

February 27, 2026

VIA ELECTRONIC SUBMISSION

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

Re: Requests for Comment on the Direct Clearing of Derivatives by Retail Participants

Dear Mr. Kirkpatrick:

Kalshi, Inc. (“Kalshi”) respectfully submits this letter in response to the above-referenced requests for comment by the Staff of the Commodity Futures Trading Commission (“Commission”).¹ We appreciate the opportunity to respond to these requests, which cover important topics relevant to the future of market structure in the United States.

Kalshi is optimistic that the Commission will be mindful of its obligation under the Commodity Exchange Act (“CEA”) to “promote responsible innovation and fair competition among boards of trade, other markets and market participants”² by giving customers a fair and open choice on how they access derivatives markets, whether directly or through futures commission merchants (“FCMs”).

I. Background on Kalshi

Founded in 2018, Kalshi has operated a Commission-regulated designated contract market (“DCM”), KalshiEx LLC (“KalshiEx”), since November 2020, and a registered derivatives clearing organization (“DCO”), Kalshi Klear LLC (“Klear”), since August 2024. Initially launched with a direct access model, Kalshi expanded to offer intermediated trading and clearing through FCMs in January 2025. Kalshi’s experience operating these markets gives us a uniquely informed perspective on the Staff’s request. While our current offerings are comprised of fully

¹ See CFTC Staff Seek Public Comment on Direct Clearing by Retail Participants, CFTC Release No. 9158-25 (Dec. 18, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9158-25> (the “RFC”).

² 7 U.S.C. § 5(b).

collateralized event contracts, in these comments we also address the broader range of product offerings popular among retail participants, both within the United States and abroad.

II. Customer Choice and the Evolution of Listed Derivatives Markets

The direct model is a relatively new innovation in derivatives markets. Staff correctly observed that, until recently, most registered DCOs have operated on an intermediated basis where almost all direct clearing members are registrants - usually FCMs.³ Notably, however, this market structure is not required by the CEA or Commission Regulations; as Staff further note, DCOs offering clearing to retail traders on a direct (non-intermediated) basis (“Retail DCOs”) have been in operation since 2004.⁴

The intermediated model has its roots in the historical beginnings of the listed derivatives markets, where exchanges were cooperatives mutually owned by brokers doing business in a particular city, limited telecommunications technology required trading to take place in a central physical location (such as a floor or a pit), and customers had to relay their orders through brokers as their intermediaries. Those days are long behind us. Exchanges now operate fully electronically, often hosted in the “cloud” (not a central server), and customers can send orders directly from their desktops or mobile devices from nearly anywhere in the world.

Amidst these changes, FCMs still provide important services. They facilitate the execution of orders and can exercise trading discretion. They also help manage margining and settlement of transactions. These services are helpful for traders accessing multiple exchanges, and for traders who appreciate the convenience of a central point to access the markets. Some traders, on the other hand, prefer to execute and fund transactions themselves, without the additional costs and risks of accessing markets through an intermediary.

Kalshi and other market observers have also seen an expansion of retail interest in Commission-regulated derivatives. Historically, the Commission principally regulated derivatives used by corporations and institutional investors to hedge their commodity, rate, currency, and equity price risks. When the derivatives markets move against these participants, they typically prefer to keep their positions open – even at the expense of posting more margin – in order to preserve these hedges. Market makers and professional arbitrageurs face similar incentives to be “position good.”

Retail traders are different. They often use derivatives to get exposure to additional assets as part of their investment portfolios or as part of active trading strategies. When markets move against a retail trader’s derivatives position, meeting a margin call might force the trader to liquidate other assets. More often, the trader might then prefer to liquidate the derivatives position – they prefer to be “money good.” To accommodate these traders, retail-focused exchanges outside the United States offer “auto-liquidation” features, with the exchange liquidating positions at

³ RFC at p.1.

⁴ *Id.*

specific market thresholds instead of generating margin calls. Within the United States, FCMs serving retail traders offer similar features.

This evolution of the markets underscores the importance of promoting customer choice. Some customers prefer to access markets in a traditional manner, using FCMs who extend them overnight credit through daily margining processes. But others prefer to access exchanges directly, either by fully collateralizing their positions or by relying on the exchange to liquidate them before incurring significant mark-to-market losses.

Consistent with the CEA's mandates for responsible innovation and fair competition, the Commission should not require Retail DCOs to establish an affiliated FCM, and retail participants should not be forced to trade through an FCM. Instead, the Commission can better ensure market integrity and customer protection through appropriate regulation of Retail DCOs and their affiliated DCMs, as discussed below.

III. Appropriate Regulation of Retail DCOs

Staff highlight certain differences in the way the Commission regulates FCMs, on one hand, and DCOs, on the other hand, in such areas as KYC/AML, protections and guarantees for customer funds, prohibitions against abusive sales or marketing practices, and participant default management.⁵ The CEA affords the Commission ample authority to supervise Retail DCOs in these areas:

- **KYC/AML**: DCM Core Principle 2⁶ and Commission Regulation 38.151, and DCO Core Principle C⁷ and Commission Regulations 39.12, address DCM access requirements and DCO participant eligibility, respectively. Consistent with these requirements, KalshiEx and Klear have adopted robust rules and procedures to address KYC/AML considerations.
- **Customer Funds**: DCO Core Principle F⁸ and Commission Regulation 39.15(c) require protection of member funds. Consistent with these requirements, Klear has adopted rules and procedures to segregate member funds from its own funds and limits on the investment of member funds, similar to the segregation requirements applicable to FCMs. Part 190 of the Commission's Regulations also provides preferential treatment to a DCO's members with respect to the distribution of member property, relative to non-member creditors.

⁵ RFC at p. 3.

⁶ 7 U.S.C. § 7(d)(2).

⁷ 7 U.S.C. § 7a-1(c)(2)(C).

⁸ 7 U.S.C. § 7a-1(c)(2)(F).

- Sales and Marketing Practices: DCM Core Principle 7⁹ and Commission Regulation 38.401, and DCO Core Principle L¹⁰ and Commission Regulation 39.21, demand public disclosure of accurate information by DCMs and DCOs, respectively.
- Default Management: DCO Core Principle G¹¹ and Commission Regulation 39.16 address participant default management.

Notably, DCMs and DCOs are registered entities and accordingly required to address these matters on a transparent and impartial basis. FCMs, in contrast, are not required to disclose their KYC/AML or default management policies or to apply them on an impartial basis.

In short - the requirements for FCM-adjacent protections in these areas already exist. But should it wish to further these aims, the Commission has an opportunity to enhance its regulation of Retail DCOs in these areas. In particular, lack of transparency with respect to Commission expectations for a Retail DCO's KYC/AML procedures, protection of member funds, and sales and marketing practices has led to inconsistent approaches across DCOs and over time. Further rulemaking or guidance in these areas would promote certainty, predictability, and fair competition.

IV. Retail DCO Affiliation with FCMs

As noted by Staff, affiliation between a DCO and an FCM participant of the DCO can pose opportunities for conflicts of interest.¹² In particular, the DCO has incentives to provide preferential treatment of the FCM affiliate relative to third-party FCMs, or relative to direct participants, with regards to fees and other terms of participation, exercise of disciplinary authority, and default management. For these reasons, it is important that the Commission require safeguards for these DCOs, including independent governance and protection of confidential information as between the DCO and FCM affiliate. Although the Commission and National Futures Association have wisely considered these protections as part of DCO and FCM registration processes, clear rules of the road would promote certainty, predictability, and fair competition.

V. Hybrid Clearing

As noted above, Kalshi offers both direct access and access through FCMs. Staff suggest that this "hybrid" clearing structure could pose elevated risk.¹³ This is not the case for the fully

⁹ 7 U.S.C. § 7(d)(7).

¹⁰ 7 U.S.C. § 7a-1(c)(2)(L)

¹¹ 7 U.S.C. § 7a-1(c)(2)(G).

¹² RFC at p. 3-4.

¹³ *Id.* at p. 4.

collateralized contracts offered by Kalshi because Klear, the DCO, cannot suffer default losses in excess of the collateral it holds.

Even for margined contracts, a hybrid clearing structure does not necessarily pose elevated risk. Direct retail traders are unlikely to pose significant risk to FCMs and their customers because the sizes of retail traders' portfolios tend to be smaller than institutional traders; in addition, Retail DCOs can take measures (such as auto-liquidation practices) to reduce the likelihood of tapping mutualized default resources that could spread losses to FCMs. Retail DCOs can otherwise establish default waterfalls that do not result in cross-pollination of risk (*e.g.*, providing that the DCO's own default fund contribution is used to cover direct retail trader losses in excess of the trader's margin). And Retail DCOs can similarly establish default waterfalls that do not transfer risk from FCMs to direct retail traders (*e.g.*, by not requiring direct retail traders to contribute to the default fund or expose their margin to FCM-related losses). Notably, Commission Regulation 190.15 would ensure application of these measures, as part of the DCO's recovery and wind-down plan and default rules and procedures, in the DCO's insolvency.

VI. Multiple Product Classes

Staff request feedback on Retail DCOs that offer both fully collateralized and leveraged or margined contracts, and related "risk transfer" considerations.¹⁴ Like with the hybrid clearing structures discussed above, DCOs can employ measures to prevent unwanted risk transfers between these types of contracts. For example, Retail DCOs can establish separate default waterfalls for the two classes of products, like the way other DCOs separate the waterfalls for other product types (*e.g.*, separate waterfalls for interest rate versus credit products). As noted above, Commission Regulation 190.15 extends enforceability of these measures in a DCO's insolvency.

VII. Retail DCO Sub-Registration Category

In our view, there is no need to establish a separate registration sub-category for Retail DCOs. Commission Regulations already distinguish between fully collateralized and leveraged contracts, and DCOs have reasonable discretion to vary their own rules to account for different types of products and participants. To the extent the Commission adopts further requirements in particular areas (*e.g.*, KYC/AML), it can distinguish among types of DCO participants based on the particular considerations they warrant.

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We appreciate Staff's consideration of our comments. Please do not hesitate to contact the undersigned with any questions.

¹⁴ *Id.* at p. 4-5.

Sincerely,

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