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SCHOOL OF LAW

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

RE: Comments on Advance Notice of Proposed Rulemaking, "Prediction Markets," RIN 3038-AF65

I am a Visiting Associate Professor at the Washington and Lee University School of Law and teach business and finance law as well as sports law. Prior to W&L, I taught at George Washington University Law School for ten years and worked at the World Bank on capital markets development and risk issues for over 20 years.

Most importantly, I have researched, presented on and written extensively about prediction markets, including my forthcoming law review article which can be found here:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5390765

In addition, I have previously researched and written about sports betting. To this extent, I feel I am qualified to offer these comments for the proposed rulemaking. Please note my views are strictly my own and do not reflect that of the law school.

Finally, unlike many of those providing comments, I have no financial stake or advisory roles with any of the state authorities, financial platforms providing event contracts, or similar. I would be pleased to present my research and knowledge at any time in any hearing at the CFTC or otherwise.

Firstly, I support the CFTC's role in regulating event contracts.

Given the thorough and in depth ANPR, and with the hope that my comments carry some weight given my knowledge and research, I am not going to answer each of the ANPR's questions, but instead focus in the following areas: impartial access, manipulation, position limits, margin trading, public interest issues, economic purpose, insurance, gaming, insider trading, and types of event contract issues.

II. A.2.a. Impartial Access

Regulation 38.151 requires designated contract markets ("DCMs") to provide "impartial access to [their] markets and services." There are, however, potential barriers to impartial access that the Commission should consider. One frequently cited concern is that event contracts are available to individuals over the age of 18, while many states that have legalized sports betting impose a minimum age of 21.

This distinction, while relevant, is not dispositive. Empirical evidence suggests approximately 55–65% of college students report participating in sports betting, indicating that age restrictions do not eliminate participation but may instead shift it into unregulated or unlawful markets. And to be fair, only about 60% of Americans attend college. Therefore, many over age 18 are sports betting.

The argument that anyone over 18 can participate in the prediction markets therefore makes them somehow problematic is misplaced. What is needed is greater education on problem gambling and financial literacy. Notably, anyone over 18 can already buy securities and instruments in the capital markets, including complex and highly risky financial instruments such as zero day options.

In order therefore for DCMs to adhere to Core Principle 2, there should not be artificial age limits for prediction markets. Impartial access also implies that participation should not be limited based on a user's state of residence, regardless of whether that state has legalized sports betting.

II. A.2.c. Manipulation

Because of the nature of event contracts, the outcome is what matters. When one individual, or a small group, can change the outcome, that becomes unfair to anyone else participating in that market. I agree with Ilya Beylin, Associate Professor of Law at Seton Hall who provided earlier comments, that "Guard rails should be established against products that settle based on the decisions of an individual or a small group of individuals."

II. A.2.e. Position Limits

Event contracts should not be subject to any different position limits than other swaps or future contracts. Imposing uniquely restrictive position limits on event contracts would risk undermining market efficiency by reducing liquidity and impairing price discovery. DCMs routinely tailor limits based on liquidity, open interest, and susceptibility to manipulation, and there is no reason to depart from that approach solely because the product is an event contract.

II. A.2.f. Margin Trading

This is the area that I would like to stress my strong beliefs that trading on margin should not be permitted in the prediction markets. Despite my belief that distinctions can be made between gambling and event contracts, the distinctions are nuanced and many have argued event contracts

are nothing more than betting disguised as financial derivative products. To this extent, allowing margin trading on these products could result in significantly negative outcomes for those that may "chase losses" or develop addictions. If someone does not have the money in their account, they should not be allowed to partake in the prediction markets. This approach aligns with broader consumer protection principles and reduces the likelihood of cascading losses associated with leveraged speculation.

Permitting margin trading would be a disaster. The only version of margin trading that I can see as even possible would be for sophisticated institutional or accredited retail investors who understand the risks. But I would suggest a categorical prohibition on margin trading would be preferable from both an enforcement and policy perspective and would be happy to go into more detail if requested.

II. B.7. Public Interest

The five listed activities in which the CFTC can determine event contracts are contrary to the public interest are broad categories, which should both prevent DCMs from self-certifying event contracts in these categories as well as to stop the CFTC from having to make discretionary decisions on each and every event contract. Requiring the CFTC to evaluate each individual event contract under a discretionary public interest standard would introduce uncertainty, delay product development, and risk inconsistent outcomes. Accordingly, the CFTC should emphasize that Regulation 40.11 is designed to operate as a rule based screening process, and not meant for an ongoing subjective evaluation of individual event contracts that fall outside the enumerated categories.

II. B.9. Economic Purpose

There is no need to adopt a new economic purpose test, as almost every single event contract could be determined to have some type of economic purpose.

II. B.12. Insurance

Event contracts do not substitute for insurance products. There may not be availability of insurance products for all areas now available in the prediction markets. Moreover, there are also likely pricing and possible tax implications. The markets are separate and the availability of insurance products should not be a factor in the CFTC's public interest determination.

II. B.12. Gaming

When states or tribes argue that sports event contracts are simply gambling or even gaming and that is illegal in the U.S., they often cite Congressional intent in writing the Special Rule (40.11) and claim sports event contracts were meant to be excluded. Yet, at that time, in 2010, sports betting was illegal because of PASPA. Only after the Supreme Court overturned PASPA, was sports betting legalized in states that chose to pass sports betting legislation that authorized this activity. The states and tribes also neglect to mention that Daily Fantasy Sports (DFS) was carved out of federal gambling law through the Unlawful Internet Gambling Enforcement Act of

2006 (UIGEA). DFS mirrors sports betting yet was claimed to be a game of skill and therefore carved out of gaming.

In my forthcoming law review article, I try to set forth definitions of investing, betting, and gambling/gaming. As I wrote, "It might be helpful to think about betting and investing being more closely related than to gambling. There is an argument that event contracts can be distinguished from pure gambling given the investor has some control over the contract and it is not pure chance. In a similar vein, DFS and online poker, as discussed above, were carved out of the UIGEA for being games of skill."

II. E.29. Inside Information

As any of my former students will attest, I am firmly against all insider trading and believe in the fairness and transparency of every aspect of our capital markets. To this extent, I want to differentiate between material nonpublic information (MNPI) and the creation of superior information. An easy example to understand would be an event contract as to the date of superstar Taylor Swift's wedding. If you are a bridesmaid, or her florist, you are likely to have MNPI and should be prevented from trading on this (or any related) event contract. However, if you are a super fan and have conducted data analysis to create superior information, there is no fraud or deception, nor is there misappropriation of any information. The same kind of quantitative analysis is conducted by fans to determine which sports team might win. This is not insider trading; this is the creation of superior knowledge and belongs in the prediction markets which are supposed to represent the "wisdom of the crowds." As the current CFTC civil complaint and DOJ criminal arrest of the "Maduro" trader shows, there are systems and laws in place to enforce anyone with MNPI from trading in the prediction markets.

It is important to note here that for sports event contracts, leagues, teams and fans are all concerned about the "integrity of the game." Sports betting scandals have been front page news the past few years – but these have all involved sports betting, not sports event contracts. It is hypocritical to criticize sports event contracts as somehow riskier in this regard than sports betting. As with my comments under II. A.2.c. Manipulation above, I would urge the Commission to consider preventing event contracts or putting in place some kind of guardrails for those contracts which rely on one person or a small group to determine the outcome. This would include prop bets.

II. F.33. Types of Event Contracts

I may not be answering the questions in the ANPR directly here, but I must stress the following issue: all the "fuss" has been about sports event contracts. There has been some pushback regarding political event and national security contracts, but the overwhelming number of lawsuits etc. are all focused on who has the right to regulate sports event contracts: the CFTC or the states.

Imagine a world where the states/state regulatory authorities win, and the Commodity Exchange Act (CEA) is determined not to preempt state legislation or for whatever reason, sports event contracts are banned in the US (or in certain states). I would argue that the activity will continue,

and many will continue to engage in buying sports event contracts, but they will simply go offshore or into a black market. Moreover – and this seems to be forgotten by most – the CFTC will still be responsible for regulating all other types of event contracts. We would be living in a bifurcated world where some event contracts are federally regulated, and others are outright banned or state regulated.

In this hypothetical world, DCMs could go through the state licensing process and offer prediction markets if therefore licensed (and taxed) to do so in a specific state. The states, despite their arguments to the contrary, have not done a terrific job in the sports betting space in the first place. We have a patchwork of state laws that are all over the map in terms of tax and licensing fees, resources – if any – dedicated to problem gambling, and other significant differences between operating among the states. Neither the states nor the sports books talk to each other, leading to increased issues with problem gambling and addiction. And there are states where sports betting is not legal. Given all of this, consumers lose.

However, in the alternative world, where event contracts are determined to be financial derivative products and not merely some loophole or disguised bets, then the CFTC would be responsible to regulate all event contracts. There would be one regulator, and a "clearinghouse" existing as opposed to the fragmented state by state approach. Moreover, prediction markets, whether sports event contracts or otherwise, would be (paraphrasing NBA Commissioner Adam Silver's famous OpEd) out of the darkness and into the light, with the ability to be regulated. There is clear consumer interest in the prediction markets, given the volumes traded over the past year and a half. It would be better not to send them offshore or into the black market.

This is why this rulemaking is so important.

I would be happy to expand on any of the above issues as well as those I did not discuss.

Thank you for your consideration.

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