



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, and for Fully Collateralized Swap Contracts Traded Pursuant to the Rules of Bitnomial Exchange, LLC and Cleared by Bitnomial Clearinghouse, 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 request¹ (the “Request”) from Bitnomial Exchange, LLC and Bitnomial Clearinghouse, LLC (collectively, “Bitnomial”). Bitnomial requests a no-action position, on their own behalf and on behalf of their participants, from the swap data reporting and recordkeeping requirements of regulations 38.8(b), 38.10, 38.951 (to the extent that regulation 38.951 requires compliance with Part 45 of the Commission’s regulations), 39.20(b)(2), along with Parts 43 and 45 of the Commission’s regulations (collectively, the “Relevant Regulations”). Bitnomial requests a no-action position with respect to reporting “binary and bounded swaps referencing digital assets, economic indicators, and financial outcomes” with the features described in this letter, traded and cleared pursuant to Bitnomial’s rules (the “Bitnomial Contracts”).² Bitnomial Exchange, LLC is a designated contract market (“DCM”) and Bitnomial Clearinghouse, LLC is a registered derivatives clearing organization (“DCO”).

Background

Bitnomial stated in the Request that Bitnomial contemplates listing, “among other products, binary and bounded swaps referencing digital assets, economic indicators, and financial outcomes.”³ Bitnomial stated that Bitnomial Contracts are “fully collateralized.”⁴

¹ Letter from James Walsh to R. Varma and R. Haynes re: Request for No-Action Relief for Commission Regulations 38.8(b), 38.10, 38.951 (In Part), 39.20(b)(2), Parts 43 and 45, and for Fully Collateralized Swap Contracts Traded Pursuant to the Rules of Bitnomial Exchange, LLC and Cleared by Bitnomial Clearinghouse, LLC (Dec. 18, 2025) (the “Request”).

² Request at 1.

³ *Id.*

⁴ *Id.* at 2. Commission regulation 39.2 defines a “[f]ully collateralized position” to mean “a contract cleared by a [DCO] that requires the [DCO] to hold, at all times, funds in the form of the required payment sufficient to cover the

In the Request, Bitnomial represented that Bitnomial Contracts are swaps under the Commodity Exchange Act (“CEA”).⁵ However, Bitnomial stated that Bitnomial Contracts “are standardized, novated, and fungible” and “[d]esigned to be traded on a central limit order book and cleared through a registered DCO.”⁶ Thus, according to Bitnomial, although the Bitnomial Contracts are “structured as swaps, the [Bitnomial] Contracts exhibit characteristics traditionally associated with exchange-listed products, such as transparency, fungibility, and standardized terms, and are distinguishable from bilateral or customized swaps in both operation and risk profile.”⁷

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)⁸ amended the CEA by adding a definition of “swap.”⁹ The Dodd-Frank Act required the Commission and the Securities and Exchange Commission to further define jointly the term “swap,” and in 2012, the Commissions jointly adopted such further definition.¹⁰

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 Commission’s use in fulfilling its surveillance and market analysis missions.

No-Action Position Requested

Bitnomial requested that the Divisions not recommend the Commission take enforcement action against Bitnomial or their participants for failure to report Bitnomial Contracts to an SDR or to fulfill any of the other requirements of the Relevant Regulations. Bitnomial indicated that granting the requested no-action position would be consistent with the Divisions’ previous grants of no-action positions to DCMs and DCOs complying with certain conditions.¹¹ Bitnomial makes the following representations in support of its request, which it states are “consistent with prior no-action relief”:¹²

maximum possible loss that a party or counterparty could incur upon liquidation or expiration of the contract.” 17 C.F.R. § 39.2.

⁵ Request at 1.

⁶ *Id.*

⁷ *Id.*

⁸ Public Law 111–203, 124 Stat. 1376 (2010).

⁹ 7 U.S.C. § 1a(47).

¹⁰ 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).

¹¹ See Request at 2 (“[T]he CFTC Staff’s historical assessment that DCMs and DCOs complying with the conditions for relief is a suitable substitute for complying with the Relevant Regulations remains true to Bitnomial.”); *see also*, e.g., 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>.

¹² Request at 2-3.

- Bitnomial Exchange, LLC shall clear the fully collateralized swap Contracts solely through Bitnomial Clearinghouse, LLC;
- Bitnomial shall publish on its website the following time and sales data for all Bitnomial Contract transactions promptly after execution thereof—trade timestamp, contract, quantity, and price (in USD);
- Bitnomial shall provide DMO with transactional information as described in Commission Regulation 16.02;
- Bitnomial shall continue to comply with all swap reporting 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 Commission’s Regulations (the record described in this undertaking are referred to below as the “Required Records”); and
- Bitnomial shall keep the Required Records open to inspection upon request by any representative of the Commission, the United States Department of Justice 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 Bitnomial to any representative of the Commission upon request. Bitnomial shall provide copies of the Required Records by electronic means, 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.

No-Action Position and Related Conditions

The Divisions have decided to take a no-action position consistent with Bitnomial’s Request, subject to certain conditions described below, based on Bitnomial’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.¹³ The Divisions will not recommend that the Commission initiate an enforcement action against Bitnomial or their participants for failure to comply with Commission

¹³ See CFTC Letter No. 17-31 (June 30, 2017), *available at* <https://www.cftc.gov/csl/17-31/download>; CFTC Letter No. 17-32 (June 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>; CFTC Letter No. 25-26 (Aug. 7, 2025), *available at* <https://www.cftc.gov/csl/25-26/download>; CFTC Letter No. 25-28 (Sept. 3, 2025), *available at* <https://www.cftc.gov/csl/25-28/download>; CFTC Letter No. 25-35 (Sept. 30, 2025), *available at* <https://www.cftc.gov/csl/25-35/download>; CFTC Letter No. 25-44 (Dec. 11, 2025), *available at* <https://www.cftc.gov/csl/25-44/download>; CFTC Letter No. 25-45 (Dec. 11, 2025), *available at* <https://www.cftc.gov/csl/25-45/download>; CFTC Letter No. 25-47 (Dec. 11, 2025), *available at* <https://www.cftc.gov/csl/25-47/download>; and CFTC Letter No. 25-48 (Dec. 11, 2025), *available at* <https://www.cftc.gov/csl/25-48/download>.

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 Bitnomial Contracts, subject to the following conditions:¹⁴

- 1) Bitnomial will require all Bitnomial Contracts to be fully collateralized positions, as defined by Commission regulation 39.2;¹⁵
- 2) Bitnomial Exchange, LLC will clear all Bitnomial Contracts through Bitnomial Clearinghouse, LLC and Bitnomial Clearinghouse, LLC will clear all Bitnomial Contracts;
- 3) Bitnomial will publish on its website the following time and sales data for all Bitnomial Contract transactions promptly after execution thereof: trade timestamp, contract, quantity, and price;
- 4) Bitnomial will provide the Commission with all transactional information as described in Commission regulation 16.02;
- 5) Bitnomial will comply with all reporting and recordkeeping requirements of the CEA and CFTC regulations applicable to them in their 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”); and
- 6) Bitnomial will 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 Bitnomial, to any representative of the Commission upon request. Bitnomial 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.

¹⁴ 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.

¹⁵ Commission regulations define “fully collateralized position” as “a contract cleared by a [DCO] that requires the [DCO] 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.

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 Bitnomial Contracts or the conduct of any person covered by the no-action position.¹⁶ 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.¹⁷ 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 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 Daniel O'Connell, Division of Clearing and Risk, at (202) 418-558 or doconnell@cftc.gov.

Sincerely,

Thomas Smith
Acting Director
Division of Market Oversight

Richard Haynes
Acting Director
Division of Clearing and Risk

¹⁶ For the avoidance of doubt, this letter is not intended to address whether any of the Bitnomial 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.

¹⁷ 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.”).