

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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11:07 am, Sep 29, 2022

In the Matter of:

CX Futures Exchange, L.P.,

Respondent.

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) **CFTC Docket No. 22-51**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6b OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that between in or about November 2017 and at least August 2022 (“Reporting Relevant Period”), CX Futures Exchange, L.P., a/k/a FMX Futures Exchange, L.P. (“CX or “Respondent”) violated Sections 2(a)(13)(G) and 6(c)(2) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(a)(13)(G), 9(2), and Commission Regulations (“Regulations”) 43.3(a)(1), 43.3(a)(2), and 45.3(a), 17 C.F.R. §§ 43.3(a)(1), 43.3(a)(2), 45.3(a) (2020) (amended 2021),¹ as well as Regulation 16.02, 17 C.F.R. § 16.02 (2021). The Commission further has reason to believe that between in or about September 2017 and August 2021 (“System Safeguards Relevant Period”), CX violated Section 5(d)(20) of the Act, 7 U.S.C. § 7(d)(20), and Regulations 38.1050, 38.1051(f), 38.1051(h)(3), 38.1051(h)(4), 38.1051(h)(5), 38.1051(h)(7), 38.1051(k), and 38.1051(l), 17 C.F.R. §§ 38.1050, 38.1051(f), 38.1051(h)(3), 38.1051(h)(4), 38.1051(h)(5), 38.1051(h)(7), 38.1051(k), 38.1051(l) (2021). 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 6b of the Commodity

¹ The Commission amended Parts 43, 45, and 49 on November 25, 2020, with the new regulations becoming effective on January 25, 2021. Certain Swap Data Repository and Data Reporting Requirements, 85 FR 75601 (Nov. 25, 2020). The amendments did not affect the substantive requirements at issue in this order.

Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.²

II. FINDINGS

The Commission finds the following:

A. SUMMARY

CX is a designated contract market (“DCM”). As a DCM, CX must comply with DCM Core Principle 20, which imposes, among other things, requirements relating to the reliability, security, and adequate scalable capacity of operations and automated systems. *See* 17 C.F.R. § 38.1050 (2021); *see also* 7 U.S.C. § 5(d)(2). Regulation 38.1051 imposes additional requirements relating to DCM Core Principle 20, including requirements for specific forms of testing and analysis of IT systems.

The Commission’s system safeguards rules are critical to ensuring the security of the financial markets. Cyberattacks against financial institutions are becoming more frequent, more sophisticated, and more widespread. System Safeguards Testing Requirements, 80 Fed. Reg. 80140 (Dec. 23, 2015). The financial system, moreover, is increasingly connected, and a threat to one entity may often pose threats to others. *Id.* at 80141. Cybersecurity testing can harden cyber defenses, mitigate operations, reputation, and financial risk, and maintain cyber resilience and the ability to recover from cyberattacks. *Id.*

During the System Safeguards Relevant Period, CX failed to comply with multiple aspects of Regulations 38.1050 and 38.1051, which require DCMs to establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk. Among other things, CX failed to develop comprehensive enterprise technology risk assessments (“ETRA”), failed to conduct adequate information security testing, and failed to review such ETAs and testing at the board level, in violation of these Regulations.

As a DCM, CX is also required to comply with certain reporting requirements relating to its options and swaps transactions set forth in Parts 16, 43, and 45 of the Regulations, 17 C.F.R. pts. 16, 43, 45 (2021). From in or around November 2017 to at least June 2020, CX failed to report certain data for over two hundred thousand options transactions to the Commission in violation of Regulation 16.02. And, from in or around November 2017 to at least August 2022, CX failed to report certain data for the same transactions, which were also considered swaps transactions under the Commission’s Regulations, to a swaps data repository (“SDR”) in

² 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.

violation of Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G), and Regulations 43.3(a)(1), 43.3(a)(2), and 45.3(a), 17 C.F.R. §§ 43.3(a)(1), 43.3(a)(2), 45.3(a) (2020).

Relatedly, in connection with a 2017 request for a no-action letter regarding its SDR reporting obligations, CX falsely represented to Commission staff that it was reporting data to the Commission pursuant to Regulation 16.02 and would continue to do so, when in fact CX should have known that it was not reporting such data at the time of its request and did not report Regulation 16.02 data to the Commission during much of the Reporting Relevant Period. CX's false statement violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2).

In accepting Respondent's Offer, the Commission recognizes the substantial cooperation of CX with the Division of Enforcement's investigation of this matter. 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 appropriate remediation is further reflected in the form of a reduced penalty.

B. RESPONDENT

CX Futures Exchange, L.P. is a Delaware corporation headquartered in New York, New York. CX was designated as a contract market in 2010 under the name Cantor Futures Exchange, L.P. and changed its name to CX Futures Exchange, L.P. in 2018. In or around April 2022, CX changed its name to FMX Futures Exchange, L.P. ("FMX Futures Exchange"). CX was a DCM at all times during the Relevant Periods. During the Relevant Periods, CX primarily listed options and swap contracts relating to weather events, including precipitation, storms, and temperature.

C. FACTS

1. CX's Failure to Comply with System Safeguards Requirements

During the System Safeguards Relevant Period, CX failed to comply with multiple aspects of the system safeguards requirements contained in Regulations 38.1050 and 38.1051, including by (1) failing to conduct controls testing, (2) failing to conduct sufficient internal and external penetration testing, (3) failing to conduct adequate enterprise technology risk assessments ("ETRA"), (4) failing to review ETAs and testing results at the board level, and (5) failing to provide timely advanced notice to the Commission of a planned change to automated systems that may impact the security of such systems.

During the System Safeguards Relevant Period, CX contracted with an administrative services provider ("Administrative Services Provider") to administer CX's IT systems. Between 2017 and 2020, neither CX nor its Administrative Services Provider maintained a library of the automated systems and controls that were part of CX's program of risk analysis and oversight. Furthermore, neither CX nor its Administrative Services Provider conducted an analysis to determine the appropriate scope or frequency of controls testing necessary to identify risks and vulnerabilities in CX's systems. Although CX and/or its Administrative Services Provider conducted certain system testing during the System Safeguards Relevant Period—including certain internal and external penetration testing, vulnerability scans, and testing of its business

continuity-disaster recovery capabilities—they did not otherwise conduct controls testing to ensure that CX’s controls were implemented correctly, operating as intended, and enabling CX to meet the requirements of Regulation 38.1051.

CX also failed to conduct internal or external penetration testing in 2020. The policies of the Administrative Services Provider, which performed penetration testing of CX’s systems during the System Safeguards Relevant Period, required that internal and external penetration testing be conducted (i) on an annual basis, or (ii) when significant changes were made to its IT systems. CX migrated its systems to a cloud-based platform between September 2019 and April 2020—a significant and material change that had the potential to impact the reliability, security, or adequate scalable capacity of CX’s systems. However, neither CX nor its Administrative Services Provider conducted internal or external penetration testing in connection with this significant change to CX’s IT systems between June 2019 and May 2021. CX, moreover, did not inform Commission staff of this material change until after it had occurred.

CX likewise failed to prepare adequate ETRAs between 2017 and 2020. During that time, the Administrative Services Provider prepared ETRAs on an enterprise-wide basis for each registered entity for which the Administrative Services Provider was providing IT-related services, including CX. These enterprise-wide ETRAs, however, were not sufficient to analyze CX’s threats and vulnerabilities. For example, the Administrative Services Provider’s 2020 ETRA identified only three risks applicable to CX and did not analyze any CX-specific risks.

Finally, between 2017 and 2020, CX’s board of directors did not receive or review any ETRA and did not receive or review the results of any IT systems testing conducted pursuant to Regulation 38.1051.

2. CX’s False Statement to the Commission

In May 2017, CX submitted a request for a no-action letter (“Request”) to the Commission’s Division of Market Oversight (“DMO”). Among other things, the Request asked that DMO not recommend that the Commission take enforcement action against CX if the DCM ceased the reporting of certain transactions to an SDR under Parts 43 and 45 of the Regulations, as CX had been doing since commencing trading in 2013. CX represented in its Request that it listed “binary options,” which it stated were “characterized 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 upon the value of the underlying commodity at contract expiration compared to the strike price or strike value of the option.” CX further stated that “[t]he settlement obligation [of a binary option] does not vary based upon the amplitude by which the price at expiration exceeds the strike or strike price.” CX also represented that it “provides transactional information to the Division under Commission Rule 16.02” in connection with its binary options and was obligated to continue to make such reports, thereby implying that it would continue to make such reports going forward.

Commission staff granted the Request in a no-action letter dated June 30, 2017 (“No-Action Letter”). In granting the Request, Commission staff relied on certain representations made by CX in its Request, including that CX provides transactional information to DMO pursuant to Regulation 16.02. The No-Action Letter was subject to certain express conditions,

including that “CX continue[] to provide DMO with transactional information as described in Commission Regulation 16.02.” Further, the No-Action Letter applied only to “CX Binary Options,” defined as “binary options traded on or pursuant to CX’s rules and cleared by [a specified derivatives clearing organization].” Quoting the Request, the No-Action Letter further defined a “CX Binary Option” as follows:

CX describes its binary options . . . as generally characterized 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 upon the value of the underlying commodity at contract expiration compared to the strike price or strike value of the option.” Furthermore, CX stated that “[t]he settlement obligation does not vary based upon the amplitude by which the price at expiration exceeds the strike or strike price.”

Contrary to CX’s representation, CX was not reporting Regulation 16.02 data to the Commission when it made its Request. At the time CX submitted its Request in 2017, CX provided Regulation 16.02 data to its regulatory services provider (“Regulatory Services Provider”). However, the contract between CX and the Regulatory Service Provider, executed in 2013, did not require that the Regulatory Service Provider report Regulation 16.02 data to the Commission on behalf of CX, and the Regulatory Service Provider was not reporting this information to the Commission. CX also was not reporting this information to the Commission on its own. Moreover, the Regulatory Service Provider informed CX in 2014 that it was not reporting Regulation 16.02 data to the Commission, and CX should have known that such data was not being reported.

By representing that it was reporting transaction data to the Commission pursuant to Regulation 16.02, when in fact it was not, and implying that it would continue to report such data going forward, CX made statements of material fact that it reasonably should have known were false and misleading.

3. CX’s Failure to Report Options Transactions to the Commission

Beginning at least as early as 2017, and continuing through at least June 2020, CX failed to report over two hundred thousand CX Binary Options and CX Pari-Mutuel Contracts (defined below) pursuant to Regulation 16.02.

As a DCM, Respondent is required to report certain data about options transactions to the Commission pursuant to Regulation 16.02. The CX Binary Options were cash-settled options subject to the reporting requirements of Regulation 16.02. As described above, CX failed to report the CX Binary Options under Regulation 16.02, either on its own or through its Regulatory Services Provider. In addition, in or around 2019, CX self-certified with the Commission and began listing a new type of weather contract that it called “pari-mutuel” contracts (“CX Pari-Mutuel Contracts”). Pari-mutuel means, in essence, that orders of a particular type are grouped into a pool, and a trader’s return is based on (among other things) the size of the pool and the number of contracts held by the trader in the pool. Like the CX Binary

Options, the CX Pari-Mutuel Contracts were cash-settled options subject to the reporting requirements of Regulation 16.02.

4. CX's Failure to Report Swaps Transactions to an SDR

Between November 2017 and at least August 2022, CX failed to report over two hundred thousand transactions to an SDR as required under Parts 43 and 45.

As a DCM, Respondent is required to report certain data about swap transactions to an SDR pursuant to Parts 43 and 45 of the Regulations. The CX Binary Options and CX Pari-Mutuel Contracts met the Act's definition of "swap," 7 U.S.C. § 1a(47), and were therefore subject to the swap reporting requirements of Parts 43 and 45 of the Regulations. Beginning in 2013, CX reported swaps transactions to an SDR as required by Parts 43 and 45. In November 2017, relying on the No-Action Letter, CX stopped reporting CX Binary Option transactions pursuant to Parts 43 and 45. However, the No-Action Letter was contingent on CX reporting transaction data pursuant to Regulation 16.02. CX did not meet this condition because it failed to report transaction data pursuant to Regulation 16.02. CX therefore was not entitled to rely on the No-Action Letter in connection with its obligation to report CX Binary Options under Parts 43 and 45. Although CX is now taking steps to resume Parts 43 and 45 reporting, it has not resumed such reporting as of the date of this Order.

CX also was not entitled to rely on the No-Action Letter in connection with the CX Pari-Mutuel Contracts. The No-Action Letter was limited to CX Binary Options, and the CX Pari-Mutuel Contracts did not meet the definition of a CX Binary Option. There are important differences between the CX Pari-Mutuel Contracts and CX Binary Options. Whereas CX stated in its Request that the CX Binary Options pay an "absolute amount" to the holder of an in-the-money option, the payout on a CX Pari-Mutuel contract was not "absolute," but instead varied based on the size of the distribution pool and the number of in-the-money position holders. Similarly, whereas CX described the CX Binary Options in the Request as yielding "no payment" for an out-of-the-money option, the CX Pari-Mutuel Contracts did pay small amounts to out-of-the-money position holders. And, whereas CX stated in the Request that the "settlement obligation [for CX Binary Options] does not vary based upon the amplitude by which the price at expiration exceeds the strike or strike price," the CX Pari-Mutuel contracts operated differently, as payout varied based on the distance between the index level and the strike level.

CX also was not entitled to rely on the No-Action Letter in connection with the CX Pari-Mutuel Contracts because it failed to report Regulation 16.02 data in connection with them and therefore did not meet the conditions of the No-Action Letter.

III. LEGAL DISCUSSION

A. CX's Failure to Maintain an Adequate Program of Risk Analysis and Oversight in Violation of Section 5(d)(20) of the Act and Regulation 38.1050

Section 5(d)(20) of the Act, 7 U.S.C. § 7(d)(20), provides that a board of trade (i.e., an organized exchange or other trading facility, such as a DCM, 7 U.S.C. §§ 1a(6), (37), (51)) shall:

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

As a condition to registration, DCMs must comply with Regulation 38.1050, which contains identical requirements. 17 C.F.R. § 38.1050 (2021).

As set forth above, Respondent failed to establish and maintain an adequate program of risk analysis and oversight to identify and minimize sources of operational risk. By this conduct, CX violated Section 5(d)(20) of the Act and Regulation 38.1050.

B. CX’s Failure to Conduct Controls Testing in Violation of Regulation 38.1051(h)(5) and (k)

Regulation 38.1051(h)(5) provides that “[a] designated contract market shall conduct controls testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.” 17 C.F.R. § 38.1051(h)(5) (2021). Paragraph (k) provides, in turn:

The scope for all system safeguards testing and assessment required by this part shall be broad enough to include the testing of automated systems and controls that the designated contract market’s required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to: (1) Interfere with the designated contract market’s operations or with fulfillment of its statutory and regulatory responsibilities; (2) Impair or degrade the reliability, security, or adequate scalable capacity of the designated contract market’s automated systems; (3) Add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the designated contract market’s regulated activities; or (4) Undertake any other unauthorized action affecting the designated contract market’s regulated activities or the hardware or software used in connection with those activities.

17 C.F.R. § 38.1051(k) (2021). Paragraph (h)(5)(i) further provides:

A designated contract market shall conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency

determined by an appropriate risk analysis. Such testing may be conducted on a rolling basis.

17 C.F.R. § 38.1051(h)(5)(i).

As set forth above, Respondent failed to conduct controls testing between 2017 and 2020. By this conduct, CX violated Regulations 38.1051(h)(5) and (k).

C. CX’s Failure to Conduct Sufficient Internal and External Penetration Testing in Violation of Regulation 38.1051(h)(3), (h)(4), and (k)

“External penetration testing” means “attempts to penetrate the designated contract market’s automated systems from outside the systems’ boundaries to identify and exploit vulnerabilities.” 17 C.F.R. § 38.1051(h)(1) (2021). Regulation 38.1051(h)(3) provides that “[a] designated contract market shall conduct external penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.” 17 C.F.R. § 38.1051(h)(3) (2021). Furthermore, “[a] designated contract market shall conduct such external penetration testing at a frequency determined by an appropriate risk analysis.” *Id.* § 38.1051(h)(3)(i).

“Internal penetration testing” means attempts to penetrate the designated contract market’s automated systems from inside the systems’ boundaries, to identify and exploit vulnerabilities.” 17 C.F.R. § 38.1051(h)(1). Regulation 38.1051(h)(4) provides that “[a] designated contract market shall conduct internal penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.” 17 C.F.R. § 38.1051(h)(4) (2021). Furthermore, “[a] designated contract market shall conduct such internal penetration testing at a frequency determined by an appropriate risk analysis.” *Id.* § 38.1051(h)(4)(i).

As set forth above, Respondent failed to conduct internal and external penetration testing between June 2019 and May 2021 and failed to conduct such testing in connection with a material change to CX’s IT systems. By this conduct, CX violated Regulations 38.1051(h)(3), (h)(4), and (k).

D. CX’s Failure to Conduct Adequate Enterprise Technology Risk Assessments in Violation of Regulation 38.1051(h)(7) and (k)

An “enterprise technology risk assessment” is “a written assessment that includes, but is not limited to, an analysis of threats and vulnerabilities in the context of mitigating controls.” 17 C.F.R. § 38.1051(h)(1). An ETRA “identifies, estimates, and prioritizes risks to designated contract market operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, and availability of data and information or the reliability, security, or capacity of automated systems.” *Id.* Regulation 38.1051(h)(7) provides that “[a] designated contract market shall conduct enterprise technology risk assessment of a scope sufficient to satisfy the requirements set forth in paragraph (k) of this section.” 17 C.F.R. § 38.1051(h)(7) (2021). Furthermore, “[a] designated contract market shall

conduct an enterprise technology risk assessment at a frequency determined by an appropriate risk analysis.” 17 C.F.R. § 38.1051(h)(7)(i).

As set forth above, CX failed to conduct an ETRA between 2017 and 2020 that met the requirements of these provisions. By this conduct, CX violated Regulations 38.1051(h)(7) and (k).

E. The CX Board’s Failure to Receive or Review Enterprise Technology Risk Assessments and Results of Testing in Violation of Regulation 38.1051(l)

Regulation 38.1051(l) provides that “the Board of Directors of a designated contract market shall receive and review reports setting forth the results of the testing and assessment required by this section.” 17 C.F.R. 1051(l) (2021). As set forth above, CX’s board of directors failed to receive or review ETAs or the results of testing pursuant to Regulation 38.1051. By this conduct, CX violated Regulation 38.1051(l).

F. CX’s Failure to Provide Timely Advance Notice of a Material Planned Change to Its Automated Systems in Violation of Section 38.1051(f)

Regulation 38.1051(f) provides that “[a] designated contract market must give Commission staff timely advance notice of all material . . . [p]lanned changes to automated systems that may impact the reliability, security, or adequate scalable capacity of such systems . . .” 17 C.F.R. § 38.1051(f) (2021). As set forth above, CX failed to provide timely advance notice to Commission staff regarding a material planned change to its automated systems. By this conduct, CX violated Regulation 38.1051(f).

G. CX’s Failure to Report Options Transactions to the Commission in Violation of Regulation 16.02

Regulation 16.02 requires that DCMs “provide trade and supporting data reports to the Commission on a daily basis,” including “transaction-level trade data and related order information for each futures or options contract.” 17 C.F.R. § 16.02 (2021). The accuracy and completeness of these reports and data “are critical to the Commission’s mission to protect market participants and promote market integrity.” *In re ICE Futures U.S., Inc.*, No. 15-17, 2015 WL 1276463 (Mar. 16, 2015). The effectiveness of the Commission’s market and financial surveillance programs, as well as other Commission work, hinge upon correct and thorough reporting data. Without accurate and complete data, the Commission’s ability to detect and prevent market disruptions, to enforce speculative position limits, and to measure the financial

risks that large contract positions may pose to Commission registrants and clearing organizations is compromised.

As set forth above, Respondent failed to report over two hundred thousand options transactions to the Commission between November 2017 and June 2020. By this conduct, CX violated Regulation 16.02.

H. CX's Failure to Report Swaps Transactions to an SDR in Violation of Section 2(a)(13)(G) of the Act and Regulations 43.3(a)(1), 43.3(a)(2), and 45.3(a)

All swaps, both cleared and uncleared, are required to be reported to a registered SDR, and the Act establishes requirements for real-time reporting and public availability of swap transaction data. *See* Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G). Pursuant to these requirements, the Commission adopted regulations implementing swaps data reporting requirements, which apply to CX in its capacity as a DCM. *See, e.g.*, Parts 43 and 45 of the Regulations, 17 C.F.R pts. 43, 45 (2020). Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3, 45.3 (2020), require reporting of reportable swap transactions to a registered SDR.

Specifically, Regulation 43.3(a)(1) states that a DCM “shall report the publicly reportable swap transaction to a swap data repository as soon as technologically practicable after execution” 17 C.F.R. § 43.3(a)(1). Similarly, Regulation 43.3(a)(2) states that “[f]or each swap executed on or pursuant to the rules of a . . . designated contract market, the . . . designated contract market shall report swap transaction and pricing data to a swap data repository as soon as technologically practicable after execution.” 17 C.F.R. § 43.3(a)(2). Regulation 45.3(a) states that “[f]or each swap executed on or pursuant to the rules of a . . . designated contract market, the . . . designated contract market shall report required swap creation data electronically to a swap data repository in the manner provided in § 45.13(a) not later than the end of the next business day following the execution date.” 17 C.F.R. § 45.3(a).

These swap data reporting provisions were designed to enhance transparency, promote standardization, and reduce systemic risk. The accuracy and completeness of swap reporting are critical to the Commission’s mission to protect market participants and to ensure market integrity. *See, e.g., In re BNP Paribas*, CFTC No. 22-9, 2022 WL 2734273 (July 5, 2022) (consent order); *In re NatWest Markets Plc*, CFTC No. 18-32, 2018 WL 4502270 (Sept. 14, 2018) (consent order); *In re Citibank, NA.*, CFTC No. 17-26, 2017 WL 4280594 (Sept. 25, 2017) (consent order).

As set forth above, Respondent failed to report over two hundred thousand swap transactions to an SDR between November 2017 and at least August 2022. By this conduct, CX violated Section 2(a)(13)(G) of the Act and Regulations 43.3(a)(1), 43.3(a)(2), and 45.3(a).

I. CX's False Statement to the Commission in Violation of Section 6(c)(2) of the Act

Section 6(c)(2) of the Act, 7 U.S.C. § 9(2), makes it unlawful for any person:

[T]o make any false or misleading statement of a material fact to the Commission . . . or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect,

if the person knew, or reasonably should have known, the statement to be false or misleading.

As set forth above, in connection with its Request for a No-Action Letter, Respondent falsely represented to Commission staff that it was reporting transaction data to the Commission for CX Binary Options pursuant to Regulation 16.02, when in fact it was not, and implied that it would continue to report such data going forward. CX reasonably should have known that its statements were false or misleading. These statements were material because it was important for DMO to know that the Commission would continue to have access to CX's transaction data if CX's Request for a No-Action Letter were granted, and DMO expressly relied on these statements in granting CX's Request for a No-Action Letter. By this conduct, CX violated Section 6(c)(2) of the Act.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Reporting Relevant Period and System Safeguards Relevant Period, as applicable, CX Futures Exchange, L.P. violated Sections 2(a)(13)(G), 5(d)(20), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 7(d)(20), 9(2), and Regulations 43.3(a)(1), 43.3(a)(2), and 45.3(a) (2020), as well as Regulations 16.02, 38.1050, 38.1051(f), 38.1051(h)(3), 38.1051(h)(4), 38.1051(h)(5), 38.1051(h)(7), 38.1051(k), and 38.1051(l), 17 C.F.R. §§ 16.02, 43.3(a)(1), 43.3(a)(2), 45.3(a), 38.1050, 38.1051(f), 38.1051(h)(3), 38.1051(h)(4), 38.1051(h)(5), 38.1051(h)(7), 38.1051(k), 38.1051(l) (2021).

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 (2021), 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. 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;
- E. 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 Sections 2(a)(13)(G), 5(d)(20), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 7(d)(20), 9(2), and Regulations 43.3(a)(1), 43.3(a)(2), 45.3(a), 17 C.F.R. §§ 43.3(a)(1), 43.3(a)(2), 45.3(a) (2020), as well as Regulations 16.02, 38.1050, 38.1051(f), 38.1051(h)(3), 38.1051(h)(4), 38.1051(h)(5), 38.1051(h)(7), 38.1051(k), and 38.1051(l), 17 C.F.R. §§ 16.02, 43.3(a)(1), 43.3(a)(2), 45.3(a), 38.1050, 38.1051(f), 38.1051(h)(3), 38.1051(h)(4), 38.1051(h)(5), 38.1051(h)(7), 38.1051(k), 38.1051(l) (2021);
 2. Orders Respondent to cease and desist from violating Sections 2(a)(13)(G), 5(d)(20), and 6(c)(2) of the Act and Regulations 16.02, 43.3(a)(1), 43.3(a)(2), 45.3(a), 38.1050, 38.1051(f), 38.1051(h)(3), 38.1051(h)(4), 38.1051(h)(5), 38.1051(h)(7), 38.1051(k), and 38.1051(l);
 3. Orders Respondent to pay a civil monetary penalty in the amount of six million and five hundred thousand dollars (\$6,500,000), plus any post-judgment interest within ten days of the date of entry of this Order; and
 4. Orders Respondent and its successors and assigns, including but not limited to FMX Futures Exchange, to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order;
- F. Represents that it has already taken steps to remediate the above-referenced violations, including, but not limited to, the following:
1. Back-reporting transaction data pursuant to Regulation 16.02 for all of the transactions that are the subject of this Order;

2. Implementing new processes designed to confirm that Part 16 data is reported to the Commission each trading day;
3. Adding an addendum to its compliance manual setting forth policies and procedures designed to ensure compliance with Regulation 38.1051;
4. Establishing an IT controls library and implementing policies and procedures requiring regular controls testing;
5. Conducting internal and external penetration testing and controls testing;
6. Conducting an enterprise technology risk assessment;
7. Revising its administrative services agreement with the Administrative Services Provider to clearly set forth responsibilities for system safeguards-related services;
8. Updating its compliance manual to require regular meetings between CX and the Administrative Services Provider; and
9. Implementing policies requiring semi-annual meetings between CX's IT and Compliance personnel to assess compliance with Regulation 38.1051.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and its successors and assigns, including but not limited to FMX Futures Exchange, shall cease and desist from violating Sections 2(a)(13)(G), 5(d)(20), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 7(d)(20), 9(2), and Regulations 43.3(a)(1), 43.3(a)(2), 45.3(a), 17 C.F.R. §§ 43.3(a)(1), 43.3(a)(2), 45.3(a) (2020), as well as Regulations 16.02, 38.1050, 38.1051(f), 38.1051(h)(3), 38.1051(h)(4), 38.1051(h)(5), 38.1051(h)(7), 38.1051(k), and 38.1051(l), 17 C.F.R. §§ 16.02, 43.3(a)(1), 43.3(a)(2), 45.3(a), 38.1050, 38.1051(f), 38.1051(h)(3), 38.1051(h)(4), 38.1051(h)(5), 38.1051(h)(7), 38.1051(k), 38.1051(l) (2021).
- B. Respondent shall pay a civil monetary penalty in the amount of six million and five hundred thousand dollars (\$6,500,000) ("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
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amz-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 (1) the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (2) the Deputy Director, Commodity Futures Trading Commission, Eastern Regional Office, 290 Broadway, New York, New York 10007.

- C. Respondent and its successors and assigns, including but not limited to FMX Futures Exchange, shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its 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 its successors and assigns, including but not limited to FMX Futures Exchange, shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
 2. **Cooperation, in General:** Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
 3. **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.

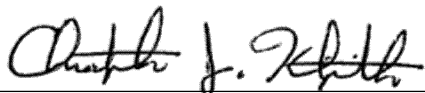
4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
5. Until 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 N.W.
Washington, DC 20581

6. Remediation
 - a. Respondent will continue to implement and improve its internal controls and procedures in a manner designed to ensure the accuracy and integrity of its swaps and options reporting and its compliance with Regulations 38.1050 and 38.1051.
 - b. Within 180 days of the entry of this Order, Respondent shall provide swap data to an SDR with respect to transactions subject to SDR reporting executed after November 2017. For good cause show, Division staff may extend this deadline.

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 29, 2022