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

Submitted via the Federal Rulemaking Portal at comments.cftc.gov.

Re: Prediction Markets, Advance Notice of Proposed Rulemaking, 91 Fed. Reg. 12516 (Mar. 16, 2026), RIN 3038-AF65

Dear Secretary Kirkpatrick:

Smarkets respectfully submits this comment on the Commission's Advance Notice of Proposed Rulemaking. We have operated a prediction market exchange since 2008, hold licenses in the United Kingdom, Malta, Ireland, and Sweden, and have an active application before the Commission for DCM and DCO registration. We write from operational experience running the kind of regulated venue this rulemaking is meant to enable, and we think the Commission is on the right path.

Three points up front

1. Gambling is a motivation, not a contract category. A trader speculating on a stock, an FX pair, or an event contract is doing the same thing. The relevant question is not whether a contract resembles activity that some people call gambling. It is whether the trader's conduct around the contract warrants protection: margin restrictions, position limits, age verification, self-exclusion tools, deposit limits, advertising standards. Sorting contracts by the imputed motivation of their users is a category error. It has driven a lot of litigation around event contracts and produced almost no regulatory clarity. The Commission should regulate venue integrity, price-formation fairness, and participant protections, not user motivation.

2. "Prediction market" is a colloquial term. These contracts do not predict anything. They price the probability of a defined outcome. The closer functional analogy is a futures contract on an event with a binary or categorical settlement, which is why "event futures" or "event contracts" is a more accurate term. We use "prediction market" here because that is what the public calls it, but we think the Commission should adopt a precise term and treat "prediction market" as a colloquial reference.

3. Predatory bid-offer spreads are a primary consumer-protection concern, and they are better addressed under federal regulation than the current state-by-state patchwork. Many incumbent venues in adjacent regulated spaces (state-licensed sportsbooks, offshore platforms) often have effective margins of 10 percent or more per trade, structuring outcomes so the operator wins regardless of who else does. A federally regulated DCM with anonymous order matching and a commission-based revenue model is a different product. Smarkets's effective spreads on liquid contracts are a fraction of that level, driven by competitive market dynamics. Fair, efficient markets are themselves in the public interest, and the regulatory framework should distinguish between venues that deliver them and venues that do not.

On the legitimacy concerns motivated by §5c(c)(5)(C)

The Commission asks (Q9) whether the pre-2000 economic-purpose test should inform its public-interest determination. It should not. The relevant frame is the §5c(c)(5)(C) special rule's underlying concern: derivatives markets should not become vehicles for unsafe speculation without surveillance, integrity, and consumer-protection infrastructure. We agree. The question for the Commission today is whether the regulatory architecture that addresses that concern already exists. It does. A federally regulated DCM operates on a generally fully-collateralized model, or through intermediaries that accept the risk of loss, with anonymous order matching, real-time surveillance, position limits, KYC, age verification, mandatory self-exclusion and deposit-limit tooling, and integrity cooperation with sports governing bodies. That is not the speculative free-for-all the special rule was written against. These participant-protection requirements have been in place across our European jurisdictions since 2008, with measurably better consumer-protection outcomes than unregulated and offshore alternatives serving the same customers. The Commission's public-interest determination should look not to a categorical judgment about subject matter, but to whether the venue, the contract, and the participant-protection framework collectively address the concerns the statute is meant to address.

On the gaming question

The definition of "gaming" that the Commission's question (Q19, Q19(a)) reaches has produced more litigation and less clarity than any other piece of this rulemaking. The debate runs on a binary premise: contracts on sporting events are either gaming and prohibited, or not gaming and permitted. Both framings depend on a definition of "gaming" that is contested in federal court and that varies materially across state statutes. The Commission has the authority to settle the definitional question for federal regulatory purposes, and we think it should.

The cleanest definition distinguishes contracts by their structure rather than by their underlying subject matter. Our proposed definition:

> **Gaming is a contract structure in which one counterparty has a systemic structural advantage over the other.**

Under this definition, a coin-flip contract on a fair, anonymous, regulated exchange is not gaming, because no party has a structural advantage. The same contract offered by a house-driven operator that prices spreads to its own profit irrespective of outcome is gaming. The definition catches slot machines, traditional sportsbook offerings, and house-driven contract markets. It does not catch event futures listed on a registered DCM with anonymous order matching, full collateralization, and a commission-based revenue model. It is administrable, it ties directly to venue characteristics the Commission can observe, and it produces consistent outcomes across contract types.

The Commission has an even cleaner near-term path. CEA §4(c) authorizes the Commission to exempt classes of contracts from specified provisions of the Act in order to promote responsible innovation. Federal regulation, not state gaming law, governs the resulting contracts. That authority lets the Commission establish jurisdictional certainty for sports event contracts and other classes listed on registered DCMs, without first having to resolve the contested definition of "gaming." The §4(c) pathway is constructive rather than prohibitory: it asks how a class of contracts should be structured, not whether it should be permitted to exist, and it lets the Commission attach the conditions needed to secure market integrity and customer protection. The Commission should use it. The baseline conditions worth attaching (full collateralization, anonymous order matching, real-time surveillance, restricted-person controls, customer fund segregation, cross-operator self-exclusion) are demanding but operationally achievable. Smarkets has run under all of them under European regulatory oversight.

On consumer protection

The Commission has asked (Q19(e)) what aspects of responsible-participation standards should inform its public-interest determination.

The protective measures appropriate to event-futures trading by individual participants should not be unique to event futures or to "prediction markets" as a category. They should apply consistently across financial trading. The same individual participant who can be harmed by speculative event-contract trading can be harmed by leveraged options, zero-day-to-expiration index options, margin-funded equities, unregulated cryptocurrency products, and retail FX. The question for the Commission is not whether to apply gambling-style consumer protections to event futures. It is whether to apply finance-style consumer protections consistently across all such trading, regardless of category. We are recommending that the Commission impose these participant-protection requirements on Smarkets and on every DCM listing event contracts, and that it work with its sister agencies to apply equivalent requirements across the other speculative trading categories accessible to the same participants. We are not asking for less regulation; we are asking for consistent regulation, beginning with our own.

Several operational measures are well-established in mature regulatory frameworks for individual-participant trading and have proven workable at scale. Cross-operator self-exclusion is the design choice that does the most for participant protection: in the UK, a customer self-excludes once and is excluded from every licensed operator for the duration. Default-on deposit limits at account creation, friction periods for raises, and affordability checks at higher thresholds are similarly load-bearing. Advertising rules in our licensing jurisdictions prohibit targeting under-18s, implying trading is a financial-investment alternative when it is not, or portraying trading as a path to social or financial success. Information sharing on suspicious activity between regulated operators and sports governing bodies gives integrity oversight the bidirectional flow it needs. Operator contributions to research and treatment funds, structured as a mandatory levy, give consumer-protection infrastructure stable funding independent of regulatory budget cycles.

Smarkets runs all of these across our European licenses, and the operational costs are absorbable. Consistent with the principle above, we do not recommend that the Commission impose these measures uniquely on event futures. We recommend instead that the Commission consider, in coordination with sister agencies, whether a consistent participant-protection framework, including cross-operator self-exclusion, default-on deposit limits, affordability checks, and advertising standards, should apply across all forms of speculative trading accessible to individual participants. If such a framework is developed, Smarkets is operationally prepared for it.

On war, terrorism, and assassination

The Commission's questions on terrorism, assassination, and war (Q17, Q18) ask whether these enumerated activities should remain categorically prohibited. They should. A market on whether a specific foreign leader will be deposed, or whether a specific military operation will succeed, creates incentives for actors with operational knowledge or influence to act on or against the predicted outcome, and that is the harm the prohibition exists to prevent. Smarkets supports the Commission's continued enforcement and would not list such contracts on any DCM we operate. The line is whether the contract creates that operational incentive, not whether its subject matter is proximate to the categories. A contract on whether Congress will pass a sanctions bill, for example, is war-adjacent in subject matter but does not create the incentive the prohibition is designed to prevent.

On state versus federal regulation

The Commission's antitrust and federalism questions (Q39 and others) raise the most important structural issue this rulemaking will resolve, and the answer is clear. National derivatives markets cannot exist under fragmented intrastate regulation. The inputs that make a derivatives market function (cross-jurisdictional liquidity, uniform contract specifications, consistent settlement and surveillance standards) are fundamentally incompatible with fifty distinct regulatory regimes. Fragmentation does not produce a smaller national market; it produces a structurally inferior one, with reduced liquidity, inconsistent standards, and entrenched local market power. Each of those effects is anti-competitive in the §15(b) sense the Commission is required to consider. The §4(c) authority discussed above is the cleanest legal architecture for the Commission to assert federal jurisdiction without first resolving the contested definitional questions, and it supports the breadth of specialized DCM applicants whose business models depend on regulatory certainty (weather, music, compute capacity, conditional asset pricing).

On tribal sovereignty

The Indian Gaming Regulatory Act and the tribal-state compacting framework remain the appropriate regulatory regime for gaming on Indian lands, and the sovereignty interests they protect are real. The question for the Commission is the narrower one of whether federally-regulated derivatives traded on a registered DCM, by participants located across the country, occupy the same regulatory space as Class III gaming on tribal lands. We do not think they do, and most categories of event contracts (weather, election, regulatory, economic, and sports event contracts under the structural-advantage test above) sit clearly outside the IGRA framework. Where the Commission considers contract categories that genuinely intersect tribal gaming interests, formal tribal consultation is appropriate, and we would support its inclusion in the conditions of any §4(c) exemption that applies to sports event contracts.

On the public-interest determination

The Commission asks (Q7) what factors should inform its public-interest determination under §5c(c)(5)(C). The framework is straightforward. A contract is in the public interest when all three of the following are satisfied:

1. **Venue integrity.** The contract is listed on a registered DCM or SEF with full Core Principle compliance, real-time surveillance, independent settlement, and impartial order matching.
2. **Contract design.** The contract has a clearly defined outcome, a sufficiently broad and accountable set of actors influencing that outcome, an independent settlement source, and does not fall within the §5c(c)(5)(C) categorical exclusions.
3. **Participant protections.** The platform implements age verification, KYC, position limits, deposit limits, self-exclusion tooling (preferably cross-operator), advertising standards, and access to problem-gambling resources.

A contract that satisfies all three is presumptively in the public interest. A contract that fails one or more is the right candidate for §5c(c)(5)(C) prohibition. The framework is observable, administrable, and produces consistent outcomes across contract types. It does not require the Commission to make judgments about user motivation, and it does not import state-by-state definitional variation into federal regulation.

On enforcement

The framework the Commission constructs will only work if it is enforced consistently. The most consequential enforcement question for regulated DCMs is the treatment of offshore platforms accessible to US users through circumvention tools. A platform that knowingly, or with reasonable cause to know, permits access by US users without DCM or SEF registration is within the Commission's enforcement reach. The technical jurisdiction of the underlying protocol and the use of VPNs by individual users are not safe harbors. Without consistent enforcement against offshore competitors, the regulatory load on US-registered DCMs becomes a competitive disadvantage rather than a baseline. The Commission should keep its attention on this (Q2(h)).

Conclusion

The Commission has the authority and the framework to bring event futures into a coherent national derivatives regime. We support that direction and think the §4(c) exemption authority is the cleanest near-term path to jurisdictional certainty. Smarkets is committed to working with the Commission on the build-out and is available to share operational evidence on any of the questions raised in the ANPRM.

Respectfully,

Jason Trost
CEO and Founder
Smarkets Limited