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August 8, 2024

VIA ELECTRONIC SUBMISSION

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

Re: ***CFTC Proposed Rule on Event Contracts; Notice of Filing of Proposed Amendments to CFTC Regulation Section 40.11 (Rel. No. 8907-24; RIN 3038-AF14)***

Dear Mr. Kirkpatrick:

Robinhood Derivatives, LLC (“Robinhood Derivatives”)¹ respectfully submits this letter in response to the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) above-referenced proposed amendment to CFTC Regulation Section 40.11 (the “Proposal”). We appreciate the opportunity to provide comments on the Proposal. Robinhood Derivatives believes the Proposal is far too broad, as it would prohibit certain products and limit product innovation for which the CFTC should not have concerns. As such, we believe that any categorical prohibition that prevents the listing and the trading of futures contracts should be narrowly tailored to achieve a defined public policy goal. For the purposes of this letter, we will focus on the Proposal’s potential impact on the broader sporting industry. Specifically, we believe that: (1) the Proposal’s definition of “gaming” is overly broad and ambiguous; (2) the Proposal lacks sufficient economic analysis given the breadth of the Proposal; and (3) the Proposal is arbitrary and capricious because the CFTC has not properly assessed the types of event contracts that have economic value that would be prohibited under the Proposal.

I. Background of Robinhood Derivatives

Robinhood Derivatives is a registered FCM that will provide Robinhood Financial LLC’s (“Robinhood Financial”)² self-directed retail clients access to the futures markets. With its mission

¹ Robinhood Derivatives, a registered Futures Commission Merchant (“FCM”), is a wholly owned subsidiary of Robinhood Markets, Inc. (“Robinhood”).

² Robinhood Financial is an SEC registered broker-dealer and FINRA member firm. Robinhood Financial offers over 24 million customers mobile and website platforms to invest in stocks, exchange traded funds and options. Robinhood Financial is an affiliate of Robinhood Derivatives.

to “democratize finance for all,” Robinhood has made equities trading more accessible by eliminating account minimums and trading commissions and offering investors IPO access, fractional trading and the first IRA with a match, no employer necessary.

Robinhood Derivatives’ futures team has decades of experience in the marketplace and we will utilize that experience to create an industry leading futures experience. In fact, this leadership team has been at the forefront of increased retail participation in the futures markets. In particular, they have worked with DCMs and DCOs to develop and distribute futures contracts that meet the needs of retail traders. Likewise, Robinhood Derivatives will leverage Robinhood’s award winning mobile platform and extensive educational content to enable a new generation of investors (both domestic and foreign) to access the futures markets, which (if permitted by regulators) would include allowing retail participation in new and innovative futures contracts.

II. The Proposal’s Definition of “Gaming” is Overly Broad and Ambiguous

The CFTC proposes an amendment to further specify types of event contracts that fall within the scope of Section 5c(c)(5)(C) of the Commodity Exchange Act (“CEA” or “the Act”).³ In particular, the Proposal would amend CFTC Regulation 40.11 to specify the types of event contracts, including “gaming contracts,” that fall within the scope of Section 5c(c)(5)(C) of the CEA that would be deemed to be contrary to the public interest, and thus, prohibited.

The Proposal would define “gaming” to include “the staking or risking by any person of something of value upon” any one of four broad outcomes or occurrences:

- 1) Outcome of a contest of others (*e.g.*, political elections);
- 2) Outcome of a game involving skill or chance (*e.g.*, Emmys and Grammys);
- 3) Performance of competitors in contests/games (*e.g.*, sports games); or
- 4) Occurrence or non-occurrence in connection with such contests or games.⁴

Robinhood Derivatives opposes the Proposal in that it broadly and unnecessarily eliminates the possibility of event contracts for *any* sporting events. The Commission supports this broad prohibition based on the following colloquy between two U.S. Senators:

Mrs. FEINSTEIN. . . I hope it is the Senator’s intent, as the author of this provision to define “public interest” broadly so that the CFTC may consider the extent to which a proposed derivative contract would be used predominantly by speculators or participants not having a commercial or hedging interest. Will CFTC have the power to determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to a hedging or economic use?

³ See *Event Contracts*, 89 FR 48968 (June 10, 2024).

⁴ 89 FR at 48974.

Mrs. LINCOLN. That is our intent. The Commission needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed “event contracts.” It would be quite easy to construct an “event contract” around **sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament.** These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling.⁵ [emphasis added]

To the extent this discussion on the floor of the Senate represents Congressional intent, it focused on a comparison of gambling related to the results of *single* sporting events.⁶ The CFTC, however, has not supported why a series of sporting events (*e.g.*, the World Series) or an entire season cannot be used by “commercial or institutional” participants to hedge their risk. Take, for example, the Los Angeles Lakers and consider all the commercial participants that must manage risks related to whether the Lakers have a winning season, advance in the playoffs, or advance to a game seven in a playoff series. First, the Lakers have a lengthy list of corporate partners and sponsors collectively paying the Lakers tens of millions of dollars a year, including, among others: American Express, Bibigo, Chevron, Delta, Fifth Third Bank, Hennessy, Jack in the Box, MGM Resorts, Michelob Ultra, Nike, Sixt and Toyota. And, the Lakers home court is Crypto.com Arena. Each of these commercial participants could have an interest in hedging their risks of the Lakers having a losing season.

But the commercial participants are not limited to big corporate sponsors. The businesses that provide services to the Lakers, including stadium vendors (*e.g.*, companies such as Aramark), merchandise sales, nearby restaurants, hotels and bars, all have risks related to whether the Lakers are playing well – a commercial risk that they could decide to hedge.⁷ Even an individual season

⁵ 156 Cong. Rec. S5906-07 (daily ed. July 15, 2010) (statements of Senator Dianne Feinstein and Senator Blanche Lincoln), <https://www.congress.gov/111/crec/2010/07/15/CREC-2010-07-15-senate.pdf>.

⁶ In fact, former Senator Lincoln agrees with our assessment.

Of course, there are instruments that should not be traded on any financial market. Instruments about war, terrorism, and assassination. We also believed that our futures markets are not meant for gambling, and so we also gave the government the authority to prohibit gambling contracts about games like the Super Bowl, the Kentucky Derby, and the Masters Tournament. But outside these narrow categories, the law is clear that the CFTC has the responsibility to regulate contracts, not ban them.

Comment Letter, Blanche L. Lincoln, Founder, Lincoln Policy Group (Aug. 8, 2024).

⁷ A former NFL player, Mr. Andre Fluellen, agrees that restaurants near a sports stadium may have an incentive to hedge their risks:

For both retail participants and entities, there are only limited and expensive options for hedging risk based on an occurrence or non-occurrence of an event, but an event contract offers legitimate hedging opportunities for those who may not have another means to do so. For example, a restaurant near a sports stadium may want to hedge the possibility of cancellation or lower attendance that would impact their revenue for the day. Without event contracts, such

ticket holder who sells their seats to others during the season has a commercial reason to hedge as the value of their tickets will rise and fall with the Lakers win/loss record. Just as a farmer can hedge his/her exposure to a bad crop yield, these entities and persons – which all have valuable economic interests in the performance of sporting venues and franchises – should be able to hedge their revenue exposure to a poor overall win/loss record of a sports team.

On the other side of the trade are the speculators and retail participants who may wish to attempt to profit from price changes in futures contracts as the Lakers season progresses. This is no different than those speculators and retail participants who buy or sell futures contracts in agricultural products such as corn or wheat.

The CFTC assures the economic utility of the futures, swaps, and options markets by encouraging their competitiveness and efficiency. In return, futures markets participants have been permitted to innovate and provide products to commercial participants and speculators based on their business judgment of whether a product is viable.⁸ Since the Chicago Board of Trade was formed in 1848 by a group of grain merchants, the futures markets have expanded to agriculture beyond grains, financial indices, interest rates, metals, energy, real estate and cryptocurrencies. Retail traders in the futures markets are the same as retail traders in the equities and options markets – they are looking to profit from price movements. Robinhood Derivatives believes that retail traders should be free to speculate on sporting events as they do any of the current futures products noted above.

Robinhood Derivatives believes that the Commission must perform a more detailed analysis of whether the breadth of its prohibitions on certain event contracts could qualify as being in the public interest. As Commissioner Mersinger noted, “[t]he Commission can’t short-circuit the process that Congress established by determining that an event contract is contrary to the public interest – in advance and without knowing the contract’s terms and conditions – simply because that makes things easier for the agency.”⁹ The correct approach here would be to narrow the definition so it only captures single events directly associated with sports gambling.

Robinhood Derivatives recommends that the Commission revisit the proposed definition of gaming so it does not capture products that can involve legitimate risk management and speculative activities which have otherwise been permitted by the CFTC for decades. One way to achieve this is to remove the last clause of the proposed definition, which would capture contracts with the “[o]ccurrence or non-occurrence in connection with such contests or games.” By removing this specific section, we believe that the proposed definition of “gaming” would better align with Congressional intent to prohibit events tied to a single, specific sporting event that are associated with gambling activities.

businesses have no way to properly manage such risks.” Andre Fluellen, Comment for Proposed Rule 89 FR 48968, July 24, 2024, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=73942&SearchText>.

⁸ Robinhood Derivatives also does not agree that political event contracts cannot be tied to legitimate risk-management activities because history has shown that, for example, stock markets may move up or down in response to the election of one Presidential candidate over another. *See also* Comment Letter from Nasdaq (August 2, 2024).

⁹ 89 FR at 48997-98.

III. The Commission's Economic Analysis is Flawed

The Commission is required by law to undertake a thorough and accurate analysis of the costs and benefits that the Proposal would impose on regulated entities and the economy as a whole.¹⁰ The Commission appears to believe that a cost-benefit analysis should be based on the Commission's own expected costs, as well as the costs of winding down potential existing contracts that may be considered non-compliant.

Nowhere in the Proposal, however, does the CFTC discuss what the cost-benefit analysis would be for market participants. The CFTC focuses on the few proposed event contracts that have come under the CFTC's review, and provides an inadequate cost-benefit analysis in these limited reviews.¹¹ Indeed, the CFTC admits that these potentially problematic contracts account for less than 1% of the total trading volume in event contracts, thereby acknowledging that the Proposal is based on a *de minimis* amount of participation in the futures marketplace. The true cost of the Proposal would fall on the would-be participants, and new entrants to the market, that would be precluded from entering the marketplace because of the Proposal - this includes millions of retail customers seeking to engage in legitimate speculative activities.

For example, section 4 of the Regulatory Flexibility Act¹² requires a federal agency to provide an economic analysis for a proposed rule unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Proposal, however, assumes incorrectly that the only impact on this Proposal are "DCMs, SEFs, and DCOs," and, therefore, would not cover small business entities.¹³ We believe that this conclusion incorrectly assumes that the only market participants in the futures market are DCMs, SEFs, and DCOs – the corporations, small business owners that may have a legitimate commercial need to trade on these event contracts are not considered as part of the Regulatory Flexibility Act analysis. We recommend, therefore, that the CFTC conduct a more in-depth cost-benefit analysis regarding the companies (e.g., sponsors of sports franchises) and local communities that could be impacted by the Proposal.

Robinhood Derivatives believes that if the CFTC conducted a robust cost-benefit analysis it would easily find commercial participants and retail customers with significant risks and economic incentives. A recent study purported to estimate the revenues associated with sponsoring global professional sports teams in excess of \$100 billion annually.¹⁴ Future broadcasting rights for the

¹⁰ See, e.g., 44 U.S.C. § 3501 et seq.; 5 U.S.C. § 601 et seq.; 5 U.S.C. § 500 et seq.

¹¹ "Specifically, the Commission estimates that contracts involving 'gaming,' as proposed to be defined, comprised less than 1% of the total trading volume in event contracts in 2023." 89 FR at 48990, n.175.

¹² See 5 U.S.C. § 604.

¹³ 89 FR at 48986.

¹⁴ Christina Gough, *Sports Sponsorships, Statistics & Facts* (June 20, 2024), <https://www.statista.com/topics/1382/sports-sponsorship/>

National Basketball Association (“NBA”) were recently reported to be \$76 billion dollars over 11 years or almost \$7 billion per year.¹⁵ A recent study published by the District of Columbia also found that professional sports helped grow the local economy by \$5 billion in 2022.¹⁶ These are a few examples of the valuable and growing economic activities related to the sports industry that require a robust market to hedge expected economic revenues.

Greater access to a variety of financial products has increased participation in the financial industry and provided valuable tools for investors to generate income and hedge risk. The CFTC fails to acknowledge that the overly broad proposal would prohibit both large corporations and small business owners from appropriately managing risk in a more transparent, cost-effective market. The Proposal also would limit such participation and the resulting benefits by prohibiting retail traders from using certain event contracts to mitigate risk or to speculate. As such, the Proposal would be antithetical to the CFTC’s mission to promote vibrant U.S. derivatives markets.

IV. The Proposal is Arbitrary and Capricious Because the CFTC Has Not Properly Assessed the Types of Event Contracts that Have Economic Value that Would be Prohibited Under the Proposal

The Proposal is arbitrary and capricious because it is overbroad and does not properly explain why certain event contracts are not in the public interest, as described above.¹⁷ A proposed rule by a Federal agency must address the appropriate economic baseline to measure the proposed rule’s likely economic impacts – this should include the potential benefits and costs, effects of competition, and capital formation in the market(s) the Proposal would affect.¹⁸

As noted above, the Proposal would ban a variety of economically valuable event contracts that would be in the public interest without any rational explanation for such a prohibition. As described in Section II, there likely would be valuable economic interests for corporations, individuals, small businesses and other market participants tied to sports franchises (*e.g.*, corporate sponsors, media, vendors and season ticket holders, among others), but these interests are not addressed in the Proposal.

The public interest requirement (along with the “economic purpose test”) was repealed by Congress in 2000.¹⁹ In the Proposal, the CFTC appears to resurrect the economic purpose test based on a

¹⁵ Tim Reynolds and Joe Reedy, *NBA agrees to terms on a record 11-year, \$76 billion media rights deal, AP source says*, (July 10, 2024), <https://apnews.com/article/nba-media-deal-tv-07d021c1248bedfe547885a54f0b3f32>

¹⁶ Office of the Deputy Mayor for Planning and Economic Development, *Economic Impact of the District’s Major Sports Teams & Facilities*, (June 13, 2024),
<https://dc.gov/release/dmped-releases-study-showing-economic-impact-district%E2%80%99s-sports-teams-and-facilities>

¹⁷ See 5 U.S.C. § 706.

¹⁸ See *American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178-79 (D.C. Cir. 2010).

¹⁹ 89 FR at 48995.

colloquy between two Senators (excerpt noted above). Using the resurrected standard, Robinhood Derivatives believes that there would be legitimate economic interests for these contracts beyond gaming, and the CFTC should let market participants determine what these event contracts are. If CFTC-regulated entities apply the standard incorrectly, the CFTC has the authority and tools to respond accordingly.

The Proposal risks stifling innovation in the derivatives market. Event contracts are an emerging product that could offer unique commercial uses for hedging and risk management, while allowing speculators to participate in such markets. Robinhood Derivatives believes that the Proposal would deter market participants from developing this market, resulting in limited growth. In addition, the CFTC has supported innovation through its history, allowing DCMs to self-certify new products if they believe such products may be appropriate in the futures marketplace.²⁰ The self-certification process is unique to the futures market and provides innovation to occur in an efficient manner; if the market believes that there is no need for a given product, that would be reflected in the liquidity for that product. Indeed, the Proposal does not raise any concerns with the self-certification process, and we believe that the CFTC should continue to permit DCMs to evaluate potential new contracts without categorically prohibiting such contracts.

V. Conclusion

Although we recognize the CFTC's intention to ensure the integrity of the derivatives market, we believe that the Proposal is overly broad and urge the CFTC to reconsider the Proposal and engage in further dialogue with futures markets participants and retail traders to develop a more balanced and effective regulatory approach. Specifically, consistent with Congressional intent, Robinhood Derivatives believes the Commission should focus on prohibiting single sporting events or contests. Please contact Robinhood's General Counsel, Lucas Moskowitz, at lucas.moskowitz@robinhood.com if you have any questions or comments.

Respectfully submitted,

— DocuSigned by:

JB Mackenzie
President
Robinhood Derivatives, LLC

²⁰ For example, through the self-certification process, spot Bitcoin futures were listed and now provide a unique marketplace for those that desire to hedge or obtain exposure to the price of Bitcoin. See Press Release, CME Group, *CME Group Self-Certifies Bitcoin Futures to Launch Dec. 18*, https://www.cmegroup.com/media-room/press-releases/2017/12/01/cme_group_self-certifiesbitcoinfuturestolaunchdec18.html. See also [CFTC Backgrounder on Self-Certified Contracts for Bitcoin Products](#), CFTC Fact Sheet, (Dec. 1, 2017).