



**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
[www.cftc.gov](http://www.cftc.gov)

Division of Market Oversight  
Division of Clearing and Risk

**Re: No-Action Position with Respect to Commission Regulations 38.8(b), 38.10, 38.951 (in Part), 39.20(b)(2), and Parts 43 and 45, for ForecastEx Contracts**

**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 from ForecastEx LLC (“ForecastEx”). ForecastEx requested a no-action position, on their own behalf and on behalf of their participants, (the “Request”)<sup>1</sup> from the swap data reporting and recordkeeping requirements of sections 38.8(b), 38.10, 38.951 (in part), 39.20(b)(2), along with Parts 43 and 45 of the Commission’s regulations (collectively, the “Relevant Regulations”). ForecastEx requests a no-action position with respect to options with the features described in this letter traded and cleared pursuant to ForecastEx’s rules. ForecastEx is a designated contract market (“DCM”) and a registered derivatives clearing organization (“DCO”).

**Background**

On June 24, 2024, ForecastEx was designated as a DCM and registered as a DCO. ForecastEx stated in the Request that it lists for trading “ForecastEx Event Positions based on the outcomes of various economic or commercial events” (the “ForecastEx Contracts”).<sup>2</sup> ForecastEx Contracts are binary options that settle “based on the outcome of an [event], including the payment of an absolute amount to the holder of either the ‘Yes’ or ‘No’ Position and no payment to the holder of the opposite Event Position.”<sup>3</sup>

In the Request, ForecastEx represented that the ForecastEx Contracts “fall within the CFTC’s authority due to their status as swaps under the Commodity Exchange Act (“CEA”).”<sup>4</sup>

---

<sup>1</sup> Letter from G. Deese to the Division of Market Oversight and Division of Clearing and Risk re: Request for No-Action Relief from Commission Regulations 38.8(b), 38.10, 38.951, 39.20(b)(2), and Parts 43 and 45, for Swaps Traded On and Cleared by ForecastEx (June 27, 2024) (the “Request”).

<sup>2</sup> Request at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*

ForecastEx also represented that the ForecastEx Contracts “are swaps under CEA definitions because they are contracts that provide for a payment that is dependent on the occurrence, non-occurrence, or extent of the occurrence of events associated with financial, economic, and commercial consequences.”<sup>5</sup>

As options, binary options fall within the Commission’s plenary options authority under Commodity Exchange Act (“CEA”) section 4c(b).<sup>6</sup> 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. When promulgating Commission regulation 32.2, the Commission stated that “the swap definition . . . includes options . . . (whether or not traded on a DCM).”<sup>7</sup> Commission 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.<sup>8</sup>

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)<sup>9</sup> amended the CEA by adding a definition of “swap.”<sup>10</sup> The Dodd-Frank Act required the Commission and the Securities and Exchange Commission 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[.]”<sup>11</sup>

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. In particular, Parts 43 and 45 require, respectively, real-time reporting of swap transaction and pricing data to swap data repositories (“SDRs”) for purposes of public dissemination and reporting of broader swap data to SDRs for the CFTC’s use in fulfilling its surveillance and market analysis missions.

## **No-Action Position Requested**

ForecastEx requested that the Divisions not recommend the Commission take enforcement action against ForecastEx or its participants for failure to report ForecastEx Contracts to an SDR or to fulfill any of the other requirements of the Relevant Regulations. ForecastEx states that it requests a no-action position that is comparable to the no-action

---

<sup>5</sup> *Id.*

<sup>6</sup> 7 U.S.C. 6c(b).

<sup>7</sup> Commodity Options, 77 Fed. Reg. 25320, 25321, n.6 (Apr. 27, 2012).

<sup>8</sup> 17 C.F.R. § 32.2.

<sup>9</sup> Public Law 111–203, 124 Stat. 1376 (2010).

<sup>10</sup> 7 U.S.C. 1a(47).

<sup>11</sup> 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 In re: Blockratize, Inc. d/b/a Polymarket.com*, CFTC Dkt. No. 22-09, at 2, 7 (Jan. 3, 2022) (“binary options . . . constitute swaps under the CFTC’s jurisdiction, and therefore can only be offered on a registered exchange in accordance with the Act and Regulations”).

positions concerning reporting of binary options provided in CFTC Letters Nos. 17-31, 17-32, and 21-11.<sup>12</sup> ForecastEx makes the following representations:

- ForecastEx Contracts will be fully collateralized;
- ForecastEx will publish time and sales data for all ForecastEx Contracts transactions on its website promptly after execution of the transactions;
- ForecastEx will fully comply with Parts 16 of the Commission’s regulations, including providing transactional information to the Commission pursuant to Commission Regulation 16.02;
- ForecastEx exchange will clear all ForecastEx Contracts through ForecastEx clearinghouse and ForecastEx clearinghouse and ForecastEx clearinghouse will clear all ForecastEx Contracts;
- ForecastEx 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 ForecastEx to any representative of the Commission upon request. ForecastEx 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 ForecastEx’s Request, subject to certain conditions described below, based on ForecastEx’s representations and statements in support of the Request. The Divisions note that this no-action position is similar to previous no-action positions taken with respect to reporting certain binary options transactions.<sup>13</sup> The Divisions will not recommend that the Commission initiate an enforcement action against ForecastEx or its 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 Commission’s regulations), 39.20(b)(2), as well as the applicable provisions of Parts 43 and 45 of the Commission’s regulations, or the requirements of the relevant CEA provisions pursuant to which the Relevant Regulations were promulgated, with respect to ForecastEx Contracts, subject to the following conditions:<sup>14</sup>

---

<sup>12</sup> See CFTC Letter No. 17-31 (Jun. 30, 2017), available at <https://www.cftc.gov/csl/17-31/download>; CFTC Letter No. 17-32 (Jun. 30, 2017), available at <https://www.cftc.gov/csl/17-32/download>; CFTC Letter No. 21-11 (Apr. 22, 2021), available at <https://www.cftc.gov/csl/21-11/download>.

<sup>13</sup> See CFTC Letters Nos. 17-31, 17-32, and 21-11.

<sup>14</sup> Some of these conditions regarding the no-action position 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

- 1) ForecastEx will require all ForecastEx Contracts to be fully collateralized positions, as defined by Commission regulation 39.2;<sup>15</sup>
- 2) ForecastEx will clear all ForecastEx Contracts through ForecastEx clearinghouse and ForecastEx clearinghouse will clear all ForecastEx Contracts;
- 3) ForecastEx will publish on its website the following information for all ForecastEx transactions promptly after execution thereof: trade timestamp, contract quantity, and price;
- 4) ForecastEx will provide the Commission with all transactional information as described in Commission regulation 16.02;
- 5) ForecastEx will comply with all reporting and recordkeeping requirements of the CEA and CFTC regulations applicable to it in its respective capacities as a DCM and 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 records required to be retained by this condition (5) are referred to below as the "Required Records");
- 6) ForecastEx keeps 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 ForecastEx to any representative of the Commission upon request. ForecastEx 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 ForecastEx Contracts or the conduct of any person covered by the no-action position.<sup>16</sup> 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

---

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 position from the Commission or its staff. The public is not required to respond to a collection of information that does not have a valid OMB control number.

<sup>15</sup> CFTC 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.

<sup>16</sup> For the avoidance of doubt, this letter is not intended to address whether any of the ForecastEx 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.

any other Commission division or office. This letter and the no-action position taken herein are not binding on the Commission.<sup>17</sup> Except as explicitly provided in this letter, the no-action position taken herein does 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, are based upon the representations made to the Divisions. Any different, changed, or omitted material facts or circumstances may render this letter void. As with all no-action letters, the Divisions retain the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action position provided herein.

If you have any questions concerning this letter, please contact Paul Chaffin, Assistant Chief Counsel, Division of Market Oversight, at (202) 418-5185 or pchaffin@cftc.gov; Chase Lindsey, Assistant Chief Counsel, Division of Market Oversight, at (202) 740-4833 or clindsey@cftc.gov; Owen Kopon, Associate Chief Counsel, Division of Market Oversight, at (202) 418-5360 or okopon@cftc.gov; or Gavin Young, Special Counsel, Division of Clearing and Risk, at (202) 418- 5976 or gyoung@cftc.gov.

Sincerely,

---

Vincent McGonagle  
Director  
Division of Market Oversight

---

Clark Hutchison  
Director  
Division of Clearing and Risk

---

<sup>17</sup> 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.”).