Submitted via Regulations.gov

July 10, 2026

Christopher Kirkpatrick, Secretary

Commodity Futures Trading Commission

Three Lafayette Centre

1155 21st Street, NW

Washington, DC 20581

Re: Data Reporting Requirements for Certain Event Contracts, RIN 3038-AF73 — Supplemental Comment on the Investigatory-Predicate Gap

Dear Secretary Kirkpatrick:

I. Purpose and Scope of This Supplemental Letter

The undersigned filed comments in this docket on July 10, 2026, addressing the Commission's proposed data-reporting framework for Covered Event Contracts and recommending six specific amendments, including a supplemental intraday reporting trigger.[1] This letter is submitted separately, and intentionally so. It isolates a single issue that the undersigned's prior letter touches on but does not develop at length, because the issue is important enough, and analytically distinct enough, to warrant standalone treatment rather than being absorbed as one argument among several. The question addressed here is not what data the Commission should collect, but what the Commission's existing investigatory authority can actually accomplish in the absence of that data.

II. The Commission's Investigatory Authority Is Broad, But It Is Reactive

The Commission's investigatory powers under CEA Sections 6(c), 8, and 12(f), and its implementing regulations at 17 CFR Part 11, are substantial.[2] Commission staff may issue subpoenas compelling any person, not only registrants, to produce documents, records, or testimony once an investigation has been opened, and those subpoenas are judicially

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[1]Letter from Steven G. Brubaker, President, Brubaker Public Relations, Inc., to Christopher Kirkpatrick, Secretary, CFTC, Re: Data Reporting Requirements for Certain Event Contracts, RIN 3038-AF73 (submitted via Regulations.gov July 10, 2026) ("AF73 Letter").

[2]7 U.S.C. §§ 9, 12, 16(f); 17 CFR Part 11 (Rules Relating to Investigations).

enforceable.[3] The undersigned does not dispute the scope of this authority and is not asking the Commission to expand it. The point is narrower and, in the undersigned's view, more consequential: this authority is triggered case by case, and it requires a predicate. The Commission does not, and as a practical matter cannot, subpoena account-level records from the general population of market participants absent some reason to look at a particular account in the first place. That reason has to come from somewhere.

III. Routine Reporting Is the Mechanism That Ordinarily Supplies the Predicate

For the accounts the Commission's reporting rules actually capture, the predicate typically arises from the Commission's own surveillance function. DCM Core Principle 4 and its implementing regulation require DCMs to maintain surveillance programs capable of detecting market disruption,[4] and that surveillance depends on the transaction and position data DCMs report to the Commission under Part 16. An anomalous position, an unusual pattern of trading, or a data point that does not fit an account's ordinary profile can prompt a referral, an inquiry, or ultimately a subpoena. In other words, routine reporting does not just inform the Commission's ongoing market oversight; it is also the raw material from which investigatory predicates are made.

IV. The Proposal's Own Estimate Describes a Population for Which No Such Predicate Can Arise

The Commission estimates that the proposed 125,000-contract end-of-day reporting threshold will produce a 97 to 99 percent reduction in reportable accounts.[5] As the undersigned's prior letter in this docket discusses at length, that threshold may not reliably capture market makers whose function is to flatten inventory before the close, regardless of the volume such an account

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[3] 17 CFR 11.4; see also FTC v. Ken Roberts Co., 276 F.3d 583 (D.C. Cir. 2001) (discussing enforceability of CFTC administrative subpoenas and the deference afforded to agency investigatory authority absent a patent jurisdictional defect).

[4] DCM Core Principle 4 (Prevention of Market Disruption), CEA Section 5(d)(4); 17 CFR 38.151 (DCM market surveillance program requirements).

[5] 91 Fed. Reg. at 40,110 (“[A] reporting level representing an end-of-day position with a $125,000 notional value will exclude the vast majority of retail traders from large trader reporting for most markets and will generally capture a relatively small number of significant traders in more liquid markets, such as market makers and institutional traders. The proposed 125,000 reporting level could result in a 97 to 99 percent reduction in the number of potentially reportable special accounts.”).

intermediates during the trading day.[6] For the population of accounts that generate no reportable position under the Proposal as drafted — whether ordinary retail traders or high-volume market makers who do not carry positions overnight — the Commission's surveillance program has no transaction or position data on which an anomaly could ever be flagged. There is nothing to notice, because there is nothing reported.

This means that for that population, the Commission's investigatory authority, however broad, can only be brought to bear through a predicate arising from a source entirely outside the Commission's own reporting architecture: a whistleblower, a competitor's complaint, press reporting, a referral from another federal or state agency, or a Suspicious Activity Report filed independently by a futures commission merchant under Bank Secrecy Act obligations that operate on their own separate track.[7] That authority is real. But it functions, for this population, only when the Commission gets lucky, not when its own surveillance program is working as designed.

V. This Is a Distinct Point From the Undersigned's Data-Element Recommendations

The six recommendations in the undersigned's prior letter, including the proposed intraday volume trigger, are aimed at improving the completeness and quality of the data the Commission collects as a matter of routine.[8] The point developed here is broader than data quality. A reporting gap of the kind described above does not merely leave the Commission's surveillance program with an incomplete picture; it silently disconnects that population of accounts from the Commission's investigatory function entirely, because that function depends on a predicate that routine reporting would otherwise supply. The Commission's authority to investigate is not in question. What is in question is whether that authority has any practical means of reaching the accounts most likely to warrant its attention.

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[6]AF73 Letter, supra note 1, at § V (discussing the structural mismatch between an end-of-day position threshold and the inventory-flattening business model of a market maker).

[7]Bank Secrecy Act compliance, including Suspicious Activity Reporting, is discharged independently at the futures commission merchant and introducing broker level and does not depend on, or feed systematically into, the Commission's own Part 16 reporting architecture.

[8]AF73 Letter, supra note 1, at § VII (proposing six data elements, including contract originator identification, market maker/designated liquidity provider status, DCM/DCO affiliate status, an algorithmic pricing indicator, a single-leg/multi-leg contract indicator, and an intraday volume or trade-count reporting trigger).

VI. Conclusion

The undersigned's prior letter in this docket recommends, among other things, that the Commission supplement the 125,000-contract end-of-day threshold with an equivalent intraday trigger, so that high-volume accounts are captured as reportable regardless of whether they carry a position overnight.[9] The undersigned reiterates that recommendation here, for the additional and independent reason set out in this letter: without it, the Commission's substantial investigatory authority has no reliable way of ever being pointed at the population of accounts for which it may matter most.

Respectfully submitted,

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[9] AF73 Letter, supra note 1, at § IX (requesting that the Commission supplement the 125,000-contract end-of-day reporting threshold with a cumulative intraday trigger set at the same level).