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Submitted via Regulations.gov

Christopher Kirkpatrick
Secretary of the Commission
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, 91 Fed. Reg. 40,102 (July 1, 2026); Docket No. CFTC-2026-1453

Dear Mr. Kirkpatrick:

I submit this comment in response to the Commission's notice of proposed rulemaking establishing an alternate data reporting framework for certain fully collateralized event contracts (the "Proposal"). I am a tax attorney whose practice concentrates on the federal income tax treatment of derivatives, wagering, and event-contract activity, including advising individual participants in designated contract markets listing event contracts. I write in my individual professional capacity and not on behalf of any client.

I take no position on the core policy judgment of the Proposal, which appears sound: the parts 16 through 18 framework is a reasonable fit for standardized, exchange-traded, fully collateralized contracts, and codification is preferable to serial no-action relief. My comments concern two consequences of the Proposal that fall outside the Commission's ordinary field of view but that the Proposal will substantially affect: the collateral use of the Commission's characterization language in federal tax controversies, and the absence of any participant-facing recordkeeping requirement in an architecture designed to exclude retail traders from Commission-facing reporting.

I. The Proposal's non-preclusion clause is too narrow to prevent collateral use of the Commission's characterization language.

The Proposal contains a disclaimer, but it is doubly limited. In the preamble discussion of proposed § 16.03(a), and again at footnote 35, the Commission states that the proposed section and the proposed "Covered Event Contract" definition are "not intended to and should not be construed to define 'event contract' for any other purpose." That language does not appear in the proposed regulatory text. It therefore sits in the portion of the rulemaking that carries the least interpretive weight, and it addresses only the

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defined term. It does not reach the substantive characterizations the Proposal makes in support of the framework, and those characterizations are what will be cited outside this docket.

The Proposal advances two characterizations simultaneously. First, it affirms that Covered Event Contracts fall within the swap definition at CEA section 1a(47)(A)(i) or (ii), and the first prong of proposed § 16.03(a) makes swap status an element of the definition. Second, and in support of the same framework, the Commission finds that the futures and options reporting regime is "better-suited" to these instruments because they have "characteristics in common with futures and options on futures, including highly-standardized terms, exchange-trading protocols, and fungibility," and states, in setting out the fourth prong of the definition, that a Covered Event Contract "may be referred to as a binary option."

The Proposal also collects, in its own footnotes, authority characterizing these instruments as options. It cites a decision of the United States District Court for the District of Columbia holding that binary option event contracts permitting customers to predict the occurrence of events by buying or selling shares were options. *Commodity Futures Trading Comm'n v. Trade Exch. Network Ltd.*, 117 F. Supp. 3d 29, 36 (D.D.C. 2015). It cites the CEA's own definition of "option" at section 1a(36). And it invokes the Commission's plenary authority over commodity options under CEA section 4c(b), expressly conditioned on the extent to which event contracts are structured as commodity options. Whatever the Commission intends by assembling that material, its effect is to place a federal court's option holding, the statutory option definition, and an assertion of option-based rulemaking authority in a single release about these instruments.

Each of those characterizations maps onto a contested position in an unsettled and consequential area of federal income tax law:

- Section 1256 of the Internal Revenue Code (the "Code") applies mark-to-market treatment and the 60/40 long-term/short-term split to "nonequity options," defined as listed options that are not equity options. A "listed option" is one traded on, or subject to the rules of, a qualified board or exchange, and a domestic board of trade designated as a contract market by the Commission is expressly a qualified board or exchange. I.R.C. § 1256(g)(3), (g)(5), (g)(7)(B). Every element of that chain is addressed somewhere in this release: the instruments are described as binary options, they are by definition listed on a DCM, and the Proposal reports them under the futures and options regime. The Trade Exchange Network holding the Commission cites supplies the remaining element.
- Section 1256(b)(2)(B) excludes from section 1256 treatment any interest rate, currency, basis, commodity, equity, equity index, or credit default swap, "or similar agreement." The Commission's affirmation of swap status under CEA section 1a(47) will be offered as support for applying that exclusion.
- Section 165(d) limits losses from wagering transactions to gains from such transactions, and, as amended by section 70114(a) of Public Law 119-21, further limits the deduction to 90 percent of those losses for taxable years beginning after December 31, 2025. Whether event-contract activity constitutes a wagering transaction is contested, and the Commission's characterization of the economics and participant profile of these markets, including the observation that retail participation is significant and that contracts are commonly resolved shortly after initiation, will be marshaled on both sides.

These characterizations were made for reporting purposes and rest on reporting-specific reasoning. They were not the product of an inquiry into the Code, and the Commission has no occasion to resolve questions

of tax characterization. But a preamble finding by the regulator with plenary jurisdiction over these instruments is precisely the kind of authority that examining agents, taxpayers, and courts will reach for in the absence of guidance from Treasury or the Internal Revenue Service (the "Service"). The consequence of leaving the point unaddressed is not that the Proposal is used carefully; it is that both sides of every dispute will quote the sentence that helps them, and the Commission's silence will be read as acquiescence.

Recommendation 1. The Commission should move the non-preclusion language into the regulatory text of § 16.03 and broaden it so that it reaches the Commission's characterizations, not merely the defined term. Language along the following lines would suffice:

> *"Nothing in this section, or in the Commission's discussion of the characteristics of Covered Event Contracts in support of this section, is intended to determine or is determinative of the treatment of any contract for purposes of any provision of law other than the Commodity Exchange Act and the regulations thereunder, including the Internal Revenue Code of 1986, as amended."*

This costs the Commission nothing. It does not alter a single reporting obligation, it does not narrow the Commission's reasoning, and it does not require the Commission to take any view of the tax questions. It simply prevents a reporting rulemaking from being converted into substantive authority in a body of law the Commission did not purport to address.

II. The Proposal should require participant-facing annual transaction statements. (Responsive to Requests for Comment (10), (11), and (12).)

The Proposal's reporting architecture is deliberately and, in my view, correctly calibrated to exclude the great majority of retail participants from Commission-facing reporting. Proposed § 16.03(e) sets a reporting level of 125,000 contracts at an equivalent contract size of $1, representing an end-of-day position with a $125,000 notional value, which the Commission states 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 Commission estimates that the proposed level could result in a 97 to 99 percent reduction in the number of potentially reportable special accounts, and expects to receive no large trader reporting at all for less liquid event contract markets. I do not object to those levels; imposing Form 102 and Form 40 obligations on participants holding fifty dollars of notional exposure would serve no surveillance purpose.

But the same architecture produces a recordkeeping asymmetry that the Proposal does not address. Under proposed § 16.03(g), a DCM must obtain and maintain trader-identifying data (e.g., name, address, email, telephone, occupation, employer, and the identity of guarantors and ten percent interest holders) for the life of the contract and five years thereafter. Under proposed § 16.03(f), the DCM must publish on its website, promptly after execution, four anonymized data elements: trade timestamp, contract ticker symbol, trade quantity, and price. The Commission has, in short, ensured that the exchange holds granular records identifying every participant for five years, and that the public can see anonymized prices. Neither requirement gives the individual participant a record of that participant's own transactions.

The release is candid that the § 16.03(g) dataset sits with the registrant rather than with the Commission: it acknowledges that "there is not an automatic mechanism similar to Forms 102A and 102B to transmit this information to the Commission," and that the data accordingly reaches the Commission on request. 91 Fed.

Reg. at 40,121. That observation has been advanced in this docket as a reason to doubt the sufficiency of the surveillance architecture. I offer it for a narrower purpose. If the Commission itself has no routine channel to records the exchange is compelled to keep, the individual participant plainly has none, and has no request authority to invoke.

That gap has real consequences. The federal income tax treatment of these instruments is, as discussed above, unsettled; whichever characterization ultimately governs, the taxpayer bears the burden of substantiating gross receipts, basis, and the character and timing of gain and loss. Existing broker information-reporting rules under section 6045 do not reliably fill the gap for these instruments, and participants report receiving information returns that are inconsistent across venues, incomplete, or absent altogether. A participant examined three or four years after the fact, well within the ordinary limitations period, has no independent means of reconstructing a year's activity in contracts that may have numbered in the thousands and resolved within days of initiation. The public time and sales feed is anonymized and cannot be tied to a particular account. The exchange holds the underlying records. The participant does not.

One development in this docket makes the point sharper. Other commenters have urged the Commission to add date of birth and taxpayer identification number to the § 16.03(g) fields, on the ground that the proposed collection falls short of the customer identification program standard that has applied to futures commission merchants for years under 31 C.F.R. § 1026.220. I take no position on the surveillance merits of that recommendation, which lie outside my competence. I note only its consequence, which the Commission should weigh before adopting or rejecting it: a taxpayer identification number is the operative element of a federal information return. A designated contract market that is required to obtain and retain a participant's TIN, name, and address, together with the execution, settlement, and pricing data proposed § 16.03 already requires it to capture, holds every element necessary to furnish a participant-facing annual statement, and holds most of what would be necessary to furnish an information return should Treasury or the Service later require one. If the Commission adopts the CIP-conforming baseline, the marginal cost of Recommendation 2 below falls essentially to zero. If the Commission declines to adopt it, Recommendation 2 remains warranted on the fields already proposed, but the Commission should say so knowing that it is declining to require collection of the one field that would make participant-facing reporting straightforward.

Recommendation 2. The Commission should add to proposed § 16.03 a requirement that a DCM listing Covered Event Contracts make available to each participant, on request and at no charge, a statement of that participant's own transactions and settlements for any period within the DCM's five-year retention window under proposed § 16.03(g). The statement should include, for each transaction, the data elements the DCM is already required to capture: trade timestamp, contract ticker symbol, trade quantity, price, and settlement outcome and amount.

The Commission has already determined that DCMs must obtain and retain this information for five years. Recommendation 2 imposes no new collection obligation whatsoever; it requires only that the exchange furnish to a participant, on request, records the exchange is independently required to keep about that participant. The marginal burden is a reporting interface, and the DCMs listing these contracts are, by the Commission's own description, technologically sophisticated electronic venues that already provide account interfaces to non-intermediated retail participants. Where trading is intermediated, the obligation can be satisfied by the FCM or clearing member carrying the account.

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Recommendation 3. In response to Request for Comment (10), I do not believe additional *publicly disseminated* data elements are necessary. The four elements proposed in § 16.03(f) are sufficient for price discovery, and expanding public dissemination in markets with substantial non-intermediated retail participation raises re-identification concerns that the Commission should weigh carefully. This position should not be confused with opposition to the expanded *collection* other commenters have recommended; the two questions are distinct, and nothing in this comment bears on the latter. The gap I identify is participant-facing rather than public-facing, and Recommendation 2 addresses it without any increase in public disclosure.

I note that this recommendation is consistent with, and advances, the Commission's stated objective of protecting market participants. A participant who cannot substantiate the participant's own trading activity is exposed to a real and quantifiable harm arising directly from the market structure the Commission is codifying. That the harm is realized in a proceeding before another agency does not make it less a consequence of this rule.

III. Conclusion

The Proposal is a sensible replacement for serial no-action relief and I support its adoption. I urge the Commission to adopt a broadened non-preclusion provision so that a reporting rulemaking is not repurposed as substantive authority in tax controversies the Commission did not undertake to resolve, and to require that participants be given access to records of their own transactions that the Commission is already requiring exchanges to retain.

I appreciate the opportunity to comment and am available to discuss any of the foregoing with Commission staff.

Respectfully submitted,



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Admitted in New York and the District of Columbia; United States Tax Court

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