



U.S. COMMODITY FUTURES TRADING COMMISSION

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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 Fully Collateralized Binary Option Contracts and Variable Payout Contracts Traded on or Pursuant to the Rules of QCX LLC and QC Clearing LLC

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 QCX LLC and QC Clearing LLC (collectively, “QCEX”). QCEX requested a no-action position, on their own behalf and on behalf of their participants, (the “Request”)¹ 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”). QCEX requests a no-action position with respect to reporting fully collateralized binary options contracts and variable payout contracts with the features described in this letter traded and cleared pursuant to QCEX’s rules. QCX LLC is a designated contract market (“DCM”) and QC Clearing LLC is a registered derivatives clearing organization (“DCO”).

Background

This letter concerns certain contracts listed on QCEX that have the features described in this letter (“QCEX Contracts”). QCEX stated in the Request that it intends to list for trading “fully-collateralized option contracts on various underlying commodities, assets or indices”.² QCEX stated that these contracts will be structured as either binary contracts, for which, “[a]t settlement, either the entire fixed amount is paid to one of the long or short position holders,” or variable payout contracts, for which, at settlement, the fixed amount is “pro-rated between the two sides based on the final settlement price.”³ QCEX stated that for QCEX Contracts, “[t]his payout

¹ Letter from M. Childers to the Division of Market Oversight re: No-Action Relief from Commission Regulations 38.8(b), 38.10, 38.951 (only to the extent it requires compliance with Part 45 of the Commission’s Regulations), 39.20(b)(2), and Parts 43 and 45 for Fully-Collateralized Options Traded on or Pursuant to the Rules of QCX LLC and QC Clearing LLC (July 16, 2025) (the “Request”).

² Request at 1-2.

³ *Id.* at 2.

structure is independent of the underlying index used to determine final settlement value, although the final settlement amount will obviously be dependent on the underlying index.”⁴ QCEX believes the QCEX Contracts will “offer trading opportunities for commercial and retail participants. . . .”⁵

In the Request, QCEX represented “that all of the contracts that QCEX intends to list are options that are technically within the definition of a ‘swap’ under the Commodity Exchange Act.”⁶ QCEX also observes that the CFTC has defined “swaps,” consistent with the Commodity Exchange Act,⁷ to include “commodity options.”⁸ CFTC regulations, including the Relevant Regulations, provide reporting and recordkeeping requirements for swaps that are applicable to DCMs, DCOs, and market participants. However, QCEX characterized its market and the contracts to be traded as “most closely resembl[ing] exchange-traded options on futures (i.e., exchange traded with standardized terms, fungible, and subject to offset), with few of the indicia of traditional swaps,”⁹ and therefore seeks to report the contracts offered on its exchange in a manner similar to that required for exchange-traded options on futures.

Commodity options fall within the Commission’s plenary options authority under Commodity Exchange Act (“CEA”) section 4c(b).¹⁰ 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)[.]”¹¹ 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.¹²

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹³ amended the CEA by adding a definition of “swap.”¹⁴ 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[.]”¹⁵

⁴ *Id.* at 2.

⁵ *Id.* at 1-2. QCEX “[i]nitially . . . intends to list contracts based on foreign currency exchange rates, with such rates as the settlement indices, but anticipates using other settlement indices appropriate to binary and variable payout contracts in the future.” *Id.* at 2.

⁶ *Id.*

⁷ 7 U.S.C. § 1a(47).

⁸ Request at 3.

⁹ *Id.* at 2 (footnote omitted).

¹⁰ 7 U.S.C. § 6c(b).

¹¹ Commodity Options, 77 Fed. Reg. 25320, 25321, n.6 (Apr. 27, 2012).

¹² 17 C.F.R. § 32.2.

¹³ Public Law 111–203, 124 Stat. 1376 (2010).

¹⁴ 7 U.S.C. § 1a(47).

¹⁵ Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement;” Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 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

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

QCEX requested that the Divisions not recommend the Commission take enforcement action against QCEX or its participants for failure to report QCEX Contracts to an SDR or to fulfill any of the other requirements of the Relevant Regulations. QCEX states that it requests a no-action position that is consistent with no-action positions the Divisions took with respect to certain other market participants, including the no-action positions provided in CFTC Letter No. 17-31, CFTC Letter No. 17-32, CFTC Letter No. 21-11, and CFTC Letter No. 25-02, and states that “[t]he facts and considerations set forth [in the Request] are substantially similar to those set forth in the prior requests,” such that granting such no-action positions to QCEX “is equally warranted and appropriate.”¹⁶ QCEX also represents that they have made certain undertakings which will “provide information to the Commission (and the public) similar, but not identical, to that currently required to be provided to an SDR under Parts 43 and 45 of the Commission’s regulations.”¹⁷ Specifically, QCX and QCC represent that:

- The QCEX Contracts are required to be fully collateralized;
- No market participant will clear QCEX Contracts through a third party clearing member;
- QCEX is seeking a no-action position that applies to contracts listed by QCX and cleared through QC Clearing;
- QCEX will comply with its end-of-day reporting requirements pursuant to Parts 16 and 39 of the Commission’s regulations;
- QCEX will provide the Commission with all transactional information as required under Commission Regulation 16.02, which will be submitted through the National Futures Association;
- QCEX will publish its time and sales data, as well as a daily bulletin on the QCEX website in compliance with Parts 16, 38 and 39 of the Commission's regulations;

the CFTC’s jurisdiction, and therefore can only be offered on a registered exchange in accordance with the Act and Regulations”).

¹⁶ See Request at 4-5; see also 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>; CFTC Letter No. 25-02 (Jan. 31, 2025), available at <https://www.cftc.gov/csl/25-02/download>.

¹⁷ Request at 4.

- If granted the no-action position requested, QCEX will make transactional information publicly available in near-real-time;
- QCEX could, with a minimal amount of effort, publish the prices and quantities of transactions in QCEX Contracts on its website; and
- QCEX will keep the required records open to inspection upon request by any representatives 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 QCEX to any representative of the Commission upon request. QCEX will 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.¹⁸

No-Action Position

The Divisions have decided to take a no-action position consistent with the Request, subject to certain conditions described below, based on QCEX’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 and similar transactions.¹⁹ The Divisions will not recommend that the Commission initiate an enforcement action against QCEX 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 CFTC’s regulations), 39.20(b)(2), as well as the applicable provisions of Parts 43 and 45 of the CFTC’s regulations, or the requirements of the relevant CEA provisions pursuant to which the Relevant Regulations were promulgated, with respect to QCEX Contracts, subject to the following conditions:²⁰

- 1) QCEX will require all QCEX Contracts to be fully collateralized positions, as defined by Commission Regulation 39.2;²¹

¹⁸ Request at 3-4.

¹⁹ 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>; CFTC Letter No. 24-09 (July 12, 2024), available at <https://www.cftc.gov/csl/24-09/download>; CFTC Letter No. 24-12 (Sept. 3, 2024), available at <https://www.cftc.gov/csl/24-12/download>; CFTC Letter No. 24-15 (Oct. 4, 2024), available at <https://www.cftc.gov/csl/24-15/download>; CFTC Letter No. 25-02 (Jan. 31, 2025), available at <https://www.cftc.gov/csl/25-02/download>; CFTC Letter No. 25-23 (Jul. 22, 2025), available at <https://www.cftc.gov/csl/25-23/download>; and CFTC Letter No. 25-26 (Aug. 7, 2025), available at <https://www.cftc.gov/csl/25-26/download>.

²⁰ Some of these conditions to 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.

²¹ 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

- 2) QCEX will clear all QCEX Contracts through QC Clearing LLC and QC Clearing LLC will clear all QCEX Contracts;
- 3) QCEX will publish on its website the following information for all QCEX Contracts transactions promptly after execution thereof: trade timestamp, contract, quantity, and price;
- 4) QCEX will provide the CFTC with all transactional information as described in Commission Regulation 16.02;
- 5) QCEX LLC and QC Clearing LLC will comply with all reporting and recordkeeping requirements of the CEA and CFTC regulations applicable to each in their respective capacities as a DCM or a DCO, other than the Relevant Regulations, including, but not limited to, the applicable requirements of Parts 38 and 39 of the CFTC's regulations (the records required to be retained by this condition (5) are referred to below as the "Required Records");
- 6) No QCEX participant clears a QCEX Contract through a third-party clearing member; and
- 7) QCEX 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 CFTC. Copies of all such records shall be provided, at the expense of QCEX, as applicable, to any representative of the Commission upon request. QCEX, as applicable, shall provide copies of the Required Records either by electronic means, in hard copy, or both, as requested by the CFTC, 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 QCEX Contracts or the conduct of any person covered by the no-action position.²² 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.²³ 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

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.

²² For the avoidance of doubt, this letter is not intended to address whether any of the QCEX 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.

²³ 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.").

authority to, in their 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, Division of Market Oversight, at (202) 418-5185 or pchaffin@cftc.gov; Alicia Viguri, Division of Market Oversight, at (202) 418-5219 or aviguri@cftc.gov; Owen Kopon, Division of Market Oversight, at (202) 418-5360 or okopon@cftc.gov; or Elizabeth Arumilli, Division of Clearing and Risk, at (312) 596-0632 or earumilli@cftc.gov.

Sincerely,

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