August 8, 2024

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

VIA ONLINE SUBMISSION

RE: Request for Comment on Event Contracts

Dear Mr. Kirkpatrick:

LedgerX LLC d/b/a MIAX Derivatives Exchange ("**MIAXdx**") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("**Commission**" or "**CFTC**") notice of proposed rulemaking titled Event Contracts ("**Proposal**").[1] As explained further below, we have concerns about certain aspects of the rulemaking, particularly the 60-day implementation period during which registered entities will need to wind down any contracts covered by the Proposal.

I. Introduction

MIAXdx is a wholly-owned subsidiary of Miami International Holdings, Inc. ("**MIH**"), a technology-driven leader in building and operating regulated financial markets across multiple asset classes and geographies. MIH is the fourteenth largest global derivatives exchange group by executed volume in 2023 and the fastest growing exchange group for U.S. multi-listed options since 2016.[2] MIAXdx is regulated by the CFTC as a designated contract market ("**DCM**"), swap execution facility ("**SEF**"), and derivatives clearing organization ("**DCO**"). Currently, MIAXdx provides third-party clearing services for event contracts on behalf of an unaffiliated exchange; several of these contracts may be impacted by the Proposal.

[1] Event Contracts, 89 Fed. Reg. 48968 (June 10, 2024).
[2] Compiled from source data available at theocc.com. *See also* FIA ETD Tracker, Volume by Exchange, available at https://www.fia.org/fia/etd-tracker.

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The Commission explains that the Proposal aims to provide registered entities with additional clarity regarding the types of event contracts that are prohibited under the Commodity Exchange Act ("**CEA**"), thereby assisting them make informed business decisions with respect to product design.[3] Although the Proposal discusses the effect of the proposed amendments on registered entities generally, it does not consider that a final rule will necessarily impact exchanges and clearinghouses differently. For example, exchanges will naturally focus on initial contract design and listing decisions, whereas clearinghouses will focus on identifying all open positions covered by the final rule that must be wound down. Accordingly, MIAXdx has concentrated its comments below on the unique impacts a final rule would have on clearinghouses. In particular, MIAXdx's comments address challenges clearinghouses will face with respect to the identification and orderly wind down of covered contracts and recommend several changes to the Proposal that would facilitate that process.

II. Proposal

A. Registered Entities Making Good Faith Efforts to Wind Down In-Scope Contracts Should not Be Subject to a 60-Day Implementation Period

For the reasons outlined below, MIAXdx respectfully submits that 60-days is not sufficient time for registered entities to (i) identify all contracts impacted by any final rule, and (ii) arrange for an orderly cessation of their trading. Instead, registered entities working in good faith to comply expeditiously with any final rule should not be subject to an arbitrary final date by which all contracts must be de-listed and settled. Rather, any deadline should be tailored to the settlement dates of contracts already trading or being cleared through a particular exchange or clearinghouse at the time a final rule is adopted.

The Proposal provides a 60-day implementation period after the final rule is published in the Federal Register.[4] During this implementation period, registered entities must oversee the expiration of, or orderly cessation of trading in, all listed event contracts that are impacted by the final rule.[5] In explaining why this 60-day implementation period is appropriate, the Commission asserted that (i) "many event contracts settle within relatively short time horizons," and (ii) event contracts that involve gaming "currently comprise a small portion of the overall event contracts market, suggest[ing] that few event contracts impacted by the proposed rule amendments, if finalized, would need to be

[3] Proposal, 89 Fed. Reg. at 48969.
[4] Proposal, 89 Fed. Reg. at 48995.
[5] *Id*.

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wound down before their existing settlement dates."[6] Additionally, the Commission noted that it believed the 60-day implementation period would "provide sufficient time for the registered entity to ensure the orderly cessation of trading" in any longer-dated contracts.[7]

Based upon our preliminary analysis of contracts currently listed for trading and clearing, we respectfully disagree with the Commission's assessment that "few" contracts are implicated by the Proposal. MIAXdx believes there are potentially hundreds of contracts currently listed for trading on DCMs or SEFs that could be implicated by the final definition of "gaming." For example, there are dozens of event contracts currently trading based on television, movie and song rankings, nominations and outcomes of award shows, rankings of artificial intelligence programs, outcomes of ongoing litigation, outcomes related to sports, and outcomes associated with corporate events – all of which appear to fall within the proposed definition of "gaming" as either "contests," "games," or "an occurrence or non-occurrence in connection with [] a contest or game."[8]

In addition, although the Commission is correct that many event contracts have short time horizons, that is not universally the case. Various event contracts are either long-dated (*e.g.*, settlement dates in 2025), or have an indeterminate settlement date based on the outcome of future events (*e.g.*, outcome of litigation). For example, a "New Microsoft CEO before 2026" contract settles by December 31, 2025, the settlement of an award show contract is necessarily tied to the date of the show (with the Grammys currently scheduled for February 2025 and the Oscars currently scheduled for March 2025), and litigation contracts often settle upon the date of any settlement or final decision by a court.

Further, as detailed below, it is impossible for a registered entity to know with certainty which event contracts fall within the scope of any final rule. Depending upon the final definitions adopted, as well as any guidance in the preamble, it is possible that additional contracts may come into scope, while other contracts may be excluded. In the Proposal, the Commission noted that it

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[6] *Id.*
[7] *Id.*
[8] For example, there are contracts currently listed for trading on: song, artist, or album rankings (*e.g.*, Billie Ellish has #1 album this year, Top Artist on Spotify this year); television and movie rankings (*e.g.*, Gladiator 2 Rotten Tomatoes score, The Witcher: Season 4 Rotten Tomatoes score); award show nominations and outcomes (*e.g.*, Oscar nominations for Best Actor, How many Oscars "Dune: Part Two" will win); artificial intelligence rankings (*e.g.*, Best LLM at the end of the year); the outcome of ongoing litigation (*e.g.*, Courts consider Google a Monopoly, Courts consider Amazon a monopoly); outcomes involving sports (*e.g.*, Bill Belichick gets a head coaching job before May); and whether particular CEOs will be removed from office (*e.g.*, NPR CEO ousted this year, New Boeing CEO this year).

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> expected [registered entities] to make good-faith efforts that will result in conformance with the final rule amendments by no later than the effective date of the final amendments (or the 60-day implementation period, as applicable). These good-faith efforts should take the final rule amendments into account in all compliance, contract design, and listing, trading, or clearing decisions, as well as in decisions leading to the orderly and timely winddown of any contracts with settlement dates beyond the 60-day implementation period.[9]

In order to begin winding down covered contracts, MIAXdx must first comprehensively analyze each contract to determine which are in-scope. Moreover, because the boundaries of what constitutes a "game" or "contest" are not clear under the proposed "gaming" definition (and may not be sufficiently clarified in any final definition), in many cases MIAXdx may need to consult the Commission to confirm it agrees with MIAXdx's determination. In addition, because MIAXdx clears event contracts for an unaffiliated third-party exchange, MIAXdx will also need to coordinate with this DCM regarding contract determinations and the cessation of trading in-scope contracts. Lastly, as we explain further below, there are significant legal, operational, and reputational risks to MIAXdx, and other registered entities, if they incorrectly conclude that a particular contract is either in-scope or out-of-scope from the rulemaking.

For all of these reasons, MIAXdx respectfully requests that the Commission eliminate a final 60-day deadline by which all in-scope contracts must be de-listed. Instead, we respectfully request that the Commission provide exchanges and clearinghouses the flexibility and time they need to analyze each contract, confer with the Commission about their determinations, and responsibly wind down trading and clearing of in-scope contracts in an orderly manner.

B. The Commission Should Establish a Process by which Registered Entities Can Receive Clarity Quickly about whether a Contract is Covered by the Final Rule

In order to facilitate implementation of any final rule, MIAXdx respectfully requests that the Commission establish a process by which exchanges and clearinghouses can engage the Commission to resolve open implementation questions. As discussed in greater detail below, the proposed definition of "gaming" makes it impossible for registered entities to determine with certainty whether many event contracts are either in-scope or out-of-scope. Given the significant consequences of that determination to both registered

[9] 89 Fed. Reg. at 48985.

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entities and market participants, it is critical that there be a process for registered entities, including clearinghouses, to engage with the Commission to confirm whether particular contracts are encompassed by the Proposal.

MIAXdx respectfully requests that the Commission establish a process by which registered entities can submit a list of contracts, along with their preliminary determinations regarding whether they are in- or out-of-scope, for confirmation by the Division of Market Oversight and the Division of Clearing and Risk. Upon confirmation, the registered entity would begin the process of winding down the contracts in an orderly manner.

The absence of a process by which registered entities can receive clarity from the Commission exposes them to unnecessary legal, reputational, and/or operational risk because of the significant consequences of an incorrect determination. For example, if a registered entity decides in good faith that a contract is not covered by the Commission's definition of "gaming," but the Commission subsequently disagrees, the registered entity may not only be subject to penalties from the Commission, but it is also unclear whether such contracts would continue to enjoy federal preemption from applicable state gaming laws.[10] On the other hand, if a registered entity is over-inclusive and determines that an event contract is encompassed within the Commission's definition of "gaming," market participants may be unnecessarily forced to close out their lawful positions. In fact, the same registered entity may simultaneously be both over- and under-inclusive in its determinations of what is covered by the Commission's proposed vague definition of "gaming," thereby exposing it to both such risks.

Given the significant consequences of making an incorrect determination, MIAXdx respectfully requests that the Commission establish a process by which registered entities may obtain legal certainty about whether a contract is in-scope before they are required to take actions on contracts they currently clear or offer for trading.

[10] Depending upon the facts and circumstances, a clearinghouse or exchange may be at risk of being the subject of claims or investigations arising from state gaming or gambling laws, whether from private causes of action or state or local authorities. While we would expect that any federally-regulated exchange or clearinghouse would vigorously defend itself against any such allegations, this potential outcome can be avoided by narrowing the definition of gaming as described under Sections II.C. and D. below.

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C. The Commission Should Limit the Definition of Gaming to those Activities Commonly Understood to be Gaming – §§ 40.11(b)(1)-(2)

The potential negative consequences of an incorrect scope determination could be mitigated by narrowing the definition of "gaming" so that the final rule text itself provides a clear, unequivocal standard. MIAXdx believes that the definition of gaming should be limited to those activities that are commonly understood to be gaming (*e.g.*, contracts involving the outcome of a sporting game, point spreads, or the performance of players in a sporting game).[11] A more restrictive definition of gaming that aligns with the historical understanding of the word would facilitate registered entities' identification of in-scope contracts.

As discussed below, the proposed definition of gaming includes many activities that are not commonly understood to be gaming, such as elections and award shows. However, the Senate colloquy regarding CEA Section 5c(c)(5)(C) does not reference award shows or elections, and instead focuses on games and sporting events, such as the Kentucky Derby, Super Bowl and Masters Golf Tournament.[12] MIAXdx respectfully submits that the definition of "gaming" should be limited to sporting events and games, as the colloquy suggests.

D. The CEA Provides the Commission with Authority to Prohibit Additional Types of Contracts via the Rulemaking Process

The Commission does not have to find that all the event contracts it seeks to prohibit are "gaming" contracts, because the CEA establishes an alternate path for such prohibitions. Specifically, CEA Section 5c(c)(5)(C) authorizes the Commission to prohibit event contracts on other types of activities if it promulgates a rule finding that such activities are (i) similar to one of the prohibited enumerated activities under the CEA, and (ii) contrary to the public interest. If the Commission seeks to prohibit contracts involving a broader universe of activities beyond the traditional understanding of the term "gaming," including activities like award shows and elections, then MIAXdx respectfully requests that the Commission do so via rulemaking as contemplated by statute. If the Commission adopted this approach, then contracts involving these broader topics would be prohibited, but not as gaming—and therefore, an incorrect determination by a registered entity under

[11] As MIAXdx notes below, the Commission may prohibit event contracts involving elections and award shows by promulgating a rule finding that such activities are (i) similar to one of the prohibited enumerated activities under the CEA, and (ii) contrary to the public interest.

[12] 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche Lincoln), *available at* https:// www.congress.gov/111/crec/2010/07/15/CREC- 2010-07-15-senate.pdf (last visited August 8, 2024).

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Regulation 40.11 likely would **not** cause the entity to potentially violate state gaming or gambling regimes, thereby limiting the legal and reputational risks to the exchange or clearinghouse.

E. Alternatively, the Commission Should Clarify the Meaning of Certain Prongs of the Proposed Gaming Definition – §§ 40.11(b)(1)-(2)

The Proposal's broad definition of "gaming" presents significant implementation challenges because it is difficult, if not impossible, to discern the outer boundaries of the definition. The Proposal defines "gaming" as "the staking or risking by any person of something of value upon: (i) The outcome of a contest of others; (ii) The outcome of a game involving skill or chance; (iii) The performance of one or more competitors in one or more contests or games; or (iv) Any other occurrence or non-occurrence in connection with one or more contests or games."[13] Proposed Rule 40.11(b) lists examples of what constitutes gaming, including but not limited to: "the staking or risking by any person of something of value upon the outcome of a political contest, including an election or elections, an awards contest, or a game in which one or more athletes compete, or an occurrence or non-occurrence in connection with such a contest or game, regardless of whether it directly affects the outcome."[14]

MIAXdx respectfully submits that this definition does not provide registered entities with clear guidance about what contracts would be prohibited as "gaming" under any final rule. If the Commission determines not to limit the definition of "gaming" as described above, we respectfully request that the final definition of "gaming" should (i) clarify what constitutes a "contest" under Proposed Rule 40.11(b)(1)(i), and (ii) limit the catch-all prong of Proposed Rule 40.11(b)(2) to events that affect the outcome of a contest or game.

i. *The Commission Should Clarify the Scope of the Term "Contest" under § 40.11(b)(1)(i)*

The Commission should consider limiting the term "contest" to formal competitions organized and decided by third parties. Under this proposed definition, award shows, athletic award contests, and achievement award contests like the Nobel Prize would all constitute contests. However, contracts that settle based upon real-world rankings or outcomes that are not part of formal, organized competitions would not be considered contests. For example, a contract based upon the movie scores reported on Rotten

[13] Proposed Regulation 40.11(b)(1).
[14] Proposed Regulation 40.11(b)(2).

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Tomatoes would not be considered a contest, because the rankings are not part of a formal contest, but rather are critics' and individual's real-world rankings. Similarly, a contract based upon who is chosen to be CEO of a company would also not be a "contest." Limiting the definition to formalized competitions ensures that the prohibition does not extend to all circumstances where a contract is settled based upon the competitive performance of the underlying subject matter.

ii. *The Commission Should Narrow the Scope of its Proposed Category of Prohibited Event Contract that References "an Occurrence or Non-occurrence in Connection with such a Contest or Game, Regardless of Whether it Directly Affects the Outcome"*

Proposed Rule 40.11(b)(2) would establish a catch-all category of prohibited "gaming" contracts for contracts based on "an occurrence or non-occurrence in connection with [a] contest or game, regardless of whether it directly affects the outcome." MIAXdx respectfully submits that this clause should be narrowed to "an occurrence or non-occurrence in connection with such a contest or game that affects the outcome." MIAXdx believes that prohibiting a contract based upon any event in connection with a contest or game is too broad because it encompasses events that are not commonly understood to be "gaming." For example, as Commissioner Mersinger notes in her statement accompanying the Proposal, the proposed definition would include a contract on whether Taylor Swift attends a football game. However, it is not obvious why Swift's attendance at the game constitutes "gaming," given that her attendance is not directly related to the outcome of the game and, indeed, may be determined based upon factors completely unrelated to the game, such as her touring schedule.

Additionally, some contracts that would be swept up by such a broad definition of "gaming" have actual economic significance independent from the outcome of the game. MIAXdx respectfully submits that it would be inappropriate to classify these contracts—which are not related to the outcome of the game, are not traditionally understood as "gaming," and have their own economic significance in the real world—as gaming. For example, contracts based upon event attendance, number of hot dogs sold, or television ratings all have economic consequences independent from the outcome of the game itself. Under the proposed revised definition of gaming, none of these contracts would be prohibited as "gaming" because they do not "affect the outcome" of the game.

In contrast, MIAXdx believes it is appropriate to include within the definition of gaming any contract based upon point spreads or the individual performance of competitors. Contracts based upon such activities directly impact the outcome of the game or contest. Moreover, they are commonly understood to constitute "gaming," and therefore would be

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easier for registered entities to identify as in-scope. In contrast, including any event in connection with a contest or game could conceivably include many events that are merely tangential, and potentially totally unrelated, to the underlying contest or game. For these reasons, MIAXdx respectfully requests that this prong of the gaming definition be limited to "an occurrence or non-occurrence in connection with such a contest or game that affects the outcome."

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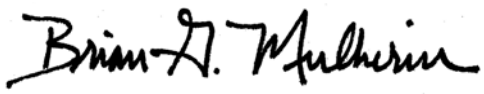
MIAXdx appreciates the opportunity to comment on the Proposal and looks forward to continued engagement with the CFTC throughout the rulemaking process. Please feel free to contact me at gc@ledgerx.com if you have any questions regarding our comments.

Sincerely,



Brian G. Mulherin
General Counsel, LedgerX LLC d/b/a MIAX Derivatives Exchange

cc: Honorable Chairman Rostin Behnam
Honorable Commissioner Christy Goldsmith Romero
Honorable Commissioner Kristin N. Johnson
Honorable Commissioner Summer K. Mersinger
Honorable Commissioner Caroline D. Pham

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