CFTC ANPRM Comment - Prediction Markets

RIN 3038-AF65 | 91 FR 12516

A. Core Principles and Commission Regulations

Question 1

Market-Capability Standard. The Commission should condition any guidance or rule amendments on whether a prediction market raises functionally distinct challenges under the existing Core Principles, not on the assumption that event contracts, as a category, require a separate regulatory framework.

The Core Principles are already functional and technology-neutral. They apply to prediction markets the same way they apply to every other DCM. The Commission should provide guidance only where a specific Core Principle produces a genuinely different compliance question for event contracts, and should resist building a parallel regulatory architecture for prediction markets when the existing one already works.

Question 2(a)

National Market Requirement. Prediction markets require impartial access on identical terms across all fifty states; a state-by-state patchwork or class-based gating breaks market functionality and price discovery.

The Core Principles already require impartial access, and no separate guidance is needed for prediction markets. The Commission should clarify that DCMs cannot fragment access by state or demographic class where that fragmentation destroys the liquidity and price-formation function that justifies the market's existence.

Bounded Payoff Constraint. Prediction markets are structurally less susceptible to many traditional forms of abusive trading because event contracts typically have a fixed payoff range.

Many conventional abuses, such as trading ahead of client flow, settlement committee manipulation, or forced liquidation through close-out, are either absent or substantially diminished in prediction markets, particularly in non-intermediated or direct-access models. A binary contract that resolves at zero or one imposes a hard ceiling on pump-and-dump schemes and limits the profitability of manipulation.

Enforced Rationality Principle. The bounded payoff structure of event contracts constrains irrational pricing and limits the profitability of manipulation.

Because event contracts generally resolve at a fixed value, the contract structure itself narrows the zone in which manipulation can be profitable. Insider trading concerns should be addressed separately under the appropriate statutory framework, but the Commission should recognize that the abusive-trading risk profile of prediction markets is materially lower, not higher, than traditional derivatives.

Question 2(b)

Commercial Settlement Framework. Questions about how event contracts are settled and how disputes over settlement are resolved should remain commercial questions for each DCM, not subjects for prescriptive Core Principle guidance.

The interpretation of contract terms and procedures for challenging resolution outcomes are matters where markets can develop transparent participant appeal rules. Speed, certainty, and the need to gatekeep frivolous disputes require flexibility. Existing Core Principles are sufficient because exchanges have direct commercial incentives to resolve correctly; consistently poor resolution drives participants away.

Question 2(c)

Participant Edge Threshold. Whether an event contract is readily susceptible to manipulation depends not on the dollar volume of the market but on the number of people who can legitimately have an informed view on the underlying event.

If a sufficient number of participants can form and act on an opinion, market forces can self-correct manipulative attempts even in a market with low volume. A contract on whether Pluto will be reclassified as a planet may attract minimal trading interest, but it concerns a public question that many people can track and form views on. By contrast,

a contract on what five private individuals will order for dinner is readily susceptible because almost no one can have a legitimate informational edge.

Insider Trading Is Not Manipulation. The Commission should state clearly that trading on nonpublic information, whatever its other regulatory implications, is not manipulation under Core Principle 3.

Manipulation requires artificial price distortion. Informed trading, even trading on an informational edge, moves prices toward accuracy rather than away from it. The insider-trading question belongs in the Section 6(c)(1) and Section 4c(a)(3)-(4) framework, not in the "readily susceptible to manipulation" analysis.

Bounded Payoff Constraint. Event contracts are structurally resistant to common forms of market manipulation because binary contracts have fixed payoff ranges.

Unlike equities, where a short squeeze can drive prices to irrational levels, or crypto assets, which can be pumped without an upper price bound, event contracts resolve at zero or one. Pump-and-dump schemes face a hard ceiling, and short squeezes cannot occur in the same way because there is no constraint on supply. This bounded structure, combined with the Participant Edge Threshold, creates enforced market rationality.

Readily Susceptible Means Readily Susceptible. "Readily susceptible" does not mean that manipulation can never occur under any circumstances.

It means that the contract is, in the ordinary course, easy to manipulate. Bounded event contracts on public events with a sufficient participant edge are not readily susceptible to manipulation merely because manipulation is theoretically possible.

Question 2(d)

Structural Surveillance Advantage. Prediction markets have inherent structural advantages in surveillance and enforcement compared to traditional derivatives markets.

The bounded payoff structure and direct contract resolution eliminate many manipulation vectors that affect futures and swaps markets. Prediction markets are also a poor venue for insider trading because a trader with material nonpublic information must trade directly on the event to exploit that information, creating an obvious paper trail. The Commission should recognize that the surveillance burden on prediction markets is lighter, not heavier, than on many other DCMs.

Question 2(e)

Position Accountability Over Position Limits. Position limits are inappropriate for prediction markets because there is no spot market for event contracts and position limits serve no structural purpose.

Position accountability, requiring disclosure and surveillance of large positions, is sufficient and more useful, particularly in the insider-trading context. The marginal safety benefit of position limits is zero while the harm to market function is real. The Commission should decline to impose position limits on prediction markets.

Question 2(g)

Technology-Neutral Framework. Prediction markets pose no unique operational risk requiring special guidance.

The technological sophistication of prediction-market operators reflects innovation, not an inherent characteristic of event contracts. Existing Core Principle 20 requirements for risk analysis and operational controls apply fully to prediction markets without modification or special guidance.

Question 2(h)

Blockchain-Neutral Standard. Prediction markets operating on blockchain infrastructure should be subject to identical Core Principle requirements as traditional prediction markets.

Blockchain versus non-blockchain infrastructure is a technology choice, not a regulatory category. Whether public or private blockchain is used, the functional requirements under the Core Principles remain unchanged, and the Commission should not differentiate treatment based on distributed ledger technology.

Question 5(a)

Commercial Data Exemption. Swap data reporting requirements under CEA Section 2(a)(13) are outdated and unsuitable for prediction markets.

Existing prediction-market infrastructure has produced commercially viable data solutions superior to government-mandated reporting regimes. Part 43 reporting is sufficient. The Commission should explicitly exempt prediction markets from additional swap data repository reporting, data standardization, and public identifier requirements because the costs and friction outweigh any regulatory benefit.

Question 5(b)

No Unique Susceptibility. Prediction markets are not uniquely susceptible to pre-arranged trades, noncompetitive trades, or wash sales under CEA Section 4c(a)(1) and (2)(A).

The absence of a spot market reduces rather than increases the risk of these practices. Standard enforcement authority and ordinary exchange surveillance are sufficient.

Question 5(c)

Bounded Rationality Defense. Prediction markets are less susceptible to disruptive trading practices under CEA Section 4c(a)(5) because of the Enforced Rationality Principle and bounded payoff structure.

Market forces naturally constrain and correct disruptive behavior in bounded event contracts. Standard Core Principle 4 surveillance is sufficient.

Question 6

Freedom Cost Framework. Cost-benefit analysis under CEA Section 15(a) must include the cost of restricting economic freedom.

When the Commission limits who can trade prediction markets or what contracts can be listed, it imposes a real cost: the loss of opportunity for willing participants to engage in markets they choose. This freedom cost is material and has been historically underweighted in regulatory analysis. Restrictions on speech about events embedded in contract-listing decisions also implicate First Amendment concerns, so traditional exchange compliance costs are only part of the analysis.

B. Public Interest

Question 7

Market Function Standard. The Commission's public-interest inquiry under CEA Section 5c(c)(5)(C) should be confined to whether event contracts trade orderly and function as markets in the substantive sense described in CEA Section 3(a).

The Commission lacks expertise and authority to make determinations about moral appropriateness, downstream consequences, or traditional regulatory categories unrelated to market function. Market mechanics and orderliness are within the Commission's competence. Only in extraordinary circumstances where a contract demonstrably fails to trade or function as a market should the Commission intervene.

Question 8

Price Discovery Primary Standard. The public interests in CEA Sections 3(a) and 3(b) should be the exclusive consideration in the Commission's public-interest determination.

The Commission's core expertise is whether markets function to enable price discovery and aggregate participant beliefs about event likelihood. If an event contract serves this function by allowing participants to trade and generating a market price that reflects aggregate expectations, the public interest is served. Downstream social consequences, moral judgments, and policy preferences are outside the Commission's mandate and competence.

Question 9

Economic Purpose Test Rejection. The pre-2000 "economic purpose" test should not be revived.

That test requires the Commission to make determinations about how people should trade and what purposes trading should serve, which is outside the Commission's competence and mandate. The Commission is equipped to assess whether markets function and generate accurate prices. Market participants, not regulators, decide how to use markets.

Question 10

Event Price Discovery Standard. Price discovery under CEA Section 3(a) is not limited to spot commodities or futures on traditional assets.

Price discovery encompasses the ability of markets to aggregate participant beliefs about the probability of future events and disseminate that pricing information. Prediction markets are a direct mechanism for measuring what market participants believe will occur. Prediction markets can also serve a genuine hedging function where event outcomes create operational or commercial risk.

Question 11

Harmonized Framework. The purposes in CEA Section 3(b), preventing price manipulation, protecting against fraudulent or abusive sales practices, and promoting responsible innovation, are not in conflict when the Commission maintains its proper role.

The Commission should require SROs to implement surveillance, compliance, and enforcement procedures, but should remain technology-neutral and outcome-neutral about how markets function. The Commission's role is to ensure markets have the tools to police themselves, not to impose prescriptive requirements or make value judgments about whether trading purposes align with Commission preferences.

Question 12

Derivative vs. Insurance Distinction. Event contracts function as derivatives, not insurance.

Derivatives enable prospective hedging of uncertain future outcomes; insurance provides retrospective indemnification on a dollar-for-dollar basis. The availability of insurance does not diminish the legitimate hedging function of derivatives on event outcomes. The Commission should not treat event contracts as insurance substitutes or apply insurance-specific reasoning to them.

Q13–Q14: Market Function Codification

Yes, the Commission should propose amendments codifying that its public interest determination under CEA §5c(c)(5)(C) is confined to market function attributes: whether the contract trades orderly, generates accurate prices, and serves price discovery or hedging. The Commission should explicitly exclude from its analysis moral judgments, downstream social consequences, and determinations about appropriate trading purposes. This codification narrows and clarifies the Commission's inquiry to within its competence. The default position should be that markets may list contracts unless the Commission affirmatively demonstrates a functional defect. Restricting economic freedom — preventing willing participants from trading — is an extraordinary regulatory step that should require clear justification grounded in market mechanics, not policy preference.

C. Activities Listed in CEA Section 5c(c)(5)(C)

Question 15

Contract-Underlying Principle. The Commission should apply a Contract-Underlying Principle: the relevant inquiry is what the contract's underlying is, not whether the contract can be described at a high level as touching, relating to, or having some connection with an enumerated subject.

Section 5c(c)(5)(C) is concerned with the contract submitted for listing and the event, occurrence, or contingency on which that contract settles. The Commission should therefore reject the inappropriate and overreaching definition first advanced in the Kalshi and Nadex orders, which treated a contract as covered based on broad subject-matter association rather than the actual underlying of the contract.

Underlying Activity Test. The Commission should apply an Underlying Activity Test: a contract falls within an enumerated category only when the contract references the enumerated underlying activity itself, not merely a lawful action that concerns, regulates, or affects that activity.

A contract on how many murders will occur in Chicago references murder, which is illegal under state law. A contract on how many people will commit tax evasion references tax evasion, which is illegal under federal or state law. By contrast, a contract on whether a legislature will change the law governing a prohibited or regulated activity references legislative action, and legislative action is not itself terrorism, assassination, gaming, or unlawful conduct.

Legal-Action Boundary. The Commission should recognize a Legal-Action Boundary between contracts that settle on the occurrence of an enumerated activity and contracts that settle on lawful governmental, legislative, regulatory, or judicial action.

A state legislature voting to prohibit, authorize, tax, regulate, or otherwise change the rules for an activity is a legal act by a governmental body, not the underlying activity being regulated. Treating such contracts as categorically covered would improperly convert contracts about lawmaking into contracts about the activity that the lawmaking addresses.

Review-Not-Ban Principle. The Commission should apply a Review-Not-Ban Principle: even where a contract involves an enumerated activity, Section 5c(c)(5)(C) creates a review mechanism, not an automatic statutory prohibition.

Congress could have prohibited the enumerated categories outright, but instead gave the Commission authority to determine whether a contract is contrary to the public interest. It is therefore possible for a contract involving an enumerated activity to be permissible where its design, purpose, settlement terms, and market effects serve the public interest.

Question 16

Single-State Trigger Principle. The Commission should apply a Single-State Trigger Principle: if the underlying activity referenced by a contract is illegal under the law of even one state, that may be sufficient to give the Commission authority to review the contract under Section 5c(c)(5)(C).

State-law illegality should function only as a gating concept. It identifies when the Commission may examine whether a contract involving unlawful activity is contrary to the public interest, but it does not require the Commission to conduct that review in every case and does not require the Commission to prohibit the contract.

Discretionary Review Gate. The Commission should treat state-law illegality as a Discretionary Review Gate, not as a mandatory merits determination or automatic prohibition.

Section 5c(c)(5)(C) gives the Commission authority to determine whether certain contracts are contrary to the public interest. The existence of state-law illegality may open the door to that inquiry, but the Commission retains discretion both as to whether to undertake the inquiry and how to resolve it.

Question 19

Market-Fitness Mandate. The Commission should apply a Market-Fitness Mandate: its proper role is to determine whether a contract can trade on a regulated market consistent with the Core Principles, not to make a free-floating value judgment about whether the underlying event is desirable, respectable, or morally preferred.

The Commission's institutional expertise is market regulation: trading, clearing, surveillance, financial integrity, manipulation prevention, settlement, and customer protection. The Commission should confine its analysis to whether participants can have edge and whether the contract can be listed, traded, monitored, cleared, and settled in a robust way.

Market-Decides Principle. The Commission should apply a Market-Decides Principle: where participants can have edge and the Core Principles can be satisfied, the market should decide whether the contract is worth trading.

The Commission should not be in the business of deciding, as a value judgment, which contracts should exist because it prefers some underlyings and disfavors others. In the extraordinary categories identified by Congress, the Commission may ask whether the contract has characteristics that make it unsuitable for regulated trading, but if the contract works well on a market, it should be for the market, not the Commission, to determine demand.

Regulatory-Competence Boundary. The Commission should observe a Regulatory-Competence Boundary and avoid resolving questions of morality, cultural preference, or social approval that fall outside its expertise as a derivatives regulator.

The Commission knows how to assess whether a contract trades with integrity, whether the market can be surveilled, whether settlement is objective, whether the clearing model is sound, and whether the exchange can comply with the Core Principles. Those are the proper questions for this rulemaking.

Edge Belongs on Markets. The Commission should apply an Edge Belongs on Markets principle: when market participants can have, or reasonably believe they have, informational, analytical, statistical, or judgment-based edge about an uncertain outcome, that is a strong factor supporting treatment as a market rather than as mere gaming.

Markets function because participants disagree, interpret information differently, build models, assess probabilities, and take positions based on informed judgment. That is true for sports event contracts, political event contracts, economic event contracts, weather event contracts, and the other event contracts that have historically traded on regulated prediction markets.

No-Edge Casino Boundary. The Commission should recognize a No-Edge Casino Boundary between contracts where participants can form informed views and activities where no participant can have meaningful edge over the randomizing mechanism.

The toss of dice at a craps table or the spin of a roulette wheel does not create a market in informed views because no participant has superior information about what the next roll or spin will be. By contrast, a participant can analyze teams, injuries, weather, incentives, lineups, coaching decisions, market prices, public information, and historical data in order to form an informed view about a sports event.

Informed-View Factor. The Commission should treat the existence of an Informed-View Factor as central to the public-interest analysis for event contracts.

Where participants are trading because they believe they have an informed view, the contract serves a market function: it allows information, probability judgments, and risk preferences to be expressed through price. That is fundamentally different from a casino game in which the activity is organized around entertainment from random chance rather than the aggregation of informed views.

Question 19(a)

Edge-Not-Entertainment Standard. The Commission should apply an Edge-Not-Entertainment Standard: the relevant question is not whether a participant is motivated by entertainment, but whether the contract permits participants to form and express informed views.

Entertainment purpose is outside the proper scope of the CFTC's analysis. It is inappropriate for the federal government to regulate a federally listed derivatives contract by attempting to classify a participant's subjective motivation as entertainment, investment, hedging, research, professional trading, or something else.

Motivation-Is-Unworkable Principle. The Commission should reject a Motivation-Is-Unworkable Principle because the same activity can be undertaken by different people for entirely different reasons.

Some participants trade, forecast, or take risk for entertainment; others do the same activity professionally, analytically, or as part of a broader commercial strategy. A motivation-based standard would be impossible to administer consistently because there is no clear, principled, or objective way to determine when a participant's purpose is sufficiently "entertainment" to change the legal status of the same contract.

Chance-Is-Universal Principle. The Commission should apply a Chance-Is-Universal Principle: the existence of chance cannot distinguish gaming from derivatives markets because chance exists in all uncertain markets.

There is an element of chance in stocks, commodities, interest rates, weather, elections, sports, and all derivatives on uncertain future events. If "element of chance" were the standard, the Commission would then have to decide what degree of chance is too much, which is neither administrable nor consistent with how markets function.

Edge-Over-Chance Standard. The Commission should apply an Edge-Over-Chance Standard: the better public-interest distinction is whether participants can have, or reasonably believe they have, edge despite uncertainty.

Sports plainly involve uncertainty, but uncertainty is not the same thing as randomness without edge. Participants can study teams, players, injuries, coaching, incentives, weather, matchups, statistics, and market prices; that ability to form differentiated views is what makes the contract market-like even though the outcome remains uncertain.

Question 19(b)

No Vibe Regulation Principle. The Commission should apply a No Vibe Regulation Principle: any rulemaking in this area must rest on objective, administrable characteristics of the contract, not on whether the Commission is comfortable with, dislikes, or intuitively disapproves of a particular underlying.

The Commission should assiduously avoid regulating by vibe, preference, or what amounts to a subjective value judgment about which forms of uncertainty are acceptable. A federal derivatives regulator should not decide that one type of event market is permissible and another is impermissible merely because a particular underlying feels more familiar, respectable, useful, or comfortable.

Objective-Characteristics Requirement. The Commission should apply an Objective-Characteristics Requirement and make any distinction among event contracts solely by reference to objective features such as settlement certainty, susceptibility to manipulation, market surveillance, financial integrity, participant protection, and rule enforceability.

A principled rule cannot turn on whether the Commission likes or dislikes the referenced activity. If the Commission departs from objective characteristics, it risks picking winners and losers among lawful markets and creating a standard that cannot be applied consistently across sports, politics, awards, weather, economics, and other event categories.

Contest-Is-Not-A-Standard Principle. The Commission should reject a Contest-Is-Not-A-Standard Principle because the word "contest" does not supply a meaningful, objective, or administrable regulatory boundary.

There is no principled difference, for purposes of federal derivatives regulation, between different types of competitions, contests, races, votes, awards, games, tournaments, or other events simply because some are labeled "contests" and others are not. The Commission should excise "contest" as a decisive term and avoid carrying forward terminology that reflects subjective comfort with some event categories and discomfort with others.

Question 19(c)

Market-Fitness Mandate. The Commission should apply a Market-Fitness Mandate: its proper inquiry is whether the contract can trade on a regulated market consistent with the Core Principles, not whether the Commission approves of the underlying event as a matter of taste, morality, or policy preference.

The Commission's expertise is market regulation: trading, clearing, surveillance, financial integrity, manipulation prevention, settlement, and customer protection. It should therefore ask whether participants can have edge and whether the contract can be listed, monitored, cleared, and settled in a robust way.

Market-Decides Principle. The Commission should apply a Market-Decides Principle: where participants can have edge and the Core Principles can be satisfied, the market should decide whether the contract is worth trading.

The Commission should not make a value judgment about which underlyings deserve a market. In the extraordinary categories identified by Congress, the Commission may ask whether a contract has characteristics that make it unsuitable for regulated trading, but if the contract works well on a market, demand should be determined by market participants rather than by regulatory preference.

Regulatory-Competence Boundary. The Commission should observe a Regulatory-Competence Boundary and confine its analysis to questions within its institutional competence as a derivatives regulator.

The Commission can assess objective settlement, market surveillance, financial integrity, manipulation risk, clearing, customer protection, and Core Principle compliance. It should not attempt to resolve broader questions of morality, cultural approval, or social value that fall outside its statutory expertise.

Question 19(d)

Data-First Demographics Principle. The Commission should apply a Data-First Demographics Principle: any assessment of who participates in prediction markets should be based on actual platform data, not speculation by parties that do not operate exchanges or clearinghouses.

Registered exchanges and comparable regulated platforms have customer information through onboarding, KYC, account records, trading records, and compliance systems. By contrast, commenters who do not operate these markets generally do not have reliable participant-level data and are necessarily making assumptions, extrapolations, or guesses.

Exchange-Data Superiority Principle. The Commission should apply an Exchange-Data Superiority Principle and give greater weight to data from exchanges and clearinghouses than to outside assertions about prediction-market users.

If the Commission wants to understand user age, geography, participation patterns, trading frequency, or other demographic facts, it can ask exchanges such as Kalshi or Polymarket for aggregated, anonymized data drawn from

their actual customer base. That information will be materially more reliable than claims from entities that are not responsible for onboarding customers, monitoring accounts, or operating the market.

No Demographic Dart-Throwing Principle. The Commission should reject a No Demographic Dart-Throwing Principle: predictions about who uses these markets should not be based on generalized impressions, moral intuitions, or unsupported assumptions.

The Commission should discount comments that make broad claims about user demographics without access to actual market data. This is especially important because demographic assumptions can easily become a proxy for policy preference rather than evidence-based regulation.

Evidence-Not-Assumption Standard. The Commission should apply an Evidence-Not-Assumption Standard and avoid generalized claims about prediction-market participation unless those claims are supported by reliable data.

The Commission has the ability to request relevant, aggregated information from regulated markets and to evaluate those data in a disciplined way. It should not substitute speculation for evidence when the relevant data exist and can be obtained from the platforms that actually operate these markets.

Question 19(e)

Public-Interest Scope Boundary. The Commission should apply a Public-Interest Scope Boundary: responsible-trading protections and related customer-protection measures should not be folded into the Section 5c(c)(5)(C) public-interest determination.

Those protections may be important, but they are analytically distinct from the question whether a particular event contract is contrary to the public interest under the enumerated-category review. Expanding the public-interest inquiry to include every adjacent customer-protection or responsible-trading consideration would make the inquiry unbounded and would risk turning a narrow statutory review into a general-purpose policy judgment.

Core-Principles Channeling Rule. The Commission should apply a Core-Principles Channeling Rule: if the Commission believes responsible-trading protections are appropriate, it should address them through the relevant DCM Core Principles and exchange compliance obligations rather than through the public-interest determination.

Nothing in this position means that the Commission lacks authority to require appropriate safeguards. The point is that the proper regulatory channel is market oversight, participant protection, disclosures, compliance, surveillance, access controls, or other Core Principle obligations, not the threshold public-interest determination under Section 5c(c)(5)(C).

Safeguards-Without-Expansion Principle. The Commission should apply a Safeguards-Without-Expansion Principle: responsible-trading safeguards may be appropriate without expanding the public-interest test beyond its statutory role.

The Commission can require exchanges to adopt reasonable protections where those protections fit within the CEA, Commission regulations, and the DCM Core Principles. But those protections should not become a basis for treating a contract as contrary to the public interest simply because the Commission believes additional customer-facing controls may be useful.

Question 19(f)

Edge-Is-The-Line Principle. The Commission should apply an Edge-Is-The-Line Principle: the relevant distinction is whether participants can have, or reasonably believe they have, meaningful edge about the outcome.

A regulated market exists to let participants express informed disagreement about uncertain outcomes. Where edge can exist, price can aggregate information, judgment, models, research, and risk preferences.

Pure-Chance Boundary. The Commission should recognize a Pure-Chance Boundary for activities where no participant can have meaningful edge over the outcome-generating mechanism.

A dice roll at a craps table, a spin of a roulette wheel, or the next number drawn in bingo does not involve informed disagreement about the underlying event. Those activities are materially different from sports or other prediction-market contracts where participants can analyze facts, statistics, incentives, conditions, and market prices to form differentiated views.

Market-Edge Distinction. The Commission should apply a Market-Edge Distinction between contracts that permit informed trading and activities that merely monetize random chance.

Sports event contracts involve uncertainty, but uncertainty is not the same as no-edge randomness. If participants can study the event and form a reasoned view that differs from the market price, the contract has the core characteristic that makes it suitable for market trading.

Question 20

Extraordinary-Circumstance Limitation. The Commission should apply an Extraordinary-Circumstance Limitation: any residual authority to identify other contracts as inappropriate for regulated trading should be reserved for genuinely extraordinary cases.

The fact that the Commission has authority to consider whether a contract is contrary to the public interest does not mean that the Commission has carte blanche to make broad judgment calls about which underlyings it likes or dislikes. The Commission should exercise that authority only where the contract presents a concrete market-structure problem that cannot be addressed through ordinary Core Principle compliance.

Market-Fit Inquiry. The Commission should apply a Market-Fit Inquiry: the relevant question is whether the contract can trade, clear, settle, and be surveilled in a way that fits the structure of a regulated derivatives market.

There may theoretically be contracts that do not fit well on a market because their terms are too subjective, their settlement is unreliable, their trading cannot be effectively surveilled, or their risks cannot be managed through exchange rules. But the Commission should identify those problems by objective market-function criteria, not by making generalized policy judgments about the underlying event.

No Carte Blanche Principle. The Commission should apply a No Carte Blanche Principle and avoid treating its public-interest authority as open-ended permission to prohibit contracts based on regulatory discomfort.

Congress gave the Commission a defined role, not a free-floating mandate to decide which lawful topics deserve markets. Unless a contract presents an extraordinary and objectively identifiable reason why it cannot function properly on a regulated market, the Commission should not use public-interest review as a substitute for market demand and Core Principle compliance.

Question 21

Invalid-Regulation Replacement Principle. The Commission should replace its existing regulations because the current rules are contrary to the statute, invalid, and entitled to no continuing weight.

Section 5c(c)(5)(C) establishes a review framework under which the Commission may determine whether particular contracts involving enumerated activities are contrary to the public interest. Existing regulations that convert that framework into a blanket prohibition do not faithfully implement the statute and should be rescinded and replaced.

Contract-by-Contract Requirement. The Commission should apply a Contract-by-Contract Requirement: the statute requires review of contracts based on their particular terms, underlyings, settlement mechanics, purpose, and market effects, not categorical prohibition of an entire subject area.

The existing regulations are invalid because they substitute a blanket ban for the individualized inquiry Congress provided. A contract-specific framework is especially important for event markets because contracts within the same broad category can differ materially in objective settlement, manipulation risk, informational value, market utility, and Core Principle compliance.

Public-Interest Determination Defect. The Commission should recognize a Public-Interest Determination Defect in the existing regulations because a blanket prohibition cannot stand without the public-interest determination required by the statute.

The statutory structure does not permit the Commission to skip the public-interest analysis and prohibit contracts merely because they relate to an enumerated activity. The existing regulations are therefore defective for two independent reasons: they impose a categorical ban rather than contract-by-contract review, and they do so without a valid public-interest determination.

Rescind-And-Replace Obligation. The Commission should follow a Rescind-And-Replace Obligation: because the existing regulations are invalid, the Commission should eliminate them and adopt a lawful, substantially better framework.

A replacement framework should conform to the statute by preserving the Commission's ability to review particular contracts where appropriate, while avoiding categorical prohibitions that exceed the statutory design. The new framework should be principled, objective, administrable, and tied to contract-specific public-interest analysis.