



January 22, 2021

Via Electronic Submission and Email

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

Dear Mr. Kirkpatrick,

GTS Securities, LLC (“GTS”) appreciates the opportunity to comment on the proposed RSBIX NFL futures contract (the “Contracts”) that were self-certified by the Eris Exchange on December 15, 2020 (the “submission”). We write to urge the Commodity Futures Trading Commission (“CFTC”) to approve the listing of the Contracts.

GTS has extensive experience with market making. It is the New York Stock Exchange designated market maker responsible for one of the largest group of companies in the world; its equity options market maker quotes more than 735,000 individual securities across 13 global options exchanges; its Client Wholesale Market Making Business covers the full breadth of all Domestic and International exchange listed and OTC securities; and its ETF Client Market Making group offers execution and liquidity in all asset classes of ETFs listed in the United States. We speak from first-hand knowledge about the value of deep, liquid, stable markets as a mechanism for hedging risks, and the benefits that such markets bring to their primary users and the public as a whole.

Based on our experience and our review of the submission, we believe that the proposed Contracts are a well-designed solution to a genuine economic problem affecting enterprises engaged in businesses that are lawful in the jurisdictions where they operate. We believe that they do not violate the gaming restriction in CFTC Rule 40.11. Our letter briefly expands on these points below:

1. The Contracts are a well-designed market solution.

The Contracts are not random games of chance; they are financial instruments designed for actual commercial market participants to hedge financial risks that largely are beyond their control. As proposed, it appears that the Contracts contain substantial protections that are designed to ensure the integrity of the market, the biggest of which is that the Contracts would be limited only to those commercial market participants and legitimate market makers; speculators and casual participants would be ineligible to use these instruments. Meanwhile, the commercial market participants themselves are subject to substantial regulation and

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scrutiny to ensure that they are operating within the bounds of the law, and that they are free from illegal influences that could corrupt the market. Given all of this, we agree with Eris Exchange that the Contracts do not violate either the letter of, or the public policy considerations underlying, CFTC Rule 40.11. Moreover, given our deep experience making markets on exchanges around the world, we are confident that the protections afforded to participants are sufficient to ensure a fair and orderly market for the Contracts, and we would strongly consider committing our own capital to facilitate trading as a market maker if the Contracts are approved.

2. The Contracts solve a genuine economic problem.

The business of sports betting is, despite popular misconceptions, a legitimate business. Proprietors (what Eris Exchange refers to as “Licensed Sportsbooks”) are licensed by the state in which they operate; they are subject to significant and meaningful restrictions on what they can and cannot do, and with whom they may and may not transact. Significantly, the Licensed Sportsbooks are not directly in the business of betting: while their clients are betting on the outcome of a particular event, the Licensed Sportsbooks attempt to construct an even balance between winners and losers. This is because they make their money by collecting a fee from each side, regardless of the outcome of the bet. In a properly designed sportsbook, the winnings paid to the winners will be funded by the monies invested by the losers, in which case the Licensed Sportsbook has no liability.

If there are too many people on one side of a bet and not enough on the other, the resulting book is unbalanced, and if the bet ends up paying out to the larger (winning) side, the Licensed Sportsbook must cover the difference that the smaller side’s losing bets do not cover. As the submission clearly explains, there are several structural reasons why a book may be out of balance, but one of the key reasons is regulatory restrictions that prohibit Licensed Sportsbooks from accepting bets from out-of-state participants. This is common sense: one need only look at Soldier Field on game day to understand that there are huge swaths of fans in Illinois who would never “sell their soul” by betting against the Bears, and only a relative handful of Bears-haters brave enough to bet against them in their home state. Because a Licensed Sportsbook in Illinois can’t take bets from out of state, either its book will be imbalanced (the Bears fans will inevitably outnumber the non-Bears fans), or it will have to limit the number of pro-Bears bets it can take, or it will have to post unreasonable (and unprofitable) odds in order to make the bets balance.

In contrast, venue owners and vendors do care whether the home team wins, but that is because they have a direct economic stake in the team’s fortunes on the field – if the team makes the playoffs, or at least has a fighting chance, they benefit from higher attendance at games and the possibility of hosting future playoff games. In this way, these businesses are like any other commercial user of the commodities market: they must invest capital upfront for facilities upkeep, staffing, purchasing inventory, marketing, and the like in order to secure a future profit that is uncertain, and the success of which depends on factors beyond their control. Their team’s collapse is the sporting equivalent of a drought-induced crop failure – an event that may undo even the most diligently-executed business plan. The Contracts are a

mechanism for the venue owners and vendors to hedge their risk exposure, in the same way that farmers use the commodities markets to protect the prices for their crops.

3. The users of these Contracts are engaged in lawful businesses.

As Eris Exchange plainly describes, the Contracts are limited to commercial users who have legitimate business interests at stake: Licensed Sportsbooks, and the proprietors and vendors who operate adjacent businesses to the sporting event itself – the stadium owner, the vendors who sell food and beverages at the games, the vendors who sell merchandise at the games, and similar businesses that cater to the fans who attend football games. As noted above, these are all legal businesses, operating under the aegis of federal, state, and local regulations, including business licenses, workplace protections, and taxes. Although some of them (the venue owners and vendors) may have a stake in the outcome of a particular game, none of them has influence over the team, the officials, or any other aspect of the game, and thus can have no impact on its outcome.

4. The Contracts do not violate the letter or spirit of CFTC Rule 40.11.

Notwithstanding that the CFTC's Rule 40.11 purports to prohibit event contracts that involve, relate to, or refer to "gaming," neither the commodities laws nor the rule define "gaming" – as Eris Exchange noted in the submissions, the Commission determined to define it on a case-by-case basis. Accordingly, the Commission requested comment on the proper definition of "gaming."

We agree that it is reasonable to evaluate based on the actual facts presented rather than attempting to adopt a single definition that lacks real-world flexibility. Even so, we believe that the questions the Commission promulgated in connection with the submission are too narrow because they take the word "gaming" out of the context in which it appears.¹ To properly interpret the term, it is necessary to restore its context.

The proper mechanism for doing that involves a canon of statutory construction known as *noscitur a sociis* (literally, a word "is known from its associates"), in which courts define an ambiguous term by reference to its associates or neighbors.² In this case, the word "gaming" does not occur in Rule 40.11 in a vacuum – it is part of a list of things that are against public policy because they are all illegal – specifically "terrorism," "assassination," "war," or "an activity that is unlawful under any State or Federal law." The regulatory intent from this "parade of horrors" is clear: the commodities laws should not be used to facilitate or promote *illegal* activity. For a specific activity to be proscribed "gaming," therefore, it must be not just

¹ To the contrary, the Commission's questions break the rule into discrete components for interpretation, in isolation from each other: Question 1 asks specifically about "gaming," and Question 2 asks about "activity that is unlawful under any State or Federal law."

² See, e.g., *Nat'l Muffler Dealers Assn. v. United States*, 440 U.S. 472 (1979) ("[The lower court] confronted what it called the 'lexicographer's task of deciding what is meant by a 'business league'." Finding no direct guidance in the statute, the court applied the maxim of *noscitur a sociis* ('it is known from its associates,') and looked 'at the general characteristics of the organizations' with which business leagues were grouped in the statute...") (internal citations omitted).

any activity that might popularly be thought of as “gaming,” but “gaming” that is plainly and specifically illegal. Accordingly, to understand the term “gaming” as applied to the Contracts, the CFTC must consider whether the supposed “gaming” at issue is, in fact, illegal – that is, whether it is “unlawful under any State or Federal law.” If it is, then it belongs on the list of proscribed event contracts; if it is not, it does not violate Rule 40.11.

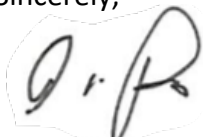
Simply put, while betting on the outcomes of a football game may have been classified as illegal “gaming” at the time that the Commission adopted Rule 40.11, at least 26 jurisdictions in the United States have now determined that it is no longer so under certain conditions: if the proprietor of a sportsbook obtains the proper licenses from the state, and observes the appropriate regulatory requirements, the activity of the now-Licensed Sportsbook is legitimate and legal. Because it is not illegal, there is no basis for the Commission to bar the Contracts.

Even if the CFTC were to conclude that the *customers* of these Licensed Sportsbooks were engaged in “gaming” that violates Rule 40.11, the Licensed Sportsbooks themselves are not engaged in gaming – they are (or should be) neutral to the outcome of the individual event, which is the antithesis of gaming. What’s more, for the reasons outlined above, their customers are not eligible to participate in the market for the Contracts, and therefore the Commission’s conclusions as to the customers’ conduct would be irrelevant to the approval or rejection of the Contracts. The only conduct that is properly before the Commission is that of the eligible market participants, all of whom are engaged in lawful businesses under their states’ laws and federal law. As to *these* participants, we believe that the record is clear: as either entities that have a legitimate business interest in hedging risk exposure, or licensed market makers that are providing depth and liquidity to the market for the Contracts, neither group is engaged in unlawful “gaming.” Accordingly, the Commission should approve the listing of the Contracts.

* * *

GTS strongly encourages the CFTC to approve the listing of the Contracts as proposed by Eris Exchange. We believe that the contracts are in the public interest and that they will facilitate hedging of risks that arise in the legitimate conduct of lawful businesses. We further believe that there are sufficient protections in the design of the Contracts, the limits placed on who may buy and sell such contracts, the regulatory and supervisory regimes governing the eligible market participants’ businesses, and the apparatus designed to ensure the integrity of the games themselves, that approving the Contracts will not introduce negative externalities into the commodities markets. To the contrary, approving the contracts will provide significant benefit to a wide variety of stakeholders, including the eligible commercial participants and their ultimate customers.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Rubenstein", enclosed in a faint, irregular white outline.

Ari Rubenstein