DE SILVA LAW OFFICES, LLC
110 North Wacker Drive, Suite 2500
Chicago, Illinois 60606
Telephone: (312) 500-8424

April 30, 2026

VIA CFTC COMMENTS PORTAL

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

Re: Prediction Markets, RIN 3038–AF65 (91 Fed. Reg. 12516, March 16, 2026)

Dear Mr. Kirkpatrick:

I. Introduction and Statement of Interest

De Silva Law Offices, LLC respectfully submits this comment letter in response to the Commission's Advance Notice of Proposed Rulemaking on Prediction Markets, 91 Fed. Reg. 12516 (March 16, 2026) (the "ANPRM"). The firm represents commodity trading advisors, commodity pool operators, introducing brokers, and other entities active in derivatives markets, including in connection with event contract compliance matters, and has followed the evolution of prediction market regulation since the Commission's 2008 Concept Release.[1]

The firm's principal submission is that the current self-regulatory framework for designated contract markets, as codified in the DCM Core Principles and implemented through the Commission's part 38 regulations, is structurally inadequate to detect and deter insider trading and manipulation in event contracts whose outcomes are determined by the discrete decisions of identifiable individuals or small groups of individuals. This inadequacy is not a function of

[1]Concept Release on Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25669 (May 7, 2008) (the "2008 Concept Release").

insufficient effort by exchanges or insufficient resources at the Commission. It is a function of the regulatory architecture itself. The Core Principles presuppose a market structure in which manipulation presents as detectable anomaly in exchange trading data. That presupposition, which serves the Commission well in traditional futures and swaps markets, does not hold for event contracts in which the determinative information is held by a bounded and identifiable universe of persons outside the exchange.

The federal securities laws address an analogous regulatory problem through four structural features with no present analog in the Commission's framework: mandatory issuer disclosure, beneficial ownership and insider transaction reporting, jurisprudential reach of insider trading liability beyond statutory categories of federal officials, and dedicated cross-market enforcement infrastructure. The firm does not contend that the securities regulatory framework has solved the problem of trading on material non-public information; it plainly has not. The firm contends that the structural features the securities laws have developed over ninety years are the reason equity markets tolerate the existence of corporate insiders trading securities without destroying retail confidence, and that the Commission's regulation of event contracts under individual control currently relies on self-regulatory surveillance at the exchange level without those structural supplements.

This letter proposes that the Commission adopt a tiered framework in which event contracts under individual control are subject to heightened requirements adapted from the structural features of the federal securities laws, and that the Commission reserve its authority under CEA section 5c(c)(5)(C)(i)(VI) to categorically prohibit a narrow subset of contracts for which the adaptive framework cannot close the information asymmetry gap.

The firm's analytical work on event contracts and prediction markets is published and publicly available. Its recent expert analysis in Law360 has included *What the CFTC's Event Contracts Amicus Brief Is Missing* (March 12, 2026), addressing the Commission's amicus brief in *North American Derivatives Exchange Inc. v. Nevada* before the United States Court of Appeals for the Ninth Circuit, and *When the Market Moves Before the President Posts: Futures Anonymity and the Architecture of Oversight* (April 10, 2026), addressing the structural insider trading and

surveillance concerns that inform the arguments presented in this letter.[2] The firm website hosts a continuing library of more than a dozen articles addressing the listing process under part 40, the public interest determination under section 5c(c)(5)(C), the CLARITY Act, and the regulatory treatment of specific categories of event contracts.[3] The firm approaches the ANPRM's forty enumerated questions by focusing on the subset where its cross-domain practice is most useful to the Commission, principally Questions 29 through 32 on inside information, and secondarily Questions 2(c), 2(d), 7 through 9, 19, and 30.

The firm appreciates the Commission's careful attention to these issues and the opportunity to participate in the rulemaking record.

II. The Structural Vulnerability of Event Contracts Under Individual Control

The ANPRM recognizes, at Question 30, that "some events underlying event contracts are under the control of a single individual or small group of individuals," and invites comment on the role this aspect of event contracts should play in the Commission's regulatory analysis.[4] The distinction the Commission draws in this question is the conceptual starting point for any serious treatment of the insider trading and manipulation problem in prediction markets, and the distinction deserves to be sharpened before it is applied.

Event contracts, as a category, reference outcomes of widely varying determinacy. At one end of the spectrum are contracts whose resolution depends on broad economic or market phenomena: the level of the Consumer Price Index in a given month, the outcome of a Bureau of Labor Statistics jobs release, the average temperature in a metropolitan area over a defined period, the closing level of a financial index. These contracts share a structural feature with traditional futures on broad commodity references. The outcome is the aggregate product of many actions by many actors, and no individual person controls the outcome in any meaningful sense. A trader may have better data, better models, or better analysis than other market participants, but the

[2]R Tamara de Silva, What the CFTC's Event Contracts Amicus Brief Is Missing, Law360 Expert Analysis (Mar. 12, 2026); R Tamara de Silva, When the Market Moves Before the President Posts: Futures Anonymity and the Architecture of Oversight, Law360 Expert Analysis (Apr. 10, 2026).

[3]The firm's published work on event contracts and prediction markets is available at www.desilvalawoffices.com.

[4]ANPRM, 91 Fed. Reg. at 12522 (Question 30).

information environment is not meaningfully different from the information environment surrounding traditional commodity futures.

At the other end of the spectrum are contracts whose resolution depends on the discrete decisions of identifiable individuals or small groups. Whether a particular candidate announces a campaign. Whether a particular merger receives board approval. Whether a particular central banker votes for a particular rate move. Whether a particular corporate chief executive remains in office at the end of a quarter. These contracts are categorically different in their information structure. The outcome is determined by a small number of identifiable persons whose decisions are often formed, communicated, and finalized outside any public process. The universe of persons with material non-public information about the outcome is frequently small enough to enumerate: the candidate and a handful of senior staff, the board members and the transaction advisors, the central banker and the immediate staff supporting the decision.

This categorical distinction is not a matter of degree along a continuous variable. It is a structural break in the information environment. An event contract on aggregate economic phenomena is, in its information profile, similar to a traditional financial future. An event contract on the decision of an identifiable individual is, in its information profile, similar to a security issued by that individual's associated entity. The regulatory implications of that similarity are the central concern of this letter.

The distinction maps imperfectly onto existing regulatory categories. The "excluded commodity" definition in CEA section 1a(19)[5] encompasses both varieties of event referent because it was drafted to distinguish commodities that are within human control from commodities that are not, not to distinguish events that are within the control of identifiable individuals from events that are aggregate in nature. The Commission accordingly has the analytical work to do, and in the view of the firm should do it, of articulating a subcategory within the broader event contract universe for contracts under individual control. CEA section 5c(c)(5)(C)(i)(VI) provides ample statutory authority for such a subcategorical distinction through the "other similar activity"

[5] 7 U.S.C. 1a(19).

mechanism, and the Commission's general rulemaking authority under CEA section 8a(5)[6] reinforces that authority.

The operational significance of the category distinction becomes apparent when one considers how information moves in each type of market. In an event contract referencing aggregate economic phenomena, information reaches the market through the ordinary channels of economic data analysis, forecasting, and interpretation. Some traders will have better information than others, but the information advantage is typically the product of analytical work rather than access, and the universe of persons with any claim to advantaged information is large, dispersed, and difficult to enumerate. Manipulation in this environment requires capital deployment or coordinated action, both of which tend to leave detectable footprints in trading data.

In an event contract referencing an individual decision, information reaches the market very differently. The persons who know the outcome, or who can meaningfully narrow the probability distribution of the outcome, are often a small and identifiable group. Their information advantage is not the product of analytical work but the product of position. They know because they are the deciders, or because they work immediately for the deciders, or because they are in the meetings where the decisions are formed. Manipulation in this environment does not require capital deployment or coordinated action. It requires only that one of the persons with access place a trade, and the trade can be modest in size and unremarkable in pattern. The information asymmetry is decisive regardless of whether it leaves a footprint in the exchange's trading data.

The firm's managing attorney previously served as a floor trader at a major United States futures exchange. The experience of attempting to document manipulative trading patterns at the tape level, including in connection with high-frequency trading strategies in liquid futures contracts, informs the firm's view that exchange-level trading surveillance is effective at detecting manipulation that presents as a pattern in the tape but is not effective at detecting manipulation that presents as an absence of pattern. An insider who knows the outcome of a binary event contract does not need to move the market. The insider needs only to trade in the direction of the known outcome at whatever size the insider is willing to risk. The trade looks, to a surveillance system,

[6] 7 U.S.C. 12a(5).

like any other directional trade by any other trader with a view. The surveillance system has no mechanism to distinguish the trader with a view from the trader with knowledge, because the distinction lies not in the trading behavior but in the information environment upstream of it.[7]

This observation is not a criticism of exchange surveillance or of the staff who design and operate such systems. The surveillance systems do what they are designed to do, and they do it effectively within the domain for which they were built. The observation is instead a statement about the limits of that domain. Exchange surveillance is calibrated for markets in which manipulation requires behavior detectable in trading data. It is not calibrated, and cannot be straightforwardly recalibrated, for markets in which the problem is information asymmetry upstream of trading behavior.

The ANPRM asks, at Question 30, whether prediction markets are more likely than other designated contract markets or swap execution facilities to be susceptible to manipulation. In the view of the firm, the answer is category-specific. Prediction markets listing event contracts on aggregate economic phenomena are approximately as susceptible to manipulation as traditional futures markets on comparable references, and the existing regulatory framework is approximately as effective. Prediction markets listing event contracts on individual decisions are substantially more susceptible to a particular form of manipulation: informed trading by persons with access to the decision. The existing regulatory framework is substantially less effective because the framework was not designed for the problem.

III. The Inadequacy of the Self-Regulatory Model for This Category

The structural vulnerability identified in Section II above is not addressed by the Core Principles under which designated contract markets currently operate. This gap is not a failure of implementation but a limitation of architecture, and the Commission should approach the inadequacy of the self-regulatory model as a question of regulatory design rather than a question of exchange diligence.

[7]These observations are developed at length in When the Market Moves Before the President Posts: Futures Anonymity and the Architecture of Oversight, supra note 2.

DCM Core Principle 3, codified at CEA section 5(d)(3), provides that a designated contract market shall list "only contracts that are not readily susceptible to manipulation."[8] DCM Core Principle 4, codified at CEA section 5(d)(4), requires that a designated contract market "have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures."[9] The Commission's guidance under each Core Principle, codified in Appendix B to part 38 of the Commission's regulations, describes surveillance mechanisms that focus principally on monitoring of trading activity, position concentrations, and settlement processes.[10]

The design assumption embedded in this framework is that manipulation presents as an observable phenomenon at the level of the exchange. The exchange is directed to watch its own market, to identify patterns that suggest manipulation, to investigate those patterns, and to take enforcement action when warranted. The Commission, through its oversight of designated contract markets under part 38 and its direct enforcement authority under CEA section 6(c)(1), serves as a backstop and a cross-market integrator.[11] The structure works, and has worked for decades, for markets in which the manipulation problem is principally behavioral. Consider a trader attempting to corner a physical delivery, to paint the close, to layer orders to create false impressions of depth, or to coordinate with other traders to move prices. Each of these actions produces data that, given adequate surveillance and forensic resources, can be detected.

The structure does not work, and cannot be made to work by adjustments in surveillance intensity, for markets in which the manipulation problem is principally informational. An insider in an event contract under individual control does not paint the close, does not layer orders, and does not coordinate with other traders. The insider trades, at ordinary size, in the direction of the insider's private information, and the trade is statistically indistinguishable from the trades of other directional traders. No amount of additional surveillance resources applied to exchange trading

[8] 7 U.S.C. 7(d)(3).

[9] 7 U.S.C. 7(d)(4).

[10] 17 CFR part 38, Appendix B, Core Principle 3 (Guidance on Contracts Not Readily Susceptible to Manipulation); id., Core Principle 4 (Guidance on Prevention of Market Disruption).

[11] 7 U.S.C. 9(1); 17 CFR 180.1.

data will reveal the distinction, because the distinction does not reside in the trading data. It resides in the information environment outside the exchange.

The Commission's guidance under Core Principle 3 contemplates consideration of the susceptibility of a contract's reference to manipulation at the design stage, before the contract is listed. The listing process under part 40 provides a mechanism for that assessment.[12] But the assessment, as currently structured, focuses on susceptibility to the kinds of manipulation the Commission has historically addressed: cornering, squeeze, settlement process distortion. The assessment does not, in any structured way, address susceptibility to insider trading by persons with access to the determinative decision. The listing certification process under Regulation 40.2 produces a certification from the exchange that the contract complies with the Core Principles, and the Commission's review period of one business day before listing is insufficient to permit any independent assessment of insider trading vulnerability, assuming such an assessment were even possible on the record then available.[13]

The Core Principle 4 requirement of market surveillance is operationalized in practice through exchange-level surveillance systems that monitor, analyze, and flag anomalous trading patterns. These systems, which represent substantial investment by exchanges and their technology providers, are sophisticated within their design parameters. They are not equipped to address the information asymmetry problem because they have no mechanism to observe the information environment. The exchange does not know who the candidate's chief of staff is, does not know who sits on the target company's board, does not know who the central banker's deputies are. Even if the exchange knew, the exchange would have no authority to condition market access on the informational status of the trader. The self-regulatory framework asks the exchange to do something the exchange is structurally unable to do.

This observation leads to the question the remainder of this letter takes up. If the self-regulatory model is architecturally inadequate for the information asymmetry problem in event contracts under individual control, what regulatory model is adequate? The federal securities laws

[12] 17 CFR 40.2; 17 CFR 40.3.

[13] 17 CFR 40.2(a)(2) (requiring submission at least one business day before listing).

offer an instructive comparison, not because they have solved the problem (they have not) but because they have developed, over ninety years, an architecture that addresses the structural dimensions of the problem rather than relying solely on market surveillance. Section IV below turns to that comparison.

IV. What the Federal Securities Laws Do Differently

The federal securities regime has addressed an analogous regulatory problem for approximately ninety years. The regime is not exemplary, and the firm does not suggest that the Commission import it wholesale into the event contract context. The regime does, however, rest on four structural features that together reduce the scope of trading on material non-public information in equity markets, and none of those four features has a present analog in the Commission's framework for event contracts under individual control. This section identifies the four features in sequence and describes the architectural gap that the absence of each feature creates in prediction market regulation.

A. Mandatory Issuer Disclosure

Section 13(a) of the Securities Exchange Act of 1934 requires issuers of registered securities to file periodic and current reports with the Securities and Exchange Commission. These reports are standardized as Forms 10-K for annual reporting, 10-Q for quarterly reporting, and 8-K for current material events.[14] Regulation FD prohibits selective disclosure of material information to analysts, institutional investors, and other favored recipients in circumstances that would not simultaneously reach the investing public.[15] The proxy rules under Section 14(a) of the Exchange Act impose analogous disclosure obligations in connection with shareholder decisions. The aggregate effect of these requirements is that material information concerning issuers of registered securities is, by design, pushed continuously into the public domain on a defined schedule and through defined channels.

[14]Exchange Act § 13(a), 15 U.S.C. 78m(a); Forms 10-K, 10-Q, and 8-K are prescribed by 17 CFR 249.310, 17 CFR 249.308a, and 17 CFR 249.308, respectively.

[15]Regulation FD, 17 CFR 243.100–243.103.

An insider at an issuer who possesses material information about a forthcoming development operates with the knowledge that the issuer will disclose that development publicly within a defined window. The substantive insider trading prohibitions in the federal securities laws operate within the disclosure-defined space that this architecture creates. The prohibitions are effective in part because the pool of material non-public information available to insiders is continuously narrowed by the mandatory disclosure regime that runs in parallel with them.

For event contract referents under individual control, no such mandatory disclosure requirement exists. A candidate who will announce a campaign is under no obligation to disclose the decision in advance on any defined schedule. A corporate board that will approve a transaction has no disclosure obligation analogous to Form 8-K that attaches to the decision itself, independent of any associated securities transaction. A central banker whose vote will determine a rate move is under no public disclosure requirement with respect to the vote before the Federal Open Market Committee announcement. The information that determines the outcome of an event contract under individual control exists, almost by definition, outside any mandatory public disclosure regime applicable to the decisionmaker.

The difference is concrete. In securities markets, the pool of material non-public information available to insiders before trading is continuously narrowed by mandatory disclosure. In event contract markets under individual control, the pool is not narrowed. It persists until the event occurs or is publicly announced, whichever comes first. The exchange, the Commission, and retail participants are equally downstream of the underlying decision. None of them has any mechanism to narrow the informational gap short of enforcement action after trading has occurred.

B. Beneficial Ownership and Insider Transaction Disclosure

Sections 13(d), 13(f), 13(g), and 13(h) of the Exchange Act require disclosure of large positions in registered securities by various categories of holders. Section 16 of the Exchange Act requires officers, directors, and beneficial owners of more than ten percent of a class of registered

equity securities to report their transactions within two business days and to disgorge short-swing profits. The Commission's Forms 3, 4, and 5 operationalize these requirements.[16]

Two functional outcomes follow from this architecture. First, a factual record is created that enforcement staff and sophisticated counterparties can examine for patterns suggesting misconduct. A corporate insider who traded in advance of a material corporate event has disclosed the trade publicly on Form 4, and the temporal relationship between the trade and the subsequent event is directly observable by any person who examines the filings. Second, an ex ante deterrent effect operates independently of any enforcement action. An insider who knows that a transaction will be publicly visible within two business days will, as an empirical matter, trade less frequently on material non-public information than an insider who faces no such disclosure.

For event contract markets under individual control, neither outcome currently obtains. A position of any size in an event contract on a political, corporate, or policy decision is not publicly disclosed. Position concentration may be reported to the exchange and to the Commission under the large trader reporting regime in part 17 of the Commission's regulations for certain contract categories,[17] but that reporting is directed to the exchange and the Commission, not to the public or to other market participants. Trading activity by persons with material non-public information is accordingly invisible both to the public and, until enforcement action is initiated, largely invisible to the Commission itself. The ex ante deterrent effect of mandatory public disclosure is absent from the current framework.

The asymmetry between these two regimes is not incidental. The Exchange Act was drafted in deliberate response to conditions in which opacity around insider positions produced systemic abuse in the securities markets of the 1920s and early 1930s. Congress concluded that continuous mandatory disclosure of insider positions was a necessary complement to substantive insider trading prohibitions. The firm submits that the same reasoning applies to event contracts under individual control and that the Commission has sufficient authority under CEA section 4(i) and its

[16]Exchange Act §§ 13(d), 13(f), 13(g), and 13(h), 15 U.S.C. 78m; Exchange Act § 16, 15 U.S.C. 78p. Forms 3, 4, and 5 are prescribed by 17 CFR 249.103, 249.104, and 249.105.

[17]7 U.S.C. 6i; 17 CFR part 17 (establishing large trader reporting obligations).

part 17 regulations to implement an analogous regime by rule, without requiring any statutory amendment.

C. Jurisprudential Reach of Insider Trading Liability

Section 10(b) of the Exchange Act and the Commission's Rule 10b-5 together prohibit the use of manipulative or deceptive devices in connection with the purchase or sale of any security.[18] Over more than four decades, federal courts have developed this statutory framework into a detailed and evolving body of insider trading doctrine.

The classical theory, articulated by the Supreme Court in *Chiarella v. United States*, imposes liability on corporate insiders and quasi-insiders who trade on material non-public information derived from a relationship of trust and confidence. The misappropriation theory, articulated in *United States v. O'Hagan*, extends liability to persons who misappropriate such information from the source to which they owe a duty, even where the source is not the issuer whose securities are traded. The tipper-tippee doctrine, developed in *Dirks v. SEC* and refined in *Salman v. United States*, addresses liability along chains of communication, reaching persons who trade on information received from those with duties of trust and confidence. Related doctrines address temporary insiders, outsiders who acquire information through specified relationships, and recipients at multiple removes from the original source.[19]

The practical reach of this body of law is broad. A chief executive's immediate family member, a corporate advisor's professional associate, a merger target's outside counsel, and an investment banker's analyst are all, under specified circumstances, within the reach of the securities laws when they trade securities on information derived from their respective positions or relationships.

The Commodity Exchange Act reaches a narrower statutory category. CEA section 4c(a)(3) and section 4c(a)(4) prohibit the use of material non-public information acquired by virtue of federal government employment, including employment by Members of Congress,

[18] 15 U.S.C. 78j(b); 17 CFR 240.10b-5.

[19] Chiarella v. United States, 445 U.S. 222 (1980); United States v. O'Hagan, 521 U.S. 642 (1997); Dirks v. SEC, 463 U.S. 646 (1983); Salman v. United States, 580 U.S. 39 (2016).

congressional staff, and judicial officers.[20] Employees of executive agencies who acquire material non-public information in their official capacities are included. Persons outside this statutory category, however, are not reached by this provision. A candidate's senior campaign staff, a corporate officer's family members, a central banker's immediate advisors, and the outside counsel to parties with direct access to the underlying decision are each positioned to trade on decisive information about the outcome of an event contract, and each falls outside the statutory scope of CEA section 4c(a)(3) and section 4c(a)(4).

The Commission possesses general anti-manipulation authority under CEA section 6(c)(1) and Regulation 180.1,[21] and the Commission has stated that this authority extends to misappropriation-based theories in certain circumstances. However, the application of Regulation 180.1 to event contract insider trading by non-governmental personnel remains largely untested in the enforcement record and in the case law, and that clarity through rulemaking rather than through enforcement-by-enforcement doctrinal development is warranted given the volume of event contracts now certified for listing. The Commission's own data, reflecting approximately 1,600 event contracts certified for listing on designated contract markets in 2025,[22] establishes that doctrinal clarity on this point is an operational necessity rather than an academic question.

D. Enforcement Infrastructure

The Securities and Exchange Commission's enforcement infrastructure for detecting and prosecuting insider trading reflects substantial institutional investment over multiple decades. The Market Abuse Unit within the Division of Enforcement is a specialized unit dedicated principally to identifying and prosecuting misconduct of this category. The Division's Analysis and Detection Center applies machine learning techniques to cross-market trading data to identify patterns consistent with informed trading. The Consolidated Audit Trail, established under Exchange Act Rule 613, captures every order, cancellation, modification, and trade in the national market system for equities and listed options.[23] Together, these tools create a surveillance capacity that operates

[20] 7 U.S.C. 6c(a)(3)–6c(a)(4).

[21] See note 11, supra (citing 7 U.S.C. 9(1) and 17 CFR 180.1).

[22] ANPRM, 91 Fed. Reg. at 12517 n.9 (reporting that designated contract markets certified approximately 1,600 event contracts for listing in 2025).

[23] 17 CFR 242.613 (Consolidated Audit Trail).

above and independently of the exchange level and that has visibility across markets in which a single actor may trade.

The Commodity Futures Trading Commission's enforcement infrastructure, while competent within its domain, does not have functional equivalents on each of these dimensions. The Division of Enforcement relies substantially on exchange-level self-regulatory surveillance for the initial identification of potentially improper trading activity, on referrals from exchanges and other regulators, and on targeted investigations initiated based on external information. The Commission's own surveillance and data analytics capabilities, while developing, do not presently reach the scale or the cross-market integration of the securities analog.

The firm intends no criticism of Commission staff, whose work on enforcement matters is serious and effective within the resources and authorities available to them. The observation in this section is structural. For markets in which manipulation and insider trading present as detectable patterns in exchange trading data, the current infrastructure is adequate. For markets in which the problem is information asymmetry upstream of trading behavior, and in which the critical analytical work requires identifying informed traders across many individually unremarkable trades rather than detecting anomalies in aggregate trading data, the current infrastructure is not sufficient. The ANPRM's own Question 30, inviting comment on the problem of events under individual or small-group control, appears to recognize this structural reality.

The firm acknowledges, and indeed underscores, that the federal securities regime has not solved the problem of trading on material non-public information. Congressional trading enforcement has been historically limited in both volume and effect. Expert network prosecutions over the past fifteen years have exposed persistent gaps in the tipper-tippee chain. Political intelligence networks continue to operate in regulatory spaces that remain unresolved. The scope of liability for remote tippees beyond the personal benefit chain has produced repeated appellate litigation without fully definitive resolution. These limitations are acknowledged because the letter's argument does not depend on ignoring them.

The firm's argument is narrower and more structural. It is that the federal securities regime has developed, over ninety years, four architectural features that together reduce the scope of trading on material non-public information in equity markets, and that none of those four features

is presently available in the Commission's framework for event contracts under individual control. Section V below proposes a tiered framework by which the Commission may adopt adaptive analogs of these features, tailored to the event contract context and calibrated to the specific subcategory of event contracts under individual control, without requiring statutory amendment and without wholesale importation of the securities regime.

V. A Proposed Tiered Framework

The structural analysis in Sections II through IV leads to a specific regulatory proposal. The Commission should adopt a tiered framework in which event contracts are classified by reference to the information structure of the underlying event, and in which contracts referencing events under individual or small-group control are subject to a set of heightened requirements adapted from the structural features of the federal securities laws. The framework does not require statutory amendment. It rests on authorities the Commission already possesses under the Commodity Exchange Act and on a targeted use of Commission rulemaking authority. Each of the five elements below addresses specific ANPRM questions and is designed to be implementable through notice-and-comment rulemaking following this advance notice.

A. A Categorical Distinction by Rule

The Commission should, by rule, distinguish between event contracts referencing aggregate economic or market phenomena and event contracts referencing outcomes determined by the discrete decisions of identifiable individuals or small groups of individuals. The distinction is analytically necessary, as Section II of this letter explains, because the regulatory problem is categorically different between the two classes. The distinction is also legally grounded. CEA section 5c(c)(5)(C)(i)(VI) authorizes the Commission to determine, by rule or regulation, that particular activities associated with event contracts are contrary to the public interest,[24] and the Commission's general rulemaking authority reinforces the available statutory basis.[25]

The firm proposes that the Commission define "event contracts under individual control" by rule, with the defining characteristic being that the outcome of the event is determined

[24]CEA section 5c(c)(5)(C)(i)(VI), 7 U.S.C. 7a-2(c)(5)(C)(i)(VI).

[25]See supra note 6 (citing CEA section 8a(5), 7 U.S.C. 12a(5)).

principally by the discrete decisions of a bounded and identifiable universe of persons. Illustrative examples should be included in the rule or its adopting release: contracts referencing the announced candidacy of a specific individual, contracts referencing the approval of a specific merger or regulatory action, contracts referencing the decision of a specific corporate officer, board, or public official. The illustrative examples provide operational clarity for designated contract markets assessing their own listings at the certification stage, and provide notice to market participants regarding the category of contracts subject to the heightened requirements proposed in V.B through V.E below.

This categorical distinction is responsive to ANPRM Questions 19, 20, and 30, and provides the classificatory foundation on which each of the subsequent elements of the proposed framework operates.

B. Position Reporting for Event Contracts Under Individual Control

The Commission should require, by rule, that designated contract markets listing event contracts under individual control submit position reports to the Commission on a defined schedule, and that specified large positions be made public through a mechanism analogous to Section 13(d) of the Exchange Act. The statutory authority is CEA section 4(i), which grants the Commission authority to require reports of trades, positions, and accounts in such form and at such times as the Commission may require.[26] The proposed rule would extend and adapt the part 17 large trader reporting framework for event contracts under individual control, with thresholds calibrated to the contract category and to the specific vulnerabilities identified in Section II of this letter.

The structural purpose of public disclosure is addressed in Section IV.B above. Public disclosure creates both the factual record that enforcement staff and sophisticated counterparties can examine for patterns suggesting misconduct and the ex ante deterrent effect that operates independently of any specific enforcement action. Neither function is currently served by the Commission's event contract framework.

[26]See supra note 17 (citing CEA section 4(i), 7 U.S.C. 6i, and part 17 large trader reporting requirements).

The firm's April 10 Law360 analysis proposed that the Commission calibrate large trader reporting thresholds to reflect the speed and scale of modern algorithmic trading, particularly in contracts with demonstrated sensitivity to government announcements.[27] The firm renews that proposal as part of the comment record for this rulemaking. Thresholds for event contracts under individual control should be calibrated significantly lower than thresholds for traditional futures contracts on broad references, because the manipulation vulnerability in these markets is not principally a function of position size. A small directional trade by a person with decisive information produces the same informational abuse as a large one.

These proposals address ANPRM Questions 4, 5(a), and 30.

C. Rulemaking to Extend Insider Trading Prohibitions

The Commission should use its existing authority under CEA section 6(c)(1) and Regulation 180.1 to extend insider trading prohibitions, by rule, to any person who trades on material non-public information about the underlying event of an event contract under individual control. The Commission's 2011 adopting release for Regulation 180.1 expressly stated that the rule is modeled on Exchange Act Rule 10b-5 and incorporates the misappropriation theory.[28] The doctrinal architecture is accordingly already in place. What is missing is the specific rulemaking that would operationalize the misappropriation theory for event contract insider trading, and that would make the scope of Regulation 180.1 predictable ex ante rather than resolved case-by-case through enforcement.

The firm proposes specific rule text substantially as follows: It shall be a manipulative or deceptive device or contrivance within the meaning of section 6(c)(1) of the Act and section 180.1 of this chapter for any person to enter into, offer to enter into, or participate in a transaction in an event contract under individual control while in possession of material non-public information concerning the underlying event, where such information is obtained in breach of a fiduciary duty

[27] See When the Market Moves Before the President Posts, supra note 2 (proposing that the Commission calibrate large trader reporting thresholds to reflect the speed and scale of modern algorithmic trading in contracts with demonstrated sensitivity to government announcements).

[28] 17 CFR 180.1; Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41398, 41405 (July 14, 2011) (adopting release for Regulation 180.1).

or similar duty of trust and confidence owed to the source of the information. This formulation reaches the categories of persons Section IV.C of this letter identifies as outside the scope of CEA section 4c(a)(3) and section 4c(a)(4): the candidate's senior staff, the corporate officer's immediate family members, the central banker's deputies, and outside counsel to persons with direct access to the underlying decision.

Rulemaking on this point is preferable to enforcement-by-enforcement doctrinal development for three reasons. First, the volume of event contracts now certified for listing, approximately 1,600 in 2025 alone per the Commission's own data,[29] produces operational uncertainty for exchanges and market participants that doctrinal clarity by rule would resolve. Second, the ordinary process of case-by-case common law development through enforcement will not keep pace with the rate at which event contracts are being listed and traded. Third, the Commission has the opportunity in this rulemaking to align its insider trading doctrine with the well-developed securities analog discussed in Section IV.C, avoiding the inefficiency of duplicative regulatory interpretation in adjacent markets.

The foregoing addresses ANPRM Questions 29, 31, and 32.

D. Enhanced Surveillance and Mandatory Referral Obligations

The Commission should require, by rule, that designated contract markets listing event contracts under individual control implement enhanced surveillance procedures calibrated to the specific vulnerabilities of this category. The required procedures should include, at minimum, identity-linked trade data capable of matching trading activity to persons within categories identified as having potential material non-public information about the underlying event, and defined statistical triggers that require the exchange to refer unusual trading activity to the Commission within specified time windows.

CFTC Staff Advisory Letter No. 26-08, issued on March 12, 2026, reiterated existing compliance obligations under DCM Core Principles 3, 4, and 12 and addressed Commission

[29] See supra note 22 (citing 91 Fed. Reg. at 12517 n.9, reporting approximately 1,600 event contracts certified for listing on designated contract markets in 2025).

expectations regarding surveillance and enforcement for prediction markets.[30] The staff advisory, while an important signal of Commission expectations, does not itself provide the binding and specific framework that the volume and complexity of event contract listings now require. The proposed rulemaking would move from advisory guidance to enforceable requirement, while preserving the Commission's existing self-regulatory architecture.

The firm's April 10 Law360 analysis specifically proposed that mandatory referral protocols requiring exchanges to escalate to the Commission when trading anomalies exceed defined statistical parameters in a specified window before a government announcement could be implemented through exchange rule changes certified under the procedures established by CEA section 5c(c).[31] The firm reaffirms that proposal in this rulemaking record. Automatic escalation requirements reduce the discretion that exchanges currently exercise in deciding what to investigate and what to report, and they align exchange-level surveillance with the policy objectives of Core Principle 4 without dismantling the self-regulatory framework. The enhanced surveillance and referral obligations proposed here bear on ANPRM Questions 2(c), 2(d), and 3(c).

E. Categorical Prohibition Where Structural Measures Cannot Close the Gap

For a narrow subset of event contracts within the category of events under individual control, the firm submits that even the adaptive structural measures proposed in V.A through V.D will be insufficient to address the information asymmetry problem. Where an event outcome is determined by a very small number of identifiable persons with defined fiduciary duties, and where the informational environment surrounding the decision is structurally opaque to public disclosure and to exchange surveillance, the Commission should exercise its authority under CEA section 5c(c)(5)(C)(i)(VI) to categorically prohibit the listing of such contracts.

The prohibition proposed here is narrow and principled, limited to event contracts for which the four structural features described in Section IV have no adaptive analog that can meaningfully reduce the vulnerability. Illustrative categories for the Commission's consideration

[30]CFTC Letter No. 26-08, Prediction Markets Advisory (Mar. 12, 2026), available at www.cftc.gov/csl/26-08/download.

[31]See When the Market Moves Before the President Posts, supra note 2 (proposing mandatory referral protocols under CEA section 5c(c) for trading anomalies exceeding defined statistical parameters in specified windows before government announcements).

may include certain contracts referencing non-public corporate transaction decisions, certain contracts referencing classified government operational decisions, and certain contracts referencing the decisions of judicial officers or administrative adjudicators. This letter does not propose specific contract types for prohibition. It proposes instead that the Commission's rulemaking should articulate the structural criteria by which particular contract categories are to be assessed, and that those criteria should be applied either through the ordinary part 40 review process for new listings[32] or through targeted rulemaking under CEA section 5c(c)(5)(C) as circumstances warrant.

The categorical prohibition proposed here addresses ANPRM Questions 7 through 9, 15, and 20.

VI. Response to the Public Interest Framing

The framework proposed in Section V above is consistent with the public interest purposes of the Commodity Exchange Act as articulated in sections 3(a) and 3(b), and is responsive to the cost-benefit considerations the Commission is required to address under CEA section 15. The firm offers the following observations in direct response to ANPRM Questions 7 through 11 concerning the Commission's public interest analysis under CEA section 5c(c)(5)(C).

CEA section 3(a) identifies the national public interest animating the statute as "providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities."[33] Event contracts referencing aggregate economic or market phenomena fulfill these public interest purposes in the conventional manner that futures contracts on broad references have fulfilled them for decades. Event contracts under individual control, however, stand in a different relationship to the section 3(a) purposes. The price discovery function is compromised when a significant proportion of informed trading represents access to non-public information rather than analytical insight. The risk management function is attenuated when the underlying event is determined by the discrete decision of an identifiable person rather than by market forces against which a

[32]CEA section 5c(c)(1), 7 U.S.C. 7a-2(c)(1) (exchange rule certification process).

[33]CEA section 3(a), 7 U.S.C. 5(a).

legitimate hedging interest could be asserted. The Commission's public interest analysis under CEA section 5c(c)(5)(C) should recognize that the section 3(a) purposes operate with different force across the categories the framework distinguishes.

CEA section 3(b) further specifies the purposes of the statute as including "to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to [the CEA] and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition."[34] The proposed framework serves each of these purposes directly. The categorical distinction and the heightened requirements for event contracts under individual control are designed to deter insider trading as a specific form of manipulation. The position reporting and enhanced surveillance requirements protect market participants from abusive practices by making informed trading on misappropriated information more costly and more detectable. The framework's calibration to a narrow subcategory, rather than imposing uniform requirements across all event contracts, preserves responsible innovation and fair competition across the broader prediction market space.

The framework also addresses the tension the ANPRM identifies at Question 29 between the public interest utility of informed trading, which may improve the informational content of prices, and the public interest harm of trading on misappropriated information, which disadvantages retail participants and undermines market integrity. The correct analytical framing of this tension is that informed trading based on analytical insight, public information, and legitimate expertise is socially valuable and that prediction markets in this sense can serve the price discovery function described in section 3(a). Informed trading based on non-public information obtained in breach of a duty owed to the source is not socially valuable, is not a form of expertise, and is not contemplated by section 3(a)'s price discovery purpose. The structural features of the securities laws described in Section IV of this letter exist precisely to preserve the former while prohibiting the latter, and the framework proposed in Section V adapts those features to the event contract context to serve the same distinction.

[34]CEA section 3(b), 7 U.S.C. 5(b).

CEA section 15(a) requires the Commission to consider, before promulgating a regulation, the costs and benefits of its action in light of five specified considerations: protection of market participants and the public; the efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations.[35] The proposed framework is designed with these considerations in view. Its central effect is to reduce the information asymmetry in a specific category of contracts where retail participants are demonstrably disadvantaged, which speaks directly to the protection of market participants. Because the framework is calibrated to a narrow subcategory rather than imposed uniformly, it avoids burdening the broader prediction market space and preserves the efficiency and competitiveness of event contract listing generally. The enhanced surveillance and referral obligations strengthen the Commission's ability to detect misconduct, which bears on financial integrity. And the rulemaking proposed in V.C, by clarifying the doctrinal framework for insider trading liability ex ante rather than leaving it to case-by-case enforcement, promotes sound risk management by giving exchanges and market participants a defined standard against which to organize their compliance.

CEA section 15(b) requires the Commission to consider the public interest protected by the antitrust laws and to take the least anticompetitive means of achieving the statute's objectives.[36] The proposed framework is consistent with this requirement. The categorical distinction limits the scope of the heightened requirements to the subcategory where they are necessary, rather than applying them uniformly. The structural measures in V.A through V.D are the least restrictive means of addressing the information asymmetry problem identified in this letter, and the categorical prohibition in V.E is explicitly limited to contracts for which the structural measures cannot close the gap.

VII. Cost-Benefit Considerations

The proposed framework imposes marginal compliance costs on a narrow subset of designated contract market activity and avoids the significantly greater costs associated with either wholesale regulatory expansion across all event contracts or categorical prohibition of the broader

[35]CEA section 15(a), 7 U.S.C. 19(a).

[36]CEA section 15(b), 7 U.S.C. 19(b).

category. The firm addresses below the specific cost-benefit considerations the ANPRM identifies at Questions 6, 13, 14, 22, 28, and 38.

The compliance burden of the categorical distinction in V.A is minimal at the rule adoption stage. Designated contract markets already assess event contracts against the Core Principles during the part 40 certification process. Incorporating the individual-control distinction into that existing process requires the addition of an analytical step rather than the construction of a new regulatory architecture. For contracts that do not fall within the individual-control category, the ordinary certification process continues without modification.

The position reporting and public disclosure requirements in V.B impose compliance costs on designated contract markets that list event contracts under individual control and on large traders in such contracts. These costs are analogous to the costs that equity market participants bear under Sections 13 and 16 of the Exchange Act, which have been in operation for decades without impairing the functioning of equity markets. The adaptive calibration proposed in V.B, with thresholds set to the specific contract category, limits the reporting burden to positions of sufficient size to warrant regulatory attention.

The rulemaking to extend insider trading prohibitions in V.C imposes no direct compliance cost beyond the cost of compliance with existing anti-manipulation obligations under CEA section 6(c)(1) and Regulation 180.1. The proposed rule clarifies existing obligations rather than establishing new ones. Any cost imposed falls on persons whose trading is, under the proposed rule text, already within the scope of the Commission's existing authority. The benefit is the operational clarity that rulemaking provides in contrast to case-by-case doctrinal development, which is itself a cost-reducing feature for exchanges, market participants, and the Commission.

The enhanced surveillance and referral obligations in V.D impose compliance costs on designated contract markets listing event contracts under individual control. These exchanges already represent sophisticated institutional participants with substantial technology infrastructure, and the marginal cost of implementing identity-linked surveillance and defined statistical triggers is modest relative to the cost already expended on exchange-level surveillance generally. The benefit is a material improvement in the Commission's ability to identify insider trading in a category of contracts for which the current surveillance architecture is inadequate.

The categorical prohibition in V.E imposes costs only on the specific subset of contracts subject to prohibition, which the framework defines narrowly. The alternative, which is the status quo, imposes its own costs in the form of the documented insider trading vulnerability described in Sections II and III of this letter. The costs of the narrow prohibition proposed in V.E are materially lower than the costs of continuing to list contracts for which no adequate surveillance or enforcement mechanism is available.

The less costly alternative inquiry required by CEA section 15(a) is satisfied by the tiered structure of the framework itself. Each element in V.A through V.E is calibrated to the specific problem it addresses, and collectively the framework avoids the larger costs that would be associated with uniform application of the heightened requirements across all event contracts or with a broader prohibition on event contracts as a category.

The cost-benefit analysis above addresses ANPRM Questions 6, 13, 14, 22, 28, 38, and 40.

VIII. Conclusion

For the reasons set forth above, De Silva Law Offices, LLC respectfully submits that the Commission should adopt the tiered framework proposed in Section V of this letter. The framework addresses the structural information asymmetry problem that Sections II and III identify as inadequately served by the current self-regulatory model. It draws adaptively on the four architectural features of the federal securities laws described in Section IV, without importing that framework wholesale, and it rests on statutory and rulemaking authorities the Commission already possesses. The framework is calibrated to a specific subcategory of event contracts where the structural vulnerability is most acute, and it preserves the Commission's existing framework for the broader category of event contracts and for prediction markets generally.

The firm remains available to provide additional information or analysis to Commission staff at any time. Questions regarding this letter may be directed to R Tamara de Silva at tamara@desilvalawoffices.com or (312) 500-8424.

Respectfully submitted,

DE SILVA LAW OFFICES, LLC

By: _____

R Tamara de Silva
Managing Attorney
CFTC Registrant
De Silva Law Offices, LLC
110 North Wacker Drive, Suite 2500
Chicago, Illinois 60606
tamara@desilvalawoffices.com
(312) 500-8424