April 18, 2026

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: Prediction Markets; Advance Notice of Proposed Rulemaking (RIN 3038-AF65)

Dear Mr. Secretary:

This comment is submitted in response to the Commission's Advance Notice of Proposed Rulemaking concerning event contracts and the application of Commodity Exchange Act ("CEA") § 5h(g) and the special rule at § 7a-2(c)(5)(C). The comment proposes a structural framework for distinguishing event contract activity that falls within the Commission's core market-regulatory mandate from activity that has historically been regulated by the States as gaming.

The approach proposed here is informed by Commissioner Mersinger's 2024 dissent from the Commission's prior event contracts rulemaking, which observed that the Commission "has a role in regulating event contracts as a market regulator, but it is essential that the CFTC does not encroach upon the prerogatives of States," and that an appropriate proposal "would have struck a balance between Federal oversight and State autonomy by focusing on the CFTC's core mandate of promoting market stability and protecting market participants from fraud and abusive practices." The structural safe harbor proposed below operationalizes that balance. It defines the Commission's regulatory interest by reference to venue architecture rather than contract subject matter, and it preserves State authority over activities that do not meet the structural criteria of a neutral market-making venue.

I. THE ANALYTICAL FRAMEWORK: MARKET-MAKING VENUES AND BOOKMAKING OPERATIONS

The Commission's difficulty in administering CEA § 5h(g) and the special rule at § 7a-2(c)(5)(C) stems from an attempt to define "gaming" by reference to the subject matter of the underlying contract rather than the structure of the venue on which it trades. This subject-matter approach is both constitutionally fraught, inviting the kind of content-based line-drawing that courts have repeatedly found unadministrable, and economically incoherent, because identical contracts can serve legitimate hedging and price-discovery functions in one context and resemble wagering in another.

I respectfully propose that the Commission adopt a structural framework that distinguishes between two categorically different activities.

A market-making venue is a neutral intermediary that matches bids and offers submitted by independent market participants. The venue earns transaction fees, holds no directional position in any listed contract, and extends no economic or informational advantage to any participant. Price formation occurs through the interaction of participant orders, and the venue bears no risk tied to contract outcomes.

A bookmaking operation is a principal counterparty that offers prices, manages a book of exposures, and profits from the differential between offered odds and realized outcomes. Whether the bookmaker is organized as a single entity, a network of affiliated entities, or a nominal exchange operator that extracts economic benefits from participant activity, the defining feature is that the operator is itself a participant in the economic outcome of listed contracts.

This distinction tracks the historical common-law and state statutory treatment of gambling, which has consistently focused on the operator's economic relationship to the game rather than the nature of the underlying event. It also aligns with the structural premises of the Commodity Exchange Act, which regulates designated contract markets as neutral intermediaries subject to the Core Principles of § 5(d).

II. THE PROPOSED SAFE HARBOR

A venue that satisfies the following conditions should be conclusively deemed to be conducting market-making rather than gaming activity, and its listed event contracts should not be subject to prohibition under § 5h(g) on gaming grounds.

Operator Neutrality. Neither the venue operator nor any affiliated person may hold any position, direct or indirect, in any contract listed on the venue. Market-making agreements or designated liquidity provider arrangements that economically replicate principal participation by the operator or its affiliates are prohibited.

Prohibition on Seeded Liquidity. The venue may not provide initial or ongoing liquidity through proprietary accounts, affiliated accounts, or any arrangement in which the venue bears economic risk tied to contract outcomes.

Equal Access to Execution. The venue may not offer rebates, volume discounts conditioned on directional participation, payment for order flow, or any other economic inducement that differentiates among market participants on grounds other than objective operational criteria.

Equal Access to Information and Infrastructure. The venue may not offer co-location, preferential data feeds, advance notice of order book changes, or any other informational or latency advantage to any participant or class of participants.

Transparent Fee Structure. All transaction fees and other charges shall be publicly disclosed and applied uniformly to all participants engaged in equivalent activity.

III. GROUNDING THE SAFE HARBOR IN THE EXISTING CORE PRINCIPLES

The structural conditions proposed above operationalize commitments already embedded in the Designated Contract Market Core Principles at CEA § 5(d). The safe harbor asks the Commission to apply its existing statutory framework with greater specificity to the event contract context. Each condition reflects an existing Core Principle obligation—from CP 2 (Compliance with Rules) to CP 12 (Protection of Markets)—articulated with the precision that the event contract context requires.

IV. FEDERALISM: THE SAFE HARBOR PRESERVES STATE AUTHORITY

The proposed safe harbor respects State police power by defining federal jurisdiction by reference to venue structure rather than contract subject matter. This framing respects the principle that the federal government regulates activities falling within its enumerated powers (market integrity) rather than displacing State authority over subject matters reserved to the States (wagering). It permits the co-existence of federally regulated event contract exchanges and State-regulated sportsbooks as complementary institutions.

V. BENEFITS OF THE STRUCTURAL APPROACH

The structural safe harbor is objective and verifiable through corporate examination. It is faithful to the statutory text of the CEA and institutionally modest, avoiding the need for the Commission to act as an "election cop" or "sports referee." It is consistent with the dissenting views of Commissioner Mersinger by focusing the Commission on its proper role as a market regulator while respecting State prerogatives.

VI. CONCLUSION

The structural safe harbor offers a principled, administrable distinction between market-making venues, which fall within the Commission’s core mandate, and bookmaking operations, which do not. I respectfully urge the Commission to adopt this framework in any forthcoming proposed rulemaking on event contracts.

Respectfully submitted,

Francis S. Quinn, Jr.