



1 created to allow itself to be contacted by the public; and, since the Commission provided the  
2 Ooki DAO the summons and complaint via those mechanisms on September 22, 2022 (in order  
3 to guard against potential evasion of service of process, as set forth below), that the Commission  
4 effectively served the Ooki DAO on that date.

## 5 **POINTS AND AUTHORITIES**

### 6 **I. Statement of Issue To Be Decided**

7 This Motion presents the following issue to be decided by the Court:

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9 1. Whether the Commission may serve the Ooki DAO—a decentralized autonomous  
10 organization (“DAO”) made up of certain anonymous users of the trading platform it operates  
11 and which has no physical office address or any publicly identifiable persons associated with its  
12 business—via a help chat box (“Help Chat Box”) (with contemporaneous notice on an online  
13 discussion forum (“Online Forum”) on the Ooki DAO’s website to view the Help Chat Box);  
14 where the Help Chat Box and Online Forum are the sole mechanisms the Ooki DAO has chosen  
15 for the public to contact it directly, and where courts in this circuit have authorized similar  
16 service (e.g., by email) on similarly situated organizations (e.g., those who merely operated a  
17 website, had no known physical location, and provided on the website only an email address to  
18 be contacted).

### 19 **II. Statement of Facts**

20 In support of its Motion, the Commission states the following facts:

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22 1. On September 22, 2022, the Commission filed a Complaint against the Ooki DAO  
23 (formerly doing business as the bZx DAO), alleging violations of Sections 4(a) and 4d(a)(1) of  
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1 the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6(a), 6d(a)(1), and Commission Regulation  
2 (“Regulation”) 42.2, 17 C.F.R. § 42.2 (2021). ECF No. 1.

3           2.       As alleged in the Complaint, from approximately June 1, 2019 through August  
4 23, 2021, bZeroX, LLC (“bZeroX”) and its owners—Tom Bean (“Bean”) and Kyle Kistner  
5 (“Kistner”)—designed, deployed, marketed, and made solicitations concerning a blockchain-  
6 based software protocol (the “bZx Protocol”) that accepted orders for and facilitated margined  
7 and leveraged retail commodity transactions (functioning similarly to a trading platform). The  
8 Complaint alleges that, in so doing, bZeroX—which had never registered with the  
9 Commission—unlawfully engaged in activities that could only lawfully be performed by a  
10 registered designated contract market (“DCM”) and other activities that could only lawfully be  
11 performed by a registered futures commission merchant (“FCM”) under the Act, 7 U.S.C. §§ 1-  
12 26, and Regulations, 17 C.F.R. pts. 1-190 (2021). In addition, bZeroX failed to conduct know-  
13 your-customer (“KYC”) diligence on its customers as part of a customer identification program  
14 (“CIP”), as required of FCMs by the Regulations. ECF No. 1 ¶ 1.

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17           3.       As further alleged in the Complaint, on approximately August 23, 2021, bZeroX  
18 transferred control of the bZx Protocol to the bZx DAO, which subsequently, on approximately  
19 December 18, 2021, renamed itself and is now doing business as the Ooki DAO. The Complaint  
20 alleges that the Ooki DAO is an unincorporated association comprised of holders of OokiDAO  
21 Tokens (“Ooki Tokens”) who vote those tokens to govern (e.g., to modify, operate, market, and  
22 take other actions with respect to) the bZx Protocol (which the Ooki DAO has renamed the  
23 “Ooki Protocol”). The Complaint further alleges that from approximately August 23, 2021 to the  
24 present, the Ooki DAO has operated, marketed, and made solicitations concerning the Ooki  
25 Protocol in the same manner as bZeroX, Bean, and Kistner before it, and in violation of the same  
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1 provisions of the Act and Regulations that bZeroX, Bean, and Kistner violated. ECF No. 1 ¶¶ 2,  
2 4.

3 4. As alleged in the Complaint, a key bZeroX objective in transferring control of the  
4 bZx Protocol (now the Ooki Protocol) to the bZx DAO (now the Ooki DAO) was to attempt to  
5 render the bZx DAO, by its decentralized nature, enforcement-proof. Put simply, the bZx  
6 Founders believed they had identified a way to violate the Act and Regulations, as well as other  
7 laws, without consequence. A bZx Founder so stated on a call with bZeroX community  
8 members prior to transferring control of the bZx Protocol to the bZx DAO:  
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10 It's really exciting. We're going to be really preparing for the new regulatory  
11 environment by ensuring bZx is future-proof. So many people across the industry  
12 right now are getting legal notices and lawmakers are trying to decide whether  
13 they want DeFi companies to register as virtual asset service providers or not –  
14 and really what we're going to do is take all the steps possible to make sure that  
when regulators ask us to comply, that we have nothing we can really do because  
we've given it all to the community.

15 ECF No. 1 ¶ 3.

16 5. On September 22, 2022, in a Commission Order issued concurrently with the  
17 Complaint, bZeroX, Bean, and Kistner resolved charges with the Commission in connection with  
18 their unlawful conduct. *See In re bZeroX, LLC, Tom Bean, and Kyle Kistner*, CFTC No. 22-31  
19 (Sept. 22, 2022).

20 6. By choosing to organize itself as a DAO, the Ooki DAO has structured its  
21 business in a way that has erected significant obstacles to traditional service of process. The  
22 Ooki DAO has no headquarters or physical office location; no mailing address; does not appear  
23 to be registered in any jurisdiction; and does not have a listed president, secretary, treasurer, or  
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1 agent appointed to accept service. *See* Declaration of Brittné Snyder (“Snyder Declaration”)  
2 (attached hereto as Exhibit 1) ¶¶ 5-6, 8 & Ex. A.

3 7. Instead, it is a completely decentralized unincorporated association of anonymous  
4 individual Ooki Token holders who have voted those tokens to participate in the business of  
5 operating the Ooki Protocol. The Ooki DAO offers a website to access the Ooki Protocol  
6 (ooki.com). Through that website, users may submit comments or requests for assistance  
7 through a Help Chat Box linked through the website. Separately, the website links to an Online  
8 Forum for Ooki Token holders to discuss and vote on Ooki DAO governance issues  
9 (forum.ooki.com). Snyder Declaration ¶¶ 5, 7.

10 8. The Commission took extensive steps to attempt to identify an individual  
11 authorized to accept service of process on the Ooki DAO’s behalf or a physical location to which  
12 a summons and complaint could be mailed. For example, the Commission searched law  
13 enforcement databases for any contact information associated with the Ooki DAO; searched the  
14 Ooki DAO website and the internet for any information regarding identifiable members  
15 associated with the Ooki DAO or a physical address; and searched business registration websites  
16 for all 50 states for any registration information and associated identification of authorized  
17 agents for service of process. However, the Commission has not identified any such relevant  
18 information. Snyder Declaration ¶¶ 5-6, 8 & Ex. A.

19 9. In addition, on the same date it filed the Complaint, the Commission provided  
20 copies of the summons, complaint, and additional related papers to the Ooki DAO via the Ooki  
21 DAO’s Help Chat Box (through a submission with attachments via the Help Chat Box); and  
22 further provided notice of the action via the Ooki DAO’s Online Forum (which does not permit  
23 the posting of attachments). In addition, the day after serving the summons, complaint, and  
24 certain additional related papers, the Commission served additional related papers on the Ooki  
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1 DAO via the Help Chat Box, with contemporaneous notice of such service via the Online  
 2 Forum.<sup>1</sup> In these communications, the Commission requested that the Ooki DAO contact  
 3 counsel for the Commission to discuss the litigation, including service of process.<sup>2</sup> As of the  
 4 filing of this motion, the Ooki DAO has not responded to the request to contact counsel for the  
 5 Commission. Snyder Declaration ¶¶ 9-12.

7 10. Nevertheless, it appears that the Ooki DAO, and many of its members and  
 8 platform users, are in fact aware of the action. The Commission has observed at least 38  
 9 messages discussing the Commission’s complaint against the Ooki DAO in the Ooki DAO’s  
 10 Telegram Channel, including by a participant listed as an Ooki DAO “Community admin” who  
 11 predicted “there will be an official statement from the OokiDAO team soon.” Snyder  
 12 Declaration ¶ 13. Similarly, according to data listed publicly in the Online Forum, there have  
 13 been at least 112 views of the CFTC’s post in the Online Forum regarding the action. Snyder  
 14 Declaration ¶ 15. More generally, this action has been well-publicized and has been extensively  
 15 discussed on social media, including in over 1,000 tweets on Twitter. Snyder Declaration ¶ 14.

### 17 **III. Argument**

18 The Court should authorize service of the complaint and summons through the Ooki  
 19 DAO’s Help Chat Box on the Ooki DAO’s website, with contemporaneous notice through  
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22 <sup>1</sup> The CFTC is concurrently filing with this Motion a Certificate of Service detailing each additional  
 23 document served on the Ooki DAO, to comply with Judge Orrick’s Standing Order for Civil Cases ¶ 9, which  
 24 requires service of all of Judge Orrick’s standing orders and the filing of a Certificate of Service certifying that such  
 service occurred.

25 <sup>2</sup> The Commission provided the documents to the Ooki DAO in this manner to guard against potential  
 26 evasion of service of process by the Ooki DAO upon learning of the Commission’s action against it—for example,  
 27 by disabling the Help Chat Box and/or the Online Forum. The Commission reasonably anticipated such conduct in  
 28 light of the fact that the Ooki DAO was founded, according to Kistner, in part to avoid compliance with its legal  
 obligations. By this Motion, the Commission is requesting that the Court direct that service of process be made by  
 these mechanisms; and, since the Commission provided the documents in this manner on September 22, 2022, that  
 the Court hold that the Commission effectively served the Ooki DAO on that date.

1 posting in the Ooki DAO Online Forum. There are significant obstacles to serving the Ooki  
2 DAO using other methods, and the proposed service methods are reasonably calculated to give  
3 actual notice of this action.

4 Federal Rule of Civil Procedure (“FRCP”) 4(h)(1) provides that a corporation,  
5 partnership, or other unincorporated association “must be served . . . in a judicial district of the  
6 United States: (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or (B) by  
7 delivering a copy of the summons and of the complaint to an officer, a managing or general  
8 agent, or any other agent authorized by appointment or by law to receive service of process  
9 and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy  
10 of each to the defendant . . . .” As described above, none of the predicates to satisfy FRCP  
11 4(h)(1)(B) exist (i.e., there is no officer, managing or general agent, etc.). Thus, per FRCP  
12 4(h)(1)(A), the Commission must serve the Ooki DAO in a manner prescribed by FRCP 4(e)(1),  
13 which permits service “following state law for serving a summons in an action brought in courts  
14 of general jurisdiction in the state where the district court is located or where service is made.”  
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16 The traditional California state law service provisions potentially applicable to this action  
17 require steps—such as serving an identifiable person, or leaving or mailing the summons at or to  
18 an identifiable physical address—that present significant obstacles to successful service. *See,*  
19 *e.g.*, CAL. CIV. PRO. CODE § 416.40 (permitting service on specified officers or agents associated  
20 with unincorporated association or when authorized by Section 18220 of the California  
21 Corporations Code); CAL. CORP. CODE § 18220 (similarly permitting service by personal  
22 delivery to authorized individuals or delivery by hand or mail to a physical office location); *cf.*  
23 CAL. CIV. PRO. CODE § 415.95 (permitting service on a business organization whose form is not  
24 known by leaving a copy of the summons and complaint with the person apparently in charge of  
25 the physical office followed by mailing copies to that physical office address). Here, as set forth  
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1 above, the Ooki DAO has no headquarters or physical office location; no mailing address; does  
2 not appear to be registered as any type of entity or association in any jurisdiction; and does not  
3 have a listed president, secretary, treasurer, or agent appointed to accept service. Instead, it is a  
4 completely decentralized unincorporated association of anonymous individuals which merely  
5 offers a website to access the Ooki Protocol and an online forum for Ooki Token holders to  
6 discuss and vote on Ooki DAO governance issues. Thus, the service provisions described above  
7 do not appear to provide viable avenues for service.  
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9 In light of this, the Court should direct that the summons and complaint be served under  
10 California’s alternative service provision permitting service in a manner reasonably calculated to  
11 give actual notice to the defendant. CAL. CIV. PRO. CODE § 413.30 (“[w]here no provision is  
12 made in this chapter or other law for the service of summons, the court in which the action is  
13 pending may direct that summons be served in a manner which is reasonably calculated to give  
14 actual notice to the party to be served and that proof of such service be made as prescribed by the  
15 court.”). Courts in the Ninth Circuit have regularly upheld service under this provision by  
16 whatever means of electronic communication a business organization with no physical address  
17 makes available on its website to contact the organization—in many cases, for example, via  
18 email. *See, e.g., Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1018-19 (9th Cir. 2002)  
19 (holding that email service was constitutionally acceptable where it was “reasonably calculated  
20 to apprise [the defendant] of the pendency of an action and afford it an opportunity to respond”);  
21 *Optima Direct, LLC v. Yageo America Corp.*, No. 21-cv-02823-DMR, 2021 WL 6051738, at \*2-  
22 3 (N.D. Cal. Dec. 21, 2021) (citations omitted) (upholding service by email). The Ninth Circuit  
23 has confirmed that service in this manner is appropriate where the defendant had “neither an  
24 office nor a door; it had only a computer terminal,” it had “structured its business such that it  
25 could be contacted only via its email address,” and where email was “the method of  
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1 communication which [defendant] utilizes and prefers.” *Rio Props.*, 284 F.3d at 1017-18  
2 (“Courts ... cannot be blind to changes and advances in technology. No longer do we live in a  
3 world where communications are conducted solely by mail carried by fast sailing clipper . . .  
4 ships. Electronic communication via satellite can and does provide instantaneous transmission  
5 of notice and information. No longer must process be mailed to a defendant's door when he can  
6 receive complete notice at an electronic terminal inside his very office, even when the door is  
7 steel and bolted shut.”) (citation omitted).  
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9       Here, while the Ooki DAO does not list an email address where it can be contacted, it  
10 does offer on its website a Help Chat Box to contact the Ooki DAO, and it does maintain a  
11 public forum dedicated to discussion of Ooki DAO governance issues. The Commission thus  
12 requests that the Court direct that the summons and complaint may be served in this action by  
13 submitting those documents through the Help Chat Box, with contemporaneous notice in the  
14 Ooki DAO Online Forum. Such method is reasonably calculated to give actual notice to the  
15 Ooki DAO because it is the method the Ooki DAO itself holds out to communicate with it.  
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17       Notably, as discussed above, to avoid potential service evasion, the Commission provided  
18 a copy of the summons and complaint to the Ooki DAO via the above method on September 22,  
19 2022. While the Commission is not required to prove that actual notice occurred (just, rather,  
20 that its method is reasonably calculated to provide actual notice), it does appear that the Ooki  
21 DAO, and many of its members and platform users, are aware of the Commission’s action. As  
22 described above, Ooki DAO community members—including a member listed as a “Community  
23 admin”—discussed the action extensively in the Ooki DAO’s Telegram channel. There have  
24 also been at least 112 views of the CFTC’s post in the Online Forum regarding the action. More  
25 generally, the Commission notes the extensive public discussion of this action on Twitter and  
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1 elsewhere.<sup>3</sup>

2 **IV. Conclusion**

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4 Based on the foregoing, the Commission requests that the Court direct that service of  
5 process on the Ooki DAO be made in this action by providing a copy of the summons and  
6 complaint through the Ooki DAO’s Help Chat Box, with contemporaneous notice by posting in  
7 the Ooki DAO’s Online Forum; and, since the Commission provided the documents in this  
8 manner on September 22, 2022, that the Court hold that the Commission effectively served the  
9 Ooki DAO on that date.

10 Dated: September 27, 2022

Respectfully submitted,

**COMMODITY FUTURES TRADING  
COMMISSION**

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24 \_\_\_\_\_  
25 <sup>3</sup> Because service in the manner proposed is reasonably calculated to provide notice, the Commission is not  
26 moving at this time to serve the Ooki DAO via a separate California state alternative service provision—publication  
27 in a newspaper. CAL. CIV. PRO. CODE § 415.50 (generally authorizing service by publication in a newspaper and,  
28 where address known, mailing when other service methods failed and publication reasonably calculated to provide  
notice). Courts in this circuit have authorized service via electronic communication pursuant to Section 413.30 prior  
to service by publication pursuant to Section 415.50 where the former is reasonably calculated to give notice of the  
action. *See, e.g., Steve McCurry Studios, LLC v. Web2Web Marketing, Inc.*, No. C 13–80246 WHA, 2014 WL  
1877547, at\*2-3 (N.D. Cal. May 9, 2014) (authorizing service by email under Section 413.30 and, only “if  
necessary” following such service, by publication pursuant to Section 415.50).

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**Certificate of Service**

I hereby certify that on September 27, 2022, I caused a copy of the foregoing to be filed with the Clerk of the Court via the CM/ECF system as well as provided to the Defendant Ooki DAO through the Ooki DAO’s Help Chat Box on the Ooki DAO website as well as by posting the foregoing to the Ooki DAO’s Online Forum.

*/s/ Anthony C. Biagioli*  
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