UNITED STATES
COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Division of
Market Oversight

DJ Hennes
Acting Director

Re: Kraken Derivatives Exchange Inc. (f/k/a Small Exchange, Inc.) – Request for Extension of Time-Limited No-Action Relief from Commission Regulations 40.1 and 38.3(b)

This letter responds to a request received by the Division of Market Oversight ("Division" or "DMO") of the Commodity Futures Trading Commission ("Commission" or "CFTC") from Kraken Derivatives Exchange Inc. (f/k/a Small Exchange, Inc.) ("KDE"), a designated contract market ("DCM").[1] KDE requested that the Division extend the no-action position concerning the Commission's dormancy regulations that was granted to KDE in CFTC Letter No. 25-46.[2]

I. Regulatory Background

Commission regulation 40.1 defines a "dormant designated contract market" as "any designated contract market on which no trading has occurred for a period of 365 days; *provided, however,* no designated contract market shall be considered dormant if its initial and original Commission order of designation was issued within the preceding 1,095 days."[3] Commission regulation 38.3(b) states that "[b]efore listing or relisting products for trading, a dormant designated contract market . . . must reinstate its designation . . .; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions."[4]

The Commission adopted the dormancy framework for registered entities to address potential compliance drift that may arise from an extended period of inactivity. As the Commission has noted, "a significant period of inactivity can potentially have a negative impact on a registered entity's ability to implement rules and list and clear contracts in a manner that remains consistent with current market conditions, the Commission's regulations, and self-regulatory best practices."[5]

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[1] *See* Letter from J. Palmer to D. Hennes, Request for Extension of Time-Limited No-Action Relief from Commission Regulations 40.1 and 38.3(b) (July 20, 2026) (the "Request").
[2] Request at 1; *see* CFTC Letter No. 25-46 (Dec. 11, 2025), *available at* https://www.cftc.gov/csl/25-46/download.
[3] 17 C.F.R. § 40.1 (emphasis in original).
[4] 17 C.F.R. § 38.3(b).
[5] Final rules, Amendments Pertinent to Registered Entities and Exempt Commercial Markets, 73 FR 8599, 8600 (Feb. 14, 2008).

II. Background and Request for Extension of No-Action Position

KDE has been designated by the Commission as a contract market since March 2020.[6] The last trade executed on KDE occurred on January 10, 2025.[7] In October 2025, Payward, Inc. (d/b/a Kraken) ("Kraken") acquired KDE.[8] Recognizing that, absent any intervening trades, KDE would become a "dormant designated contract market" on January 10, 2026 pursuant to Commission regulation 40.1, KDE requested a no-action position with respect to the Commission's dormancy regulations.[9] In support of that request, KDE represented that Kraken had committed significant resources to ensuring KDE launched active trading as soon as possible, and argued the requested no-action position would promote responsible innovation and fair competition by allowing a recently recapitalized registrant to remain and grow.[10] Based on those representations, the Division granted a conditional and time-limited no-action position, which generally provided that the Division would not recommend an enforcement action against KDE or any market participant that sought to trade on KDE if KDE listed products for trading without having reinstated its designation as a contract market pursuant to Commission regulation 38.3(b).[11] That no-action position was conditioned on certain representations relating to product certification and more general compliance, and is in effect "until the earlier of (i) October 10, 2026, or (ii) the close of business on the date on which a trade is executed on or pursuant to the rules of [KDE]."[12]

Following issuance of CFTC Letter No. 25-46, Kraken acquired another DCM.[13] In light of that acquisition, Kraken is "reevaluating its business plan and the role that KDE will play in the Kraken corporate structure going forward, including potential strategic partnerships and sales opportunities involving KDE that could support renewed trading activity on the exchange under a qualified buyer or other arrangement."[14] KDE states that "were the CFTC Letter 25-46 relief to expire before that process is complete, KDE and Kraken risk limiting future optionality."[15] KDE has now requested to extend the expiration date for the no-action position granted in CFTC Letter No. 25-46 from October 10, 2026 to the earlier of (i) August 10, 2027 or (ii) the close of business on the date on which a trade is executed on or pursuant to the rules of KDE.[16] KDE requests to retain the conditions in CFTC Letter No. 25-46 related to product certification and more general compliance.[17]

In support of its Request, KDE first argued the requested extension is narrowly tailored and would support KDE's efforts to renew activity on the exchange. KDE represented it is "pursuing potential strategic partnerships and sales opportunities that could support renewed activity on the exchange under a qualified buyer or other strategic arrangement."[18] KDE stated

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[6] In re Application of Small Exchange, Inc. for Designation as a Contract Market (Mar. 10, 2020).
[7] CFTC Letter No. 25-46, at 2.
[8] Request at 1.
[9] Request at 2.
[10] *See generally* CFTC Letter No. 25-46, at 2-3.
[11] *Id.* at 3.
[12] *Id.*
[13] Request at 2.
[14] *Id.*
[15] *Id.*
[16] *See id.* at 3.
[17] *See id.*
[18] *Id.* at 5.

that if the no-action position granted in CFTC Letter No. 25-46 expired before KDE completes that process, it would limit KDE's options to pursue such potential partnerships and sales opportunities.[19] KDE contended this result would be at odds with the "CEA's objective to promote responsible innovation and fair competition."[20]

Second, KDE argued that the requested extension is consistent with both the KDE no-action position in CFTC Letter No. 25-46 and a similar no-action position granted in CFTC Letter No. 26-18, in which an exchange was "evaluating commercial partnerships, sales opportunities, and strategic investments."[21] KDE stated that it remains committed to complying with all applicable statutory and regulatory obligations and the conditions outlined in CFTC Letter No. 25-46, which require ongoing engagement with Division staff, among other things.[22]

Third, KDE argued that the requested extension would support increased competition and product innovation by allowing a registered entity to remain positioned for renewed activity.[23]

III. No-Action Position

Based on the foregoing and the representations in KDE's Request, the Division has determined that an extension of the conditional and time-limited no-action position in CFTC Letter No. 25-46 is warranted. Specifically, and subject to the terms and conditions set forth below, the Division will not recommend an enforcement action against KDE, or its market participants, if KDE lists products for trading without officially reinstating its designation under Commission regulation 38.3(b), even though it would otherwise be classified as a dormant designated contract market under Commission Regulation 40.1. This no-action position is subject to the following terms and conditions:

A. Duration. The no-action position will remain in effect from the date of issuance of the letter until the earlier of (i) August 10, 2027, or (ii) the close of business on the date on which a trade is executed on or pursuant to the rules of KDE (the "Covered Period"). Any such trading activity occurring during the Covered Period will reset the 365-day inactivity period that underlies the definition of a "dormant designated contract market" as applied to KDE.

B. Certification of Products. During the Covered Period, KDE will (i) only list for trading products that are individually submitted to the Commission in accordance with the requirements and procedures set forth in Part 40 of the Commission's regulations, and (ii) provide the Division with at least two business days' prior written notice of each initial listing of any such product.

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[19] *See id.*
[20] *Id.*
[21] *See* CFTC Letter No. 25-46; CFTC Letter No. 26-18 (June 3, 2026), *available at* https://www.cftc.gov/csl/26-18/download, at 2.
[22] Request at 5.
[23] *Id.*

C. Compliance Representations.

a. Throughout the Covered Period, KDE will continue to routinely engage with Division staff regarding any material modifications to its business, operations, systems, policies or programs that might occur as a result of any commercial partnerships, sales opportunities, and strategic investments; will provide written notification to the Division of any material modifications to its business, operations, systems, policies, or programs that do occur; and will provide any information relating to any such modifications that is reasonably requested by Division staff.

b. KDE will provide written notice to the Division at least ten business days prior to the first listing for trading of a product during the Covered Period, and will provide concurrently with such notice a written representation from an authorized representative of KDE that, subject solely to the no-action position provided herein with respect to the "dormant designated contract market" definition in Commission Regulation 40.1 and the requirements of Commission Regulation 38.3(b), KDE remains in compliance with all provisions of the Commodity Exchange Act ("CEA") and all requirements set forth in the Commission's regulations that are applicable to DCMs, including clearing-related requirements set forth in Commission Regulation 38.601[24] and applicable self-regulatory obligations.

D. Reinstatement Backstop. If trading has not commenced on KDE prior to expiration of the Covered Period, then to list products for trading, KDE must reinstate its designation pursuant to Commission Regulation 38.3(b).

This letter, and the position taken herein, represent the views of the Division only, and do not necessarily represent the positions or views of the Commission or of any other division or office of the Commission. This letter and the no-action position taken herein are not binding on the Commission or other Commission staff.[25] The positions provided in this letter do not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA, Commission regulations, or any other applicable laws (*i.e.*, securities laws). Further, this letter, and the position taken herein, are based upon the facts and circumstances presented to Division staff. Any different, changed, or omitted material facts or circumstances may render the position taken in this letter void. Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the position herein, in its discretion.

If you have any questions concerning this correspondence, please contact me at (202) 713-7617 or dhennes@cftc.gov.

[24] 17 C.F.R. § 38.601.

[25] *See* 17 C.F.R. § 140.99(a)(2) ("A no-action letter binds only the issuing Division . . . and not the Commission or other Commission staff.")

Sincerely,

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DJ Hennes
Acting Director
Division of Market Oversight