



## 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 MIAxdx 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 LedgerX LLC d/b/a MIAxdx Derivatives Exchange LLC (“MIAxdx”). MIAxdx requested a no-action position (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”). MIAxdx requests a no-action position with respect to contracts with the features described in this letter traded and cleared pursuant to MIAxdx’s rules. MIAxdx is registered as a designated contract market (“DCM”) and a derivatives clearing organization (“DCO”).<sup>2</sup>

### Background

MIAxdx was designated as a DCM on June 24, 2019.<sup>3</sup> MIAxdx was registered as a DCO for the clearing of “fully collateralized digital currency swaps” on July 24, 2017.<sup>4</sup> On September 2, 2020, the Commission issued an Amended Order of Registration allowing MIAxdx to clear “fully collateralized futures, options on futures, and swaps.”<sup>5</sup> MIAxdx stated in the Request that it will seek to list for trading “binary options on the outcomes of various

---

<sup>1</sup> Request for Relief from Certain Swap Data Reporting and Recordkeeping Requirements (July 11, 2024) (the “Request”).

<sup>2</sup> MIAxdx is also registered as a swap execution facility (“SEF”), although it is not requesting relief in connection with the SEF at this time. *See* Request at 2 n.3.

<sup>3</sup> In the Matter of the Application of LedgerX LLC for Designation as a Contract Market, Order of Designation (June 24, 2019), *available at*

<https://www.cftc.gov/sites/default/files/filings/documents/2019/orgledgerxcdmorder190624.pdf>.

<sup>4</sup> In the Matter of the Application of LedgerX, LLC For Registration as a Derivatives Clearing Organization, Order of Registration (July 24, 2017), *available at*

<https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/ledgerxcdcoregorder72417.pdf>.

<sup>5</sup> In the Matter of the Application of LedgerX, LLC For Registration as a Derivatives Clearing Organization, Amended Order of Registration (Sept. 2, 2020), *available at*

<https://www.cftc.gov/media/4556/ledgerxllcamendeddcoorder9-2-2020/download>.

economic or commercial events” (the “MIAXdx Contracts”).<sup>6</sup> MIAXdx Contracts are binary options that “settle at expiration by the payment of an absolute amount to the holder of one side of the option and no payment to the counterparty, depending on the occurrence or non-occurrence of the event that is the subject of the contract.”<sup>7</sup>

In the Request, MIAXdx represented that “MIAXdx Contracts are swaps within the meaning of the [Commodity Exchange Act (‘CEA’)]” because “Section 1a(47) of the CEA expressly defines ‘swaps’ to include options as well as any contract that provides for any purchase, sale, payment, or delivery that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”<sup>8</sup>

As options, binary options fall within the Commission’s plenary options authority under Commodity Exchange Act (“CEA”) section 4c(b).<sup>9</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>10</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>11</sup>

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)<sup>12</sup> amended the CEA by adding a definition of “swap.”<sup>13</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>14</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

---

<sup>6</sup> Request at 2. MIAX stated that it initially will “seek[] to list cash-settled binary options on cryptocurrencies,” but “expects to offer other types of binary options in the future.” Request at 2 n.4.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*; see also 7 U.S.C. § 1(a)(47)(A)(i)-(ii).

<sup>9</sup> 7 U.S.C. § 6c(b).

<sup>10</sup> Commodity Options, 77 Fed. Reg. 25320, 25321 n.6 (Apr. 27, 2012).

<sup>11</sup> 17 C.F.R. § 32.2.

<sup>12</sup> Public Law 111–203, 124 Stat. 1376 (2010).

<sup>13</sup> 7 U.S.C. § 1a(47).

<sup>14</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”).

reporting of broader swap data to SDRs for the CFTC’s use in fulfilling its surveillance and market analysis missions.

### **No-Action Position Requested**

MIAXdx requested that the Divisions not recommend the Commission take enforcement action against MIAXdx or its participants for failure to report MIAXdx Contracts to an SDR or to fulfill any of the other requirements of the Relevant Regulations. MIAXdx states that it requests a no-action position that is comparable to the no-action positions concerning reporting of binary options provided in CFTC Letters Nos. 17-31, 17-32, and 21-11.<sup>15</sup> MIAXdx makes the following representations:

- MIAXdx will require that all MIAXdx Contracts be fully collateralized;
- MIAXdx will clear the MIAXdx Contracts solely through MIAXdx;
- MIAXdx will publish on its website the following time and sales data for all MIAXdx Contracts transactions promptly after execution thereof – trade timestamp, contract, quantity, and price (in USD);
- MIAXdx shall provide DMO with transactional information as described in Commission regulation 16.02;
- MIAXdx shall continue to comply with all SDR and recordkeeping requirements of the CEA and Commission regulations, other than the Relevant Regulations, including (without limitation) the applicable requirements of Parts 38 and 39 of the CFTC’s regulations (the records described in this Undertaking 5 are referred to below as the “Required Records”);
- No Participants shall clear MIAXdx Contracts through any third-party clearing member;
- MIAXdx 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 MIAXdx to any representative of the Commission upon request. MIAXdx 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

---

<sup>15</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>. The Divisions intend for the position provided in this letter to match the position provided in No-Action Letters 17-31, 17-32, and 21-11 in all material respects. Deviations from the position provided in No-Action Letters 17-31, 17-32, and 21-11 in this letter are non-substantive, and reflect the distinct characteristics of MIAXdx Contracts. Staff issued an additional no-action letter that is similar to CFTC Letters Nos. 17-31, 17-32, and 21-11 on July 12, 2024. See CFTC Letter No. 24-09 (July 12, 2024), available at <https://www.cftc.gov/csl/24-09/download>.

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 MIAXdx's Request, subject to certain conditions described below, based on MIAXdx's representations and statements in support of the Request. The Divisions note that this no-action position is similar to and consistent with previous no-action positions taken with respect to reporting certain binary options transactions.<sup>16</sup> The Divisions will not recommend that the Commission initiate an enforcement action against MIAXdx 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 MIAXdx Contracts, subject to the following conditions:<sup>17</sup>

- 1) MIAXdx will require all MIAXdx Contracts to be fully collateralized positions, as defined by Commission regulation 39.2;<sup>18</sup>
- 2) MIAXdx will clear all MIAXdx Contracts through MIAXdx and MIAXdx will clear all MIAXdx Contracts;
- 3) MIAXdx will publish on its website the following information for all MIAXdx transactions promptly after execution thereof: trade timestamp, contract quantity, and price;
- 4) MIAXdx will provide the Commission with all transactional information as described in Commission regulation 16.02;
- 5) MIAXdx 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");

---

<sup>16</sup> See CFTC Letters Nos. 17-31, 17-32, 21-11, and 24-09.

<sup>17</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 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>18</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.

- 6) No MIAXdx participant clears a MIAXdx Contract through a third-party clearing member; and
- 7) MIAXdx 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 MIAXdx, as applicable, to any representative of the Commission upon request. MIAXdx, 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.

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 MIAXdx Contracts or the conduct of any person covered by the no-action position.<sup>19</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 any other Commission division or office. This letter and the no-action position taken herein are not binding on the Commission.<sup>20</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 Chase Lindsey, Assistant Chief Counsel, Division of Market Oversight, at (202) 740-4833 or [clindsey@cftc.gov](mailto:clindsey@cftc.gov); Paul Chaffin, Assistant Chief Counsel, Division of Market Oversight, at (202) 418-5185 or [pchaffin@cftc.gov](mailto:pchaffin@cftc.gov); Owen Kopon, Associate Chief Counsel, Division of Market Oversight, at (202) 418-5360 or [okopon@cftc.gov](mailto:okopon@cftc.gov); or Gavin Young, Special Counsel, Division of Clearing and Risk, at (202) 418- 5976 or [gyoung@cftc.gov](mailto:gyoung@cftc.gov).

---

<sup>19</sup> For the avoidance of doubt, this letter is not intended to address whether any of the MIAXdx 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.

<sup>20</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.”).

Sincerely,

---

Vincent McGonagle  
Director  
Division of Market Oversight

---

Clark Hutchison  
Director  
Division of Clearing and Risk