

January 11, 2012

Via CFTC Electronic Submissions Portal

Mr. David Stawick
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st Street, N.W.
Washington D.C. 20581

**RE: Industry Filing IF 12-003
90-day Review of NADEX's Proposed Political Event Derivatives Contracts**

Dear Mr. Stawick:

This comment is submitted on behalf of North American Derivatives Exchange, Inc.

In connection with the Commodity Futures Trading Commission's review of its proposed political election contracts, Nadex looks forward to reviewing any public comments that may be submitted and will, if necessary, file a submission to address issues raised in such comments after the public comment period has closed. As part of the public comment process, however, Nadex suggests that one of the questions posed by the Commission appears to incorrectly frame the provisions of Commission Regulation 40.11(a)(1).

Specifically, Question 2 states:

2. Commission Regulation 40.11(a)(1) states DCMs shall not list for trading or accept for clearing any contract that is based upon an excluded commodity, under CEA Section 1a(19)(iv), that "involves, relates to, or references . . . an activity that is unlawful under any State or Federal law." Are any of Nadex's proposed contracts considered unlawful under any State or Federal law?
Please identify any relevant statutory or regulatory provisions. (underline added)

The underlined portion of the question asks whether “any of Nadex’s proposed contracts [are] considered unlawful under any State or Federal law.” The issue framed by section 40.11(a)(1) of the Regulations and Section 1a(19)(iv) of the CEA, however, is not whether the proposed contracts themselves are considered unlawful, but rather whether any of Nadex’s proposed political contracts “involves ... an activity that is unlawful under any State or Federal law.” The distinction is important. The activity that is the subject of the contracts is the election of the President of the United States or a majority of the members of the U.S. House of Representatives and the U.S. Senate. Clearly, these activities are not unlawful under State or Federal law.

This reading of Commission Regulation 40.11(a)(1) becomes even clearer when the entire text of the phrase is examined. That Regulation states in full:

(a) Prohibition. A registered entity shall not list for trading or accept for clearing on or through the registered entity any of the following:

(1) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law; ...

The prohibited “excluded commodities” that a contract may not involve, relate to, or reference are terrorism, assassination, war, gaming or an activity that is unlawful. Hence, the phrasing of Question 1 in the Commission’s list of questions correctly frames the issue with respect to possible “gaming”. Question 1 is phrased as follows:

1. Commission Regulation 40.11(a)(1) states DCMs shall not list for trading or accept for clearing any contract that is based upon an excluded commodity, under CEA Section 1a(19)(iv), that “involves, relates to, or references . . . gaming.” Do any or all of Nadex’s proposed contracts involve, relate to, or reference gaming? If so, in what way? (underline added)

By simply replacing the word “gaming” with the phrase “an activity that is unlawful under any State or Federal law”, the appropriately phrased question for Question 2 would be “Do any or all of Nadex’s proposed contracts involve, relate to, or reference an activity that is unlawful under any State or Federal law?” Again, Nadex strongly believes that the election of the President or members of Congress cannot be considered an activity that is unlawful.

Nadex appreciates the opportunity to submit this Comment and looks forward to reviewing the Public Comments with respect to its proposed political contracts.

Should you have any questions regarding the above, please do not hesitate to contact me.

Sincerely,

/s/ Timothy G. McDermott

Timothy G. McDermott
General Counsel

cc: Tom Leahy – CFTC
David Van Wagner – CFTC
Ali Hosseini – CFTC

Yossi Beinart – Nadex