PRIZEPICKS

April 29, 2026

VIA ELECTRONIC SUBMISSION

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

Re: Comments on the CFTC's Advance Notice of Proposed Rulemaking; Request for Comments, *Prediction Markets* (RIN 3038-AF65)

Dear Mr. Kirkpatrick:

I. INTRODUCTION

Performance Predictions II LLC d/b/a PrizePicks Predict ("**PrizePicks**") submits this letter in response to the Commodity Futures Trading Commission's ("**CFTC**" or "**Commission**") Advance Notice of Proposed Rulemaking; Request for Comments, *Prediction Markets* ("**ANPR**").[1] PrizePicks is a subsidiary of SidePrize LLC d/b/a PrizePicks, a daily fantasy sports company, and is the first event contract-only Futures Commission Merchant ("**FCM**") registered with the CFTC and the National Futures Association ("**NFA**").[2]

PrizePicks appreciates the CFTC's ongoing hard work throughout the rulemaking process and offers these comments to further advance that process. In particular, the steps the CFTC is taking to regulate prediction markets and event contracts—including the ANPR—go a long way towards clarifying the Commission's jurisdiction and regulatory authority over event contracts and prediction markets and promoting market integrity and public confidence in prediction markets as legitimate, transparent, and well-regulated financial markets operating under robust federal oversight.

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[1] 91 Fed. Reg. 12,516 (Mar. 16, 2026).

[2] NFA Basic Profile, Performance Predictions II LLC (Futures Commission Merchant registered, NFA Member and Swap Firm approved as of Sept. 22, 2025); Press Release, PrizePicks Launches Prediction Markets Offering with Kalshi (Nov. 14, 2025).

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PrizePicks' comments reflect its experience as the first event contract-only FCM. Specifically, PrizePicks' comments address both conceptual and technical issues faced by event contract market participants, including: (i) the equal application of the CFTC's customer protection paradigm; (ii) the need for material nonpublic information guardrails to preserve the integrity of event contract markets; (iii) the modernization of the CFTC's registration requirements with respect to certain types of market participants; and (iv) certain other technical regulatory requirements.

PrizePicks would like to act as a resource to the Commission as it works through the ultimate adoption of a final rule that modernizes the CFTC's regulatory paradigm for event contract markets. Please do not hesitate to contact me at Legal@PrizePicks.com if you have any questions regarding these comments or would like to discuss anything set forth below in greater detail.

II. COMMENTS

A. Ensuring Customer Protection and Leveling the Playing Field for Retail Intermediaries

The current retail event contract playing field is uneven. Market participants who access event contracts through FCMs and Introducing Brokers ("**IBs**") are provided the full protection of the Commission's consumer protection regulations[3]—market participants who access event contracts through a direct clearing arrangement are not.[4]

FCMs and IBs have historically been the primary interface through which the CFTC protects retail market participants. Specifically, as the CFTC knows, FCMs and IBs are subject to a number of regulatory requirements, including disclosure obligations and mandatory NFA membership and oversight, that provide (i) their customers with crucial information regarding the products they are trading and (ii) confidence that their accounts are subject to robust regulatory oversight.

The advent of the direct clearing model in event contract markets has bypassed this layer of customer protection. While the innovation of direct retail event contract clearing offers some benefits, those benefits should not come at the expense of customer protection and an uneven regulatory playing field for FCMs and IBs.[5] In short, it does not make sense to provide a higher standard of protection to retail customers who access event contract markets through FCMs and IBs than retail customers who use a direct clearing model. Providing a level playing field

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[3] Footnotes that reference the ANPR herein tie the comment to specific questions in the ANPR for ease of the CFTC's review. *See* ANPR Question 2a (impartial access, abusive trade practices, and access criteria under DCM Core Principle Two, 17 C.F.R. § 38.151).

[4] *See* ANPR Question 4 (institutional vs. retail trading on prediction markets registered as SEFs and DCMs and impact on market liquidity).

[5] *See* ANPR Questions 6 and 38 (costs and benefits of Commission rulemaking regarding prediction markets, including considerations of market participant protection, efficiency, competitiveness, and financial integrity under CEA Section 15(a)).

prevents regulatory arbitrage and ensures that participants choose platforms based on technology and preferences.

Recommendation: The Commission should subject direct-clearing Derivative Clearing Organizations ("**DCOs**") to the same customer protection and disclosure requirements as FCMs and IBs when serving retail customers. As noted above, direct-clearing DCOs that serve retail customers do not bear the same extensive customer protection obligations that FCMs must satisfy, creating a competitive disparity and a potential customer protection race to the bottom.[6] Failing to impose equivalent customer protection obligations on direct-clearing DCOs and FCMs is anticompetitive.[7]

B. Defining Material Non-Public Information Guardrails

As noted in the ANPR at Question 31, the Commodity Exchange Act ("**CEA**") prohibits the use of "any manipulative or deceptive device or contrivance…in connection with any swap."[8] Specifically relevant to the application of this provision of the CEA to prediction markets is the potential use of material nonpublic information ("**MNPI**") in the trading of event contracts.

Recommendation: To assist Designated Contract Markets' ("**DCM**") compliance with DCM Core Principle Three[9] and event contract market participants' compliance with the Commission's fraud prohibitions,[10] the CFTC should provide bright-line guidance regarding the use of MNPI in event contract markets.[11] The Commission's Prediction Markets Advisory correctly identifies high risks in "single actor contracts" and "officiating actions".[12] The Commission should codify its response to these risks, including that individuals who control an event's outcome, such as athletes, team staff, performers under NDAs, and government officials, are prohibited from trading on related contracts. Doing so would: (i) be consistent with certain event contract DCMs' existing rules;[13] (ii) provide clear guidance to market participants on the

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[6] *See* ANPR Question 39 (Commission consideration of the public interest protected by the antitrust laws and endeavoring to take the least anticompetitive means of achieving CEA objectives under CEA Section 15(b)).

[7] Under CEA Section 15(b), 7 U.S.C. § 19(b), the Commission must take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the CEA's objectives, a mandate that counsels strongly in favor of regulatory parity in the retail event contract market.

[8] *See* ANPR Question 31; 7 U.S.C. § 9(1).

[9] 17 C.F.R. § 38.200.

[10] *See* 7 U.S.C. § 9; 17 C.F.R. § 180.1.

[11] *See* ANPR Question 29 (asking whether "there [is] some public interest utility if people with an asymmetric information advantage on a particular event contract are able to trade on prediction markets" and what factors the Commission should consider in "evaluating and balancing the public interest in this scenario.").

[12] CFTC Letter No. 26-08, CFTC Staff Advisory, Division of Market Oversight, Prediction Markets Advisory at 4-5 (Mar. 12, 2026).

[13] *See, e.g.*, KalshiEX LLC Rulebook (v. 1.24 Feb. 16, 2026) Rules 5.17(y), which prohibits any trader who is an "Insider," defined as any person with access to material nonpublic information about the subject of an underlying contract, or who is an employee or affiliate of a Source Agency, from trading, directly or indirectly, in such contracts and 5.17(z)), which prohibits any trader who "is a decision maker, either directly or indirectly, or has any influence,

types of conduct that are prohibited; and (iii) send a strong signal that the Commission is committed to ensuring the integrity of prediction markets.

In addition, that guidance could provide a framework for how the Commission expects CFTC registrants with affiliated market makers to handle customer MNPI. Specifically, such guidance could recommend that affiliated market makers establish appropriate information barriers to prevent the flow of customer information between the registrant and its affiliated market maker. Such guidance would reinforce the Commission's commitment to customer protection while preserving the liquidity benefits that market makers provide to event contract markets. Clear regulatory expectations in this area would also help ensure a level playing field among market participants and prevent potential conflicts of interest that could undermine market integrity.

C. Treatment of Certain Promotions Under CFTC Regulation 1.56

As part of their marketing efforts, event contract brokers offer a variety of incentives and rewards to their customers that may be new to regulated derivatives markets. PrizePicks requests that the CFTC provide guidance on the application of certain rules in the context of current marketing practices.

For example, CFTC Regulation 1.56 prohibits an FCM or IB from guaranteeing its customers' event contract trading against loss or otherwise limiting its customers' loss from such trading.[14] PrizePicks understands this prohibition to prohibit an FCM or IB from serving as a backstop for its customers' trading because, as the Commission stated when adopting that rule, "the use of limited-risk and guarantee-against-loss agreements has often been associated with patterns of allegedly unlawful conduct by FCMs or other registrants or with the financial instability of such persons."[15] Said another way, FCMs purportedly guaranteeing traditional margined futures trading was a marker of potential fraud by FCMs and exposed the FCMs to material market risk.

From PrizePicks' perspective, an FCM providing its customers with trading incentives and rewards in the form of free trades, bonuses, or reduced or no-fee transactions for fully collateralized event contracts is consistent with the intent underlying CFTC Regulation 1.56 because: (i) it is clear to the customer what benefit they are receiving; (ii) the customer's own funds are not exposed to risk; and (iii) as the transactions are fully paid at execution, the FCM is not exposed to market risk. The fully collateralized structure of event contracts eliminates the credit risk concerns underlying CFTC Regulation 1.56. Permitting such promotions also serves the innovation and competitiveness goals included in the CEA by allowing FCMs to compete on fair terms with unregulated offshore platforms that offer similar incentives without regulatory constraint. PrizePicks requests that the CFTC confirm its understanding in guidance that

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either directly or indirectly, no matter the scale and importance of the influence, on the outcome of the Underlying (event) of any Contract" from trading in such contracts.

[14] 17 C.F.R. § 1.56.

[15] CFTC Final Rule, *Prohibition of Guarantees Against Loss*, 46 Fed. Reg. 62,841, 62,842 (Dec. 29, 1981).

addresses how CFTC Regulation 1.56 and others apply to common event contract marketing practices.

Recommendation: The Commission should clarify how common marketing incentives interact with regulations such as CFTC Regulation 1.56.

D. Modernizing the CFTC's Registration Paradigm for FCMs and IBs

The CFTC should consider modernizing its registration framework to account for two event contract innovations, which are discussed in this Section II.D and in Section II.E.

The first innovation is that both brokers (*e.g.*, FCMs and IBs) and DCMs in the retail event contract space use social media-based third-party marketers in ways that do not fit cleanly into the CFTC's and NFA's current registration and regulatory paradigms. Brokers and DCMs use third parties with large social media following to direct customers to their event contract offerings. These social media marketers can be compensated in several ways, including by earning compensation for each unique customer referral generated by their social media activity.

Historically, receiving compensation for referring a customer to trade in a commodity interest could be viewed as activity that triggers an obligation to register as an IB.[16] However, treating these third-party marketers as IBs would, as discussed below, be inconsistent with the intent of the IB registration paradigm and impose unnecessary regulatory burdens on the marketers themselves as well as the brokers and DCMs that rely on the marketers.

Specifically, FCM and IB registration requirements were, at least in part, established to provide commodity interest market participants with disclosure and customer protection at the appropriate part of the CFTC's regulatory universe because brokers were historically customers' entry point to derivatives markets.[17] These third-party marketers are not an entry point to derivatives markets—they are third-party advertising and should be regulated as such. Further, if third-party marketers fall within the definition of "Introducing Broker," then any NFA Member can only do business with them if they are properly registered as such,[18] which is an obligation that direct clearing DCMs and DCOs do not share. This raises the issue of regulatory parity discussed in Section II.A above.

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[16] *See, e.g.*, CFTC Staff Letter 04-15 at 3 (Mar. 22, 2004) (The phrase "soliciting or accepting orders" is "construed to encompass not just the literal solicitation of customers' orders, but also the solicitation of customers...or referral...for the institution of a trading relationship; CFTC Letter 03-19 at 1 (Apr. 29, 2003) ("The registration requirements have been construed flexibly to require the registration of persons who participate even indirectly in such solicitations or referrals.").

[17] *See* CFTC Final Rule, *Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements*, 48 Fed. Reg. 35,248, 35,250 (Aug. 3, 1983) (noting that the underlying congressional purpose of the IB category, was to capture persons who "performed the types of activities traditionally engaged in by agents" of FCMs, persons who solicited customers, accepted their orders, and referred them to an FCM on a per-trade or referral-fee basis, carrying accounts on a fully disclosed basis).

[18] *See* NFA Bylaw 1101.

Recommendation: We respectfully request that the CFTC provide guidance clarifying that third-party marketers who are compensated through the use of social media referral links do not fall within the definition of "Introducing Broker".[19] These marketers do not refer or negotiate specific event contract transactions, advise customers, or otherwise introduce accounts in the classic sense. Providing the requested guidance would be an appropriate update of the CFTC's regulatory paradigm to properly account for the use of social media-based marketing and would be consistent with the underlying purpose of the IB definition.[20] Retail market participants would still receive disclosure and customer protection from their brokers or, if the Commission adopts the recommendations in Section II.A, their DCM or DCO, and the CFTC, through its antifraud authority, could still pursue actions against marketers who engage in deceptive conduct.

E. Modernizing the CFTC's Registration Paradigm for Swap Dealers

The second innovation that has resulted from the advent of event contracts and prediction markets requires modernization of the CFTC's swap dealer registration paradigm. Specifically, because the CEA treats event contracts as swaps,[21] any entity that makes a market in event contracts traded on or subject to the rules of a DCM may be engaged in swap dealing activity,[22] potentially triggering an obligation to register as a swap dealer.[23] Market makers provide much-needed liquidity to prediction markets and can facilitate larger hedging transactions that are integral to the market. However, the swap dealer regulatory regime is not appropriate for on-exchange event contract market makers, described further below.

Additionally, the CFTC's swap dealer regulatory paradigm imposes a number of onerous customer protection requirements.[24] These are not necessary for potentially anonymous counterparties to cleared fully collateralized trades because the customer protection concerns and

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[19] 7 U.S.C. § 1a(31).

[20] *See infra* note 17 and accompanying text.

[21] The CEA defines a "swap", in relevant part, as "a put, call, cap, floor, collar, or similar option of any kind…that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence….". 7 U.S.C. § 1a(47)(A). *See* Joint Final Rule; Interpretations, *Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement;" Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 Fed. Reg. 48,208, 48,236 (Aug. 13, 2012) and Order, *In re: Blockratize, Inc. d/b/a Polymarket.com*, CFTC Dkt. No. 22-09, at 2 (Jan. 3, 2022) ("[E]vent contracts, each of which is composed of a pair of binary options, constitute swaps under the CFTC's jurisdiction… in accordance with the [CEA] and Regulations.").

[22] *See* 7 U.S.C. § 1a(49)(A) ("The term "swap dealer" means any person who—(i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps….").

[23] *See* 7 U.S.C. §6s(a) ("It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.").

[24] For example, the current swap dealer regulatory framework imposes a broad, multi-pillar compliance regime on swap dealers—spanning registration and governance (*e.g.*, 17 C.F.R. §§ 3.10; 23.21–23.22), capital and margin (*e.g.*, 17 C.F.R. §§ 23.101; 23.151–23.161), extensive recordkeeping and daily trading records (*e.g.*, 17 C.F.R. §§ 23.201–23.203), and continuous swap reporting/public dissemination obligations (*e.g.*, 17 C.F.R. Parts 43 and 45, including §§ 43.3 and 45.14).

risks are not the same as they are with traditional over-the-counter swap transactions. In short, with respect to event contracts executed on or subject to the rules of DCM and cleared through a DCO, there is no customer relationship to regulate or protect.

The swap dealer regulations also include a number of risk mitigation measures such as regulatory capital requirements.[25] These are unnecessary for event contract market makers, at least at the levels imposed on swap dealers, because event contracts are fully collateralized and there is little to no current or potential future exposure under those transactions that needs to be mitigated with regulatory capital.

Recommendation: We respectfully request that the Commission provide swap dealer registration relief for entities making markets in event contracts on or subject to the rules of a DCM. The CFTC could provide this relief by excluding such event contracts from the consideration of whether an entity has exceeded the *de minimis* exception set out in the definition of "swap dealer" in CFTC Regulation 1.3.[26]

Alternative Recommendation: In the alternative, the Commission could provide partial relief through the expansion of existing no-action relief to allow event contract market makers to register as floor traders rather than swap dealers. Specifically, CFTC No-Action Letter ("**NAL**") 19-14[27] provides relief from certain conditions of the floor trader provision in the swap dealer *de minimis* exception in CFTC Regulation 1.3, which permits, subject to a number of conditions, registered floor traders to exclude swaps executed on or subject to the rules of a DCM or swap execution facility ("**SEF**") and cleared through a DCO ("**DCM and SEF Cleared Swaps**") from the determination of whether the floor trader has exceeded the *de minimis* threshold for swap dealer registration. Under the relief provided by NAL 19-14, a floor trader may continue excluding DCM and SEF Cleared Swaps from the *de minimis* calculation even where the floor trader does not meet certain of the necessary criteria. Specifically, a floor trader can exclude such swaps even if it enters into off-exchange swaps, negotiates the terms of off-exchange swaps, or does not file periodic risk reports that CFTC regulations typically require.[28]

While NAL 19-14 represented an important step in recognizing that the swap dealer paradigm does not readily fit on-exchange cleared market-making activity, it did not specifically address prediction markets or event contracts. Accordingly, in lieu of the relief requested above with respect to CFTC Regulation 1.3, the CFTC could expand the relief provided in NAL 19-14 to expressly cover registered floor traders whose dealing activity is limited to event contracts traded on or subject to the rules of a DCM and cleared through a DCO, regardless of whether the entity participates in a DCM's market making program or whether they are affiliated with a swap

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25 *See, e.g.*, 17 C.F.R. §§ 23.101; 23.151–23.161.

26 17 C.F.R. § 1.3.

27 CFTC No-Action Letter No. 19-14 (June 27, 2019).

28 17 C.F.R. § 23.600(c)(2).

dealer or an entity that provides swap clearing services.[29] Such relief would be consistent with the current structure of event contract markets.

The expanded relief would allow current and new market makers to provide meaningful levels of liquidity while registering appropriately as a floor trader and not a swap dealer. Specifically, existing market makers that participate in DCMs' market making programs, including Susquehanna and Kalshi Trading, likely do not qualify for the relief provided by NAL 19-14 as they are affiliated with a swap dealer[30] and a DCO respectively,[31] and each is likely a member of a DCM's market making program. In addition, if a PrizePicks affiliate were to act as a market maker on a DCM, it would similarly likely not qualify for the relief as an affiliate of a registered FCM.

In short, these current limitations force much-needed event contract liquidity providers to choose between (i) registering as swap dealer, a category that is wholly inappropriate for the activity in which they are engaged and (ii) providing liquidity below the $8 billion *de minimis* threshold. Expanding the relief in NAL 19-14 for event contract market makers in the manner requested would allow these market makers to register appropriately as a floor trader and provide needed liquidity without an arbitrary regulatory cap on their ability to do so.

F. Permitting Designee Filing of 1-FR-FCM Reports

CFTC regulations currently require that Form 1-FR-FCM reports filed with the NFA are to be accompanied by an oath or affirmation from specific individuals, including an FCM's chief executive officer ("**CEO**") or chief financial officer ("**CFO**").[32] This filing requirement does not account for the operational realities of FCMs such as PrizePicks, which routinely delegate clerical and administrative functions to qualified personnel while maintaining executive accountability for the substance and accuracy of regulatory filings.

Recommendation: The Commission should permit a designee of an FCM's CEO or CFO to file Form 1-FR-FCM reports on behalf of the authorized signer, while preserving the requirement that the CEO or CFO retain full responsibility for any misstatements or inaccuracies in the filed reports. This approach would align the CFTC's filing requirements with standard business practices without diminishing the regulatory protections underlying the oath or affirmation requirement.

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[29] The floor trader exception from the swap dealer *de minimis* exception is not available to registered floor traders that offer or are affiliated with an entity that offers "swap clearing services to third parties." It is unclear what the Commission intended to include as "swap clearing services to third parties." The CFTC regulations include the phrase "clearing services" in the definition of "Clearing Organization" (*see* 17 C.F.R. § 1.3) and when discussing the activities of FCMs (*see* 17 C.F.R. § 1.71). As such, PrizePicks understands this phrase to capture floor traders affiliated with either DCOs or FCMs.

[30] Susquehanna is affiliated with registered swap dealer Darby Trading LLC.

[31] Kalshi Trading is affiliated with registered DCO Kalshi Klear LLC.

[32] 17 C.F.R. § 1.10(d)(4).

G. Coordination with Other Regulators of Event Contracts and Prediction Markets

PrizePicks' experience is that the evolving regulatory landscape for prediction markets and event contracts presents novel issues that do not fit squarely within the CFTC's existing regulatory paradigm. The unique issues raised by event contracts and prediction markets require careful interagency coordination to ensure consistent treatment and clear guidance for market participants.

First, unregulated offshore prediction markets pose a significant threat to the integrity of the domestic event contract marketplace. These platforms operate outside of CFTC jurisdiction and without the safeguards that apply to registered exchanges and intermediaries. The existence of unregulated offshore alternatives undermines the competitive position of compliant domestic market participants and creates opportunities for market manipulation and fraud that can corrupt domestic markets. In addition, these platforms may improperly permit U.S. persons to trade in unregulated contracts, exposing those U.S. persons to the harm caused by that manipulation and fraud. We encourage the Commission to (i) aggressively prosecute any offshore platforms that provide improper access to U.S. persons and (ii) coordinate with relevant domestic and international regulatory authorities to address the risks posed by offshore prediction markets.

Second, as described above, much of the day-to-day oversight regarding brokers of event contracts (registered FCMs and IBs) is administered by the NFA. We respectfully request that the CFTC work closely with the NFA to ensure that the Commission's rules and guidance are accurately reflected in NFA practice and that the NFA is given adequate time and resources to update its rules and guidance to address the unique characteristics of prediction markets, including with respect to the new and novel marketing and promotion methods used by industry participants. Consistent regulatory treatment across the CFTC and NFA is essential to providing market participants with clear expectations and reducing compliance burdens, especially if the CFTC takes PrizePicks' recommendation and levels the regulatory playing field across brokers and DCMs.

Third, there is uncertainty regarding the federal income tax treatment of event contracts. The Internal Revenue Code ("**IRC**") generally provides the appropriate favorable tax treatment for futures contracts and nonequity options under IRC Section 1256.[33] IRC Section 1256 treatment is generally available for these types of contracts if they are traded on a "qualified board or exchange."[34] Given language in IRC Section 1256 and the fact that event contracts are technically regulated as swaps, there is uncertainty as to whether event contracts qualify for IRC Section 1256 treatment. The Internal Revenue Service ("**IRS**") has not provided definitive guidance on whether event contracts traded on a DCM qualify for IRC Section 1256 treatment or whether gains and losses from such contracts should be taxed under a different paradigm. This uncertainty creates compliance challenges for market operators and brokers and adds unnecessary complexity and uncertainty for market participants. The CFTC should ask the IRS

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[33] 26 U.S.C. § 1256. Under IRC Section 1256, with a few exceptions, income generated from futures contracts and non-equity options receive a 60/40 split between long-term and short-term capital gains treatment. This approach greatly simplifies the taxation of covered contracts.

[34] 26 U.S.C. § 1256.

to request or provide guidance necessary to confirm that IRC Section 1256 is the appropriate federal income tax treatment for event contracts traded on registered DCMs.

Recommendation: The Commission should coordinate with international regulators, the NFA, and the IRS to address the respective issues raised above.

III. Conclusion

PrizePicks appreciates this opportunity to comment on and support the ANPR and the rulemaking process pertaining to event contracts and prediction markets. If you have any questions, please contact the undersigned.

Respectfully submitted,



Adam F. Packer, SVP Legal
Performance Predictions II LLC