

ForecastEx LLC
209 South LaSalle Street
10th Floor
Chicago, IL 60604
CFTC Regulations 38.8(b),
38.10, 38.951, 39.20(b)(2)
and Parts 43 and 45

June 27, 2024

Vince McGonagle
Director, Division of Market Oversight

Clark Hutchinson III
Director, Division of Clearing and Risk

U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, D.C. 20581

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.

Dear Mr. McGonagle and Mr. Hutchinson,

Pursuant to Regulation 140.99, ForecastEx LLC (“ForecastEx”) writes to respectfully request that 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 (“Commission” or “CFTC”) issue no-action relief confirming that the Divisions will not recommend that the Commission commence enforcement action against ForecastEx or its participants with respect to contracts with the features described in this letter traded on and cleared by ForecastEx (“ForecastEx Event Positions”) for failure to report ForecastEx Event Positions to a swap data repository (“SDR”) or to fulfill the recordkeeping requirements of CFTC Regulations 38.8(b), 38.10, and 38.951,¹ 39.20(b)(2) along with Parts 43 and 45 of the Commission’s regulations (collectively, the “Relevant Regulations”).

I. Background

ForecastEx has applied for registration as a joint Designated Contract Market (“DCM”) and Derivatives Clearing Organization (“DCO”) that lists for trading and clears ForecastEx Event Positions based on the outcomes of various economic or commercial events (“Event Questions”). Market participants enter ForecastEx Event Positions by bidding for either a “Yes” position or a “No” position. For a market participant to enter a “Yes” position, there must be another market participant who simultaneously enters the paired “No” position (together, “Event Market”). The

¹ To the extent that CFTC Regulation 38.951 requires compliance with Part 45 of the CFTC’s Regulations.

paired “Yes” and “No” positions of an Event Market are entered via inverse pricing. ForecastEx accepts an Event Market for clearing when the combined bids for the “Yes” and “No” positions equal \$1.01. ForecastEx does not list or clear any other contract.

ForecastEx Event Positions are characterized by settlement based on the outcome of an Event Question, including the payment of an absolute amount to the holder of either the “Yes” Position or “No” Position and no payment to the holder of the opposite Event Position. Market participants on opposite sides of an Event Market are not counterparties to each other. Instead, the market participants are initially entered into a contract with ForecastEx, making novation unnecessary. Market participants are not permitted to enter a Bid for a ForecastEx Event Position unless they deposit and maintain sufficient collateral to fully collateralize (*i.e.*, completely cover) any loss that could be incurred in connection with the Event Position resulting from the pairing of any such Bid. Collateral transfers made by a market participant are irrevocable and unconditional when effected except in the case of funds transferred to a market participant in the event of fraud or error.

ForecastEx’s Event Positions fall within the CFTC’s authority due to their status as swaps under the Commodity Exchange Act (“CEA”). The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)² amended the CEA by adding a definition of “swap.”³ The Dodd-Frank Act required the Commission and the Securities and Exchange Commission (together, the “Commissions”) to further define jointly the term “swap.” In relevant part, the CEA defines a swap as “...any agreement, contract, or transaction... that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;”⁴ ForecastEx believes that its Event Positions 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.

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.

II. Need for No-Action Relief

As a DCM and a DCO that lists for trading and clears ForecastEx Event Positions, ForecastEx is seeking comparable relief that the Divisions provided to certain other market participants related to binary options, namely the relief provided in CFTC Letter Nos. 21-11, 17-31 and 17-32. The Relevant Regulations, while advancing the important goal of expanding

² Public Law 111-203, 125 Stat. 1376 (2010).

³ CEA § 1a(47), 7 U.S.C. § 1a(47).

⁴ CEA § 1a(47), 7 U.S.C. § 1a(47).

transparency in the swaps market, are not well suited for the particular characteristics of ForecastEx Event Positions. To that end, ForecastEx makes the following representation:

- ForecastEx Event Positions will be fully collateralized;
- ForecastEx will publish time and sales data for all ForecastEx Event Position transactions on its website promptly after execution of the transactions;
- ForecastEx will fully comply with Part 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 Event Positions through ForecastEx clearinghouse and ForecastEx clearinghouse will clear all ForecastEx Event Positions
- 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.

As Commission staff have previously concluded, these other forms of reporting for these types of products can fully advance Congress' transparency goals in Dodd-Frank in an efficient manner. There has been no change in circumstances or law or any material difference in the type of product ForecastEx offers compared to those products offered for CFTC Letter Nos. 21-11, 17-31, and 17-32. Thus, comparable relief is appropriate for ForecastEx regarding the Event Positions.

III. Relief Requested

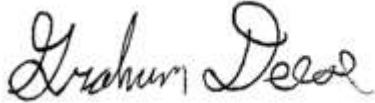
ForecastEx respectfully requests that the Divisions not recommend the Commission take enforcement action against ForecastEx or its participants for failure to report ForecastEx Event Positions to an SDR or to fulfill any of the other requirements of the Relevant Regulations.

* * *

Thank you for your attention to this request. Please do not hesitate to contact me at gdeese@forecastex.com for any further information the Commission or its staff may require in connection with this request. Pursuant to Regulation 140.99(c)(3)(i), the undersigned hereby certifies that the material facts set forth above are true and complete to the best of his knowledge. Pursuant to Regulation 140.99(c)(3)(ii), ForecastEx hereby undertakes that, if at any time prior to the issuance of a no-action or exemptive letter, any material representation made in this letter

ceases to be true and complete, it will promptly inform the Commission staff in writing of all materially changed facts and circumstances.

Respectfully submitted,

A handwritten signature in cursive script that reads "Graham Deese".

Graham Deese, ForecastEx LLC Chief Regulatory Officer

cc: David G. Downey, ForecastEx LLC Chief Executive Officer
Andrew Naughton, ForecastEx LLC Chief Financial Officer