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Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
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Washington, DC 20581

Re: Prediction Markets, RIN 3038-AF65

DraftKings Inc. ("DraftKings") appreciates the opportunity to comment on the Commodity Futures Trading Commission's Advance Notice of Proposed Rulemaking (the "ANPRM") regarding prediction markets. The questions presented in this ANPRM are consequential, and they arise at a moment when prediction markets are no longer niche products but a developing part of the regulated U.S. derivatives landscape.

DraftKings submits this comment from the perspective of a company with deep experience in sports integrity, responsible customer engagement, and regulated market operations, and more recently as a market participant whose experience is directly relevant to the Commission's questions concerning designated contract markets and retail market structure. DraftKings owns Railbird Exchange, LLC, a designated contract market, as well as DraftKings Predictions, an introducing broker with a pending FCM application.

DraftKings supports clear, durable rules that permit responsible innovation, protect customers, preserve market integrity, and give regulated firms a workable framework within which to compete. This letter makes five main points in support of these objectives.

- **First, the Commission should address market structure directly.** In DraftKings' view, a DCM that wishes to provide access to retail participants should do so through an affiliated FCM or, if the Commission continues to permit a disintermediated model, subject that model to requirements comparable to those imposed on the intermediated model. The Commission also should take a permissive approach to vertical integration and should permit common ownership of a DCM, DCO, intermediary, and affiliated market maker.

- **Second, the Commission should provide fit-for-purpose rules on reporting, clearing, and liquidity provision.** The Commission's framework should account for the actual risk profile of event contracts and the practical realities of clearing and market making.

- **Third, the Commission should establish a durable rules-based framework that preserves flexibility.** Rules provide greater long-term certainty and are less susceptible to shifting over time, but they need not be rigid. The Commission can adopt rules that preserve flexibility through principles-based standards and tailored requirements.

- **Fourth, the Commission should apply a contract-specific, public-interest framework.** Section 5c(c)(5)(C) does not authorize the Commission to collapse the statutory inquiry into categorical judgments based solely on subject matter labels. The

Commission should evaluate a contract's design, the underlying activity, the participants who may influence the outcome, the settlement process, and the safeguards in place.

- **Fifth, the Commission should not treat "gaming" as categorically contrary to the public interest.** DraftKings does not concede that sports event contracts necessarily involve "gaming" within the meaning of section 5c(c)(5)(C) or Rule 40.11, and the Commission should not read "gaming" so broadly that it captures contracts tied to sporting events merely because those events are colloquially described as "games." But regardless, the Commission should reconsider whether "gaming" should remain in Rule 40.11 in light of the materially changed landscape since 2010.

I. Core Principles and Market Structure

A. Retail access should occur through an affiliated FCM, and vertical integration should remain permissible

This Section I.A is responsive primarily to Questions 1, 2(a), 2(f), 3, and 6, and more generally to the ANPRM's market-structure questions.

The ANPRM asks a series of questions about how the DCM Core Principles should apply to prediction markets, including questions concerning impartial access, abusive trade practices, customer protections, financial integrity, and the role of intermediaries.

In DraftKings' view, if a DCM wants to provide access to retail customers, it should do so through an affiliated FCM or, alternatively, through a disintermediated model subject to the same requirements currently imposed upon intermediaries. Retail-facing prediction markets implicate the same kinds of customer-protection concerns that traditionally justify FCM intermediation: KYC/AML, customer-fund protections, supervision of sales practices and customer communications, and risk controls. The Commission's own request for comment on retail direct clearing recognizes that when no FCM stands between the customer and the clearinghouse, there is a gap around those responsibilities, and it expressly asks whether direct retail participants should instead become customers of an affiliated FCM. The answer is yes. This is not only a customer-protection concern; it is also a competitive-neutrality concern when functionally similar retail-facing activity can occur in a differently regulated framework.

DraftKings supports retail participation in prediction markets and believes that participation should occur within a more cohesive and clearly defined market structure. Prediction markets that are predominantly retail-facing should not be treated as though the absence of an intermediary is a customer benefit in itself. In practice, the absence of an intermediary can leave the exchange and clearinghouse to shoulder responsibilities that do not fit cleanly within their traditional role, while leaving retail customers uncertain about which protections apply.

The Commission should also calibrate retail-facing rules to the actual risk profile of fully collateralized event contracts. Those products do not present the same open-ended leverage and margin-call risks as margined products, and the rules should reflect that while preserving strong core protections.

The Commission should therefore state clearly that a DCM that provides access to retail participants should do so through an affiliated FCM or, if the Commission continues to permit a disintermediated model, that model should be subject to requirements comparable to those imposed on intermediaries with respect to retail onboarding, customer protection, supervision,

promotional practices, and related compliance controls. Responsibility for those functions should not disappear simply because a platform reaches retail customers without a traditional intermediary. At the same time, where an FCM intermediates customer access to a properly listed contract, product-design responsibility should remain with the listing exchange and clearing framework, not shifted to the intermediary simply because it provides access.

The Commission also should take a permissive approach to vertical integration. Common ownership of a DCM, DCO, intermediary, and affiliated market maker should be permitted, provided that each entity remains subject to appropriate regulatory obligations and conflicts controls. If the Commission concludes that guardrails are warranted, those guardrails should be targeted to specific risks—such as information sharing, supervisory independence, and fair access—rather than used to prohibit integrated ownership structures or appropriately governed shared-services models. A contrary approach would risk foreclosing efficient market structures without a clear corresponding benefit to customer protection or market integrity.

B. "Impartial access" should not require a one-size-fits-all execution model

This Section I.B is responsive primarily to Questions 2(a), 4, and 5(b)-(c).

The Commission also asks how Core Principle 2's access and abusive-trade-practice obligations should apply to prediction markets. DraftKings agrees that access standards should be transparent, objective, and non-discriminatory. But the Commission should not interpret "impartial access" to require a single execution model for every participant and every product.

Prediction markets can support multiple legitimate participant categories: retail customers trading through an affiliated FCM; institutional participants or ECPs trading on a SEF or DCM; and approved liquidity providers or market makers supporting continuous liquidity. Those participants are not similarly situated. The Commission should therefore preserve flexibility for:

- qualified liquidity providers, including arrangements that improve execution quality and resiliency so long as conflicts are controlled and surveillance is robust;
- block or privately negotiated trades among eligible institutional participants, submitted to a DCM for clearing under clear rules; and
- intermediated access that protects customers without forcing retail and institutional workflows into the same mold.

The Commission should not assume flexible execution models undermine market integrity. Properly supervised block trading and privately negotiated institutional trading can improve price discovery, enable execution in size, and reduce unnecessary disruption to a retail order book.

C. Settlement criteria and dispute governance should be clear, but the Commission should not prescribe specific sports data vendors

This Section I.C is responsive primarily to Question 2(b).

The ANPRM appropriately asks about resolution criteria, disputes over whether a triggering event occurred, and the relevance of dispute-resolution procedures in other markets. Prediction markets require unusually clear terms and conditions because ambiguity about the underlying event or the source of truth can undermine confidence in the market.

The Commission should expect DCMs to adopt contract specifications that address:

- contingencies at the outset;
- the hierarchy of resolution sources;
- the process for identifying and correcting obvious errors;
- the governance of outcome-review or resolution committees; and
- the process for handling genuinely disputed settlements, including the treatment of funds if the dispute arises after preliminary settlement activity has already occurred.

That said, the Commission should not mandate that sports event contracts settle using official league data. The better approach is to require that settlement criteria be reliable, clearly specified, objectively verifiable, and consistently disclosed in advance. That standard protects market integrity without prescribing any one category of source data or embedding a specific commercial model in the rules.

D. Manipulation, surveillance, and position accountability should be analyzed economically, not categorically

This Section I.D is responsive primarily to Questions 2(c)-2(e) and 5(b)-5(c).

The ANPRM asks how to determine whether an event contract is "readily susceptible to manipulation," what surveillance practices the Commission should expect, and how position limits or accountability should be calibrated. In DraftKings' view, those questions should be answered through an economic and structural lens.

The Commission should look to factors such as:

- how much capital would actually be required to move the contract price;
- whether a single person or small group can materially influence the outcome of the underlying event;
- whether the underlying event is broad and difficult to influence or narrow and readily influenced;
- the breadth of participation and liquidity in the market; and
- the degree to which materially similar contracts or related markets permit concentration of exposure.

A binary market can reprice sharply as the probability of an event moves from remote to near certain. That kind of price movement is not inherently suspicious. Prediction markets should not be judged by price-behavior assumptions borrowed from futures. The Commission should also recognize that certain event contracts often trade with low notional values, making traditional futures-style position-limit frameworks potentially over-restrictive if imported without adjustment.

Large-trader visibility also presents different issues in these markets because materially similar exposures may exist across related contracts. The Commission should consider whether existing large-trader reporting conventions adequately capture concentration and cross-market exposure in event markets.

E. Reporting and public disclosure should be tailored to event contracts

This Section I.E is responsive primarily to Questions 4 and 5(a).

The ANPRM asks how swap-reporting and public-disclosure requirements should apply to event contracts listed as swaps. Cleared swaps traded on an exchange should not be subject to

duplicative SDR reporting. If the Commission decides that more reporting or disclosure is needed, it should tailor those requirements to event contracts and avoid rules that make firms less willing to quote prices or trade in size.

F. The Commission should establish a durable rules-based framework that preserves flexibility

This Section I.F is responsive primarily to Questions 1, 5, and 6.

The ANPRM asks whether the Commission should provide guidance, amend rules, or both. DraftKings' view is that the Commission should adopt a durable rules-based framework for prediction markets rather than rely principally on interpretive guidance. Rules are more stable, provide greater long-term certainty to market participants, and are less susceptible to shifting materially across administrations. At the same time, those rules need not be rigid or overly prescriptive. The Commission can adopt rules that preserve flexibility through principles-based standards, objective guardrails, and tailored requirements that account for differences among products and market structures. Prediction markets are developing quickly, but that is a reason to adopt durable, fit-for-purpose rules—not to leave core questions to guidance alone.

II. Public Interest

A. Public-interest analysis should be contract-specific and anchored in the CEA

This Section II.A is responsive primarily to Questions 7 and 8.

The ANPRM's public-interest questions should be approached by reference to the CEA's own purposes: managing and assuming price risks, discovering prices, disseminating pricing information, protecting market participants, and promoting responsible innovation and fair competition. The Commission should therefore ask whether a given contract, as designed and supervised, advances or undermines those goals.

That inquiry is inherently contract-specific. It should not turn solely on the label attached to the underlying event. The Commission should consider:

- the structure of the contract;
- the economic significance of the underlying event;
- the safeguards around participant eligibility and surveillance;
- the reliability of settlement and dispute governance;
- the contract's utility for risk transfer and price discovery; and
- the likely effects of permitting or prohibiting the product on market integrity, customer protection, and competition.

B. Hedging and price discovery are real public-interest benefits

This Section II.B is responsive primarily to Questions 7 through 10.

The ANPRM asks what role event contracts play in managing price risks, discovering prices, and disseminating pricing information. They can play a substantial one. Event contracts allow participants to transfer highly specific, event-driven risk that may not map cleanly onto a

traditional commodity or financial future. They also communicate expectations in a probabilistic form that is intuitive to market participants and observers alike.

That does not mean every event contract serves those goals equally well. It does mean the Commission should not assume that hedging and price discovery are absent merely because the underlying event is not a traditional commodity. In many instances, event contracts express expectations about future developments more clearly than substitute products can.

C. The Commission should not revive an old economic-purpose test as the sole measure of legitimacy

This Section II.C is responsive primarily to Questions 9 and 13.

The ANPRM asks whether elements of the former "economic purpose" test should inform the public-interest analysis. DraftKings believes the Commission can appropriately consider hedging and price discovery as important factors, but it should not revive a displaced economic-purpose standard as the sole or dominant measure of legitimacy. The question under the current statute is whether the contract is contrary to the public interest, not whether it satisfies a resurrected pre-2000 test in disguise.

D. Greater clarity on the public-interest standard would improve confidence and reduce uncertainty

This Section II.D is responsive primarily to Questions 13 and 14.

If the Commission revises or supplements its public-interest framework, the principal goal should be clarity. Uncertainty about what the Commission means by "public interest" can itself chill innovation, complicate contract design, and weaken confidence among exchanges, intermediaries, and counterparties. The least costly path is likely one that emphasizes interpretive guidance, concrete examples, and transparent reasoning rather than broad prohibitions followed by case-by-case exceptions.

III. Activities Listed in CEA Section 5c(c)(5)(C)

A. The statute does not make every contract involving a listed activity automatically contrary to the public interest

This Section III.A is responsive primarily to Questions 15, 21, and 22.

Section 5c(c)(5)(C) identifies certain listed activities and permits the Commission to determine that contracts involving them are contrary to the public interest. It does not say that involvement with a listed activity automatically resolves the public-interest question. That distinction matters. The Commission should not read the statute as collapsing the listed-activity inquiry and the public-interest inquiry into a single categorical judgment.

B. The Commission should reconsider whether "gaming" should remain in Rule 40.11

This Section III.B is responsive primarily to Questions 19(a)-19(f) and 21-22.

DraftKings does not concede that sports event contracts necessarily "involve gaming" within the meaning of CEA section 5c(c)(5)(C) or Rule 40.11. The term "gaming" should not be read so broadly that any contract relating to a sporting event, contest, or other real-world outcome is swept into that category merely because the underlying event is colloquially described as a "game."

Regardless, the Commission should not treat "gaming" as categorically contrary to the public interest. That is the point on which the legal and policy landscape has changed most significantly since 2010. When Dodd-Frank was enacted, gaming occupied a very different legal and regulatory posture. Today, gaming broadly exists within a far more developed lawful and regulated framework across the United States. In the current environment, "gaming" cannot be analyzed as if it still occupied the same legal and policy position it held when federal and state restrictions were materially different from those in place today.

That changed landscape matters for two reasons.

First, it means the Commission should not treat "gaming" as categorically analogous to war, terrorism, assassination, or unlawful conduct. Those categories do not present the same modern legal, economic, or regulatory posture.

Second, it means the Commission should reconsider whether "gaming" should remain in Rule 40.11 at all, at least in its current form. Whatever the original rationale for including "gaming" in Rule 40.11, the Commission should now reassess that category in light of the materially changed legal and regulatory landscape. At a minimum, the Commission should not use "gaming" as a categorical shortcut. It should instead evaluate specific contracts based on their actual design, safeguards, participant restrictions, settlement mechanics, and public-interest implications.

Blanket categorizations about "gaming" do not fit the statute or the current market.

C. Responsible-gaming concepts may inform the analysis, but should not be imported wholesale into CFTC regulation

This Section III.C is responsive primarily to Questions 19(c)-19(e).

The ANPRM also asks what role responsible-gaming standards should play. DraftKings agrees that retail customer protections matter. To that end, the Commission should require retail-facing prediction market operators to offer core responsible engagement tools, including self-exclusion, cool-off functionality, and spending controls, alongside customer education and age gating.

But the Commission should be careful not to import state gaming rules wholesale into a CFTC-regulated DCM framework. State-regulated gaming products and federally regulated event contracts are not identical products, and the governing regimes do not solve the same problems in the same way. The better approach is for the Commission to adopt principles-based responsible engagement requirements that draw on relevant consumer-protection concepts–such as giving retail participants practical tools to manage their activity–without simply

transplanting every requirement of state-based responsible-gaming regimes into the federal derivatives framework.

Age limits present a related consumer-protection question. Reasonable arguments can be made for either an 18+ or 21+ standard for event contracts, but current public sentiment appears to favor 21+ as the more appropriate line. The Commission need not treat public sentiment as dispositive, but it should take seriously the view that a 21+ standard may better align with consumer-protection expectations for retail-facing event contracts as part of the broader analysis.

D. "Similar activity" authority can be useful, but it should be used cautiously

This Section III.D is responsive primarily to Questions 20 through 22.

The ANPRM asks how the Commission should approach "other similar activity." That authority can have legitimate administrative value, particularly where materially similar contracts would otherwise require repeated duplicative analysis. But it should be applied cautiously and only where the underlying activity is genuinely the same or closely analogous. The Commission should articulate limiting principles and illustrative examples so that "similar activity" does not become an open-ended grouping tool for contracts with different public-interest profiles.

IV. Procedure Under Section 5c(c)(5)(C)

A. The Commission should not make public-interest determinations before a listing is filed

This Section IV.A is responsive primarily to Question 23.

The ANPRM asks when a public-interest determination may occur "in connection with the listing" of a contract. DraftKings does not believe it would be appropriate for the Commission to make such a determination before a listing is actually filed or self-certified. DCMs are self-regulatory organizations, and the self-certification framework would be undermined by a de facto advance-permission regime for hypothetical or anticipated contracts.

B. Illustrative examples would be useful

This Section IV.B is responsive primarily to Question 24.

The Commission asks whether examples of contracts that do or do not involve the listed activities would be useful. They would. Examples would help exchanges, intermediaries, and counterparties understand the Commission's thinking and reduce uncertainty without requiring the Commission to resolve every possible product design in advance. They would also reduce wasted effort by helping market participants understand where the Commission's likely lines are before a product is submitted.

C. "Involve" should refer to the underlying activity, not the act of trading itself

This Section IV.C is responsive primarily to Question 25.

The ANPRM asks what it means for a contract to "involve" a listed activity. In DraftKings' view, the Commission should focus on the underlying activity referenced by the contract, not treat the act of trading the contract as itself the relevant "activity." Otherwise the inquiry quickly becomes circular and overbroad.

D. The statutory 90-day deadline should constrain delay, and any procedural changes should be narrow

This Section IV.D is responsive primarily to Questions 26, 27, and 28.

The Commission also asks how the 90-day time limit should shape its procedures and whether procedural changes under section 5c(c)(5)(C) are warranted. The best reading is that the deadline exists to constrain delay and provide commercial predictability. The Commission should not use the existence of that deadline as a reason to add pre-review burdens, expand informal hold periods, or create a more cumbersome process than the statute contemplates. If the Commission nevertheless concludes that procedural changes are warranted, it should prefer narrow adjustments that improve transparency and predictability while preserving self-certification and avoiding the need for a full-blown review in every case.

V. Inside Information, Integrity, and Manipulation

A. Some asymmetric information can improve price accuracy, but integrity should be preserved through market design

This Section V.A is responsive primarily to Question 29.

The ANPRM asks whether there is public-interest utility in allowing traders with asymmetric information to participate. There can be. Informed participation can improve price accuracy and speed the incorporation of new information. But that benefit must be balanced against the willingness of others to participate and provide liquidity. The Commission should therefore focus on market-design tools that preserve price accuracy while constraining unfair advantage, misuse of nonpublic information, and control-person trading.

B. Concentrated control over the underlying should warrant heightened scrutiny, not automatic exclusion

This Section V.B is responsive primarily to Question 30.

Some event contracts reference outcomes that may be influenced by a single person or a small group. That factor is relevant, but it should not be treated as automatically disqualifying. Other derivatives markets also reference concentrated or relatively small underlyings. The Commission should instead assess:

- how easy it would be for a participant to influence the outcome;
- whether the persons with such influence can be identified and restricted;

- and whether surveillance and integrity controls can reduce the risk to an acceptable level.

In sports-related contexts, existing integrity infrastructure can be relevant to that analysis. The Commission may also consider rulemaking regarding contract designs that are unusually susceptible to manipulation or misconduct–for example, markets tied to injuries, officiating decisions, or other outcomes readily influenced by a single actor or subjective judgment. The Commission need not create an exhaustive taxonomy to make this point; objective guidance tied to structural integrity risk would be sufficient.

C. Prediction markets are not inherently more susceptible to deceptive devices than other derivatives markets

This Section V.C is responsive primarily to Question 31.

The ANPRM asks how section 6(c)(1) should apply to prediction markets. DraftKings does not see a clear basis to conclude that prediction markets are inherently more or less susceptible to manipulative or deceptive conduct than other derivatives markets. As in other markets, susceptibility depends primarily on liquidity, market depth, concentration, and the effectiveness of surveillance and enforcement. The Commission should therefore focus on market quality and supervision rather than treat prediction markets as uniquely vulnerable by label.

Conclusion

DraftKings supports clear and durable rules for prediction markets that protect customers, preserve market integrity, and permit workable market structures. In particular, the Commission should:

- require retail access to prediction markets to occur through an affiliated FCM or, if the Commission continues to permit disintermediated models, subject those models to requirements comparable to those imposed on intermediaries, while also permitting integrated ownership structures and appropriately governed shared-services models;
- adopt fit-for-purpose rules on clearing, reporting, and liquidity provision;
- establish a durable rules-based framework that preserves flexibility through principles-based standards and tailored requirements;
- apply a contract-specific, evidence-based public-interest framework rather than categorical judgments based on labels alone; and
- not treat “gaming” as categorically contrary to the public interest, and reconsider whether “gaming” should remain in Rule 40.11 in light of the changed landscape.

A well-designed federal framework can support responsible innovation while protecting the public. DraftKings welcomes the opportunity to continue engaging with the Commission as it considers these issues.

Respectfully submitted,

DraftKings Inc.