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The CFTC Cannot Adequately Regulate Prediction Markets

By: Kenneth Bernstein

I. INTRODUCTION

At the end of a routine earnings call, Coinbase CEO Brian Armstrong single-handedly manipulated an entire market with five words: "*Bitcoin*, *Ethereum*, *blockchain*, *staking*, and *Web3*."[1] Those five words were not said in the context of any discussion.[2] Nor did they prompt any further comment.[3] Instead, some investors had placed bets on the so-called "prediction markets" that any of those five words would not be said on the call.[4] When

Armstrong said those five words, Armstrong changed the outcome of about $90,000 worth of prediction-market bets.[5]

For those with financial sense, Armstrong's actions should raise concerns.[6] An individual can say five words to instantly change the value of an investment.[7] Not oblivious to such an outcome, the federal Commodities Futures Trading Commission (CFTC) has assumed the role of the prediction-markets watchdog.[8] However, that decision was an oversight. The CFTC's current regulations cannot tackle the concerns that arise out of prediction markets.

II. BACKGROUND

Since its inception, the CFTC has regulated derivatives in which traders, for either legal or economic reasons, have negligible individual power to influence either derivative or asset prices.[9] The CFTC departed from this trend by regulating prediction markets.

Prediction markets are growing, multi-billion dollar markets.[10] To regulate prediction markets in light of their recent emergence, the CFTC assumed jurisdiction over prediction-market bets, also known as "event contracts."[11] Some characterize event contracts as "derivatives" that derive value from the likelihood of a future event occurring.[12] As traders believe that an event's occurrence is more probable, its corresponding event contract approaches its full value (generally $1), and as the event becomes less probable, its event contract approaches $0.[13]

Most derivatives fall into either of two categories: commodities-like derivatives or securities-like derivatives.[14] Commodities-like derivatives are economically difficult to manipulate. Commodities are abundant, fungible goods, like corn or oil.[15] Because commodities are abundant, most buyers and sellers can only have a negligible effect on a commodity's price.[16] And because commodities of the same type are indistinguishable, most buyers and sellers generally cannot have special knowledge about a commodity.[17] Thus, the values of commodities are resistant to influence, and commodities markets (and derivatively, commodities' derivatives markets) are difficult to manipulate.

Securities-like derivatives would be relatively easy to manipulate if they were not protected by laws. Regulatory bodies have recognized that securities are prone to manipulation from individuals, notably insiders.[18] To address concerns arising out of individual power, securities-like contracts are usually subject to scrutinous oversight.[19]

For example, the Securities and Exchange Commission has tremendous power to protect investors against insider trading, fraud, and market manipulation of securities.[20]

Other derivatives are either commodities-like or securities-like.[21] Currency derivatives are more commodities-like; currencies are plentiful and fungible, similar to corn or oil.[22] Interest rate derivatives are securities-like because benchmark interest rates come from insiders such as the Federal Reserve, so strict regulation prevents abuses.[23] The CFTC has promulgated laws to regulate commodities-like and some securities-like derivatives because for the decades of its existence, those have been the only derivatives that the CFTC has regulated.[24]

III. ANALYSIS

Event contracts are neither commodities-like nor securities-like. Because the CFTC is only equipped for the regulation of commodities-like and some securities-like derivatives, the CFTC should have never assumed jurisdiction over prediction markets.

Event contracts are not commodities-like because the value of at least some events can be controlled by one individual or a group of individuals. For example, Coinbase CEO Brian Armstrong completely and single-handedly controlled a series of events by speaking just five words.[25] Relatedly, the D.C. Circuit Court also explored in *KalshiEX, LLC v. CFTC* how individual politicians could control some political-election contracts.[26]

Nor are event contracts securities-like. Although event contracts are vulnerable to manipulation, event contracts are not subject to scrutinous oversight. Alone, the CFTC's power is weak compared to other agencies' power to prevent event contract market manipulation.[27] The CFTC's limited resources and regulations have been dedicated to regulating large financial firms for financial products—not individuals for speculative contracts.[28] Event contracts in their current state are vulnerable to exploitation.[29]

Event contracts have one other difference from most commodities-like and securities-like financial derivatives: a bad actor can manipulate event contracts independent of the underlying event. The assets that underlie most non-event derivatives have intrinsic value.[30] Events have no intrinsic value.[31] A single trader can sway the price of a derivative without changing the value of the underlying event. And without a benchmark asset that has intrinsic value, buyers could believe that the price of an event contract is reflective of the event's likelihood.[32]

In summary, event contracts are unlike the derivatives that the CFTC has traditionally regulated, and the CFTC is not nearly robust enough to prevent or deter forms of prediction market manipulation.

IV. CONCLUSION

When individuals control prices, and when those individuals have an unfair advantage against others, a profit-maximizing individual can exploit that advantage. While this would normally be regulated in a financial context, the CFTC is not equipped to deal with event-contract exploiting opportunities. Therefore, the CFTC, at least in its current state, should not be regulating event contracts.

[1] *See* Coinbase, *Coinbase Q3 2025 Earnings Call*, at 56:16 (YouTube, Oct. 30, 2025), https://perma.cc/D5UL-KHJ3 (emphasis added) (cleaned up).

[2] *See id.*

[3] *See id.*

[4] *See* Gino Matos, *When the CEO Reads the Script: Did Coinbase Brian Armstrong Manipulate a Market?*, CryptoSlate (Nov. 1, 2025, at 00:55 UTC), https://perma.cc/6YK3-ZYLN.

[5] *See id.*

[6] *See, e.g.*, Matt Levine, *Money Stuff: Coinbase Said Web3*, Bloomberg: Money Stuff (Nov. 3, 2025) (on file with the Author); Sam Becker, *Coinbase CEO Brian Armstrong Flips Prediction Markets with Last-Minute Earnings Call Word Salad*, Fast Company (Oct. 31, 2025), https://perma.cc/2NAE-WWJ8.

[7] *See id.*

[8] *See* Levine, *supra* note 6; *Frequently Asked Questions*, Kalshi, https://perma.cc/E72V-9YZG (last visited Jan. 20, 2026) (explaining Kalshi's relationship to the CFTC); Karl M.F. Lockhart, *Betting on Everything*, 66 B.C. L. Rev. 2175, 2182 (2025) ("Generally speaking, the federal government regulates investing; states regulate gambling.").

[9] *See* Lockhart, *supra* note 8, at 2183.

[10] *See* Elias Schisgall, *Polymarket, Dow Jones Partner to Display Prediction-Markets Data in Dow Jones Content*, Wall St. J. (Jan. 7, 2026, at 16:15 ET), https://perma.cc/EW45-ZEWR; David Yaffe-Bellany, *All Bets Are On: The Rise of Prediction Markets*, N.Y. Times (Jan. 19, 2026), https://perma.cc/H7TL-9P83.

[11] *See* 7 U.S.C. § 2 (defining the jurisdiction of the CFTC); Laura Matthews & Christ Prentice, *CFTC Moves to Drop Appeal in Kalshi's Event Contracts Case*, Reuters (May 5, 2025, at 17:54 ET), https://perma.cc/8LPT-KTDN (calling Kalshi bets "event contracts"); *see also* Livestream, CFTC and SEC to Hold Joint Event on Harmonization, U.S. Financial Leadership in the Crypto Era (statement of CFTC Chairman Michael S. Selig) (Jan. 29, 2026, at 14:00 ET), https://perma.cc/V57F-KY3E (discussing event contracts and admitting that "[f]or too long, the CFTC's existing [prediction market] framework has proven difficult to apply and has failed our market participants").

[12] *See* Nicole Moran, Laurent Samuel & Mariano Palleja, *Event Contracts: A Primer on Growth, Mechanics and Regulation*, 2025 Practitioner Insights Commentaries 0500 (Nov. 6, 2025) (search "2025 PRINDBRF 0500" in Westlaw); Peter Gratton, *Event Contracts: What They Are and How They Are Used*, Investopedia (Mar. 18, 2025), https://perma.cc/K34F-SCDN.

[13] *See id.*

[14] *Cf.* Willa E. Gibson, *Are Swap Agreements Securities or Futures?: The Inadequacies of Applying the Traditional Regulatory Approach to OTC Derivatives Transactions*, 24 J. Corp. L. 379, 384–88 (1999) (dividing swap contracts, which are a type of derivative, into "interest rate," "currency," "commodity," "equity," and "credit" swaps).

[15] *See id*.

[16] *See In re* Amaranth Nat. Gas Commodities Litig., 587 F. Supp. 2d 513, 530 (S.D.N.Y. 2008), *aff'd*, 730 F.3d 170 (2d Cir. 2013) (describing how commodities' market manipulation requires that "the defendant possessed an ability to influence market prices"); Frey v. CFTC, 931 F.2d 1171, 1178 (7th Cir. 1991) (finding that defendants possessed the ability to influence market prices when the defendants "controlled a substantial position in the market"). *Compare* Cargill, Inc. v. Hardin, 452 F.2d 1154, 1161 (8th Cir. 1971) (finding that the defendants had the ability to influence market prices when the defendants manipulated derivatives for hundreds of thousands of corn bushels), *with*

In re Soybean Futures Litig., 892 F. Supp. 1025, 1035 (N.D. Ill. 1995) (finding that the defendants might have had the ability to influence market prices when they allegedly manipulated derivatives for hundreds of thousands of tons of soybeans).

[17] *See* Jerry W. Markham, *Manipulation of Commodity Futures Prices-the Unprosecutable Crime*, 8 Yale J. on Reg. 281, 373 (1991) ("[V]ery few manipulation cases have ever been brought for the spreading of rumors or false information."). *But see* 7 U.S.C. § 6c(a) (outlining restrictions on individuals, especially government employees, who trade on private information that could affect markets); Cargill, Inc. v. Hardin, 452 F.2d 1154, 1159 (8th Cir. 1971) (describing how only the defendant knew it owned most of the wheat in the market).

[18] *See* United States v. O'Hagan, 521 U.S. 642, 651–53 (1997) (discussing the different theories behind the ban on insider trading of securities).

[19] *See generally* The Securities Act of 1933, Pub. L. 73-22, 48 Stat. 74 (codified at 15 U.S.C. § 77a *et seq.*); The Securities Exchange Act of 1934, Pub. L. 73-291, 48 Stat. 881 (codified at 15 U.S.C. § 78a *et seq.*).

[20] *See Testimony of the Securities and Exchange Commission Before the United States House of Representatives Committee on Financial Services*, SEC (Sep. 24, 2024), https://perma.cc/J94N-RXH6.

[21] *See* Jerry W. Markham & Thomas Lee Hazen, Broker-Dealer Operations Under Securities and Commodities Law § 9:17.50 (2025) (search in Westlaw: "SECBDOP § 9:17.50").

[22] *See Understanding Currency: Types, Functions, and Its Role in Money*, Investopedia (last updated Nov. 26, 2025), https://perma.cc/5KVV-CXCP. *But see* Sonterra Cap. Master Fund Ltd. v. Credit Suisse Grp. AG, 277 F. Supp. 3d 521, 539–40, 570 (S.D.N.Y. 2017) (discussing how plaintiffs claimed that five banks submitted biased Swiss-franc values to the British Bankers' Association over an 11-year period).

[23] *See* Brian Sozzi, *Wall Street Reactions as Federal Reserve Holds Interest Rates Steady*, Yahoo!Finance (July 30, 2025), https://perma.cc/NVR6-E2YZ (discussing one instance of the Federal Reserve's interest-rate decision making); FOMC Policy on Investment and Trading for Committee Participants and Federal Reserve System Staff (as

amended effective Jan. 28, 2025), https://perma.cc/H56Q-E9NE (describing strict internal restrictions on trading within the Fed); *see also* In the Matter of Barclays, Comm. Fut. L. Rep. (CCH) ¶ 32,234, 2012 WL 2500330, at *6–7 (C.F.T.C. 2012) (discussing how Barclays Bank tried to individually manipulate the LIBOR interest rate by submitting fixed rates to the British Bankers' Association, who then set the LIBOR rate based on Barclay's and other banks' submissions).

[24] *See Written Testimony of Chairman J. Christopher Giancarlo before the Senate Banking Committee, Washington, D.C.*, CFTC (Feb. 6, 2018), https://perma.cc/Y8GD-AX73s ("[O]rganized commodity futures markets . . . have grown to include those for energy and metals commodities, collectively including crude oil, heating oil, gasoline, copper, gold, and silver. The agency now also oversees these commodity futures markets for financial products such as interest rates, stock indexes, and foreign currency."). As of January 2026, the CFTC takes the position that prediction markets are not new. *See* Livestream, *supra* note 11 ("[Event contracts] have operated within the CFTC's regulatory perimeter for more than two decades."). However, many disagree. *See id.* ("But, despite their history, many view them as novel or unsettled."); Anna Yen, *What Are Event Contracts*, Benzinga (Nov. 7, 2023), https://perma.cc/S8QS-YF6D (reporting that event contracts first appeared in 2022).

[25] *See* Levine, *supra* note 6.

[26] *See* KalshiEX LLC v. CFTC, 119 F.4th 58, 64 (D.C. Cir. 2024) ("The Commission broadly claims that . . . [election event contracts] could potentially be used in ways that would have an adverse effect on the integrity of elections, or the perception of integrity of elections" (internal quotation marks omitted)); Bobby Allen, *They Quit Their Day Jobs to Bet on Current Events: A Look Inside the Prediction Market*, NPR (Jan. 21, 2026, at 17:22 ET) ("[Former CFTC Commissioner Kristen Johnson] Johnson fears this could lead to a type of election meddling, where money from overseas or deep-pocketed donors could try to influence how voters see a candidate's odds of winning.").

[27] *See* Jerry W. Markham, *Manipulation of Commodity Futures Prices—The Unprosecutable Crime*, 8 Yale J. on Reg. 281, 283 (1991) ("[U]nder present law the crime of manipulation is virtually unprosecutable."). *Compare Testimony of the Securities and Exchange Commission Before the United States House of Representatives Committee on Financial Services*, SEC (Sep. 24, 2024) (reporting a $2.15 billion SEC budget), *with* Kat Tretina, *Understanding The CFTC—The Commodity Futures Trading Commission*, Forbes

(July 25, 2023, at 14:06 ET), https://perma.cc/3W5M-CVS8 (reporting a $320 million CFTC budget). *See also* Livestream, *supra* note 11 ("I have directed CFTC staff to withdraw the 2024 event contracts rule proposal that would prohibit political and sports-related event contracts and the 2025 staff advisory, which cautioned registrants about offering access to sports-related event contracts due to ongoing litigation.").

[28] *See* Cantrell Dumas, *Gambling on Elections & Event Contracts*, Better Markets, Sep. 10, 2024, at *1–2, https://perma.cc/C8X4-5PY6.

[29] *See* Allen, *supra* note 26 ("[M]any traders place bets under pseudonyms, so it's hard to prove insider trading on things like tech news."); Kyla Scanlon, Opinion, *The Dangerous Power of Prediction Markets*, N.Y. Times (Jan. 23, 2026, at 05:00 ET), https://perma.cc/UF9Y-C55G ("Large traders with better information (perhaps insider information—tools are already popping up to try and track unusual activity) move prediction markets."); *see also* Cargill, Inc. v. Hardin, 452 F.2d 1154, 1163 (8th Cir. 1971) ("The methods and techniques of manipulation are limited only by the ingenuity of man.").

[30] *See* Gibson, *supra* note 14. *But see Understanding Currency: Types, Functions, and Its Role in Money*, *supra* note 22 ("Modern currency lacks intrinsic value.").

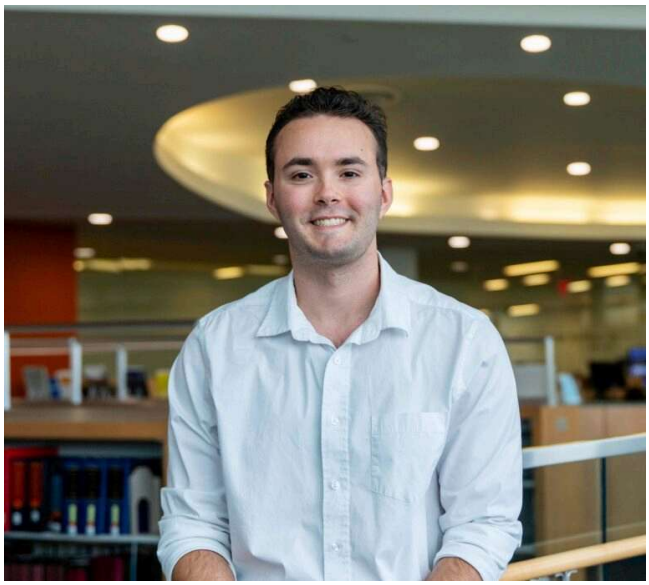
[31] *See* Yen, *supra* note 24 (noting that "[e]vent contracts don't trade actual assets or represent company ownership"). *But see* KalshiEX LLC v. CFTC, 119 F.4th 58, 61 (D.C. Cir. 2024) ("Businesses and individuals can use event contracts to hedge against economic risk.").

[32] *See* Ilya Beylin, *Event Contracts Are a Step Too Far for Derivatives Regulation*, 4.1 U. Chic. Bus. L. Rev. 77, 131 (2025), https://perma.cc/TDD2-SZJ4:

Provided the market attracts sufficient liquidity and otherwise functions, the price of each instrument should converge to the product of the likelihood of the occurrence and the payment upon the occurrence, with the likelihood being based on traders' dispersed beliefs. By dividing the price by the payment, the likelihood is obtained.

Id. (emphasis added).

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