



July 11, 2024

VIA ELECTRONIC MAIL ONLY

Vincent McGonagle
Director, Division of Market Oversight
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Clark Hutchison III
Director, Division of Clearing and Risk
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Request for Relief from Certain Swap Data Reporting and Recordkeeping Requirements

Dear Mr. McGonagle and Mr. Hutchison:

Pursuant to Commodity Futures Trading Commission (the “CFTC” or “Commission”) Regulation 140.99, LedgerX LLC d/b/a MIAAX Derivatives Exchange (“MIAAXdx”) requests no-action relief from certain swap data reporting (“SDR”) and recordkeeping requirements applicable to binary options traded on or pursuant to the rules of the MIAAXdx designated contract market (“DCM”), and cleared by MIAAXdx (the “MIAAXdx Contracts”).

This request is consistent with the stated purpose of the Commission’s swap data reporting and recordkeeping rules under the Commodity Exchange Act (“CEA”) and with certain no-action relief previously granted by DMO and DCR regarding the types of swaps at issue (namely, binary options).¹ Indeed, DMO and DCR most recently granted similar relief for certain binary options traded on Kalshi and cleared by MIAAXdx.² For the reasons discussed below, MIAAXdx respectfully requests that the divisions grant the reporting and recordkeeping relief described herein for MIAAXdx Contracts.

¹ See CFTC Letter 17-31; CFTC Letter 17-32; CFTC Letter 21-11.

² See CFTC Letter 21-11.

I. Background

As a registered DCM and derivatives clearing organization (“DCO”),³ MIAxdx is developing an innovative, vibrant marketplace for the trading of binary options on the outcomes of various economic or commercial events.⁴ The MIAxdx Contracts will be fully collateralized and traded on a central limit order book (“CLOB”). Like the binary options for which reporting relief was previously granted, the MIAxdx Contracts 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.

II. Applicable SDR and Recordkeeping Requirements

A. Relevant Rules and Regulations

MIAxdx Contracts are swaps within the meaning of the CEA. 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.⁵ The Commission likewise recognized that options are a type of swap when promulgating CFTC Regulation 32.2.⁶ Additionally, both DMO and DCR recognized that

³ On September 2, 2020, Commission expanded MIAxdx’s clearing authority beyond just digital currency swaps to include all “fully collateralized futures, options on futures, and swaps,” thereby effectively enabling MIAxdx to clear contracts which do not pertain to digital currencies. *See In the Matter of the Application of LedgerX, LLC For Registration as a Derivatives Clearing Organization* (Sept. 2, 2020). MIAxdx is also registered as a swap execution facility (“SEF”), although it is not requesting relief in connection with the SEF at this time.

⁴ In the first instance, MIAxdx seeks to list cash-settled binary options on cryptocurrencies (such as Bitcoin), although MIAxdx expects to offer other types of binary options in the future.

⁵ *See* 7 U.S.C. § 1(a)(47)(A)(i)-(ii).

⁶ *Commodity Options*, 77 Fed. Reg. 25320, 25321 n.6 (Apr. 27, 2012). Since DMO and DCR first granted no-action relief under CFTC Letter 17-31, the definition of the term “swap” found in CFTC Regulation 1.3 has not changed, although changes unrelated to the swap definition were made to Regulation 1.3. On February 23, 2018, the Commission revised CFTC Regulation 1.3 to list definitions alphabetically, rather than by subparagraph. *See Definitions*, 83 Fed. Reg. 7979 (Feb. 23, 2018). Apart from typographical errors, those amendments “do not substantively alter any existing definition or other requirement set forth in other Commission regulations.” *Definitions*, 83 Fed. Reg. 7979, 7980. The Commission later amended CFTC Regulation 1.3 as it pertained to the *de minimis* exception to the “swap dealer” definition, but again that amendment did not impact the definition of “swap” itself. *See De Minimis Exception to the Swap Dealer Definition*, 83 Fed. Reg. 56666, 56689 (Nov. 13, 2018). In 2019, the Commission once again amended the *de minimis* exception to the “swap dealer” definition as it pertained to insured depository institutions, but that amendment did not impact the definition of “swap” itself. *See De Minimis Exception to the Swap Dealer Definition – Swaps Entered Into by Insured Depository Institutions in Connection With Loans to Customers*,



binary options, such as the MIAxdx Contracts, are swaps in connection with the no-action relief granted in CFTC Letter No. 17-31 (the “NADEX No-Action Relief”),⁷ CFTC Letter No. 17-32 (the “Cantor No-Action Relief”),⁸ and CFTC Letter No. 21-11 (“Joint MIAxdx-Kalshi No-Action Relief”)⁹ (collectively “Binary Option Reporting Relief”).

Because MIAxdx Contracts are swaps, CEA section 2(a)(13)(G) requires that they be reported to a swap data repository.¹⁰ Certain Commission regulations regarding swap data reporting and recordkeeping also apply. Relevant regulations applicable to MIAxdx as a DCM and DCO include the following:

- Commission Regulation 38.8(b): “Prior to listing swaps for trading on or through a designated contract market, each designated contract market must obtain from the Commission a unique, alphanumeric code assigned to the designated contract market by the Commission for the purpose of identifying the designated contract market with respect to unique swap identifier creation Each designated contract market must generate and assign a unique swap identifier at, or as soon as technologically practicable following, the time of execution of the swap, in a manner consistent with the requirements of part 45.”¹¹
- Commission Regulation 38.10: “With respect to swaps traded on and/or pursuant to the rules of a designated contract market, each designated contract market must maintain and report specified swap data as provided under parts 43 and 45 of this chapter.”¹²
- Commission Regulation 38.951: “A designated contract market must maintain such records, including trade records and investigatory and disciplinary files, in accordance with the requirements of § 1.31 of this chapter, and in accordance with part 45 of this chapter, if

84 Fed. Reg. 12450, 12466 (Apr. 1, 2019). Most recently, the Commission proposed to amend CFTC Regulation 1.3 to revise the definition of “Business day.” *See Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants*, 89 Fed. Reg. 15312 (March 1, 2024).

⁷ See CFTC Letter 17-31 at 2.

⁸ See CFTC Letter 17-32 at 2.

⁹ See CFTC Letter 21-11 at 3.

¹⁰ See 7 U.S.C. § 2(a)(13)(G) (requiring that each swap, whether cleared or uncleared, be reported to a registered swap data repository).

¹¹ 17 C.F.R. § 38.8(b).

¹² 17 C.F.R. § 38.10.

applicable.”¹³

- Commission Regulation 39.20(b)(2): “A derivatives clearing organization that clears swaps must maintain swap data in accordance with the requirements of part 45 of this chapter.”¹⁴
- Part 43: In relevant part, Part 43 requires “rules relating to the reporting and public dissemination of certain swap transaction and pricing data to enhance transparency and price discovery pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.”¹⁵
- Part 45: Establishing various SDR and recordkeeping requirements applicable to DCMs and DCOs.

B. Regulatory Purpose

The stated goals of the SDR rules under Parts 43 and 45, and the 2020 amendments thereto, are to mitigate systemic risk, enhance transparency to the public of pricing and trade data, and improve the regulatory experience for market participants.¹⁶ More specifically, Part 43 of the Commission’s regulations relates to the real-time public reporting of swap pricing and transaction data, which appear on the “public tape”, and Part 45 relates to the regulatory reporting of swap data to the Commission – by swap dealers and other covered entities – in the interest of increasing insight into the swaps markets to assist with regulatory oversight. Moreover, the Commission’s interests in SDR rules, and the recent amendments thereto, align with Congress’ stated purpose in directing the Commission to adopt real-time public reporting regulations,¹⁷ as well as Congress’ intent of improving reporting and market transparency under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).¹⁸

¹³ 17 C.F.R. § 38.951.

¹⁴ 17 C.F.R. § 39.20(b)(2).

¹⁵ See 17 C.F.R. § 43.1(a).

¹⁶ See Statement of Chairman Heath P. Tarbert in Support of Final Rules on Swap Data Reporting (Sept. 17, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement091720c>.

¹⁷ See 7 U.S.C. § 2(13)(B) (stating “[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to *enhance price discovery*.”) (emphasis added).

¹⁸ See Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Pub. L. 111–203, 124 Stat. 1376 (2010).

III. Application to MIAXdx Contracts

A. MIAXdx Contracts Merit Distinct Treatment

Although MIAXdx Contracts are swaps within the meaning of the CEA, they are not otherwise equivalent to the highly-leveraged institutional products attributed to the 2008 financial crisis which necessitated improved reporting and transparency under the Dodd-Frank Act. Namely, MIAXdx Contracts will be fully collateralized and primarily traded on a CLOB by market participants (“MIAXdx Participants”). While legally classified as swaps, the MIAXdx Contracts share most of the characteristics of exchange-traded futures or options thereon (fungibility, offset, exchange-traded with standardized terms on a single marketplace) with few of the indicia of traditional swaps (bilateral, traded over-the-counter, and customized). Moreover, potential market participant exposures associated with the MIAXdx Contracts are anticipated to be far lower than those associated with traditional swaps and swaps market participants. Given their notional sizes and the diversity of MIAXdx Participants, MIAXdx Contracts have no bearing on systemic risk or potential transmission of risk or contagion among systemically important financial institutions. Thus, the regulatory goals of Part 43 and Part 45 swaps reporting applicable to other swaps have limited to negligible application to the MIAXdx Contracts.

Lastly, MIAXdx recognizes the important role price transparency plays in fostering price competition and reducing the cost of hedging.¹⁹ However, as MIAXdx intends to fully comply with Part 16 of the Commission’s regulations – and also to publish on its website relevant time and sales data for all transactions promptly after execution thereof – the goals of the SDR rules will continue to be met under the terms of MIAXdx’s requested relief.

B. Commission Precedent Suggests No-Action Relief is Appropriate

The relief previously granted in the Binary Option Reporting Relief avoids substantial operational and financial burdens while providing more rapid and reliable information to market participants and the Commission.²⁰

Swap data reporting and recordkeeping requirements impose substantial financial and operational burdens on MIAXdx. The cost of reporting to a swap data repository is uneconomical, given the relatively small scale of anticipated trading in MIAXdx Contracts, which are fully collateralized which necessarily limits trading volume. Maintaining such reporting also requires significant engineering resources. Those costs cannot readily be passed through to end users or absorbed by MIAXdx, and the regulatory value of such reporting, considering the policy goals of

¹⁹ See Statement of Commissioner Dan M. Berkovitz Regarding Amendments to the Swap Data Reporting Rules (Sept. 17, 2020), https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement091720#_ftn2.

²⁰ See CFTC Letter 17-31; CFTC Letter 17-32; CFTC Letter 21-11.



Parts 43 and 45, is negligible, especially given the detailed time and sales data the Commission receives from MIAXdx currently pursuant to Part 16 and MIAXdx's commitment to publish relevant time and sales data in real time on its website in connection with this relief. Permitting direct reporting to market participants and the CFTC allows those engineering resources to be put to better use.

The Binary Option Reporting Relief provides more accurate and rapid reporting of swap data to both market participants and the Commission. Information can be publicly disseminated directly to the market more quickly and reliably by the exchanges themselves, without using an intermediary in the form of an SDR. The Commission also can obtain such information more quickly and reliably directly from MIAXdx through Regulation 16.02 reporting, without any of the potential pitfalls of adding an SDR as an intermediary. Thus, the relief previously granted to others would also serve the interests of the Commission and the market in this case, both in reducing burdens and in improving swap data reporting. Lastly, absent this relief, it would be uneconomic for MIAXdx to list and clear its own binary option contracts, although it would continue to clear substantially similar binary options traded on KalshiEX LLC pursuant to the Joint MIAXdx-Kalshi Relief. MIAXdx does not believe such an anti-competitive result would advance the overarching policy goals of the Commission, including the promotion of resilient and vibrant U.S. derivatives markets.

IV. Relief Sought

MIAXdx is requesting no-action relief similar to the relief previously granted in the Binary Option Reporting Relief. Specifically, MIAXdx requests that DMO and DCR not recommend an enforcement action against MIAXdx or its Participants for failing to comply with the following Commission Regulations, or the related CEA provisions pursuant to which they were promulgated (hereinafter, the "Relevant Regulations"):

- CFTC Regulation 38.8(b) (obtaining, generating and assigning a unique swap identifier before listing of swaps on a designated contract market);
- CFTC Regulation 38.10 (reporting of swaps traded on a designated contract market);
- CFTC Regulation 38.951 (recordkeeping, but only to the extent it requires compliance with Part 45 of Commission regulations);
- CFTC Regulation 39.20(b)(2) (form and manner of maintaining information);
- Part 43 of Commission Regulations (real-time public reporting); and

- Part 45 of Commission Regulations (swap data recordkeeping and reporting).

V. Undertakings

Should DMO and DCR grant the requested no-action relief, MIAxdx undertakes to do the following as it pertains to the MIAxdx Contracts in order for the no-action relief to remain in effect:

- (1) MIAxdx will require that all MIAxdx Contracts be fully collateralized;²¹
- (2) MIAxdx will clear the MIAxdx Contracts solely through MIAxdx;²²
- (3) 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);²³
- (4) MIAxdx shall provide DMO with transactional information as described in Commission Regulation 16.02;²⁴
- (5) 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

²¹ This requirement was imposed in the Joint MIAxdx-Kalshi Relief and NADEX No-Action Relief. *See* CFTC Letter No. 21-11 at 3 (Condition 1) and CFTC Letter No. 17-31 at 3 (Condition 1). The Cantor No-Action Relief, by contrast, required those binary options to be “fully margined.” *See* CFTC Letter No. 17-32 at 3 (Condition 1). MIAxdx, however, is not currently authorized to offer margin trading.

²² This requirement is consistent with requirements imposed in the Binary Option Reporting Relief. *See* CFTC Letter No. 17-31 at 3 (Condition 2); CFTC Letter No. 17-32 at 4 (Condition 2); CFTC Letter No. 21-11 at 3 (Condition 2).

²³ This is consistent with the requirement imposed by the Joint MIAxdx-Kalshi Relief and Cantor No-Action Relief. *See* CFTC Letter No. 17-32 at 4 (Condition 3); CFTC Letter No. 21-11 at 4 (Condition 3). The NADEX No-Action Relief, by contrast, required publication of the following time and sales data: business date, execution time, instrument type, periodicity, display name, expiration date, price in USD, and volume. *See* CFTC Letter No. 17-31 at 3 (Condition 3). The NADEX No-Action Relief, however, covered both binary options and spread contracts, whereas the Joint MIAxdx-Kalshi Relief and Cantor No-Action Relief are more directly relevant – covering only binary options.

²⁴ This is consistent with requirements imposed by the Binary Option Reporting Relief. *See* CFTC Letter No. 17-31 at 3 (Condition 5); CFTC Letter No. 17-32 at 4 (Condition 4); CFTC Letter No. 21-11 at 4 (Condition 4).

“Required Records”);²⁵ and

- (6) No Participants shall clear MIAXdx Contracts through any third-party clearing member;²⁶
- (7) 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 originally created and exclusively maintained in paper form may be provided in hard copy only.²⁷

VI. Conclusion

Granting no-action relief in this instance is consistent with the intent of the Dodd-Frank Act, the Relevant Regulations, and the Commission’s position as a principles-based regulator. The material terms of all transactions executed and cleared on MIAXdx will continue to be captured and recorded on MIAXdx systems, and trade information will be disseminated directly to market participants and the Commission. Granting the requested relief, however, would relieve MIAXdx of a substantial financial and operational burden, and avoid unnecessary potential errors inherent to using an intermediary to process and report such data. No-action relief would likewise advance the policy goals underlying Parts 43 and 45 reporting, and support the Commission’s efforts to promote responsible financial technology innovation and fair competition for the benefit of the American public – particularly as comparable relief has historically been extended to fully-collateralized binary options.

²⁵ This is consistent with requirements imposed by the Binary Option Reporting Relief. *See* CFTC Letter No. 17-31 at 3 (Condition 5); CFTC Letter No. 17-32 at 4 (Condition 5); CFTC Letter No. 21-11 at 4 (Condition 5).

²⁶ This is consistent with requirements imposed by the Binary Option Reporting Relief. *See* CFTC Letter No. 17-31 at 4 (Condition 6); CFTC Letter No. 17-32 at 4 (Condition 6); CFTC Letter No. 21-11 at 4 (Condition 6).

²⁷ This is consistent with requirements imposed by the Binary Option Reporting Relief. *See* CFTC Letter No. 17-31 at 4 (Condition 7); CFTC Letter No. 17-32 at 4 (Condition 7); CFTC Letter No. 21-11 at 4 (Condition 7).



For all these reasons, MIAAXdx respectfully requests that DMO and DCR grant the no-action relief requested herein. Thank you for your consideration, and we would be happy to discuss this request with you in greater detail at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Brian G. Mulherin". The signature is written in a cursive, flowing style.

Brian G. Mulherin
General Counsel, LedgerX LLC d/b/a MIAAX Derivatives Exchange

cc: Nancy Markowitz, Division of Market Oversight
Owen Kopon, Division of Market Oversight



Certification and Undertaking Pursuant to Regulation 140.99(c)(3):

I hereby certify that the material facts set forth in the attached letter dated July 11, 2024 are true and complete to the best of my knowledge. If at any time prior to issuance of a Letter, any material representation made in the request ceases to be true and complete, the person who made the undertaking will ensure that Commission staff is informed promptly in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of a Letter, the person on whose behalf the Letter is sought (or that person's authorized representative at the time of the change) must promptly so inform Commission staff.

Very truly yours,

A handwritten signature in black ink that reads "Brian G. Mulherin". The signature is written in a cursive, flowing style.

Brian G. Mulherin
General Counsel, LedgerX LLC d/b/a MIAAX Derivatives Exchange