Comment on Advance Notice of Proposed Rulemaking: Prediction Markets

RIN 3038-AF65 · 17 CFR Chapter I

Commodity Futures Trading Commission

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Three Lafayette Centre
1155 21st Street NW
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Re: Advance Notice of Proposed Rulemaking – Prediction Markets (RIN 3038-AF65)

Dear Mr. Kirkpatrick:

I submit this comment in response to the Commission's Advance Notice of Proposed Rulemaking (ANPRM) regarding prediction markets, published in the Federal Register on March 16, 2026.

1. Executive Summary

Properly designed and regulated prediction markets serve the public interest through two primary mechanisms:

(i) **hedging**, by enabling participants to hedge otherwise unhedgeable risks associated with one-off or non-standard events, and

(ii) **information aggregation**, by aggregating diffuse, private, and specialized information into a publicly available price signal. These two functions are the direct result of the economic incentives that drive participation in event contract markets.

Prediction markets may also serve other purposes, presently or in the future, but these are the two primary public interest benefits that exist today and on which I focus in this comment. Well-operated and properly regulated prediction markets are equipped to serve both of these functions, while minimizing potential harms. My purpose in this comment

letter is to discuss how the Commission and its regulated entities can achieve the goal of operating societally valuable markets while safeguarding against any potential harms caused by and concerns raised about these markets.

My research and experience in prediction markets suggests a few principles that should guide the Commission's regulation of prediction markets:

(i) **The statutory framework requires contract-specific, two-step analysis.** Section 5c(c)(5)(C) of the Commodity Exchange Act requires the Commission to first determine that a contract *involves* one of the enumerated activities and then, separately, to determine that the contract is *contrary to the public interest*. Categorical prohibitions of entire classes of event contracts—without individualized public interest analysis—exceed the Commission's statutory authority. Importantly, the default for any given event contract is that it is not contrary to the public interest. In other words, an event contract does not have to be established (by the operator, regulator, or anyone else) as favorable to the public interest; rather, the Commission, if it wishes to apply Section 5c(c)(5)(C) of the CEA to prohibit a market, must establish that the contract is explicitly contrary to the public interest.

(ii) **Event contracts serve the public interest when they address risks and information about events that exist externally and independently of the markets themselves.** The public interest is most readily served by markets for which at least one of two conditions holds: (1) hedgable risks must exist externally and independently of the markets being offered, or (2) the information produced by the market must be useful and informative for events that exist externally and independently of the markets being offered. If at least one of the above conditions holds, the market is *prima facie* in the public interest. A market that exists "for its own sake" is harder to justify on public interest grounds, but not impossible. The vast majority of markets currently offered on regulated prediction markets, including sports, politics, and current events markets, satisfy at least one of these conditions.

(iii) **Market structure, not contract subject matter, determines susceptibility to manipulation.** The question of whether an event contract is "readily susceptible to manipulation" under Core Principle 3 depends primarily on the design and operation of the market in which it trades, not on the topic of the underlying event. To address concerns about manipulation, the Commission's regulatory principles should focus on market structure, rather than specific subject matter addressed by markets. Manipulation concerns, however, should be carefully weighed against principles of free markets

and non-interference with the events underlying a prediction market.

(iv) **The Commission should distinguish "information advantage" from "outcome control" when evaluating insider trading concerns, and should establish that policing inside information is the responsibility of the entity where the information originates, not the market operator. Further, the source of information should have discretion over whether and how to police its own proprietary information, without interference from the Commission or its operators.** The appropriate regulatory target is not information advantage *per se*, but rather the ability of a trader or any individual party to directly control or influence the outcome of the underlying event. Even this condition, however, must be carefully considered, and should not be used as a catchall to restrict broad categories of markets across the board. Moreover, the existence of a market on a given event should not be used by the Commission, its licensees, or lawmakers to interfere with or infringe upon the right of the individuals or entities involved in that event.

(v) **The Commission should implement principles and policies that put reasonable safeguards in place to ensure the integrity of markets operated under its purview. Neither the Commission nor its licensed operators should be compelled or empowered to protect market participants from every possible contingency or adverse outcome associated with trading on a CFTC regulated prediction market.** Trading on prediction markets, as on any financial market, is inherently adversarial and risky. Market participants should acknowledge that prediction market trading is inherently risky and adversarial in nature, and that they are solely responsible for protecting their interests while participating in these markets. The Commission and CFTC regulated operators should be guided by the mantra *to serve and protect* market participants, and to serve as stewards of these markets for the benefit of the public.

The remainder of this comment applies these principles to the specific questions posed by the Commission.

2. Questions and Answers

A. DCM, DCO, and SEF Core Principles

Q1. What factors should the Commission consider in determining whether to provide guidance or amend its regulations regarding how the DCM Core Princi-

> ples in CEA section 5(d) apply to prediction markets? Are there specific points on which the Commission should provide guidance or adopt rule amendments? Why or Why not?

Response. The Commission should be guided by whether any proposed guidance or rule amendment promotes a long-term successful and sustainable market ecosystem for event contracts. The public interest benefits of event contract markets apply to both market participants and market observers. The long-term sustainability of an event contract ecosystem relies on operators and regulators to ensure the proper function of markets, which implies the proper treatment of participants and observers. Therefore, the core principle guiding event contract operation and regulation is *Serve and Protect*. The operators' role is to serve the public interest by offering the best product they can today and an even better product tomorrow. The regulators' role is to protect the public interest by fostering an environment in which operators are forced to compete and are incentivized to innovate.

Four areas stand out where guidance would be useful. First, impartial access under Core Principle 2: the Commission should make clear that DCMs may not arbitrarily limit, ban, or tier customers based on their profitability or sophistication, which is the standard practice at state-regulated sportsbooks and is fundamentally incompatible with exchange trading (see Q2a). Second, resolution criteria under Core Principle 2: the Commission should articulate expectations that resolution criteria be specified at listing and applied to produce the common-sense outcome, not the pathological one (see Q2b). Third, the Commission should distinguish between manipulating the market and manipulating the outcome under Core Principles 3, 4, and 5 (see Q2c and Q2d). Fourth, the Commission should establish clear definitions of what constitutes an "insider" and should clearly allocate the responsibility for policing insider information between the market and the institution where the information originates (see Q29–Q32).

The Commission should resist the impulse to write detailed prescriptive rules. Prediction markets are at an early stage of development, and overly specific rules risk freezing the industry in its current underdeveloped form. Principles-based guidance combined with strong enforcement of existing Core Principles is the right approach.

> Q2. With respect to the following DCM Core Principles, what factors are relevant to prediction markets?

a. Core Principle 2 states that a DCM "shall establish, monitor, and enforce compliance with the rules of the [DCM], including—(i) access requirements; ... and (iii) rules prohibiting abusive trade practices". Regulation 38.151, adopted under this core principle, requires that

a DCM provide "impartial access to its markets and services, including ... [a]ccess criteria that are impartial, transparent, and applied in a non-discriminatory manner". What aspects of prediction markets affect how a DCM provides impartial access and prohibits abusive trade practices? Are there potential barriers to impartial access that the Commission should consider? Are there particular risks of abusive trading?

Response. Impartial access is critical to the function of event contract markets. Although prediction market platforms serve a fundamentally different purpose and offer a different product than state-regulated sportsbooks, the latter provides useful cautionary tales that the Commission is well served to address in its approach to regulating prediction markets. Under state-regulated sports betting in the United States, operators are permitted to arbitrarily restrict, limit, and ban customers from their platforms. In this model, winning customers are routinely throttled to micro-stakes or banned outright, while losing customers are courted with predatory promotions and bonuses. These exploitative practices are fundamentally incompatible with the principle of fair access, and should not be permitted on CFTC-regulated prediction market platforms.

A prediction market DCM must not be permitted to discriminate against participants on the basis of their profitability, sophistication, or the information they bring to the market. If a trader's orders are valid and fully collateralized under the DCM's stated rules, the DCM must accept them. The Commission should read Regulation 38.151's impartial access requirement as prohibiting the sportsbook-style practice of cherry-picking customers as well as other forms of unequal customer treatment. The economic incentive for an exchange operator to limit winning customers is weaker than the incentive for a sportsbook (since exchanges are not counterparties to their customers), but it is not zero. Market makers and liquidity providers who enjoy a commercial relationship with a DCM may exert pressure on the DCM to exclude traders whose activity hurts their profits. The Commission should anticipate this and enforce impartial access accordingly.

As an aside, the prohibition of these predatory practices is one of the primary features that distinguishes prediction markets from state-regulated sportsbooks. As I discuss further below, and elsewhere, while state regulators may argue that prediction markets are offering an identical product to their state-licensed sportsbook operators, a number of differences invalidate those arguments. The fair treatment of customers is one such difference.

A concrete example where such impartiality may be violated is in relation to latency on the execution of trades on combinations (i.e., parlays) and live, in play events. For such offerings, it has been alleged that market makers are given an opportunity to "void" trades for a period

of time after they have been placed by a market participant. These policies are in place to protect one participant (market makers) over others, and should be curtailed or eliminated entirely to ensure a level playing field. Market makers and other high-volume participants in prediction markets enjoy a number of structural advantages over other participants. Adverse selection risk is a structural disadvantage that market makers in every market face and must deal with. Platforms should not be permitted to implement technical restrictions that disadvantage price taking participants (which are predominantly retail traders) and advantage market making participants (which are predominantly institutional).

Other access concerns are (i) geographic restrictions driven by state-level legal uncertainty and (ii) suitability determinations for retail customers using margin, if margin is ultimately permitted. The first can only be fully resolved by the Commission asserting that federally regulated event contract trading on a DCM is lawful nationwide, consistent with the CEA's preemptive scope and with the Interstate Horse Racing Act precedent discussed in Q16.

b. Core Principle 2 also requires a DCM to "establish, monitor, and enforce compliance with … the terms and conditions of" contracts traded on the DCM. In this regard, what factors should the Commission consider regarding a DCM's rules related to resolution criteria for event contracts? For example, if there is a dispute regarding how an event contract is resolved or how the trigger event for an event contract is determined (such as a dispute regarding whether an event underlying a contract has occurred), what factors should the Commission consider in setting expectations for DCMs to have rules to resolve the dispute? Are dispute resolution procedures for other types of swaps, such as credit default swaps, helpful precedents? Also, what considerations under Core Principle 14, which requires a DCM to have "rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries", are relevant in this regard?

Response. Dispute resolution is critical to event contract market function and integrity. By nature, event contracts settle based on one-off, unique events. The terms of a contract often involve technical nuances designed to handle edge cases, and occasionally an edge case occurs that is not foreseen and is not covered by the stated rules or resolution criteria in any clear-cut way.

Platform rules often contain multiple potential sources for determining the outcome of an event, typically something like: (i) a designated official data source, (ii) if that source fails to report, a consensus of credible reporting, and (iii) if none of the above is available, the discretion of the platform operator. In principle there is nothing wrong with this tiered approach, but multiple criteria invite ambiguity and conflict when different sources report

differently. When resolution relies on something other than a single official data source, the risk of outcome manipulation and dispute increases.

A core principle of event contract resolution is that the contract should resolve to the outcome that most closely matches the actual underlying event. Markets too often resolve in counterintuitive or pathological ways based on rules technicalities. While literal adherence to stated rules is essential to avoid arbitrariness, platforms should list only markets whose technical rules will produce the common-sense outcome with overwhelming frequency (with a targeted frequency exceeding 99% of the time). The Commission should set the expectation that a DCM will not list contracts whose resolution criteria are likely to produce a settlement at odds with the plain reading of the contract question.

When determining principles on market resolution, the Commission ought to bear in mind that the contracts traded on its DCMs are commodities. As such, an event contract on one exchange should, in principle, be interchangeable with the corresponding event contract on another. However, even when the same event underlies contracts offered on two exchanges, differences in resolution criteria may negate the interchangeability of the contracts. Contract rules that appeal to consensus opinion of the operator's staff is a specific practice that cuts against the interchangeability of these contracts, and should be limited or disallowed altogether.

Kalshi's resolution of the Iran Supreme Leader market illustrates the problem. The market asked whether a named individual would hold the office on a specified date. There was no dispute that he did not hold the office on that date, so the common-sense resolution is No. Instead the contract resolved to the last traded price before the confirmed killing of the Supreme Leader. A market that resolves in such a manner has failed its basic function, and repeat instances of this kind of resolution will erode credibility of prediction markets as a whole. This specific issue relates to the question of markets on death, which is addressed in Q17.

The Commission should require DCMs to maintain written resolution criteria specified at the time of listing, with identification of the authoritative source, treatment of foreseeable ambiguities (cancellation, postponement, partial occurrence), and a transparent dispute resolution procedure.

c. Core Principle 3 states that a DCM may list "only contracts that are not readily susceptible to manipulation". How should a determination of whether an event contract is "readily susceptible to manipulation" be made? What factors should be considered? Are there particular aspects of event contracts that make this determination different from the determination with

respect to other listed contracts? Do any existing rules for other types of exchanges and platforms (i.e., not prediction markets) limit or mitigate the potential for manipulation? If so, how and to what extent are these rules appropriate as requirements for prediction markets? See also the questions regarding inside information in part II.E. below.

Response. The "readily susceptible to manipulation" determination under Core Principle 3 requires the Commission to be clear about what is being manipulated. There are two distinct concerns, which have fundamentally different sources and require different remedies:

- **Price manipulation**: any deliberate action that distorts market prices away from those that reflect the genuine aggregated beliefs or information of market participants. The motivation for market manipulation is almost always external to the market being manipulated: to mislead competing traders on another platform, to influence public perception, or to trigger an action by another party based on the manipulated price signal.
- **Outcome manipulation**: any deliberate action to influence the outcome of the underlying event itself, with the intent of profiting from positions on the event contract market. Match-fixing in sports, bribing a government official to change a vote, or deliberately underperforming as an athlete to cash in on a bet are all examples.

The two forms of manipulation must be carefully distinguished in determining how the Commission and its licensees should approach concerns about either. Of the two, price manipulation is a reflection of market activity, and therefore falls within the remit of licensed operators and the Commission. Outcome manipulation reflects the integrity of events underlying prediction market contracts, which generally falls outside the jurisdiction of licensed operators and the Commission.

Price manipulation. For most event contracts, price manipulation should be less of a concern than in traditional derivatives markets, because event contracts have a known terminal value determined by an external event. By contrast, a derivative's settlement price is a function of the underlying asset's market price, which can itself be moved by trading activity. A call option on stock ABC with a strike price of $100 is worth whatever the market price of ABC is at expiration, so a trader who can manipulate ABC's price can manipulate the option's settlement value, and hence manipulate the "outcome" of that trade. Event contracts do not face this same issue in most cases. A binary contract on whether a candidate wins an election settles at $1 or $0 based on the election result, not on the trading price of the contract. Absent manipulation of the underlying event, temporary price manipulation

in the contract itself is self-correcting. Informed traders will trade against the mispricing in pursuit of profit. Even if the market is slow to correct short-term price distortions, the contract will ultimately settle at its true value based on the event outcome, regardless of any mid-market distortion.

Outcome manipulation. The more relevant concern for event contracts is the susceptibility of the underlying event to manipulation. Any contract based on the behavior or decision making of a single named individual or small group of people is susceptible to manipulation. Outcome manipulation is not primarily a market integrity problem, but rather is an event integrity problem, and should be treated as such by operators and regulators. The distinction matters because the responsibility for preventing outcome manipulation should lie primarily with the institutions that govern the underlying event, not with the market operator (see Q29–Q32). Importantly, prediction market operators cannot be held accountable for policing the events underlying their markets. To do so not only places an undue burden on platform operators but also potentially infringes on the integrity of the underlying events themselves. The Commission and its operators should not, by virtue of offering a market on an event, impose restrictions or standards on the administration or integrity of that event, or on the participants in that event.

A DCM should apply the following tests when evaluating whether a contract is readily susceptible to manipulation:

(i) Does the underlying event fall outside the control of any market participant or small group of participants? The CEA's "excluded commodity" definition in Section 1a(19)(iv) already requires that the event be "beyond the control of the parties to the relevant contract" (see Q35).

(ii) Is the outcome determined by a process administered by a credible external institution (e.g., a sports league, election authority, government data release) with its own integrity controls?

(iii) Is the resolution criterion unambiguous and tied to an authoritative source (see Q2b)?

(iv) Does the market have sufficient liquidity and breadth of participation that price manipulation would require substantial capital and would be quickly arbitraged away?

The mere possibility of manipulation is not enough to disqualify a contract under Core Principle 3. Every market is susceptible to some possibility of manipulation. The statutory standard is "readily susceptible", meaning that manipulation is a realistic and significant threat, not a theoretical one. The Commission should require DCMs to document their

analysis under these factors when self-certifying contracts, but should refrain from imposing a categorical prohibition on contract classes where susceptibility is not actually demonstrated.

Some concrete examples illustrate the point.

Coinbase 2025 earnings call mention market. Kalshi and Polymarket offered markets on what the Coinbase CEO Brian Armstrong would say during the Coinbase earnings call in late 2025. As the earnings call came to a close, Armstrong informed the call of the corresponding mention market and quickly rattled off any words in the market that he had not yet said.[1] This is a clearcut case of outcome manipulation: based on the market rules, Armstrong could single-handedly determine the outcome of any given market relating to this event, and he did just that. But neither the Commission nor its licensed operators should be empowered to police such behavior in this case. Platforms offering this and similar markets do so without consent or coordination from involved parties. As such, the choice of a prediction market platform to offer a market cannot infringe on rights (in this case first amendment rights) of the participants in those events. Moreover, neither platforms nor the Commission should make any effort to influence or discourage specific behaviors from event participants, as doing so would itself interfere with the natural course of the event underlying the prediction market.

To be clear, other entities to which participants are bound, such as the company board of directors or the SEC, could impose restrictions relating to prediction markets offered on official company announcements. But such restrictions should not be imposed by the Commission. Furthermore, operators may decide not to offer such markets for any reason. But once a market, such as the Coinbase earnings call here, is actively traded, neither the platform nor the Commission should interfere with its natural resolution.

Match fixing and related issues in sports. Over the past few years, a number of issues with match or outcome fixing in sports have been highlighted, most notably in the NBA[2] and MLB.[3] The discussion here does not concern the legality of these activities, as both have been investigated and are under the jurisdiction of law enforcement. The relevant question is what steps, if any, should the Commission and prediction market platforms play in policing these behaviors. As a general principle, it is important to stress that the leagues are ultimately responsible for the integrity of their sporting events. This responsibility is

[1] https://www.businessinsider.com/coinbase-ceo-earnings-call-words-prediction-markets-bets-2025-12

[2] https://www.nytimes.com/athletic/6788069/2025/11/25/nba-players-coaches-gamblers-betting-investigation/

[3] https://www.justice.gov/usao-edny/pr/two-current-major-league-baseball-players-charged-sports-betting-and-money-laundering

solely the responsibility of the leagues. Neither platforms nor the Commission should be tasked with identifying or investigating issues of match integrity, because neither controls the on-field product.

When market participants purchase event contracts on a sporting event, they should do so with the understanding that the outcome will be resolved according to the on-field outcome, regardless of whether that outcome is found to have been manipulated or unduly influenced in any way. Though regulators, operators, and participants may find this unsettling, it is the only general principle that allows the Commission and its licensees to offer markets without the burden of policing every aspect of society which their markets touch. Leagues must ensure the integrity of their own product, just as nations must ensure the integrity of their elections, and so on.

It has become standard practice for operators to flag anomalies that occur, in sports markets and otherwise, and alert the relevant authorities of such instances. While this is a reasonable middle ground to the above issue, I urge the Commission to tread carefully with such requirements, to ensure that market surveillance does not cross the line where it adversely impacts market behavior and influences the outcomes of events underlying prediction markets.

Commission should establish a clear standard that does not interfere with outcomes of the underlying events. The Commission should establish clear standards for identifying markets that are susceptible to manipulation. Operators should be required to inform its users of any market that is susceptible to manipulation under those criteria. In that way, the market users can decide whether and how to use the market based on their own risk assessment. Importantly, a user may still find use in a market that is readily susceptible to outcome manipulation. In fact, a user who is hedging risk exposure to an event may find that susceptibility to manipulation makes the underlying prediction market even more useful for hedging that risk.

All markets are subject to the possibility of manipulation, including all stock, commodities, futures, and event contract markets currently approved by the CFTC. The mere conception of the possibility of manipulation does not make it likely, nor does it make the consequences of manipulation detrimental, even if it were to be attempted. The lack of evidence of any consequential manipulation, despite decades of political event contract markets offshore and overseas, should serve as a caution against over-regulation. The two most prominent episodes cited by critics in the last two years—the 2024 Polymarket "whale" and the 2025 Nobel Peace Prize market—proved to be instances of the markets working exactly as they should, without manipulation or insider activity (see Q2d).

Ultimately, it is the market participant's responsibility to determine whether a given market serves its useful purpose and is worth participating in. If an event is determined by a participant to be readily subject to outcome manipulation, that participant may decide not to participate in such a market. Importantly, market participants are not compelled to participate in any given market, and it must be reiterated to market participants that they are their own last line of defense. Trading in any market is an adversarial activity. Prediction markets are no different. While operators and regulators should do their best to put reasonable guardrails in place, they must also not stray too far into over-policing and over-regulation that markets fail to serve their intended purpose. Even with efforts to curtail such activity, market participants should be advised of the core principle of prediction market trading: *Protect yourself at all times*. Platforms should be encouraged, if not required, to provide reasonable educational services to participants to ensure they are sufficiently informed about market dynamics and the risks associated with event contract trading.

d. Core Principle 4 states that a DCM "shall 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". Do any aspects of prediction markets pose challenges to compliance with this Core Principle or, on the other hand, facilitate compliance? Are there market surveillance, compliance, or enforcement practices on which the Commission should focus? Are there existing surveillance practices for detecting suspicious activity in other types of exchanges and platforms that would be useful in prediction markets?

Response. While market surveillance is a legitimate and necessary function of a DCM, it is imperative that DCMs and the Commission do not treat "suspicious" as synonymous with "unconventional", "profitable", or "atypical". Prediction market traders have a wide variety of motivations and sources of information. A core purpose of these markets is to incentivize users to express their opinion, and therefore contribute information, through trading in the market. If every profitable or idiosyncratic trade is put under a microscope, informed participants will think twice before trading in these markets. Liquidity will dry up and accuracy will suffer. But most importantly the markets will fail to deliver on their intended economic and societal purposes.

Two well-known episodes illustrate the point.

2024 Polymarket whale. During the 2024 U.S. presidential election, several accounts on Polymarket accumulated more than $30 million in exposure on Trump to win, driving Trump's implied probability several percentage points higher than on other platforms. Initial

reporting by Alexander Osipovich in the *Wall Street Journal* advanced a narrative of market manipulation, with economist Rajiv Sethi quoted as saying, "If I were trying to manipulate a market, this is exactly how I would do it".[4] Within two weeks, it was confirmed that the accounts were controlled by a single individual, a French national, whose bets were based on the results of proprietary polling that showed Trump with a significant advantage over Harris. The "manipulator" was, in fact, a rules-abiding participant who sourced his own proprietary information in order to gain an advantage in the market. (Note that the above example is for Polymarket's blockchain-based platform, which operates outside of the United States and is not subject to CFTC regulation. However, the identical market was offered at CFTC-regulated platforms and all of the above considerations apply equally within the jurisdiction of CFTC regulation.)

2025 Nobel Peace Prize. Twelve hours before the official announcement of the 2025 Nobel Peace Prize winner, some traders on Polymarket and Kalshi drove the price on the eventual winner from less than $0.01 to more than $0.60. Immediate accusations of insider trading followed from prominent voices, and the episode continues to be cited in press coverage (Osipovich, 2025) as an example of insider trading. In fact, this was not a matter of insider trading, but instead a case of information that was made publicly available through the Nobel committee's website before the official announcement. Those who traded on the information were not trading based on insider or privileged information. The information was, in fact, accessible to everyone with access to the Internet.

Like the Polymarket "French whale", this episode did not involve insider trading. It is instead a prime example of markets working exactly as they should: well-informed users, not market manipulators or inside traders, contributing timely and specialized information to the market before the information reached the general public. News reports of these legitimate trades continue to erroneously label them as manipulation or insider trading. These episodes should be a cautionary tale for the Commission to be careful about equating a DCM's surveillance obligations with a mandate to interrogate every profitable trade as a potential violation.

The distinction between *what* and *why* is central here. A prediction market answers the question of *what* is going to happen and produces a market price that corresponds to a probability estimate for the answer to that question. It does not answer the question of *why* the market holds that opinion, or why a particular price move occurs. When a participant trades in a prediction market, they bring to bear proprietary information, analytical models,

[4] A. Osipovich. A Mystery $30 Million Wave of Pro-Trump Bets Has Moved a Popular Prediction Market. *Wall Street Journal*, October 18, 2024.

domain expertise, curated data, personal judgment, and other resources that constitute their intellectual property and competitive advantage. There is a reason (an answer to the question *why*) underlying every trade. But neither the market nor the Commission is entitled to know the *why*. Anonymity, privacy, and the protection of participants' intellectual property are not incidental features of well-functioning markets. They are foundational. Market surveillance should therefore focus on identifying conduct that is actually harmful and outside the rules—trading by participants with outcome control, violations of stated position limits or access rules—not on demanding that profitable traders justify their positions simply because their behavior is hard for platform operators or less sophisticated participants to understand or explain.

This is not merely a best practice recommendation. The Commission should, by rule, limit the circumstances under which a DCM or the Commission may demand that a trader reveal the information, models, or reasoning that underlies their positions. The threshold should require specific, articulable evidence of a violation of law, contract, or stated market rule. Rules must be put in place now to ensure continuity and consistency of prediction markets by limiting the Commission's authority in this regard. While the current Commission may be attentive to and respectful of these concerns, there is no guarantee future Commissions will be.

e. Core Principle 5 states that a DCM shall, for each contract, adopt position limitations or position accountability for speculators as is necessary and appropriate to "reduce the potential threat of market manipulation or congestion". What factors should the Commission expect a DCM to consider in adopting position limitations or position accountability for prediction markets? For example, what factors should the Commission consider regarding how position limits across similar event contracts should be aggregated (e.g., whether there is the same underlying reference, or whether there are similar references)? Are there reasons why event contracts, as compared to other swaps and futures contracts, should, or should not, be subject to different position limitations or position accountability? Are existing position limitation or position accountability provisions helpful as precedent for determining how prediction markets should implement such measures?

Response. DCMs should be discouraged from imposing position limits on prediction markets. Event contracts differ from traditional futures in three relevant ways: (i) they expire at a fixed, binary value ($0 or $1), (ii) there is no physical delivery or settlement price susceptible to squeeze, and (iii) the underlying "commodity" is information rather than a physical good. Because there is a terminal state determined by factors external to market behavior, market price manipulation is less of a concern in prediction markets than in con-

tinuously priced derivative markets, provided the underlying event is not itself susceptible to manipulation.

As a further point, position limits should not be used as a back-door substitute for categorical prohibition. A limit set so low that it destroys the market's hedging and information aggregation function is a prohibition dressed up as a prudential measure. The Commission should be candid about the purpose of any limit it imposes.

f. Core Principle 11 requires that a DCM have "rules and procedures for ensuring the financial integrity of transactions entered into on or through facilities of the [DCM] (including the clearance and settlement of the transactions with a derivatives clearing organization [(DCO)]); and rules to ensure the financial integrity of any [intermediary] and the protection of customer funds". Currently, event contracts are fully collateralized. What factors should the Commission consider in determining whether prediction markets should be permitted to offer trading on margin, and should such factors be different for retail as opposed to institutional customers? If margin is provided to retail customers, what disclosure, if any, should the Commission consider to ensure that customers are fully informed of the consequences and potential losses resulting from the customer's failure to meet margin requirements? If prediction markets are allowed to offer trading on margin, what factors should be involved in the calculation of initial margin, such as concentration, or liquidity (i.e., the cost to the DCM to liquidate a defaulting member's portfolio)? What methods should be involved, such as a flat percentage rate or a statistical analysis? Given that some event contracts resolve quickly and others may not resolve for years, what time series of data and other time period considerations should be involved when calibrating appropriate margin? What factors should be involved in considering other issues such as whether daily variation margin should be required, the time intervals for collecting margin, and the instruments permitted for posting initial margin and exchanging variation margin? What products should be eligible for cross-margin with event contracts if trading on margin is allowed? See also question 3.c. regarding the implications of margin trading for DCOs.

Response. Full collateralization is a conservative starting point and has served the industry well to date. Margin trading in prediction markets should be approached cautiously, as the binary payoff structure in many markets creates a number of potential issues with liquidation and margin calls that may not exist in the trading of assets with more continuous price movement. Margin for a binary contract should be calibrated to the binary payoff structure rather than imported directly from continuous futures: the maximum loss per contract is bounded and known at the time of trade, which makes initial margin straightforward to compute as a fraction of the maximum loss. The relevant risk factors for calibration include

(i) the remaining time to resolution, (ii) the current contract price (and thus the distance to each binary endpoint), (iii) susceptibility of the underlying event to sudden, unpredictable changes, (iv) concentration of the defaulting member's portfolio, and (v) liquidity, measured as the expected cost to the DCO of liquidating the portfolio into the order book.

g. Omitted.

h. In general under the DCM Core Principles, what factors should the Commission consider with respect to blockchain-based prediction markets? Are there challenges or advantages in applying existing regulations and guidance to blockchain-based prediction markets? Which areas, if any, would benefit from Commission guidance or rule amendments for blockchain-based prediction markets?

Response. The Commission should take a technology-neutral posture: the relevant questions are whether the platform satisfies the Core Principles (impartial access, sound resolution criteria, surveillance, financial integrity), not whether it uses a blockchain to implement them.

Blockchain-based prediction markets can offer advantages for regulatory compliance and auditing: all transactions are recorded on an immutable public ledger, settlement is automated through smart contracts, and audit trails are complete by design. These are features that the Commission and its surveillance staff should welcome. The challenges are (i) pseudonymous participation, which complicates know-your-customer and insider-trading enforcement, (ii) jurisdictional ambiguity when the platform, participants, and validators are distributed across borders, and (iii) the integration of off-chain event data (so-called oracles) for contract resolution, which reintroduces a trusted third party.

A bigger challenge at present, however, is that blockchain-based prediction markets can also suffer significant technological and implementation issues. Blockchain platforms can suffer from high latency, which can lead to unpleasant or unfair trading experiences for users. Furthermore, although the transactions are recorded on the blockchain, the order books generally are not. This difference can lead to failures in trade execution, in which a trade that exists on the off-chain order book is cancelled between the time of execution and the time it is recorded to the blockchain. These issues can potentially be exploited by certain market participants.

A registered DCM that runs its order book and clearing on-chain should be permissible if it can demonstrate compliance with all core principles and regulations.

Q3–Q6. Omitted.

B. Public Interest

7. *As described above, CEA section 5c(c)(5)(C) provides for the Commission to make a determination that event contracts are "contrary to the public interest" if the event contracts involve any of five listed activities or "other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest". In general, what factors should the Commission consider in making a public interest determination under this section? (Public interest factors specific to the five listed activities are discussed in part II.C., below, in connection with those activities.)*

Response. Under CEA section 5c(c)(5)(B), the Commission "shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this chapter (including regulations)". The default disposition under the Act is approval. A regulated entity listing an event contract is not required to prove that the contract serves the public interest. The contract is presumed to serve the public interest unless and until the Commission affirmatively determines otherwise.

Under the statutory framework, the burden falls squarely on the party arguing for prohibition—that is, on the Commission—to establish that a given contract is contrary to the public interest. It does not fall on the DCM or SEF listing the contract to demonstrate that it serves the public interest. Section 5c(c)(5)(C), read together with 5c(c)(5)(B), establishes a two-step process: event contracts shall be approved unless they (i) involve one of the Enumerated Activities (unlawful activity, terrorism, assassination, war, gaming, or similar activity) and (ii) are determined to be contrary to the public interest. The Act does not expressly declare contracts involving one or more of the Enumerated Activities as contrary to the public interest, nor does it authorize the Commission to make such a blanket declaration.

This burden-of-proof allocation has practical consequences. The Commission cannot justify prohibition by pointing to the *absence* of demonstrated public benefit; it must affirmatively establish the *presence* of public harm. When the Commission evaluates a new event contract, the relevant question is not "Has the listing entity demonstrated that this contract will be used for hedging, price discovery, or some other articulated public benefit?" but rather "Has the Commission identified specific, articulable reasons why this particular contract is contrary to the public interest?" If the answer to the latter question is no, the contract must be approved.

Applying this framework, the core question is whether the event contract, considered on the whole, is a net positive or a net negative for the public. All financial markets

(e.g., equities, bonds, derivatives, futures) have elements that are both beneficial and contrary to the public interest. Traditional equities markets let some traders profit from terrorist attacks and pandemics: there are well-documented accounts of stock market traders who made outsized profits after the September 11 attacks and during the Covid-19 pandemic. These markets also enable speculation and gambling, with the 2021 GameStop short squeeze being a well-publicized example. Despite these incidents, traditional financial markets are generally regarded as a net benefit. The fact that individual participants may profit disproportionately from an unsavory outcome, or may misuse a market to their own detriment, does not invalidate the market's overall public value.

The same reasoning applies to prediction markets. The fact that a market can be used for gambling, or that some participants may profit from the occurrence of a tragic event (such as death, disaster, or war), does not automatically render the market contrary to the public interest. The fact that a tragic event leads to profit is immaterial if the tragedy is incidental. Some event contracts resolve because of someone's death. But not all deaths should be viewed equally from the perspective of market restrictions. A death from natural causes or as a result of an official military or governmental action could not have been caused by a market participant. A tragic event that is incidental to the participant's profit or loss in a market is not sufficient for an operator or the Commission to interfere with the natural resolution of the contract. Provided that participation in the market does not directly influence whether the underlying event occurs, the presumption should be that the market serves the public interest.

The relevant factors for a public interest determination are therefore: (i) whether the underlying event presents real risks that exist externally and independently of the market (the external event requirement, developed further in Q10 and Q35); (ii) whether the market has sufficient integrity controls (resolution criteria, surveillance, position limits) to operate as intended; (iii) whether the event is susceptible to outcome manipulation by market participants or small groups with access to the market (Q29–Q32); and (iv) whether the Commission can identify specific, articulable public harms that outweigh the potential benefits. If the answer to (iv) is no, the contract should be approved.

8. *The public interests underlying the CEA are described in CEA section 3(a), which states that "[t]he transactions subject to [the CEA] . . . are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially se-*

cure trading facilities". Further, CEA section 3(b) provides that in order to foster the public interests described in subsection (a), the purposes of the CEA include "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 among [DCMs], other markets and market participants". How should the public interests set out in CEA section 3 inform the Commission's public interest determination under CEA section 5c(c)(5)(C)?

Response. The Commission should assess these functions structurally, rather than behaviorally. The salient question is whether the market is designed in a way that enables hedging and produces a price signal that could be informative externally, not whether any given participant is actually hedging at a given moment or whether anyone external to the market is relying on its price signal.

This distinction follows directly from the burden-of-proof allocation described in response to Q7. If the default position is that a contract serves the public interest, and the burden is on the Commission to establish that it is contrary to the public interest, the Commission cannot justify prohibition by pointing to the fact that most participants in a given market are speculating rather than hedging. The relevant question is whether the market is structured to serve hedging and information aggregation purposes, not whether every participant, or even most participants, trade for those reasons.

As discussed above, when a participant trades in a market, they are not required to justify why they are trading. No one asks a buyer of crude oil futures whether they are hedging airline fuel costs or speculating on geopolitical instability; no one asks a buyer of S&P 500 options whether they are hedging a portfolio or making a directional bet. The market serves its public function—price discovery, risk transfer, information aggregation—regardless of the individual motivations of its participants.

The Commission's 2024 proposed rulemaking was flawed in part because it rested on claims about participant intent—asserting that certain contracts would be traded "predominantly to enable gambling" and could not "reasonably be expected to be used for hedging and/or price basing on more than an occasional basis". Market participants do not declare their motivations for trading, and the Commission had no data on trader motivations to support these claims. To speculate on trader intent or motivation is

beyond the scope of the Commission's mandate.

Ex ante regulatory judgments about whether a contract will be used for hedging are most often the subject of guesswork and speculation. In the case of hedging use cases of prediction markets, many potential use cases do not yet exist simply because the option to use markets for such a purpose was not available: these markets are new. Many of the most valuable hedging and informational uses of prediction markets are likely to emerge only after these markets have time to mature. Several case studies illustrate the point.

Hedging marketing risk (Gallery Furniture). Jim McIngvale, also known as Mattress Mack, is the founder and owner of Gallery Furniture, a retail furniture chain based in Houston. During the spring and summer of 2022, Gallery Furniture offered customers who bought furniture before October the opportunity for a full refund up to $3,000 if the Houston Astros were to win the 2022 World Series. In all, the promotion exposed Gallery Furniture to an estimated $50 million in potential refunds if the Astros were to win. Anticipating the company's exposure, McIngvale placed a $10 million bet on the Astros to win the World Series at 7.5-to-1 early in the 2022 MLB baseball season. Ultimately, the Astros did win the World Series, forcing McIngvale to refund his customers, but also making McIngvale's $10 million bet a $75 million winner. Prior to legalization of sports betting, it would be impossible for Gallery Furniture to execute the above marketing strategy and similarly impossible for regulators to foresee that sports betting markets could be leveraged for this economic purpose. Both Gallery Furniture and its customers benefit: the company is able to offer a lucrative and community-building discount without taking imprudent business risk, and customers receive that benefit. This case demonstrates both the clear hedging value in event contract markets involving sports and the folly in regulators speculating on how such markets would or could be used once activated. More details of this story are given by Porterfield (2022).

Hedging sports-related business risk. In some cities, the short-term economic outlook of the hospitality industry is driven by the performance of local professional sports teams. To capitalize on a successful playoff run by one of the city's teams, businesses must train additional staff months in advance to meet potential demand. While putting the business in a position to succeed, such decisions also expose the business to substantial loss if the team fails to make the playoffs. Restaurants and bars in every city with a professional team are exposed to the risk of their own team's performance. Businesses in different cities have offsetting risks, which could easily be hedged against each other

in a nationwide sports event contract exchange.

Hedging election risk: the 2017 Tax Cuts and Jobs Act (TCJA) enacted a number of tax benefits for small businesses, including the Qualified Business Income (QBI) deduction, which was set to expire in 2025. The scheduled expiration could change depending on the outcome of the 2024 election, and expiration could reduce net profit of a small business by as much as approximately 8% annually. An event contract on the 2024 presidential outcome allowed business owners in this position to buy contracts that paid $1.00 if the deduction were likely to be extended, locking in some of the expected benefit and preserving the ability to plan. The owner of a different business—say, in green energy—may not be concerned with the QBI deduction but rather with the potential repeal of favorable legislation if a Republican were to win. The risks facing this business are complementary to the risks of the first, and a regulated prediction market on the U.S. presidential election provides a vehicle for trading those risks in a mutually beneficial way.

Hedging Covid risk: in 2021, Kalshi initiated a market on the question "Will indoor dining be closed in New York City?" The market served as an important hedging vehicle for New York City restaurants whose business would suffer from prolonged closing of indoor dining. As the marketplace grows, it is not always feasible for a sufficiently liquid market to exist on the precise event of interest; in such cases, related markets can serve as a proxy. The Covid-19 indoor dining markets also served as an indirect hedge against correlated risks—airline usage, school closures, and most other in-person activities.

Price signal accuracy in political event contract markets. Political event contracts are the paradigmatic case for the public interest of event contracts. Elections, executive actions, and legislative outcomes have substantial economic consequences for businesses, investors, and households. Hedging uses are numerous: the QBI case study cited above is one of many examples in which business outcomes are directly tied to political outcomes.

The informational value is also well established. Research and commentary from the 2018 and 2020 election cycles (Crane, 2018; Crane and Vinson, 2023; Crane and Strumpf, 2022a, 2022b) suggests that the PredictIt price signal was a more reliable predictor of election outcomes than state-of-the-art polling methods and poll aggregators, such as FiveThirtyEight—despite the regulatory handicaps imposed on PredictIt documented in Q2e.

The Commission should approve political event contracts on the same terms as any other event contract, subject to operational requirements under the Core Principles. It should resist the impulse to single out political contracts for special restriction: the existing statutory framework under CEA section 4c(a) already addresses the specific insider-trading concern for government employees (Q32).

9. *Under a past version of the CEA that was repealed in 2000, the Commission applied an "economic purpose" test as part of determining whether a DCM could list a contract for trading. Are there any elements of the former "economic purpose" test that should or should not be applied in the Commission's public interest determination under CEA section 5c(c)(5)(C)?*

   Response. No. The economic purpose test, which was repealed in 2000, required an *ex ante* determination that a contract would be used for hedging or price discovery. The fundamental problem with this test is that regulators cannot know in advance how a market will be used. The Gallery Furniture example in Q8 is instructive: no regulator could have foreseen that sports betting markets would be used to hedge promotional exposure for a furniture company. Requiring advance demonstration of economic purpose imposes an impossible epistemological burden and systematically biases regulation against innovation.

10. *What role do event contracts play in "managing and assuming price risks, discovering prices, or disseminating pricing information" as contemplated by CEA section 3(a)? How are event contracts used in hedging, which is one aspect of managing price risks? How should the Commission incorporate considerations of hedging, price risk, price discovery, and price dissemination in its public interest determination under CEA section 5c(c)(5)(C)?*

    Response. To serve the primary public interest functions of hedging and information aggregation, at least one of two conditions should generally hold: (1) the underlying event poses risk that is external to and independent of the markets being offered, and/or (2) the information produced by the market is useful and informative for events that are external to and independent of the markets being offered. An event contract market satisfying at least one of these two criteria is *prima facie* in the public interest.

    The above conditions are satisfied by the vast majority of event contracts the Commission is likely to evaluate. Sports, for example, is a huge industry—estimated at $120 billion annually in the United States alone, with another $300–$500 billion of activity generated from sports-related behaviors, such as dining and travel. With such

a large segment of the economy and societal interest driven from sports-related activity, financial risks associated with sporting events reach far beyond professional sports organizations to entire industries (e.g., travel, restaurant and hospitality), small businesses, and individual citizens. These events are administered and governed by rules externally to and independent of the prediction markets themselves.

The same conditions are satisfied by political events, executive actions, presidential decisions, legislative and judicial outcomes, economic data, financial data, awards competitions, and many other event types offered by prediction market platforms. In each case, the events exist and the associated risks are real, independently of whether a prediction market on them is offered.

For a contrasting example, consider a roulette wheel attached to a prediction market for each spin. Technically, the outcome of each spin is a distinct event for which contracts can be traded. The outcome of any given spin, however, is not associated in any way with an event or risk that exists externally to and independently of the market, and the information produced by such a market is not informative or useful for any event of independent economic or informational significance. The wheel exists solely to generate a wagering opportunity. This market does not satisfy the external event requirement, and I suggest that such markets would likely fail the public interest test, if they were put under scrutiny.

Between these poles lie markets whose public value is more debatable. So-called 'mention markets' (words mentioned during a presidential speech or an earnings call), Rotten Tomatoes score markets, Spotify rankings, and similar markets act more as proxy markets rather than contracts that directly address the event of interest. There are potential concerns about the manipulability of the underlying event; but, as highlighted above, it is ultimately each market participant's responsibility to determine whether a market is suitable for their own purposes. There is value in gathering what the topic of a presidential speech might be ahead of time, or in aggregating diffuse assessments of a film's critical reception. Unless specific harms can be identified, these markets should be permitted. Not every market will serve the public interest in an obvious or substantial way at its inception. The Commission should allow space for markets to develop and demonstrate their value, intervening only when specific, identifiable harms materialize. For markets whose public value is debatable, the Commission should apply a burden-of-proof framework that favors approval absent specific articulable harm.

Finally, I note that the above question focuses on the question of what attributes

constitute clear public interest benefits. As discussed above, the criteria for prohibiting markets under the Commission's CEA mandate involves a determination that a market is "contrary to the public interest". The criteria listed here for determining whether a market positively provides a public interest benefit should not necessarily be used as a requirement of all markets. In particular, the absence of a clear public interest benefit is not sufficient justification that a market is "contrary to the public interest".

11. *CEA section 3(b) lists several purposes of the CEA, including to prevent price manipulation, to protect all market participants from fraudulent or other abusive sales practices, and to promote responsible innovation and fair competition. What factors should the Commission consider in its effort to fulfill these purposes with respect to prediction markets? Is there any potential conflict between these purposes, and if so, how should they be balanced?*

    Response. Under CEA section 5c(c)(5)(C), the Commission must make an affirmative finding that a contract is contrary to the public interest. Where public interest considerations conflict—for example, the information aggregation benefit of a war-risk market versus the squeamishness some may feel about "betting on war"—the evaluation should be holistic. The question is not *does the contract contain elements that are contrary or may be perceived as contrary to the public interest?* but rather *is the contract (as a whole) contrary to the public interest?* To answer this question, the benefits must be weighed against the potential harms and assessed overall. In the case of the hypothetical war market: the benefits are concrete while the objections are largely moralistic. The Commission should not be empowered to regulate taste. It is, instead, mandated to address articulable harms, not outlandish or unsupported hypotheticals. When the specific harms identified are not strong enough to definitively establish the contract as contrary to the public interest, the Commission ought to approve the contract.

12. *How do event contracts compare to, or substitute for, insurance contracts? Should the liquidity and availability of insurance with respect to a particular event be a factor in the Commission's public interest determination?*

    Response. Event contracts and insurance contracts both provide a payment contingent on the occurrence of a specified event. The key difference is that insurance requires demonstration of insurable interest, whereas event contracts do not. It is precisely the participation of speculators and informed traders without direct economic exposure that provides the liquidity and information aggregation functions that make

event contract markets valuable. The potential use of a prediction market as a substitute for insurance could be cited as an additional benefit in favor of a market, but the availability of insurance should not be cited as a factor for disallowing a market.

13–14. *Omitted.*

C. Enumerated Activities

15. *CEA section 5c(c)(5)(C) lists five activities, and provides that if an event contract involves any such activity, the Commission may determine that the event contract is contrary to the public interest. What factors should the Commission consider in determining the scope of these five listed activities? What aspects of these activities would be relevant to the Commission's public interest determination?*

    Response. The five listed activities—unlawful activity, terrorism, assassination, war, and gaming—should be read as Congress wrote them: as a trigger for a public interest review, not as a list of prohibitions. Scope should be determined by the plain meaning of each term, with two constraints.

    First, the Commission should be consistent. It cannot, for example, interpret "gaming" to include sporting contests but exclude climate events that are similarly beyond the control of the contract's parties. From the perspective of a participant uninvolved in an underlying contest or event, staking something of value on the outcome of a sporting event is categorically indistinguishable from staking something of value on a natural occurrence. A principled definition must either include both or exclude both (see Q19).

    Second, the Commission should not stretch the scope of a listed activity in order to reach a contract it wishes to prohibit on other grounds. If a contract concerns a lawful political, scientific, economic, or sporting event, it should not be shoehorned into the "unlawful activity" category simply because some related behavior—for example, campaign finance—may be the subject of other legal disputes. The scope inquiry is the first step of the two-step test; the public interest inquiry is the second. The two must be treated separately.

16. *The first listed activity is an "activity that is unlawful under any Federal or State law". What types of event contracts could potentially involve such activity? What steps should the Commission appropriately take in order to determine which State laws may be involved in a particular event contract? What steps should the Commission appropriately take in order to determine which Federal laws, such as the Exchange Act, may be involved in a particular event contract? If an event contract involves an*

activity that is unlawful under some State laws, but not others, how should this conflict be resolved? What public interest factors should the Commission consider for event contracts involving unlawful activity?

Response. The category of contracts that actually "involve" unlawful activity in a meaningful sense is narrow. An event contract does not itself make the underlying activity lawful or unlawful; the contract merely pays out on whether something occurred. A contract about crime rates in a particular jurisdiction, for example, concerns the aggregate incidence of unlawful behavior but does not involve anyone in the contract committing or condoning that behavior. Hedging against crime rates (for example, an insurer or a retailer assessing the cost of theft in a geography) is a legitimate economic application of such a market and does not expressly "involve" unlawful activity: the market concerns the tallying of statistics, not the performance of a specific crime. Similarly, a market about the verdict of a criminal trial does not involve unlawful activity: the market concerns the outcome of a court case. Contrast these examples to a market on whether a particular individual will be victimized by or will commit a specific crime. The subject of such a market could be interpreted to involve something that is unlawful and, therefore, subject to review.

The Commission's proper inquiry under this prong is whether the contract creates a direct incentive for the contract's parties to engage in unlawful conduct, or whether the contract's payout structure would cause the contract itself to function as the unlawful activity. A contract on the aggregate crime rate in a city or on the verdict of a court case does not create such an incentive. The Commission should discern between these cases and draw the line where the statutory concern actually lies.

On conflicts between state and federal law: the CEA preempts state law with respect to contracts traded on a registered DCM. A contract that is lawful under federal law and traded on a CFTC-regulated exchange should not be disqualified because some state law would prohibit the same activity if conducted off-exchange.

The Interstate Horse Racing Act of 1978 (IHRA) provides a federal precedent that is directly relevant. Congress recognized that nationwide participation and interstate commingling were necessary for parimutuel pools to function properly, and established a federal framework that permits commingling of pools across state lines. Similar considerations apply to prediction markets and similarly operated exchanges, and the Commission should take a similar posture for event contracts traded on a CFTC-regulated DCM. Federal regulation of a nationwide exchange is necessary to promote the liquid-

ity and broad participation required for robust markets. State-based exchanges cannot work for the same reason that state-based betting exchanges have consistently failed: exchange trading requires liquidity, and liquidity requires a large participant pool. The failure of Betfair's New Jersey exchange in 2020 and the subsequent discontinuation of Prophet Exchange's state-level operation provide recent examples.

Moreover, the IHRA establishes the precedent that state gaming commissions do not have exclusive authority to regulate sports markets or "gambling" (widely construed). Horse racing is a sport. And, by most interpretations, horse race markets involve "gambling". Yet state gaming commissions do not have jurisdiction over sports betting markets as they apply to horse racing. This precedent should be scrutinized in light of claims by some states that state gaming commissions have exclusive authority to regulate sports-related markets. Clearly this authority does not apply to horse racing markets, which are primarily conducted via parimutuel pools, and therefore need not apply to sports event contracts traded on federally regulated prediction markets.

The Commission should read "unlawful under any Federal or State law" to mean that the *activity underlying the contract* (not the contract itself) is unlawful, and should resolve state-law conflicts in favor of federal preemption when the contract is traded on a DCM.

17. *The second and third listed activities are terrorism and assassination. Are the meanings of these terms self-evident, or are there any ambiguities that the Commission should consider? Are specific definitions in other contexts, such as insurance, helpful? Would event contracts involving cyberterrorism be covered by the terrorism provision, and if so, what factors distinguish cyberterrorism from other cyber attacks? What public interest factors should the Commission consider for event contracts involving terrorism or assassination?*

Response. Contracts that pay out on the occurrence of a specific terrorist attack or the assassination of a named individual are often cited as the paradigmatic case of a public interest prohibition. They may be reviewed by the Commission but they should not be categorically prohibited by the Commission under the current mandate of the CEA.

Opponents of these markets argue that they create a financial incentive to carry out a terrorist attack or assassination. The critique is flawed for two reasons. First, the financial incentive already exists through traditional financial markets, for which the financial benefits are orders of magnitude larger than currently offered on the

corresponding prediction market. For example, many conflicts involving the Middle East tend to have a predictable impact on oil prices. Given that the capacity of these other markets is orders of magnitude larger than prediction markets on the analogous event, the financial incentives already exist, and yet oil and other commodities markets are not prohibited on public interest grounds. Despite the existence of these incentives, there is no concrete evidence that such an action has been undertaken for the express purpose to profit in a financial market. Second, it is not the Commission's role, nor that of its operators, to design markets that either incentivize or disincentivize specific behaviors. That is the purpose of the rule of law and law enforcement. The specified activities (e.g., terrorism and assassination) are already illegal, regardless of whether financial markets tied to those events are offered. Prohibiting markets on these events does not make the underlying activity any more or less legal.

A contract on "whether a terrorist attack occurs in city X during year Y" also differs fundamentally from a contract on "whether individual Z carries out attack W". The former is an aggregate indicator similar to a crime rate or a security index, and it has legitimate hedging and informational uses for insurers, transportation companies, governments, and citizens.

To the extent the Commission is concerned that particular contracts in this area create a specific and articulable harm, the proper response is to address those contracts individually through CEA's two-step framework, not to reach for a categorical prohibition.

18. *The fourth activity is war. Does this activity encompass all military actions, or are there military actions that do not constitute war? What factors distinguish war from, for example, civil unrest? What factors distinguish war from political actions, or other actions as part of international relations? Are specific definitions in other contexts, such as insurance, helpful? What public interest factors should the Commission consider for event contracts involving war?*

Response. Contracts on the occurrence, duration, or intensity of armed conflict have clear and substantial hedging and informational uses. Airlines, shippers, multinational companies, and governments all face material and difficult-to-hedge risk from war, and private individuals with family, property, or business exposure to conflict zones face personal risk that cannot be hedged easily by other means. An airline for which 100% of business involves flights to and from the United States and China, Russia, eastern Europe, and the Middle East is constantly exposed to the risks posed by the political situation and diplomatic relationships of the countries it operates within and between.

Myriad events can and do impact the airline's ability to operate, including changes in tax rates, whether the United States government will continue to grant Chinese nationals visas, whether the Chinese government will continue to allow U.S.-based airlines to operate within its country, civil and political unrest in the Middle East, territorial disputes between Russia and neighboring countries, and the unexpected outbreak of a global pandemic. During the past decade, every one of these events has occurred. Event contract markets on the relevant events provide a straightforward vehicle to hedge and better manage these risks, to the benefit not only of the parties of the event contract but also the general public, which benefits from the smooth and stable operation of the economic sectors otherwise impacted by such risks. Though illustrated in the context of the airline industry, these circumstances apply to almost every industry and business sector in the broader economy.

The informational value is also considerable, as citizens whose lives will be impacted by potential conflict are able to gain much needed clarity during times of heightened hysteria and propaganda.

Well-functioning markets on armed conflict risk are plainly in the public interest. The Commission must not be swayed by the head-in-the-sand philosophy advanced by opponents of these markets, who seem to suggest that the threats of war addressed by these markets do not exist if the public remains misinformed about them. Indeed, it is easy to understand why government officials oppose markets that inform the public about topics that are typically filtered through official sources. The fact that markets cut against those norms is precisely why these markets are undeniably valuable for the public interest.

A narrow subset of war-related contracts may raise concerns—for example, a contract that pays out on a specific tactical outcome and that a counterparty could influence—but these are edge cases that should be addressed individually. They are not a basis for categorical prohibition. For the same reasons discussed in Q17, I do not support categorical prohibition of war contracts: the theorized financial incentive to cause the underlying event already exists in much larger traditional commodity and equity markets; war itself is already regulated by the bodies of domestic and international law that govern armed conflict; and the hedging and informational benefits of a properly designed market are concrete and substantial.

19. *The fifth activity is gaming. What factors should the Commission consider in determining the scope and public interest implications of this activity?*

Response. The Commission's handling of "gaming" is currently the most ambiguous and contentious of the enumerated topics listed in the CEA. A first critical step is to clearly define what constitutes "gaming" under the Commission's review criteria. The Commission should explore a few possible options in this regard.

"Gaming" as synonymous with "gambling". One approach would be defining the scope of "gaming" as any market involving "gambling". While this approach is a reasonable starting point based on common usage of the term "gaming", it is not a justifiable definition under a common sense reading of the CEA mandate. By this interpretation, every prediction market involves "gaming" to some extent. Every financial market involves the exchange of risk, and enables speculation and gambling. It is far fetched that the CEA's mandate would include a catchall provision that allows the Commission to arbitrarily review and prohibit any market on grounds that it involves potential gambling. If that were the case, the CEA would not include a list of Enumerated Topics at all.

The Commission's 2024 proposal. The Commission's 2024 proposed definition of "gaming" sought to ensure that the definition explicitly included certain types of events, such as sporting events, elections, and award shows, while omitting or leaving ambiguous a number of other events that would obviously also fall under "gaming" by the then-Commission's own definition of the term. The proposed definition excluded events, such as climate-related or other natural occurrences, on which staking something of value would logically constitute gaming by its vernacular meaning. At the same time, the proposed definition singled out other events, such as contests of others (e.g., sporting events and political elections), which are categorically indistinguishable from the aforementioned omitted events. From the perspective of a party uninvolved in a contest, game, or performance, to stake something of value on such a contest, game, or performance is akin to staking something of value on a natural event. As both categories of events are beyond the control of the parties of the contract, there is no logical basis on which the two would be treated as different with respect to "gaming". The Commission's definition must be reworked to accurately reflect the common-sense meaning of the term.

Proposed definition of "gaming". The Commission should define the scope of "gaming" to involve event contracts that, in themselves, constitute gaming, not whether the underlying event is or resembles a game or contest of others. An event contract involves gaming if the market exists solely for the purpose of market participants to "play a game" with one another. In this case, the event underlying the prediction market

has no clear connection to risks, information, or concerns external to the market. A prediction market on a sporting event, for example, does not constitute "gaming" under this definition because the underlying event exists independently of the corresponding market. A prediction market on a roulette wheel, craps game, or similar game that is operated solely for the purpose of running a prediction market on the outcome would constitute "gaming" by this definition, and therefore subject to review.

19a. *What sources should inform the Commission's determination of the scope of the term "gaming"? For example, is gaming synonymous with, or more or less extensive than, the scope of activities covered by State and Federal gambling statutes? Are there characteristics—such as an entertainment purpose, or an element of chance—that distinguish gaming from other activities?*

The distinguishing characteristic of "gaming", as discussed above, is *frivolity*, not *gambling*. The question is not whether the activity involves gambling (i.e., voluntary risk taking), but rather whether the activity exists solely for its own sake (i.e., is frivolous).

Gaming is not synonymous with the scope of activities covered by State and Federal gambling statutes, and should not be treated as such by the Commission. "Gambling" is an activity that involves voluntarily increasing risk exposure. One can gamble on events, but also on stocks, options, bonds, futures, commodities, real estate, and various other things whose value fluctuates. The key point is that gambling, as an activity, is not specific to prediction markets. State gaming commissions do not have a monopoly on regulating any activity that may involve gambling. Rather, the authority of state gaming commissions is to regulate activities whose sole and primary purpose is gambling. In other words, when states regulate sports-related betting markets, they regulate these markets *as gambling*. The fact that they are regulated *as gambling* by one regulatory body does not mean that markets on such an event can only be regulated as gambling, nor does it imply that such events exist solely for the purpose of gambling. It is within the Commission's authority to regulate event contracts, such as sports event contracts, as something other than gambling, just as the Securities and Exchange Commission (SEC) regulates various securities markets.

19b. *In this regard, how should the Commission distinguish between various types of contests? For example, should a sports competition be treated differently than an award competition, and if so, what factors support this distinction? What other types of contests should or should not be considered to be gaming?*

Commission should only distinguish different types of competition to the extent that

they differ with respect to the definition of gaming proposed above. A contest that exists for the sole purpose of operating a prediction market should be treated differently than a contest that exists independently of the market. Professional and collegiate sports contests, award shows, and political contests do not fall within the scope of gaming under this definition. A market designed to operate as a blackjack competition, poker game, craps or roulette tournament, coin tossing contest, or similar such activities would fall under this definition of gaming.

19c. *What aspects of event contracts involving gaming should the Commission consider in a public interest determination? For these event contracts, are there any challenges to the deterrence of manipulation and protection from abusive sales practices contemplated by CEA section 3(b)? If so, how could these challenges be mitigated? How are the responsible innovation and fair competition goals in CEA section 3(b) served by event contracts involving gaming?*

The aspects considered should be the same as for any event contract. Gaming should not be examined differently than any of the other enumerated topics. Though position limits should be used sparingly, if at all, on other markets, the Commission may consider imposing strict position limits on gaming-related event contracts, should markets on such events be offered on a CFTC regulated platform.

19d. *How should the Commission factor into its public interest determination the characteristics of market participants that trade event contracts involving gaming? For example, do these market participants tend to be younger than those trading other financial instruments, and if so, how should this inform the Commission's consideration?*

The Commission should not factor demographics or characteristics of a "typical" participant into its determination. This is irrelevant to the question of whether the *activity* involves gaming, and would violate the core principle of impartial access. If a participant is eligible to trade on prediction markets, what difference does it make whether the market involves an economic indicator, a political contest, a sporting event, or something else? The Commission should not concern itself with stereotyping or discriminating against participants who tend to participate in certain types of markets.

19e. *What aspects of responsible gaming standards, such as self-exclusion programs, monetary or time limits, or advertising limits, disclaimers, or warnings, should the Commission consider in its public interest determination?*

The Commission should not consider responsible gaming initiatives in its regulation of prediction markets. Such initiatives may be implemented by operators voluntarily, if

the operator determines it is best practice to do so.

19f. *How do the various types of event contract that involve gaming differ from each other? How are these differences relevant to the Commission's public interest determination?*

Under the definition proposed above, event contracts involving gaming are technically different (i.e., they involve different events) but they are fundamentally the same in terms of how they involve gaming. The Commission should seek to adopt a standard in line with this approach, so that the underlying characteristic that defines a contract as "gaming" is clear and consistent across such event contracts.

20. *CEA section 5c(c)(5)(C)(i)(VI) provides that the Commission may determine that an event contract is contrary to the public interest if it involves another "similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest". What factors should the Commission consider in determining whether an activity is similar to the activities listed in CEA section 5c(c)(5)(C)? Are there any examples of existing event contracts involving potentially similar activities that should be a factor in the Commission's determination on this issue? Are there any differences in how the public interest determination should be applied to such similar activities, as compared to the listed activities?*

Response. This catch-all should be read and applied narrowly. It authorizes the Commission to identify additional categories of activity that resemble the four specifically enumerated activities and that the Commission has determined, by rule, to be contrary to the public interest. It does not authorize the Commission to invent new categories at will, and it does not authorize the Commission to bypass the two-step analysis.

A threshold question for any proposed addition is whether the activity meaningfully resembles unlawful activity, terrorism, assassination, war, or gaming in its public-harm profile. A proposed expansion that is disconnected from these touchstones is not "similar activity" within the statutory meaning. The Commission should be cautious about adding categories and should articulate, for each, the specific public harm that justifies prohibition rather than operational regulation.

21–22. *Omitted.*

D. Procedural Questions

23. *CEA section 5c(c)(5)(C)(i) provides that the Commission may make a public interest*

determination "[i]n connection with the listing" of event contracts by prediction markets. What aspects of the prediction market listing process are relevant to deciding at what point in the listing process the public interest determination could occur? What factors should inform the Commission's interpretation of what occurs "[i]n connection with the listing" by a prediction market of an event contract? For example, why would it be appropriate, or not, for the Commission to make a public interest determination when a listing application is reasonably expected, but not yet filed?

Response. The statutory framework already provides the skeleton: self-certification under Part 40, with a discretionary 90-day review triggered when the Commission determines that a contract may involve an Enumerated Activity. The Commission's task is to operationalize this in a way that is predictable, timely, and respects the default-approval posture established in Q7. A workable framework has the following elements.

First, a published checklist of factors the Commission will evaluate when initiating review: whether the contract plausibly involves an Enumerated Activity under the narrow readings in Q15–Q22, and, if so, whether identifiable public harms outweigh the hedging, information aggregation, and other potential benefits identified in Q8 and Q10.

Second, a clear articulation of the burden: on the Commission, not the listing entity, to identify specific articulable public harms. Absent such articulable harms, the contract must be approved.

Third, transparent written findings at the conclusion of any review, regardless of outcome. The accumulation of such findings, over time, will provide the industry with useful guidance and prevent the kind of *ad hoc* decision-making that has plagued the Commission's treatment of event contracts in previous years.

Fourth, contracts listed under existing Commission guidance should not be subject to retroactive revocation unless a specific and articulable public interest concern is identified that cannot be addressed through operational safeguards. Stability of regulatory expectations is itself a public interest value, particularly in an industry whose participants include small businesses and retail hedgers who rely on market continuity.

Fifth, public input is appropriate at the initiation of a review, not after the fact. The Commission should publish notice when it commences a review under 5c(c)(5)(C), with a defined comment period, and should issue a written determination addressing the comments. This approach respects both Congress's timeline and the public interest in

a transparent record. It also produces a usable body of precedent for future reviews.

Sixth, the Commission should coordinate with the SEC, CFTC-registered entities, and, where appropriate, state regulators whose jurisdictions intersect with the subject of a specific contract. In such cases, it is important to emphasize that coordination is not the same as deferral. The statutory authority for event contract regulation rests with the Commission, not with the state entities whose laws the CEA preempts for contracts traded on a DCM. In all such cases, the CEA's preemptive scope controls, and the Commission should not allow coordination to become a mechanism for reintroducing categorical state-level prohibitions that the statute does not permit (see Q16). To the extent that the Commission could gain valuable perspective by consulting with other regulatory bodies, it is in the public's interest that the Commission would do so.

24. *What factors should inform the Commission's interpretation of whether CEA section 5c(c)(5)(C) contemplates that elements of a public interest determination could be made with respect to a category of event contracts, rather than a specific event contract? For example, what factors should the Commission consider in determining whether to provide guidance regarding how it expects to make any public interest determination? Would it be useful for the Commission to provide illustrative examples of event contracts that do, or do not, involve the listed activities? Why or why not?*

Response. The statute is explicit: the Commission may make a public interest determination "[i]n connection with the listing" of event contracts. This language contemplates a contract-specific evaluation, not a categorical one. The Commission should not adopt rules that establish presumptions or per se prohibitions for entire categories of event contracts. To refute any claim that contracts involving a given Enumerated Activity are categorically contrary to the public interest, it is enough to provide just a single contract involving that activity that does serve the public interest. Several such contracts have been described throughout this comment.

That said, there is a constructive role for category-level guidance. The Commission could issue interpretive guidance identifying factors relevant to the public interest determination for different types of events, providing illustrative examples. Such guidance would promote consistency and predictability without exceeding the Commission's statutory authority.

25. *CEA section 5c(c)(5)(C)(i) provides that the Commission may make a public interest determination for event contracts that "involve" the listed activities. What elements are relevant to determining what event contracts "involve"? What factors should inform*

the Commission's interpretation of when event contracts are sufficiently tied to a listed activity in order to say that the event contracts "involve" that activity?

Response. The "involve" threshold is the first prong of the two-step test discussed in the Executive Summary and in Q15. My positions on what it means for a contract to "involve" a listed activity are developed in the activity-specific responses: see Q16 (unlawful activity), Q17 (terrorism and assassination), Q18 (war), and Q19 (gaming, including the proposed definition that turns precisely on what kinds of contracts "involve" gaming).

26. *CEA section 5c(c)(5)(C)(iv) provides that the Commission must take final action regarding its public interest determination "not later than 90 days from the commencement of [the Commission's] review unless the party seeking to offer the contract or swap agrees to an extension". How should this time limit inform the Commission's procedure for making public interest determinations? Considering this limitation, what steps would be appropriate, or not, for the Commission to take prior to making its determination?*

Response. CEA section 5c(c)(5)(C)(iv) requires the Commission to take final action within 90 days of commencing its review. This time limit reflects Congress's judgment that protracted regulatory uncertainty is itself contrary to the public interest. The Commission should develop a streamlined review process that respects this timeline, including standardized initial screening, a defined record for public input, and prompt written determinations. Extensions of the 90-day window should be the exception, not the rule, and must be justified by identifiable circumstances tied to the specific contract under review.

27–28. *Omitted.*

E. Inside Information

29. *The price on a prediction market could be viewed as an indication of how likely the underlying event is to occur. The price may be a more reliable indicator of probability if the people trading on the prediction market have some insight into how likely the underlying event is to occur. On the other hand, trading by these informed participants may lead to manipulation, unfairness, and the misuse of inside information. Is there some public interest utility if people with an asymmetric information advantage on a particular event contract are able to trade on prediction markets? Does the public interest utility depend on the type of event in question? What factors should the*

Commission consider in evaluating and balancing the public interest in this scenario?

Response. The answer is unequivocally yes. But the question, as posed, conflates two fundamentally different situations that must be treated appropriately:

- **Information advantage**: the trader possesses private, non-public information about the *probability* of an event, but cannot influence whether the event occurs. Examples: a political operative with access to private polling data; a journalist who has learned that a candidate will drop out of a race; a meteorologist with a proprietary weather model.
- **Outcome control**: the trader has the ability to directly influence or determine the *outcome* of the underlying event. Examples: a referee who can fix the outcome of a sporting event; a corporate executive who can time the release of an earnings report; a government official who can decide whether to implement a policy.

Trading based on information advantage is the primary mechanism by which prediction markets achieve accuracy and by which market participants are incentivized. Prohibiting trading based on information advantage would devolve these markets into vehicles for pure speculation and gambling, in which only uninformed participants are allowed. The 2024 Polymarket "whale" and 2025 Nobel Peace Prize episodes demonstrate how traders with informational edges contribute information to the market in exchange for the financial incentives offered.

Trading based on outcome control, by contrast, presents a genuine market integrity concern. When a trader can both profit from a position and determine whether that position pays off, the market becomes a mechanism for extracting rents based on an engineered outcome. Technically, the price signaling is still accurate as a result of such activity, but the accuracy of one market is achieved at the expense of market integrity overall. If such activity is allowed to persist, informed and financially motivated traders will reduce participation, to the detriment of markets as a whole. This is the proper target of insider trading and market manipulation regulation in prediction markets.

30. *Some events underlying event contracts are under the control of a single individual or small group of individuals. What role should this aspect of event contracts play in the Commission's consideration of how prediction markets should be regulated? Do the considerations change depending on the type of event in question? Are there particular challenges related to cross-market manipulation—for example, where an individual or small group of individuals seeks to move the prediction market to influence another market, or vice versa? Are prediction markets more likely than other DCMs or SEFs*

to be susceptible to manipulation? Why or why not?

Response. For events whose outcome is determined by a small group (e.g., a corporate board deciding on a merger, a committee selecting an award winner), the risk of outcome control is highest. The Commission can approach this in two ways.

One, emphasize that market participants are responsible for determining whether the conditions of a given event resolution are suitable to their individual needs. Part of this responsibility involves an assessment of whether the underlying event has sufficient integrity to warrant investment in the given event contract market. For example, the papal conclave that determines the election of the Pope is a group of a few hundred individuals. Two different participants could reasonably arrive at opposite conclusions about the legitimacy of this process: one believing it is arbitrary and another determining that it follows a formal enough process to warrant market participation.

Two, prohibit trading by the specific individuals who have outcome control, while permitting trading by everyone else, including those who may have private information about the likely decision.

The Commission should not rely too heavily on the second option (prohibition of "insiders"). As the scope of prediction markets continues to grow, operators' and the Commission's ability to identify and police insider activity will become practically impossible. If such an approach were enacted, the result would be either (i) arbitrary and inconsistent enforcement, (ii) severe restriction of markets that can be offered, or (iii) regulatory capture by a small number of incumbent platforms whose competitive advantage lies in their ability to comply with onerous regulatory constraints.

Ultimately, the integrity of markets is critical to serve the public interest purpose, because without integrity there will be no liquidity or interest in the markets. But this fact is itself a self-correcting mechanism: if a market develops a reputation for being subject to outcome manipulation, participants will withdraw their liquidity and the market will fail on its own. The Commission need not preemptively prohibit markets on the grounds that outcome manipulation is conceivable; it need only ensure that market operators have adequate surveillance tools and that the governing bodies of the underlying events take reasonable steps to protect the integrity of their own processes.

31. *CEA section 6(c)(1) provides that "[i]t shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device*

or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by [July 21, 2011], provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect". What aspects of prediction markets are relevant to the application of this statute? Are prediction markets more or less likely than other derivative markets to be susceptible to "any manipulative or deceptive device or contrivance"? How should the potential for application of this statute inform the Commission's regulation of prediction markets?

Response. Section 6(c)(1)'s prohibition on any "manipulative or deceptive device or contrivance" applies to prediction markets through the price- and outcome-manipulation distinction suggested in Q2c. The statute's condition that protects nonpublic information from forced disclosure aligns with the surveillance principles suggested in Q2d. How §6(c)(1) should inform the Commission's regulation cannot be separated from the question of who is responsible for policing inside information. I submit that this responsibility lies with the entity where the information originates, not the market or the Commission.

Consider the case of sports leagues. It is up to the leagues to police and secure the integrity of their product. If an NFL player has non-public information about a teammate's injury, the responsibility for safeguarding that information lies with the NFL and the team (should it wish to restrict such information), not with the prediction market on which a contract about the game might trade. The fact that a piece of information is material to a separately operated prediction market cannot justify the restriction of speech involving or use of that information. Similarly, it is up to the DCM to police and secure the integrity of its markets—to monitor for suspicious trading activity, enforce position limits, and investigate potential abuses. These are two different things, and therefore should be treated differently by the Commission and its licensed operators.

The markets, and the Commission, cannot be tasked with policing every event that is relevant to market participants. The universe of events underlying prediction contracts is vast and diverse—sporting events, elections, scientific announcements, corporate decisions, weather events, and more—and the Commission's jurisdiction does not involve policing otherwise legal behaviors that might adversely impact one of their markets. Each of these domains has its own governing body, its own rules about confidential

information, and its own enforcement mechanisms. It would be both impractical and inappropriate for the CFTC to assume responsibility for information security within the NFL, the Nobel Committee, the Federal Reserve, or any other institution whose actions might be the subject of an event contract.

The appropriate allocation of responsibility is as follows:

- **The entity with whom the information originates** (the sports league, the government agency, the awards committee) is responsible for safeguarding its own confidential information and disciplining its own members who misuse it.
- **The market operator (DCM)** is responsible for monitoring trading activity on its platform, identifying suspicious patterns, and cooperating with governing bodies and the Commission when integrity concerns arise.
- **Market participants** are guided by the principle of "protect yourself at all times". Participants must understand that not everyone has the same information, and should enter positions with this in mind.
- **The Commission** sets the rules under which DCMs operate, provides oversight, and takes enforcement action when appropriate.

This framework is consistent with the approach Congress has taken in other contexts. Recent legislative proposals to ban government officials from participating in prediction markets are a mandate from the employer (in this case the federal government), not from the markets.

32. *CEA section 4c(a)(3) provides that "[i]t shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress . . . or any judicial officer or judicial employee . . . who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated [or disclosed] . . . in a manner which makes it generally available to the trading public, . . . to use the information in his personal capacity and for personal gain to enter into, or offer to enter into [a futures contract, option on a futures contract, commodity option, or swap]". Similarly, CEA section 4c(a)(4) provides that it is unlawful for any such Federal Government employee or official to impart such information in his personal capacity and for personal gain with intent to assist another person in entering into a futures contract, option on a futures contract, commodity option, or*

swap, and it is unlawful for the other person who receives such information from any such Federal Government employee or official to knowingly use the information in such transactions. How are prediction markets likely to be affected by nonpublic information that is available to Federal Government employees or officials? How should the potential for application of this statute inform the Commission's regulation of prediction markets?

Response. CEA sections 4c(a)(3) and 4c(a)(4) already prohibit federal government employees and officials from trading on or tipping material nonpublic information acquired by virtue of their government employment. These provisions are appropriate as applied to prediction markets and require no expansion.

Government officials occupy a unique position because they frequently possess both information advantage *and* outcome control. A Treasury Department official may know that a policy announcement is forthcoming (information advantage) and may have participated in drafting the policy (outcome control). The existing statutory prohibition appropriately addresses this dual concern.

The Commission should not, however, extend this prohibition to non-governmental informed traders. A private citizen who learns through personal connections that a foreign government is about to announce a policy change possesses information advantage but not outcome control. Without outcome control, this person's information merely concerns the probability of the underlying event. Such a person's trading activity should not be prohibited or limited in any way.

F. Types of Event Contracts

33–34. *Omitted.*

35. *The event underlying an event contract is typically within the definition of the term "excluded commodity" in CEA section 1a(19). Are there any event contracts that are based on events that are not within this statutory definition? If so, how are those event contracts similar to, or different from, event contracts based on events that are within the statutory definition of "excluded commodity"? How are such differences, if any, relevant to the Commission's regulation of event contracts and prediction markets?*

Response. The events underlying most event contracts fall within the definition of "excluded commodity" in CEA section 1a(19)(iv): "an occurrence, extent of an occurrence, or contingency . . . that is (I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial,

or economic consequence".

This definition contains two requirements directly relevant to the framework developed in this comment. Requirement (I) provides a statutory basis for the outcome-control framework discussed in Q29–Q32: if the event is not beyond the control of the parties, it may not qualify as an excluded commodity for the purposes of the specific, controlling party. It is further worth highlighting that eligible event contracts are tacitly required by the CEA to involve events "beyond the control of the parties to the relevant contract". The singling out of "contests of others" in any definition of "gaming" is therefore redundant to the eligible class of contracts under Section 1a(19)(iv).

Requirement (II)—the financial, commercial, or economic consequence requirement—connects directly to the external event requirement developed in Q10. Events with genuine economic consequences external to the market satisfy this requirement; events manufactured solely to generate a wagering opportunity (like the roulette wheel example in Q10) do not.

36-40. *Omitted.*

3. Conclusion

Prediction markets are growing rapidly, and the regulatory standards set by the Commission's rulemaking will determine whether these markets mature into a transparent, federally regulated source of hedging and price discovery, or migrate offshore and to state-regulated sportsbook products where the Commission lacks surveillance authority and customers are stripped of fair-access protections.

The framework I have proposed rests on five pillars. First, faithful application of the statutory two-step test: the burden lies with the Commission to identify articulable public harm, and categorical prohibition of contract classes exceeds its statutory authority. Second, event contracts best serve the public interest when they address risks and information about events that exist externally and independently of the markets themselves—a condition the vast majority of contracts on regulated platforms already satisfy. Third, market structure, not contract subject matter, determines susceptibility to manipulation; price manipulation is self-correcting in liquid markets, and outcome integrity is the responsibility of the institutions that govern the underlying event, not the market operator. Fourth, information advantage must be sharply distinguished from outcome control: trading on superior information is the mechanism by which these markets aggregate information, and the Commission must protect, not interrogate, the participants who supply it. Fifth, the guiding principle

for operators and regulators is to *serve and protect*: operators serve the public through continuous innovation in a quest to offer well-functioning, robust markets; and regulators protect the integrity of markets against the perils of over-regulation and protect the public by ensuring that markets are operated properly and market participants are treated fairly. If these principles are implemented, CFTC-regulated prediction markets will develop into an invaluable public good.

Respectfully submitted,

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