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May 5, 2026

Mr. Christopher J. Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street
Washington, DC 20581

Re: Advanced Notice of Proposed Rulemaking Relating to Prediction Markets (Release No. 9194-26; RIN 3038–AF65)

Dear Mr. Kirkpatrick,

Cboe Global Markets ("Cboe") submits these comments in response to the Advanced Notice of Proposed Rulemaking Relating to Prediction Markets. Cboe is grateful that the Commodity Futures Trading Commission ("CFTC" or "Commission") is assessing the regulatory framework applicable to prediction markets. This letter presents Cboe's viewpoint on how to address concerns related to prediction markets in a manner that fosters innovation while upholding market integrity and safeguarding investor interests.

Cboe is one of the largest derivatives networks in the world and has been at the forefront of product innovation for over 50 years. From pioneering listed options to developing the Cboe Volatility Index (VIX) and 0DTE options, Cboe has consistently introduced innovative products that have shaped the industry. Prediction markets and event contracts have recently emerged as a compelling area of innovation with the potential to enhance financial markets and provide unique insights into future events.

We are excited by this potential and intend to make our own unique contribution.[1] Our goal remains to build derivative markets that are, first and foremost, designed to support hedging and risk transfer opportunities. We believe that is what investors expect and deserve.

Trust in Markets

In 1936, Congress passed the Commodity Exchange Act. Since that time, Congress has continued to refine and expand the framework, but each time reaffirming that the purpose of

[1] Cboe Introduces Innovative Prediction Markets Framework, Expanding Choice Beyond Yes-Or-No Outcomes https://ir.cboe.com/news/news-details/2026/Cboe-Introduces-Innovative-Prediction-Markets-Framework-Expanding-Choice-Beyond-Yes-Or-No-Outcomes/default.aspx.

regulated derivatives markets is to serve the public interest and that the integrity of those markets must be protected against activities that undermine that purpose.

The stated purpose of the Commodity Exchange Act ("CEA") is to serve the public interest by "providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities"[2] and "to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants."[3]

Cboe has been building markets in support of this purpose for decades, and in our experience, investor trust is the North Star. Trust is foundational to serving the public interest goals enumerated in the CEA and a necessary component of every successful market. Trust means investors can rely on the transparency, operational resilience, and self-regulatory capabilities of the exchanges they access. Trust also means responsible innovation – that new products are introduced in ways that strengthen market integrity.

Unfortunately, certain practices of prediction markets are eroding investor trust and confidence and jeopardizing the legitimacy and future of prediction markets. Some prediction market platforms are designing contracts with ambiguous event determinations, adopting inadequate standards for making settlement determinations, offering contracts that infringe upon intellectual property rights, and offering securities on their platforms without the protections offered by the regulatory framework for securities. This is leaving investors at risk, and if allowed to continue, it will harm investor confidence in traditional markets, not just prediction markets.

Beyond those concerns, many prediction market platforms are offering event contracts that do not appear to be designed to serve any real economic purpose – no hedging function, no price discovery value, and no obvious nexus to underlying commercial relationships. If the existing regulatory framework – decades in the making – is repurposed for activities that bear little resemblance to the derivatives markets it was designed to serve, we may undermine the objectives of derivatives regulation. In addition, the resources and supervisory infrastructure necessary to build a new regulatory regime to regulate new types of activity should not be underestimated. This makes it all the more critical that the CFTC rigorously enforce existing jurisdictional boundaries – that the CFTC ensures securities are not available on CFTC-regulated platforms. It is not only what is legally required by Congress, but it is also necessary to allow the CFTC to focus on building a robust regime to oversee a new and evolving landscape.

[2] CEA section 3(a); 7 U.S.C. § 3(a).
[3] CEA section 3(b); 7 U.S.C. § 3(b).

There is no question that the full promise of prediction markets can only be realized if the regulatory framework builds investor trust. We believe trust can be established by developing products that serve clear financial or risk management purposes and pursuing a regulatory framework that promotes investor protections. This not only means ensuring securities are not offered on DCMs, it means enforcing rigorous product design standards that address risks of insider trading and manipulation. It is essential that regulatory efforts prioritize market integrity and investor protection, so innovation can flourish responsibly. In short, it calls for a renewed emphasis on the purpose of the CEA and the core principles applicable to DCMs to ensure market integrity and investor confidence remain at the center of prediction market development

Summary Recommendations

- Product Classification: Event contracts that are securities should be delisted from any DCM, and an internal process should be adopted that allows the CFTC to quickly determine in coordination with the SEC whether a self-certification implicates a security.
- Core Principles: Cboe emphasizes that all DCMs, including prediction markets, must fully comply with Core Principles to ensure fair and stable markets, particularly for retail traders. The section recommends the Commission provide clearer guidance on issues such as manipulation risks, insider trading controls, source agency integrity, settlement conditions, certification breadth, and the transparency of product filings to strengthen regulatory oversight and investor protections.
- Clearing: The Commission should consider whether leveraged, non-intermediated retail clearing of event contracts should be permitted. The Commission should also ensure that prediction market providers do not circumvent existing margin rules in order to finance leveraged trading of prediction markets.

Product Classification

Classification of Event Contracts as Securities

There is a common misconception that the CFTC has exclusive jurisdiction over all event contracts. While event contracts generally fall within the CEA's broad definition of "swap" — that definition is subject to critical statutory carve-outs that Congress expressly enacted to protect the jurisdictional integrity of the federal securities laws.

Specifically, the Commodity Exchange Act expressly provides that the CFTC shall have no jurisdiction over "any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities . . . including any group or index of securities, or any interest therein or based on the value thereof." CEA § 2(a)(1)(C)(i)(I). This provision operates in tandem with the Swap Security Exception in CEA § 1a(47)(B)(iii), which excludes from the

definition of "swap" any "put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof," where that instrument is subject to the Securities Act of 1933 and the Securities Exchange Act of 1934.

The SEC recently reaffirmed that if a financial instrument is excluded from the definition of a swap, it is neither a swap nor a security-based swap.[4]

> *To the extent a financial instrument falls into one of these exclusions, it is not a swap and, therefore, is not a security-based swap . . . Similarly, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act and the Exchange Act, is excluded from the definition of swap.*[5]

The result is unambiguous: event contracts whose payoffs are determined directly by the value of a security or securities index are options on securities — and therefore securities — subject exclusively to SEC jurisdiction.

Notwithstanding this clear statutory framework, CFTC-registered DCMs are currently listing and offering event contracts based on the value of securities and securities indexes. For example, DCMs are currently offering for trading event contracts whose payoffs are tied directly to the closing value of broad-based securities indices, including the S&P 500 Index and the Nasdaq 100 Index. These contracts are, in substance and law, binary options on securities indices — instruments that the SEC has reviewed, approved, and regulated as securities on registered national securities exchanges for many years.

We believe the CFTC should exercise its authority to require the delisting of any event contract security currently trading on a CFTC-registered DCM. The statutory basis for this action is clear, and the CFTC itself acknowledges that the SEC has jurisdiction over certain event contracts associated with potential financial, economic or commercial consequences.[6]

Beyond addressing the existing listings, we also recommend the CFTC adopt a formal internal review process to ensure that all future DCM product certifications are evaluated for potential securities law implications before trading may commence. Going forward, any product certification that involves a contract that may be a security, the product should be subject to enhanced review – including mandatory interagency consultation with the SEC – prior to becoming effective. Where that review determines that a proposed contract is a security, the

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[4] Div. of Corp. Fin., Div. of Investment Mng't, Div of Trading and Markets, Statement on Tokenized Securities, Securities and Exchange Comm'n (January 28, 2026) https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826-statement-tokenized-securities#_ftn25.

[5] *Id*.

[6] *See Prediction Markets*, 91 Fed.Reg. 12516, 12517 (March 16, 2026).

certification should be denied in accordance with the CFTC's existing authority such as for submitting a false certification.

Continued trading of these instruments in the CFTC ecosystem exposes retail investors to the very harms the federal securities laws were designed to prevent — including inadequate disclosure, insufficient anti-manipulation and insider trading safeguards. Even if the CFTC believes its framework offers adequate investor protections, the reality is that every day these contracts continue to trade on unregistered platforms is a day retail investors are denied the specific investor protections to which they are entitled by law.

Classification of Event Contracts as Futures or Swaps

The Commission has recognized both in the ANPRM and in the recent Staff Advisory on Prediction Markets that event contracts can be futures or swaps,[7] and Cboe agrees.

There is no "bright line" between futures and swaps set by law, rule, regulation, order, or court precedent. Rather, a DCM has flexibility to determine, in compliance with the CEA and Commission regulations, whether a new product, including an event contract, is to be listed as a future or a swap, and if a DCM has a view that a particular product is a future or a swap, it may self-certify the contract consistent with that view.[8] Permitting the certification of event contracts that can trade as futures and those that can trade as swaps (in compliance with the CEA and Commission regulations) serves the Commission's goal of fostering responsible innovation in the event contract space and creates opportunities for DCMs to design new and innovative offerings providing a variety of benefits to market participants.

Core Principles Compliance

Cboe recognizes that where the Commission has not adopted specific requirements, DCMs have reasonable discretion to determine how to comply with the Core Principles.[9] The Core Principles themselves, however, apply equally to all entities registered with the Commission as DCMs - there is no alternate or less onerous set of Core Principles that apply to prediction markets or any other subgroup of DCM. Notably, the majority of market participants on prediction markets are retail traders. This being the case, it is very important that the

[7] *See Prediction Markets*, 91 Fed.Reg. 12516, 12517 (March 16, 2026) (noting that event contracts can fall within the CEA's definition of swaps and may also be listed as futures); Div. of Market Oversight, CFTC Staff Advisory on Prediction Markets, Commodity Futures Trading Comm'n (March 12, 2026) https://www.cftc.gov/PressRoom/PressReleases/9193-26 ("depending on how a product is structured, an event contract may constitute a futures contract or a swap under the CEA").

[8] *See Further Definition of "Swap," "Security-Based Swap, and "Security-Based Swap Agreement; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 Fed. Reg. 48208, 48303 (Aug. 13, 2012).

[9] CEA section 5(d)(1)(B); 7 U.S.C. § 7(d)(1)(B).

Commission ensure that prediction markets fully comply with Core Principles to ensure fair, stable markets, adequate disclosures, and robust investor protections for these retail traders.

Susceptibility to Manipulation

To adequately protect participants on prediction markets, Cboe respectfully suggests that the Commission provide additional guidance as to the application of DCM Core Principle 3 (Contracts not Readily Susceptible to Manipulation) to prediction markets. The Commission sets forth guidance for compliance with Core Principle 3 in Appendix C to Part 38 of the Commission's regulations ("Appendix C"). While Appendix C, especially the guidance directed at futures contracts settled by cash settlement (Appendix C section (c)), can be analogized and applied to event contracts, it is often an imperfect fit and does not directly cover certain manipulation concerns unique to event contracts.

Staff of the CFTC's Division of Market Oversight issued a Prediction Markets Advisory on March 12, 2026 that, while somewhat focused on sports-based contracts, provides thoughtful guidance on the general application of Core Principle 3 to prediction markets.[10] Many of Cboe's concerns are reflected in this Advisory, and Cboe supports incorporating similar guidance into Appendix C.

Insider Trading Controls

Cboe suggests that the Commission provide guidance as to the content of exchange rules prohibiting insider trading necessary for compliance with Core Principle 3. Further, Cboe suggests that the Commission set forth guidance requiring that an exchange have in place reasonable programs to monitor for compliance with and enforce those rules pursuant to Core Principle 2.[11]

Source Agency Integrity and Settlement Conditions

Event contracts utilize a wide variety of source agencies (i.e., data sources on which contract settlements are based), many of which differ significantly from source agencies utilized in traditional futures contracts. The Commission should provide guidance for identifying credible and reliable source agencies for event contracts traded on a DCM. Further, Cboe suggests that the Commission consider guidance suggesting that each DCM clearly define and communicate the settlement conditions for each event contract, including, as noted above, the specific source agency(ies) to be used for settlement and specific settlement conditions. Where possible, settlement conditions should aim to anticipatorily address any potential ambiguities in outcome, but in any case, they should clearly communicate what actions may be taken in the event of

[10] Div. of Market Oversight, CFTC Staff Advisory on Prediction Markets, Commodity Futures Trading Comm'n (March 12, 2026) https://www.cftc.gov/PressRoom/PressReleases/9193-26.
[11] CEA § 5(d)(2); 7 U.S.C. § 7(d)(2).

unexpected circumstances interfering with settlement, such as unexpected ambiguity or delay with respect to the underlying event. It would be beneficial if the Commission provides guidance addressing how these circumstances can be best addressed fairly and efficiently.

Identify Higher Manipulation Risk Contracts

Cboe suggests that the Commission identify categories of contracts that carry an inherent heightened potential for manipulation or price distortion. These contracts may include those where a single person or small group of people, especially those without confidentiality obligations, can control the outcome of the contract and where, often as a result, insider trading may be difficult to identify.

Breadth of Certifications

Appendix C also serves as guidance as to what information must be included in a request for product approval or product certification pursuant to Commission Regulations 40.3 or 40.2, respectively. Many prediction markets file product certifications that are broader than a single contract question or single underlying. Prediction markets most often list large numbers of contracts including many varieties of similar contract questions on the same or closely-related underlyings, and Cboe supports the Commission providing flexibility to submit a single product certification or request for product approval encompassing multiple contract questions or multiple related underlyings. This approach supports responsible product innovation and provides flexibility that helps ensure the efficient use of Commission resources.

However, the Commission should set reasonable parameters regarding limitations on the breadth of product certifications such that the certifications still serve their intended purpose. That is, a certification must still be narrow enough to provide the Commission and market participants with adequate notice of the terms and conditions of the relevant product(s) as well as an analysis of compliance with the Core Principles, especially Core Principle 3,[12] such that market participants may "make educated choices when selecting products to trade and platforms on which to trade these products."[13] If a product certification includes too broad a set of contract questions or unrelated underlyings, it may not be feasible for a DCM to provide a single and adequate analysis of the relevant products' susceptibility to manipulation.

Confidential Product Certifications

As noted above, product self-certifications should be public, detailed, and reviewable so that market participants can assess design quality, conflicts, and risk. Currently, the majority of event contract filings are submitted with key elements inaccessible to the public. Transparency is not

[12] A product filing must include an analysis of the product's compliance with the CEA, including the Core Principles for DCMs. 17 C.F.R. § 40.2(a)(3)(v); 17 C.F.R. § 40.3(a)(4).
[13] Provisions Common to Registered Entities, 89 Fed.Reg. 88594, 88601 (November 7, 2024).

an obstacle to innovation. It is a safeguard that improves design quality, highlights conflicts, and strengthens confidence in emerging markets.

Product certifications serve the dual purposes of providing information regarding the product both to the Commission and to market participants who may be interested in trading the product. The Commission itself has stated:

> *When a DCM or SEF files a product self-certification submission with the Commission pursuant to §§ 40.2, 40.2(a)(3)(vi) requires the DCM or SEF to post a copy of its § 40.2 submission on its website, including a copy of the rules that set forth the contract's terms and conditions as required by § 40.2(a)(3)(ii) as well as the concise explanation and analysis that is complete with respect to the contract's terms and conditions, the underlying commodity, and the product's compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder as required by § 40.2(a)(3)(v). By including this information in the § 40.2 submission, the DCM or SEF makes the information accessible to market participants and the public. Access to the information enables market participants to make educated choices when selecting products to trade and platforms on which to trade these products*.[14]

Product certifications with overly-broad confidentiality assertions fail to fully serve this important purpose.

A product self-certification is presumptively public,[15] and while exemptions exist, the Commission should ensure that the self-certification process cannot be abused by asserting exemptions over information and analyses that are intended to be public. Cboe suggests that the Commission both provide guidance regarding what information in product filings should be public and, where product filings contain overly broad confidentiality treatment, institute proceedings to make the improperly concealed information available to market participants and the public.

Clearing Considerations

As Cboe previously stated,[16] Cboe has particular concerns regarding the direct retail clearing of event contracts, especially where those contracts are offered on a leveraged or margined basis without FCM intermediation. The FCM-intermediated model exists precisely to provide an important layer of risk management. Where direct retail clearing displaces that intermediation, those functions must be performed by the DCO. If a DCO steps into that role without being subject to the full complement of FCM obligations, the result is a degradation of investor

[14] *Provisions Common to Registered Entities*, 89 Fed.Reg. 88594, 88601 (November 7, 2024).
[15] 17 C.F.R. § 40.8(c).
[16] *See* Letter from Patrick Sexton, Cboe Global Markets, Inc., dated February 27, 2026, available at https://cdn.cboe.com/resources/government_relations/Cboe-Response-CFTC-Direct-Retail-Clearing-RFC.pdf.

protections and a material competitive distortion that disadvantages FCMs who bear those compliance costs — ultimately risking a reduction in the number of FCMs and the systemic risk management benefits they provide.

The Commission should therefore carefully consider whether leveraged, non-intermediated retail clearing of event contracts — or any margined derivatives product — should be permitted at all. The burden rests squarely on any DCO seeking to offer such a model to affirmatively demonstrate, through rigorous and transparent analysis, that adequate risk management mechanisms are in place and that there will be no significant unintended consequences for customers, FCMs, DCOs, and the broader market.

Additionally, Cboe has concerns about the potential extension of leverage – sometimes referred to as "margin" but fundamentally different from DCO margining – in connection with the retail trading of event contracts. Specifically, Cboe is concerned that some prediction market providers may seek to circumvent existing rules by allowing retail customers to obtain leverage outside of DCO margining by offering financing to participants to fund their trading of event contracts. In practice, this would mean that what appears to be a fully-collateralized event contract to the DCO or FCM would not in fact be collateralized – at all or to a minimal degree. The CFTC, recognizing the risks that this type of lending introduces to the system, does not permit FCMs to loan funds on an unsecured basis to finance customer trading.[17] Cboe expects that as a result, prediction market infrastructure providers may seek to provide financing through third-party lenders – potentially those that are affiliates of the prediction market provider in a vertically-integrated system – that are not FCMs.

Extending credit through a third-party lender rather than an FCM does not avoid adding risk to the system, it only moves the potential point of failure. The amount of leverage offered would be unconstrained by the limits to DCO margining under CFTC Regulation 39.13 and could reach levels that would have major customer protection implications. In addition, if the credit extended to customers was dependent on the value of customer positions, market moves could lead to position liquidations, particularly in a highly leveraged environment, that could impact market integrity. As a result, Cboe believes that the Commission should make clear that the provision of this type of leverage to retail customers is not permissible.

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[17] *See* CFTC Regulation 1.30, 17 C.F.R. § 1.30.

Thank you for the opportunity to share our perspective. We welcome any questions and look forward to providing additional feedback in the future.

Sincerely,

s/Patrick Sexton

Patrick Sexton
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Cboe Global Markets, Inc.