City, OK 73169
9-AMC-AR-CFTC@faa.gov

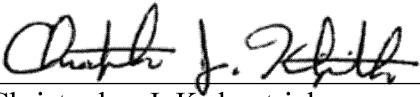
If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above email address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581;

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of ZeroEx, Inc.'s successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and any of its successors and assigns shall comply with this agreement and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
 3. **Change of Address/Phone:** Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone numbers and mailing addresses within ten calendar days of the change.
 4. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings, or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership, bankruptcy, or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 7, 2023