CENTER FOR REGULATORY ANALYSIS AND ENGAGEMENT

A Project of the Main Street Foundation

M E M O R A N D U M

To:	**Hon. Michael S. Selig, Chairman, Commodity Futures Trading Commission**
	From: Andrew Langer, President, Main Street Foundation
Date:	**April 30, 2026**
Re:	**Comments on the Commodity Futures Trading Commission's Notice of Proposed Rulemaking, "Prediction Markets," Docket #CFTC-2026-0331, RIN 3038-AF65, Fed. Reg. 2026-05105, Published March 16, 2026**

Below are comments of the Main Street Foundation's Center for Regulatory Analysis and Engagement (CRAE) in response to the Commodity Futures Trading Commission's Notice of Proposed Rulemaking, "Prediction Markets," Docket #CFTC-2026-0331, RIN 3038-AF65, Fed. Reg. 2026-05105, published March 16, 2026.

CRAE is a project of the Main Street Foundation, a recently-formed non-profit, non-partisan 501(c)(3) research and education foundation. Our mission is to bring a disciplined, common-sense perspective to the regulatory process, one grounded in real-world experience, sound science, and rigorous economic analysis. We work to ensure that the costs, risks, and benefits of regulatory proposals are evaluated transparently and accurately, and that the voices, interests, and freedoms of Americans, particularly small businesses and working families, are meaningfully represented in regulatory debates. Above all, we focus on outcomes: regulations should address real problems, function effectively in practice, and improve conditions on the ground—not exacerbate the challenges they are intended to solve.

INTRODUCTION

The rapid expansion of event-based trading platforms—commonly referred to as "prediction markets"—has brought renewed urgency to questions surrounding their proper regulatory treatment. In recent years, the volume, diversity, and accessibility of these products have grown dramatically, with offerings now spanning political events, economic indicators, sporting outcomes, and other discrete occurrences. The Commodity Futures Trading Commission's decision to issue this Advance Notice of Proposed Rulemaking is therefore both timely and necessary. As market participation accelerates, the risk of regulatory ambiguity increases in

parallel, creating uncertainty for participants, regulators, and policymakers alike. At its core, the issue presented is not one of innovation or technological novelty, but one of proper classification. Ensuring regulatory clarity and fidelity to statutory boundaries is essential to maintaining the integrity of the broader financial regulatory framework.

At the heart of this inquiry is a fundamental mischaracterization: prediction markets are increasingly being treated as derivatives markets when, upon closer examination, they do not meet the defining criteria of that category. A functional analysis demonstrates that these instruments lack the core attributes that justify their inclusion within the derivatives regulatory regime. Instead, their structure—centered on wagering on the occurrence or non-occurrence of discrete events—aligns more closely with traditional gambling constructs. This is not a marginal or academic distinction. The classification of these products determines which regulatory authorities apply, which statutory mandates are triggered, and which consumer protections are appropriate. As such, the question before the Commission goes directly to the boundaries of its jurisdiction and the proper scope of federal oversight.

A central analytical error in the current debate is the conflation of contingent payoff structures with derivatives status. The mere fact that a contract's value depends on a future event does not render it a derivative. Numerous well-established financial and commercial arrangements—ranging from venture capital investments to insurance contracts to contingent fee agreements—share this characteristic without being treated as derivatives under federal law. What distinguishes true derivatives markets is not the presence of contingency, but the existence of an underlying asset, rate, or index that anchors pricing, facilitates hedging, and enables meaningful price discovery. Prediction markets, by contrast, lack these foundational elements. Expanding the definition of "derivative" to encompass any contingent contract would effectively collapse longstanding regulatory distinctions and erode the conceptual coherence of the derivatives framework.

The statutory purposes underlying the Commodity Exchange Act further underscore the importance of maintaining these distinctions. The Act is designed to support markets that enable participants to hedge risk, discover prices, and transfer economic exposure in a manner that enhances overall market efficiency. These functions presuppose the existence of underlying economic variables and real-world exposures that market participants seek to manage. Prediction markets do not advance these objectives. They do not facilitate hedging of existing risks, nor do they generate price signals tied to underlying economic fundamentals. Instead, they create speculative opportunities detached from traditional market structures. Misclassifying such products as derivatives risks undermining the statutory scheme by extending its reach beyond the activities it was designed to govern.

The classification question also carries significant implications for the allocation of regulatory authority between federal and state governments. Historically, gambling and wagering activities have been regulated primarily at the state level, reflecting localized policy judgments regarding consumer protection, social impacts, and permissible forms of gaming. The emergence of prediction markets raises concerns that federal derivatives regulation may be used, intentionally or otherwise, to preempt these state frameworks through reclassification. Such an outcome would represent a substantial shift in the balance of regulatory authority, absent clear congressional direction. Preserving the appropriate role of state regulators requires careful attention to the functional characteristics of these products and restraint in extending federal jurisdiction beyond its statutory limits.

In our comments, the Main Street Foundation Center for Regulatory Analysis and Engagement (CRAE) applies a functional economic analysis to the question of prediction market classification. CRAE evaluates whether these products satisfy the statutory purposes of derivatives regulation, examines their alignment with the "public interest" considerations identified in the Commodity Exchange Act, and assesses whether they fall within the category of "gaming" contemplated by the statute. CRAE also considers the susceptibility of these markets to manipulation, the challenges they pose for market surveillance, and the broader structural risks they introduce. Finally, CRAE offers recommendations designed to promote regulatory clarity, preserve statutory integrity, and ensure that emerging products are governed according to their economic substance rather than their form.

EXECUTIVE SUMMARY

The rapid growth of prediction markets presents the Commodity Futures Trading Commission with a threshold question of classification that will determine the appropriate scope of federal oversight. While these products are often described as derivatives, that characterization rests on superficial similarities rather than a functional analysis of their economic role. Prediction markets do not exhibit the core features that justify inclusion within the derivatives regulatory framework, nor do they advance the statutory purposes underlying the Commodity Exchange Act. Instead, their structure and operation align more closely with traditional wagering activities. As such, the Commission's inquiry should focus on ensuring that these products are classified according to their economic substance, preserving regulatory clarity, statutory integrity, and the proper allocation of authority between federal and state regulators.

Our comments address the following:

- **Prediction markets do not meet the functional criteria of derivatives markets.**
  They lack an underlying asset or benchmark, do not facilitate hedging of existing risk, and do not generate price discovery tied to economic fundamentals.
- **The presence of a contingent payoff structure is not sufficient to establish derivatives status.**
  Many established financial and commercial arrangements share contingent characteristics without falling within derivatives regulation, and expanding the definition risks collapsing critical regulatory distinctions.
- **Prediction markets fail to advance the core statutory purposes of the Commodity Exchange Act.**
  They do not support hedging, meaningful price discovery, or efficient risk transfer, and therefore fall outside the economic rationale for derivatives oversight.
- **These products align more closely with the statutory concept of "gaming."**
  They involve consideration, chance, and prize, and are economically and functionally indistinguishable from traditional forms of wagering, including sports betting.
- **Misclassification raises significant federalism concerns.**
  Treating prediction markets as derivatives risks displacing state authority over gambling regulation without clear congressional authorization.
- **Prediction markets present heightened risks of manipulation and insider advantage.**
  Their outcomes may be influenced by small groups or individuals, and the absence of an underlying market complicates surveillance and enforcement.
- **Expanding derivatives definitions to encompass prediction markets would undermine regulatory clarity and statutory limits.**

The Commission should avoid extending its jurisdiction through interpretive expansion and instead apply a disciplined, functional approach to classification.

- **The appropriate regulatory path is to maintain clear categorical boundaries and provide ex ante guidance.**
  Where products function as wagering instruments, they should be addressed within existing frameworks rather than reclassified to fit within derivatives regulation.

In light of these considerations, CRAE urges the Commission to adopt a classification approach grounded in economic substance and statutory purpose. Doing so will ensure that prediction markets are evaluated within the appropriate regulatory context, preserve the integrity of the derivatives framework, and maintain the proper balance between federal and state authority.

I. CORE PRINCIPLES & MARKET STRUCTURE

A. Structural mismatch with derivatives markets

Prediction markets do not exhibit the defining characteristics of traditional derivatives markets and therefore sit uneasily within the regulatory framework governing designated contract markets (DCMs) and swap execution facilities (SEFs). At a foundational level, derivatives derive their value from identifiable underlying economic variables—such as commodities, interest rates, currencies, or financial indices—that exist within broader, observable markets. Prediction markets, by contrast, are based on discrete events that often lack any meaningful connection to underlying economic activity or tradable assets. This absence of a reference market undermines the core mechanisms that support pricing, hedging, and liquidity in derivatives markets. As a result, the analytical tools and regulatory assumptions embedded in the Commodity Exchange Act do not translate cleanly to these products. The mismatch is not merely technical, but structural, reflecting a fundamental divergence in economic function. Accordingly, prediction markets are ill-suited to regulation under the DCM/SEF framework.

B. Core Principle 3 — Susceptibility to manipulation

Prediction markets are particularly susceptible to manipulation due to the nature of the events on which they are based. In many cases, the outcomes of these events may be influenced or even determined by a relatively small number of individuals or entities, creating opportunities for insiders or participants with asymmetric information to affect both market prices and real-world outcomes. Unlike traditional derivatives markets, where price formation is anchored in widely observed supply and demand dynamics, prediction markets often lack an external reference point to discipline trading behavior. This creates conditions in which market participants may have both the incentive and the ability to distort outcomes. The absence of a robust, independent pricing mechanism further exacerbates this vulnerability. These characteristics raise serious questions about whether such contracts can meet the statutory requirement that listed products not be readily susceptible to manipulation.

This susceptibility stands in stark contrast to the structure of established derivatives markets, where deep and liquid underlying markets provide a stabilizing influence on pricing. In commodity and financial derivatives, the presence of active cash markets allows regulators and participants to benchmark prices, detect anomalies, and identify potential manipulation. These underlying markets serve as an external constraint on behavior, limiting the ability of any single

actor to exert undue influence. Prediction markets lack this stabilizing mechanism entirely. Without a corresponding market in which the underlying "asset" trades, there is no independent basis for validating prices or detecting distortions. The result is a trading environment that is inherently more fragile and more prone to manipulation than traditional derivatives markets.

C. Core Principle 4 — Market surveillance limitations

The challenges associated with market surveillance in prediction markets further underscore their incompatibility with existing regulatory frameworks. A central difficulty lies in verifying whether the underlying event has occurred, particularly when outcomes are ambiguous, contested, or subject to interpretation. In many cases, market operators must rely on external sources—such as media reports, official statements, or third-party determinations—that may themselves be incomplete, delayed, or disputed. This introduces a level of subjectivity into contract resolution that is largely absent from traditional derivatives markets. The lack of clear, objective settlement criteria complicates both enforcement and dispute resolution. These factors significantly weaken the effectiveness of surveillance mechanisms designed to ensure market integrity.

In addition, the absence of independent validation mechanisms means that surveillance in prediction markets is often reactive rather than preventative. In traditional markets, regulators can monitor price movements relative to underlying fundamentals and intervene when anomalies arise. In prediction markets, however, there are no such fundamentals against which to measure trading behavior. This limits the ability of regulators to detect manipulation in real time and increases reliance on ex post enforcement. The resulting regulatory posture is inherently less effective and more resource-intensive. These limitations call into question whether prediction markets can satisfy the surveillance and enforcement expectations embedded in Core Principle 4.

D. Core Principle 5 — Position limits

The application of position limits in prediction markets presents unique challenges that further distinguish them from traditional derivatives markets. Large positions in these markets have the potential not only to influence prices, but also to shape market perception regarding the likelihood of an event. In environments where prices are interpreted as probabilities, concentrated positions can create misleading signals that affect the behavior of other participants. This dynamic is particularly problematic in markets tied to political, economic, or social events, where perceptions can influence real-world decision-making. The ability of large traders to amplify or distort these perceptions raises concerns about market integrity and fairness. Unlike in traditional derivatives markets, where position limits are designed primarily to prevent price distortion, the implications here extend beyond pricing into the realm of behavioral influence.

Moreover, prediction markets introduce a feedback loop in which trading activity may influence the very outcomes being traded upon. For example, a participant with a significant financial stake in a particular outcome may take actions—directly or indirectly—to bring about that outcome. This creates a convergence between market participation and real-world intervention that is largely absent from conventional derivatives markets. The resulting incentives can undermine both the integrity of the market and the integrity of the underlying event. Position limits, as currently conceived, may be insufficient to address these risks. This further illustrates the difficulty of applying existing regulatory tools to a fundamentally different class of products.

E. Core Principle 11 — Financial integrity & margin

The financial structure of prediction markets also reflects their divergence from traditional derivatives markets. The widespread use of fully collateralized trading models suggests an implicit recognition that these products lack a stable basis for valuation. In conventional derivatives markets, margining systems are designed to manage risk associated with price fluctuations in underlying assets. These systems rely on historical data, volatility measures, and correlations to calibrate appropriate margin levels. In prediction markets, however, there is no comparable dataset or economic foundation on which to base such calculations. The reliance on full collateralization is therefore less a design choice than a necessity arising from structural uncertainty. This further distinguishes prediction markets from the types of instruments contemplated by the Commodity Exchange Act.

Allowing margin trading in this context would introduce additional risks without the benefit of established risk management frameworks. The absence of reliable valuation models and underlying market data would make it difficult to set appropriate margin requirements, increasing the likelihood of under-collateralization and default. These risks could, in turn, propagate through clearing systems and create broader vulnerabilities. The introduction of leverage in an already unstable environment would exacerbate existing concerns about manipulation, volatility, and market integrity. As such, extending margin trading to prediction markets would raise significant prudential concerns. This reinforces the conclusion that these products do not fit comfortably within the financial integrity framework envisioned by Core Principle 11.

F. Summary insight

Taken together, the application of the DCM Core Principles to prediction markets reveals a consistent pattern: the regulatory framework struggles to accommodate products that lack the structural features of traditional derivatives. The challenges associated with manipulation, surveillance, position limits, and financial integrity are not incidental, but stem from the fundamental nature of these markets. Attempts to adapt existing rules to fit these products risk obscuring these underlying issues rather than resolving them. The better approach is to recognize that prediction markets represent a distinct category that does not align with the assumptions embedded in derivatives regulation. Accordingly, their treatment under the Commodity Exchange Act should reflect this structural reality.

II. PUBLIC INTEREST ANALYSIS

A. Statutory framework (CEA Section 3)

The statutory concept of the “public interest” under the Commodity Exchange Act is grounded in the economic functions that derivatives markets are intended to serve. Specifically, the Act contemplates markets that facilitate hedging of risk, enable meaningful price discovery, and support the efficient transfer of economic exposure among participants. These functions are interrelated and depend on the existence of underlying assets or economic variables that give rise to real-world risk. The public interest is therefore not an abstract or open-ended concept, but one tied directly to the role that derivatives markets play in supporting broader economic activity. In evaluating prediction markets, the relevant question is whether they advance these core

objectives. If they do not, their inclusion within the derivatives regulatory framework is difficult to justify. As demonstrated below, prediction markets fail to satisfy each of these foundational criteria.

B. Failure to serve hedging function

Prediction markets do not facilitate hedging in any meaningful sense because they do not allow participants to offset pre-existing economic exposures. In traditional derivatives markets, participants enter into contracts to manage risks arising from fluctuations in prices, rates, or other economic variables that affect their business operations or investment portfolios. By contrast, prediction markets create exposures rather than mitigate them, offering participants the opportunity to take positions on the occurrence of discrete events without any underlying risk to hedge. There is no corresponding real-world exposure that is being offset or managed through participation in these markets. As a result, these products do not contribute to risk reduction or economic stability. Instead, they introduce new forms of speculative risk into the system. This absence of a hedging function weighs heavily against their classification as derivatives.

This distinction becomes clearer when compared to legitimate derivatives usage. In commodity markets, producers and consumers use futures contracts to hedge against price volatility, thereby stabilizing revenues and costs. In financial markets, derivatives are used to manage interest rate risk, currency exposure, and credit risk, all of which have direct implications for economic activity. These uses are grounded in identifiable economic relationships and serve a clear risk management purpose. Prediction markets lack this connection entirely. Participants are not hedging existing exposures but are instead engaging in directional speculation on outcomes that have no direct bearing on their economic positions. This fundamental difference underscores the absence of a core statutory function and further supports the conclusion that prediction markets fall outside the intended scope of derivatives regulation.

C. Failure to provide price discovery

Prediction markets also fail to provide meaningful price discovery as contemplated by the Commodity Exchange Act. In traditional markets, prices emerge from the interaction of supply and demand for underlying assets, reflecting information about scarcity, value, and expected future conditions. These price signals are then used by market participants to make informed decisions about production, investment, and consumption. Prediction markets, however, are not anchored to underlying assets or economic variables that can be objectively measured or observed. Instead, prices in these markets reflect the aggregated beliefs or sentiments of participants לגבי the likelihood of an event occurring. While such aggregation may produce a numerical output, it does not constitute price discovery in the economic sense. The absence of a fundamental reference point means that these prices lack the informational content necessary to guide real-world economic decisions.

Moreover, prediction markets lack the benchmarking and reference mechanisms that support price validation in traditional derivatives markets. In established markets, prices can be compared against observable data from cash markets, allowing participants and regulators to assess whether pricing is consistent with underlying fundamentals. This comparative process is essential for identifying distortions, detecting manipulation, and ensuring market integrity. Prediction markets offer no such capability. Without a corresponding market in which the underlying “asset” trades, there is no independent basis for evaluating whether prices are reasonable or distorted. This lack of benchmarking undermines the reliability of price signals and

further distinguishes prediction markets from the types of markets contemplated by the Act. As a result, their contribution to price discovery is, at best, limited and, at worst, misleading.

D. Absence of risk transfer

In addition to lacking hedging and price discovery functions, prediction markets do not facilitate the transfer of economic risk in a manner consistent with the public interest objectives of the Commodity Exchange Act. In traditional derivatives markets, risk is transferred from participants who seek to reduce exposure to those willing to assume it, often in exchange for compensation. This transfer is tied to underlying economic activities and contributes to the efficient allocation of risk across the economy. Prediction markets, by contrast, do not redistribute existing risk but instead create new speculative exposures. Participants are not shifting risk associated with production, investment, or consumption decisions, but are instead engaging in zero-sum wagering on event outcomes. This dynamic does not enhance economic efficiency or stability. Rather, it introduces additional volatility without corresponding economic benefit. The absence of meaningful risk transfer further undermines the case for treating these products as derivatives.

E. Economic purpose analysis

Historically, the concept of "economic purpose" has served as an important lens for evaluating whether particular contracts fall within the appropriate scope of derivatives regulation. While this concept is no longer codified as a formal test, it remains instructive in assessing whether a market serves a legitimate economic function. Under this framework, contracts that facilitate hedging, price discovery, or efficient risk allocation are viewed as serving an economic purpose consistent with the goals of the Commodity Exchange Act. Prediction markets do not meet this standard. Their primary function is to enable participants to speculate on the occurrence of discrete events, without any connection to underlying economic activity. This lack of functional relevance to the broader economy suggests that they do not serve the type of economic purpose that justifies inclusion within the derivatives regulatory regime. Accordingly, reliance on an economic purpose analysis reinforces the conclusion that prediction markets fall outside the intended scope of the Act.

This conclusion is further supported by the absence of any meaningful contribution to productive economic activity. Traditional derivatives markets play a critical role in supporting industries by allowing participants to manage risk and plan for the future with greater certainty. These markets facilitate investment, stabilize revenues, and enhance the efficiency of resource allocation. Prediction markets, by contrast, do not provide comparable benefits. They do not support production, investment, or consumption decisions in any direct way. Instead, they operate as standalone platforms for speculative activity, disconnected from the real economy. While participants may derive entertainment or informational value from these markets, such benefits do not rise to the level of economic purpose contemplated by the Commodity Exchange Act. This further underscores the limited public interest served by these products.

F. Insurance comparison

Some proponents of prediction markets have drawn analogies to insurance products in an effort to justify their inclusion within regulated financial frameworks. This comparison does not withstand scrutiny. Insurance contracts are designed to mitigate the financial impact of adverse

events by compensating policyholders for losses tied to an insurable interest. The existence of such an interest—typically involving property, life, or liability exposure—is a defining feature of insurance and serves to align the contract with legitimate risk management objectives. Prediction markets lack this element entirely. Participants do not enter into contracts to protect against losses, but to speculate on outcomes for potential gain. There is no requirement that a participant have any connection to or stake in the underlying event. As such, the analogy to insurance is inapposite. The absence of an insurable interest and the lack of loss mitigation distinguish prediction markets from insurance and further support their classification as speculative, rather than risk-management, instruments.

G. Public interest synthesis

When evaluated against the statutory framework of the Commodity Exchange Act, prediction markets do not advance the core public interest objectives that justify federal derivatives regulation. They do not facilitate hedging, do not produce meaningful price discovery tied to economic fundamentals, and do not support the efficient transfer of real-world risk. Instead, they create speculative opportunities that are disconnected from underlying economic activity. The benefits often cited in support of these markets—such as information aggregation or entertainment value—do not align with the statutory purposes of the Act. Extending derivatives regulation to encompass such products would therefore represent a departure from the Act's foundational principles. It would also risk diluting the effectiveness of the regulatory framework by applying it to activities for which it was not designed. The public interest is best served by maintaining a clear distinction between markets that support economic function and those that do not.

H. Consumer and societal considerations

Beyond the statutory criteria, prediction markets raise additional concerns related to consumer protection and societal impact. These platforms often incorporate elements of gamification, including real-time trading interfaces, rapid feedback loops, and reward structures that resemble those found in traditional gambling environments. At the same time, they are frequently marketed using the language of finance, which may create the impression that participation constitutes a form of investment rather than wagering. This framing can obscure the true nature of the activity and increase the risk of consumer misunderstanding. The accessibility of these platforms—often available through mobile applications and open to a broad user base—further amplifies these concerns. Participants may be drawn into speculative behavior without a clear understanding of the risks involved. These factors raise important questions about whether such products should be treated as financial instruments or as forms of regulated gaming.

I. Summary

Prediction markets do not satisfy the public interest criteria embedded in the Commodity Exchange Act and therefore do not warrant classification as derivatives. They fail to serve the core functions of hedging, price discovery, and risk transfer, and do not contribute meaningfully to productive economic activity. Their structure and operation more closely resemble speculative wagering than financial risk management. Extending derivatives regulation to encompass these products would undermine statutory clarity and dilute the effectiveness of the existing framework. The Commission should instead apply a disciplined, functional analysis that aligns regulatory treatment with economic substance.

III. GAMING ANALYSIS (Section 5c(c)(5)(C))

A. Defining gaming

The analysis under Section 5c(c)(5)(C) necessarily turns on whether event contracts offered through prediction markets fall within the statutory concept of "gaming." While the statute does not provide an explicit definition, a well-established framework across legal and regulatory contexts identifies three core elements of gambling: consideration, chance, and prize. Consideration refers to the staking of something of value; chance refers to the role of uncertainty or randomness in determining outcomes; and prize refers to the receipt of something of value contingent on the outcome. This three-part test provides a practical and analytically sound basis for evaluating whether a given activity constitutes gaming. Importantly, the presence of all three elements is generally sufficient to bring an activity within the ambit of gambling regulation. Applying this framework to prediction markets reveals a strong alignment with traditional gaming constructs.

B. Application of test

The element of consideration is clearly present in prediction markets. Participants must commit capital in order to take positions on the outcome of an event, whether through the purchase of contracts or the posting of collateral. This financial commitment is not incidental but is the defining feature of participation, as it creates the potential for gain or loss. The structure of these markets requires participants to risk something of value in exchange for the possibility of a return. This is directly analogous to the wagering of money in traditional gambling contexts. The presence of consideration is therefore unambiguous and satisfies the first prong of the gaming test.

The element of chance is also inherent in prediction markets, notwithstanding arguments that such markets may incorporate elements of skill or information. While participants may bring varying degrees of knowledge or analysis to their decisions, the ultimate outcome of the event remains uncertain and is often influenced by factors beyond any participant's control. In many cases, outcomes depend on complex, multifactor dynamics—such as political developments, economic conditions, or human behavior—that introduce significant randomness. Even in markets where information asymmetries exist, the resolution of the event is not deterministically tied to participant actions. This distinguishes prediction markets from activities where skill predominates and outcomes are directly controlled by participants. Accordingly, the presence of chance satisfies the second prong of the test.

The element of prize is similarly evident in the structure of prediction markets. Participants who correctly anticipate the outcome of an event receive a financial return, typically funded by the losses of other participants. This payout structure mirrors that of traditional wagering systems, where winnings are contingent on the accuracy of a prediction. The magnitude of the prize is directly linked to the amount staked and the odds implied by market pricing. There is no intermediate economic activity or value creation that generates the return; it is purely a function of the outcome of the wager. This aligns closely with the prize element in gambling and completes the three-part test. Taken together, the presence of consideration, chance, and prize indicates that prediction markets satisfy the core definitional elements of gaming.

C. Distinction from financial instruments

A key distinction between gaming activities and financial instruments lies in the presence of an underlying economic variable that anchors value and supports risk management. Financial derivatives derive their value from assets, rates, or indices that are embedded within broader economic systems. Prediction markets lack this connection entirely. The events on which contracts are based—such as election outcomes, weather occurrences, or cultural developments—do not constitute tradable assets or economic variables in the conventional sense. There is no underlying market in which these "assets" are bought and sold, nor is there a mechanism for linking contract values to observable economic fundamentals. This absence of an underlying reference point is a defining feature that separates prediction markets from derivatives.

In addition, prediction markets are structured around discrete, non-financial events that do not lend themselves to standard financial modeling or valuation. Unlike financial instruments, which can be analyzed using established methodologies based on cash flows, volatility, and correlations, prediction market contracts depend on binary or categorical outcomes. These outcomes are not part of a continuous economic process but are instead singular events with limited or no repeatability. This further distinguishes them from financial instruments, which are designed to manage ongoing economic risks. The discrete and idiosyncratic nature of these events reinforces the conclusion that prediction markets operate outside the domain of financial markets. As such, their classification as derivatives is inconsistent with their economic substance.

D. Contest comparisons

The structural similarities between prediction markets and traditional forms of gambling are particularly evident when compared to sports betting. In both contexts, participants stake money on the outcome of an event that is external to the market itself, with payouts determined by the accuracy of their predictions. The use of odds or market-implied probabilities to price contracts in prediction markets closely mirrors the pricing mechanisms used in sportsbooks. In each case, the activity is fundamentally a wager on an uncertain outcome. The presence of a trading interface or continuous pricing does not alter this underlying reality. There is no meaningful economic distinction between placing a bet on a sporting event and taking a position in a prediction market tied to that same event.

This equivalence extends beyond sports to other categories of events commonly featured in prediction markets, including elections and cultural or social developments. Contracts based on political outcomes, award ceremonies, or other public events exhibit the same structural characteristics as traditional wagers. Participants are not engaging in economic risk management but are instead speculating on outcomes for potential financial gain. The fact that these events may have broader societal significance does not transform the nature of the activity. In each case, the participant's role is that of a bettor, not an investor. The consistency of this structure across different types of events further supports the classification of prediction markets as gaming.

E. Consumer protection concerns

The alignment of prediction markets with gambling constructs raises important consumer protection concerns. These platforms often incorporate design features that encourage frequent participation, rapid decision-making, and sustained engagement, all of which are characteristic of gambling environments. The use of financial terminology—such as "trading," "markets," and "contracts"—may create the impression that participation constitutes a form of investment, potentially obscuring the speculative nature of the activity. This framing can lead to misunderstandings about risk, expected returns, and the likelihood of loss. Participants may be drawn into behavior that resembles wagering without fully recognizing it as such. These dynamics increase the risk of financial harm, particularly among less sophisticated users.

In addition, the accessibility of prediction markets amplifies these concerns. Many platforms are designed for ease of use and are available through mobile applications, lowering barriers to entry and enabling participation by a broad audience. This ease of access, combined with the gamified structure of the platforms, can contribute to patterns of behavior associated with problem gambling. The absence of traditional safeguards found in regulated gaming environments—such as limits on participation, disclosure requirements, and self-exclusion mechanisms—further exacerbates these risks. These consumer protection considerations are directly relevant to the Commission's public interest analysis. They underscore the importance of accurately classifying these products and ensuring that appropriate regulatory frameworks are applied.

F. Responsible gaming considerations

If prediction markets are permitted to operate, consideration must be given to the implementation of safeguards consistent with responsible gaming practices. Such measures may include limits on the amount of capital that can be committed over a given period, clear disclosures regarding the risks of participation, and mechanisms for users to restrict or suspend their activity. Additional safeguards could involve monitoring for patterns indicative of problematic behavior and providing resources for individuals who may be at risk. These tools are commonly employed in regulated gambling environments to mitigate harm and promote responsible participation. Their absence in prediction markets highlights the regulatory gap created by misclassification.

However, the need for such safeguards also reinforces the underlying classification issue. The fact that prediction markets would require the same types of protections as gambling platforms suggests that they are functionally equivalent to those platforms. Incorporating responsible gaming measures into a derivatives framework would represent a departure from established regulatory practice and could create confusion about the nature of the activity being regulated. A more coherent approach would be to address these products within the context of existing gaming regulations, where such safeguards are already well understood and implemented. This would ensure that consumer protection measures are appropriately tailored to the risks presented.

G. Federalism implications

The classification of prediction markets as derivatives rather than gaming has significant implications for the allocation of regulatory authority between federal and state governments. Gambling and wagering activities have traditionally been regulated at the state level, reflecting localized policy preferences and social considerations. States have developed comprehensive frameworks governing the types of gambling permitted, the conditions under which it may occur,

and the protections afforded to consumers. Reclassifying prediction markets as derivatives would effectively shift regulatory authority from states to the federal level, potentially preempting these established regimes. Such a shift would occur not through explicit legislative action, but through interpretive expansion of existing statutes.

This raises important federalism concerns. Absent clear congressional intent, the extension of federal derivatives regulation into areas traditionally governed by state law risks disrupting the balance of authority between jurisdictions. It may also create inconsistencies in regulatory treatment, as activities that would be subject to state oversight in one context are recharacterized and regulated differently in another. Preserving the role of state regulators requires a disciplined approach to classification that respects statutory boundaries and historical practice. Ensuring that prediction markets are evaluated based on their economic substance is essential to maintaining this balance.

H. Summary

We believe that this demonstrates that prediction markets satisfy the defining elements of gaming and are structurally and functionally aligned with traditional forms of wagering. The presence of consideration, chance, and prize establishes a clear basis for classification under the gaming framework. Efforts to characterize these products as financial instruments overlook their lack of connection to underlying economic variables and their reliance on discrete, non-financial events. The resulting misclassification raises concerns related to consumer protection, regulatory coherence, and federalism. A proper application of Section 5c(c)(5)(C) supports the conclusion that prediction markets fall within the category of "gaming" and should be treated accordingly.

IV. PROCEDURAL CONSIDERATIONS

A coherent regulatory approach to prediction markets requires a clear and predictable procedural framework that provides certainty to market participants while preserving the Commission's ability to enforce statutory limits. The current posture—relying on case-by-case evaluation of individual contracts—creates ambiguity regarding how and when the Commission will exercise its authority under Section 5c(c)(5)(C). Such uncertainty is particularly problematic in rapidly evolving markets, where participants must make decisions in real time and cannot rely on retrospective determinations. A predictable framework is essential not only for compliance, but also for maintaining the credibility of the regulatory regime. Without it, market participants may exploit gaps or ambiguities, and regulators may struggle to respond effectively. The Commission's procedural approach should therefore prioritize clarity, transparency, and administrability.

A central procedural issue concerns the timing of public interest determinations. Section 5c(c)(5)(C) contemplates that the Commission may act "in connection with the listing" of event contracts, but the precise point at which such determinations should be made remains unclear. If determinations are made only after contracts are listed and trading has commenced, the Commission risks allowing potentially problematic products to gain market traction before regulatory action is taken. This reactive posture can create disruption for participants and undermine confidence in the market. Conversely, making determinations too early—before sufficient information is available—may result in incomplete or overly broad conclusions. The Commission should therefore clarify the procedural stage at which it intends to evaluate event

contracts and ensure that this process is both timely and informed. Establishing clear expectations in this regard would enhance both regulatory effectiveness and market stability.

In light of these challenges, there is a strong case for the development of categorical guidance regarding the types of event contracts that fall within the scope of Section 5c(c)(5)(C). Rather than evaluating each contract in isolation, the Commission should identify categories of activities—such as those involving gaming—that are presumptively contrary to the public interest. This approach would allow market participants to assess the regulatory status of proposed products ex ante, reducing uncertainty and promoting compliance. It would also enable the Commission to allocate its resources more efficiently by focusing on clearly defined areas of concern. Categorical guidance is particularly appropriate where the underlying characteristics of a class of contracts are consistent and well understood. By articulating these categories through rulemaking or formal guidance, the Commission can provide a durable framework for decision-making.

A purely case-by-case approach, by contrast, presents significant risks. It introduces the possibility of inconsistent outcomes, as similar contracts may be treated differently depending on the specific facts or timing of their review. It also places a substantial burden on both the Commission and market participants, requiring repeated analysis of similar issues without the benefit of established precedent. This approach may incentivize strategic behavior, as market participants design products to test the boundaries of regulatory interpretation. Over time, such a dynamic can erode the coherence of the regulatory framework and make enforcement more difficult. In addition, the absence of clear standards may lead to protracted disputes and litigation, further delaying the resolution of key issues. These risks weigh in favor of a more structured and anticipatory approach.

The need for procedural clarity is further heightened by the rapid growth of prediction markets. As the number and variety of event contracts increase, the Commission's ability to evaluate each product individually becomes increasingly constrained. Market adoption may outpace the Commission's review process, allowing questionable products to proliferate before regulatory action can be taken. This dynamic not only complicates enforcement, but also increases the potential for consumer harm and market disruption. A reactive, case-by-case model is ill-suited to addressing such growth. Instead, the Commission should adopt procedures that anticipate and address categories of activity before they become widespread. Doing so will help ensure that regulatory oversight keeps pace with market developments.

For these reasons, CRAE recommends that the Commission adopt an ex ante approach to procedural clarity. This should include the issuance of categorical guidance identifying classes of event contracts that are presumptively contrary to the public interest, as well as clear timelines and criteria for evaluating new products. Such an approach would provide market participants with the information necessary to design compliant offerings while enabling the Commission to act decisively when boundaries are crossed. It would also reduce reliance on retrospective enforcement and promote a more stable and predictable regulatory environment. Ultimately, procedural clarity is essential to ensuring that the Commission's authority is exercised in a manner that is both effective and consistent with statutory intent.

V. INSIDE INFORMATION & MANIPULATION

Prediction markets are uniquely susceptible to insider advantage in ways that distinguish them from traditional derivatives markets and raise heightened regulatory concerns. Because these markets are based on discrete events rather than underlying economic variables, access to nonpublic or privileged information about those events can confer a direct and substantial trading advantage. In many cases, individuals with proximity to decision-making processes—whether in political, corporate, or institutional contexts—may possess information that is not yet reflected in public discourse. This creates conditions in which certain participants can systematically outperform others based on informational asymmetries. Unlike in traditional markets, where information is often diffuse and incorporated into prices through broad participation, prediction markets may concentrate informational advantages among a small group of actors. This structural feature increases the risk of unfairness and undermines confidence in market integrity.

Asymmetric information is not merely incidental in prediction markets—it is central to the pricing mechanism. Prices in these markets are often interpreted as probabilities, reflecting the collective expectations of participants לגבי the likelihood of an event occurring. When some participants possess superior information, their trades can disproportionately influence these implied probabilities. While this may be viewed as a form of information aggregation, it also creates a dynamic in which uninformed participants are systematically disadvantaged. The absence of a transparent, underlying economic benchmark further exacerbates this issue, as there is no independent reference point against which to assess whether prices reflect fundamental realities. As a result, pricing becomes highly sensitive to the distribution of information among participants. This dynamic raises important questions about fairness, efficiency, and the appropriate role of such markets.

In addition to informational advantages, prediction markets may create incentives for participants to influence the outcomes on which they are trading. This is a distinguishing feature that is largely absent from traditional derivatives markets. In conventional settings, market participants typically have limited ability to affect the underlying variables—such as commodity prices or interest rates—on which contracts are based. In prediction markets, however, the outcomes may be susceptible to influence by individuals or coordinated groups, particularly when the events involve human decision-making or behavior. Participants with significant financial exposure may be motivated to take actions that increase the likelihood of a favorable outcome. This convergence of financial incentive and real-world influence introduces a novel form of manipulation risk. It blurs the line between market participation and outcome determination, raising concerns about both market integrity and the integrity of the underlying events.

Prediction markets also present risks of cross-market manipulation, in which activity in one market is used to influence behavior or outcomes in another. For example, price movements in a prediction market may be interpreted as signals of likelihood, potentially affecting decisions in related domains such as political campaigns, investment strategies, or public perception. Participants may seek to move prices not for direct financial gain within the market, but to influence external behavior that, in turn, affects the underlying event. This creates a feedback loop between markets and real-world outcomes that is difficult to monitor and regulate. In addition, coordinated activity across multiple platforms may amplify these effects, further complicating detection and enforcement. These dynamics are not typically present in traditional derivatives markets, where the relationship between market prices and real-world outcomes is more indirect and less susceptible to manipulation.

The nature of insider activity in prediction markets also differs in important respects from traditional insider trading concerns. In securities markets, insider trading generally involves the misuse of material nonpublic information about a company or financial instrument, and is addressed through well-established legal frameworks. In prediction markets, however, the concept of "inside information" is broader and less clearly defined. It may include knowledge about future decisions, intentions, or events that are not tied to a specific issuer or asset. Moreover, the decentralized and often informal nature of these markets makes it more difficult to identify and regulate such activity. The absence of clear boundaries between public and nonpublic information further complicates enforcement. As a result, existing legal tools may be insufficient to address the unique forms of informational advantage present in prediction markets.

Taken together, these factors indicate that prediction markets present heightened risks related to insider advantage and manipulation. The centrality of asymmetric information, the potential for participants to influence outcomes, and the possibility of cross-market effects all contribute to a regulatory environment that is more complex and less stable than that of traditional derivatives markets. These risks are not incidental but are embedded in the structure of the markets themselves. Addressing them would require regulatory tools and frameworks that differ significantly from those currently applied to derivatives. This further supports the conclusion that prediction markets do not fit comfortably within the existing regulatory paradigm and warrant careful reconsideration under the Commission's public interest authority.

VI. CLASSIFICATION OF EVENT CONTRACTS

A. Not swaps

Event contracts offered through prediction markets should not be classified as swaps because doing so requires an impermissible expansion of the statutory definition beyond its intended scope. While the Commodity Exchange Act includes within the definition of "swap" certain agreements contingent on the occurrence of an event, that language must be interpreted in context and in light of the broader statutory framework. The relevant provisions contemplate events associated with financial, economic, or commercial consequences that are tied to identifiable variables or exposures. Treating any contingent contract as a swap, regardless of its connection to underlying economic activity, would stretch the definition beyond recognition. Such an interpretation would effectively collapse the distinction between derivatives and a wide array of non-financial agreements. The Commission should resist this form of definitional expansion and instead apply a disciplined, functional analysis. When viewed through that lens, prediction market contracts do not fit within the category of swaps.

A key reason for this conclusion is the absence of a financial or economic underlying that anchors the value of the contract. In traditional swap arrangements, the contingent payment is linked to changes in interest rates, credit risk, commodity prices, or other measurable economic variables. These variables exist within broader markets and are subject to continuous observation and analysis. Prediction market contracts, by contrast, are based on discrete events that do not constitute underlying economic variables in any meaningful sense. There is no asset, rate, or index whose value is being transferred or hedged. Instead, the contract simply reflects a wager on whether a particular outcome will occur. This lack of an economic foundation distinguishes event contracts from the types of agreements contemplated by the swap definition and further supports their exclusion from that category.

B. Not futures

Event contracts likewise do not meet the criteria for classification as futures contracts. Futures are traditionally understood as standardized agreements for the future delivery of a commodity or for cash settlement based on the value of a commodity or index at a specified time. Central to this framework is the existence of a commodity or index that serves as the underlying reference for the contract. Prediction markets do not involve such underlyings. The events on which contracts are based—such as political outcomes or discrete occurrences—do not constitute commodities, nor do they function as indices in the conventional sense. They are not part of a continuous market process and do not lend themselves to the type of standardization and valuation that futures contracts require. As a result, classifying these products as futures would represent a departure from established definitions and practices.

In addition, futures markets rely on the existence of a deliverable or a well-defined reference market that provides a basis for settlement and price validation. Even in cash-settled futures, the settlement price is typically derived from observable data in an underlying market. Prediction markets lack this feature entirely. There is no deliverable asset, and no independent market from which a settlement price can be derived. Instead, contract resolution depends on the occurrence or non-occurrence of an event, often determined by external sources that may be subjective or contested. This absence of a deliverable or reference market further distinguishes event contracts from futures and undermines the applicability of the futures framework. It reinforces the conclusion that these products fall outside the traditional scope of futures regulation.

C. Boundary preservation

Maintaining clear boundaries between derivatives and non-derivative instruments is essential to preserving the coherence and effectiveness of the regulatory framework. Expanding the definition of derivatives to include any contract with a contingent payoff would blur these boundaries and create significant uncertainty לגבי the scope of regulatory authority. Such an approach would risk bringing a wide range of non-financial agreements within the ambit of derivatives regulation, including contracts that have historically been treated differently for sound economic and legal reasons. This would not only strain regulatory resources but also undermine the clarity that market participants rely on when designing and engaging in financial transactions. A disciplined approach to classification is therefore necessary to prevent the erosion of established categories. Prediction markets present a clear case in which boundary preservation should take precedence over definitional expansion.

D. Comparison to other contingent contracts

The presence of contingency in a contract's payoff structure is not sufficient to establish its status as a derivative. Many widely accepted financial and commercial arrangements share this characteristic without being subject to derivatives regulation. Venture capital investments, for example, often involve returns that are contingent on future business outcomes, yet they are not treated as derivatives. Similarly, insurance contracts provide payouts based on the وقوع of specified events, but are governed by a distinct regulatory framework that reflects their risk management function. Contingent fee arrangements in legal and commercial contexts also depend on future outcomes without being classified as financial instruments. These examples illustrate that contingency is a common feature across a broad spectrum of agreements. What distinguishes derivatives is not contingency alone, but the presence of an underlying economic variable and a role in risk management. Prediction markets lack these distinguishing features.

E. Consumer transaction analogy

Event contracts in prediction markets are more appropriately analogized to consumer transactions that are excluded from the definition of swaps and other financial instruments. In prior interpretive guidance, regulators have recognized that certain agreements entered into by individuals for personal, family, or household purposes fall outside the scope of derivatives regulation, even if they involve contingent payments. These exclusions reflect a recognition that not all contingent agreements are part of the financial system in the sense contemplated by the Commodity Exchange Act. Prediction market participation, particularly among retail users, shares many of the characteristics of these excluded transactions. It is often motivated by personal interest, entertainment value, or speculative curiosity rather than by a need to manage economic risk. The scale and structure of participation further reinforce this analogy. Treating such activity as derivatives trading would extend the regulatory framework beyond its intended domain.

F. Summary

Event contracts offered through prediction markets do not satisfy the criteria for classification as swaps or futures and should not be treated as derivatives under the Commodity Exchange Act. Their lack of a financial or economic underlying, absence of a deliverable or reference market, and reliance on discrete, non-financial events distinguish them from traditional derivatives instruments. Expanding existing definitions to encompass these products would undermine regulatory clarity and blur important conceptual boundaries. A proper application of statutory principles and functional analysis leads to the conclusion that event contracts fall outside the derivatives framework.

VII. COST-BENEFIT & COMPETITION

The cost-benefit considerations associated with prediction markets weigh strongly against their classification and regulation as derivatives under the Commodity Exchange Act. While proponents point to potential informational or innovation-related benefits, these claims are limited in scope and often overstated. By contrast, the costs—both direct and systemic—are substantial and multifaceted. These include consumer harm, regulatory distortion, increased susceptibility to manipulation, and the erosion of clear jurisdictional boundaries. Importantly, the statutory framework requires that benefits be evaluated in light of core objectives such as market integrity, price discovery, and sound risk management. Prediction markets do not meaningfully advance these objectives. As such, the balance of considerations tilts decisively against expanding derivatives regulation to encompass these products.

One of the most immediate and tangible costs arises in the form of consumer harm and confusion. Prediction markets are frequently presented using the language and structure of financial markets, which may lead participants to believe they are engaging in investment activity rather than speculative wagering. This framing can obscure the true risk profile of the products and contribute to misunderstandings about expected returns and potential losses. The accessibility and gamified design of these platforms further increase the likelihood of excessive or impulsive participation. Unlike traditional financial instruments, prediction market contracts do not provide exposure to underlying economic value, yet they may be perceived as doing so. This disconnect creates a heightened risk of financial harm, particularly among retail

participants. The resulting consumer protection concerns represent a significant cost that must be weighed in the Commission's analysis.

Claims that prediction markets enhance price discovery also warrant careful scrutiny. While it is sometimes argued that these markets aggregate information and produce probabilistic forecasts, such outputs do not constitute price discovery in the economic sense contemplated by the Commodity Exchange Act. Without an underlying asset or economic variable, there is no fundamental value to be discovered or reflected in prices. Instead, prices in prediction markets represent the collective sentiment of participants, which may be influenced by speculation, herding behavior, or informational asymmetries. The absence of benchmarking against observable market data further limits the reliability of these signals. As a result, the purported benefits of price discovery are both limited and potentially misleading. This weakens one of the primary justifications for including such products within the derivatives framework.

Expanding derivatives regulation to encompass prediction markets also introduces the risk of regulatory distortion. The application of rules designed for financial instruments to products that lack the underlying economic structure of derivatives may lead to inconsistent or ineffective outcomes. Regulatory tools such as margin requirements, position limits, and surveillance protocols are calibrated to markets with identifiable underlyings and established pricing mechanisms. When applied to prediction markets, these tools may fail to address the relevant risks or may impose inappropriate constraints. This mismatch can create inefficiencies, complicate compliance, and divert regulatory resources from areas where they are more effectively deployed. Moreover, it may encourage the development of products that exploit definitional ambiguities, further eroding the coherence of the regulatory framework. These distortions represent a meaningful cost to the integrity of the system.

From a competition and antitrust perspective, the classification of prediction markets as derivatives may also have unintended consequences. Granting access to federal derivatives infrastructure—such as DCM registration and clearing facilities—could confer advantages on certain platforms that are not available to traditional gaming operators, thereby distorting competitive dynamics. This may incentivize regulatory arbitrage, as firms seek to structure products in a manner that qualifies for more favorable treatment under federal law. At the same time, it could disadvantage entities operating within state-regulated gaming frameworks, which are subject to different rules and oversight. Such disparities may undermine fair competition and create barriers to entry based on regulatory classification rather than economic merit. The Commission is required to consider the public interest protected by the antitrust laws and to avoid unnecessarily anticompetitive outcomes. These considerations counsel against expanding derivatives jurisdiction into areas traditionally governed by other regulatory regimes.

In light of these factors, the least intrusive and most economically coherent approach is to refrain from expanding the scope of derivatives regulation to include prediction markets. Doing so would preserve the integrity of the Commodity Exchange Act, maintain clear jurisdictional boundaries, and allow existing regulatory frameworks—particularly those governing gaming—to address these products where appropriate. This approach minimizes unnecessary costs while respecting the statutory purposes of the Act. It also avoids the risks associated with regulatory overreach and the unintended consequences of misclassification. By maintaining a disciplined approach to classification, the Commission can ensure that its regulatory efforts remain focused on markets that serve genuine economic functions.

CONCLUSION

CRAE appreciates the opportunity to provide comments on this important inquiry. The Commodity Futures Trading Commission is to be commended for engaging directly with the threshold questions raised by the rapid growth of prediction markets. The issues presented are complex and consequential, touching on statutory interpretation, market structure, and the appropriate scope of federal authority. A careful and disciplined approach is therefore essential. CRAE hopes that the analysis provided herein contributes to a clearer understanding of the economic and legal considerations at stake.

At its core, this proceeding turns on a question of classification. As demonstrated throughout these comments, prediction markets do not meet the defining characteristics of derivatives markets and should not be treated as such under the Commodity Exchange Act. Their structure is not anchored in underlying economic variables, nor do they facilitate the types of market activity that derivatives regulation is designed to support. Instead, they operate as platforms for wagering on the occurrence of discrete events. This distinction is not merely semantic; it determines the applicability of statutory provisions, regulatory tools, and jurisdictional authority. Misclassifying these products as derivatives would extend the Commission's reach beyond its intended scope. The better course is to align regulatory treatment with economic substance.

From an economic perspective, prediction markets fail to serve the core functions that justify derivatives regulation. They do not enable participants to hedge existing exposures, as there is no underlying risk being offset. They do not provide meaningful price discovery tied to economic fundamentals, as there is no asset or variable whose value is being revealed. And they do not facilitate the efficient transfer of risk across the economy, but instead create new speculative exposures. These deficiencies are not incidental but are inherent in the design of these markets. As such, they do not advance the public interest objectives embedded in the Commodity Exchange Act. Recognizing this is essential to preserving the integrity of the regulatory framework.

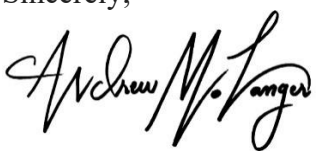
The legal implications of this analysis are equally significant. The Commodity Exchange Act establishes a framework for regulating specific categories of financial instruments, and its definitions must be interpreted in a manner consistent with that purpose. Expanding those definitions to encompass products that lack the requisite economic characteristics would undermine the coherence of the statute and blur important regulatory boundaries. Such an approach would also raise concerns about the proper allocation of authority between agencies and between federal and state regulators. A disciplined approach to classification—grounded in statutory text and economic function—is therefore necessary to ensure that the Commission's actions remain within the limits established by Congress. This is particularly important in light of broader developments in administrative law that emphasize the need for clear statutory grounding in agency action.

The policy implications of this classification decision extend beyond the confines of derivatives regulation. Treating prediction markets as financial instruments risks displacing state authority over gambling and wagering activities, which have historically been regulated at the state level. It may also create confusion among consumers, who may interpret participation as investment rather than speculation. In addition, it introduces challenges related to market integrity, including susceptibility to manipulation and the influence of asymmetric information. These concerns underscore the importance of aligning regulatory treatment with the actual nature of the activity.

Doing so will help ensure that appropriate safeguards are applied and that regulatory objectives are effectively achieved.

CFTC's task is not to expand the scope of derivatives regulation to accommodate novel products, but to ensure that those products are accurately classified according to their economic substance and statutory context. Where products function as gambling, they should be regulated as such, and not as financial instruments.

Sincerely,



Andrew M. Langer
President
Main Street Foundation