

**From:** D. T.

**Organization(s):**

Individual

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**Comment Text:**

I thank the Commission for considering my comments. I understand that as a basic tenet of the APA, once the Commission has requested comments, that the Commission will give full consideration to the comments. Accordingly, while the comments on ErisX's RSBIX contracts were not accepted, I am sure that the comments here will be considered fully.

The comments on this submission have been robust and have run the gamut from legal analyses to personal evidence. The public that has given you its evidence range from individual retail traders who explained how their risk profiles are directly affected by elections to billionaires who explain that their risk profiles are directly affected by elections. This shows the truism that the Commission's questions, perhaps unintentionally, seem to miss; elections are a universal risk to all Americans regardless of socio-economic status. They are an indiscriminate impactor, although some commenters have convincingly argued that the impact of election risks is more acutely felt by retail, individuals, and minority communities without traditional access to financial markets. Others have also noted that the impacts of elections are not limited to policy outcomes and what the elected officials say they will do (which impacts risk regardless of what they actually do). Elections have significant impact on the industrial political complex that makes it's living from the process of elections, not the policy. The comments have also inspired people to weigh in with their belief that all the aforementioned people are lying, an assertion that is plainly ridiculous and likely made without thinking; after all, if commenter x says she will use the contract for hedging, and comment y says "no one will use the contract for hedging", commenter y is calling commenter x a liar. What commenter y likely means is that she herself will not use the contract for hedging, and that she cannot imagine how anyone's life could differ from her own. Such is the state of implicit bias in America, right? It is unfortunate, but tempting nonetheless to fall in the trap of believing that "everyone is exactly like me." I suppose it's better than hating everyone who is different (or are the two related?)

Regardless, the Commission has been handed a trove of evidence about hedging and price basing utility. The Commission has been gifted views on the

public's interest in the data that is much more than mere conjecture, but actual tales of actual use, or what others might, in lighter moments call "data." Speaking of data, the Commission was also handed a powerful restorative from its erstwhile fear of pernicious vote switching. That fear was dubious when announced, as it assumes a great many things, including that we, the public, had such a clear grasp of the Commission's thought process it would not do anything to the discussion to describe it. I, unfortunately, was not invited to sit with the cognoscenti at the Commission's Algonquin and was left in the dark ages of my boomer common sense. This fog surrounding me makes me wonder the following: why, of all things, is vote switching a concern? If anything, the contract would result in more people voting along their political beliefs than without it! After all, people already have economic exposure to politics and elections. For example, a person has a job in an industry that is subject to disparate treatment by different candidates. Her political beliefs may align much more often with the candidate that is worse for her industry (she might detest herself for working in this industry, but what can you do, it's a living!) She might even find herself voting for the candidate that she disagrees with 99% of the time, simply because he is better for her job. But if she could hedge that risk, it would allow her to vote in line with her political beliefs. Quite the opposite of the Commission's fear. I assume that the biggest assumption that the Commission made way back when was actually two. First, the Commission assumed that the world is binary. You either agree with a candidate 100% all the way or not at all. Second, the Commission assumed that no one has any economic exposure to elections, and the contract, that pesky contract, is what would first introduce the fakakta (excuse my language) idea that people actually have economic exposure to elections. Well, thankfully in the single long decade (2016-2020 seemed like at least two decades, right?) since then, a lot has changed. I'm sure the Commission, diverse as it is now, understands better the reality that many of us face, which is that very often no single elected official or political party actually fully represents all of our personal views. The non-binaryness of this should not scare anyone. Welcome to the 2020s. And the impact that elections have on each one of our wallets, well that's also a secret no longer. Someone told reddit, and it just spread like wildfire from there. There is a man in the tower with a pretty strong view of climate change and the impacts that it can have on each of us. I think it would be pretty clear to a democratic commission and the good folks on the Hill that elections impact climate change, and using that old transitive property, elections impact everyone. In any event, the Commission can rest easy because it must resort to conjecture no longer. It has been presented with evidence, and evidence that is cogent and compelling. Election contracts have been around long enough that the grand total of zero instances of the Commission's fear

coming true is not a “no result” it is a “negative result” and we can safely say that this concern, noble as it was, has not materialized. Never let conjecture trump data.

In addition to all this, there is a point of statutory analysis that seems to have escaped notice in the brouhaha of public interest, voting, and whether pork bellies are the theoretical equivalent of the front seven in a super bowl (think Washington Commanders back in the 80s, not the Razorbacks) according to the colloquy of Senators Lincoln and Feinstein (hint: there is a 0% chance that they were thinking this deeply about it.) And that is, Congress actually did give the Commission exactly what it needs to administer this provision, despite the serial habit of asking for the public’s input on this issue. The directive from Congress, cleverly disguised as a statute, is actually not that bad, as statutes go (so somewhere more comprehensible than Hamlet, shorter than War and Peace, less entertaining than the Hitchhiker’s Guide to the Galaxy, less lyrical than A Year in Provence, less wise than Jeeves and Wooster, and less rhymey than Dr. Seuss). And its meaning is clear. The question of whether a contract involves an activity is limited to whether the underlying “occurrence” involves the activity. A simple reading (read simple as in “not trying to contort and manipulate words to take advantage of the inherent malleability of language to be contorted into saying whatever the heck I want it to say), or should I say, an honest reading, is all it takes. Sit back, without any preconceived notions, and relax. If you’re like me, you’ll fall asleep, but when you wake up you will be refreshed and able to take a new look at the statute. You will see it is obviously this way. It is not ambiguous, it is simply what Congress wrote. The Commission should take an honest look at what the statute says. Squeezing it enough, or glancing at it through half shut eyes to create an ambiguity where none exist is not cricket.

I also note that the Commission has a checkered past (which is a nice way of saying a really bad track record) when it comes to providing explanations for its actions. Just look at the four actions it’s taken in event contracts:

- a. Nadex
- b. ErisX
- c. PredictIt
- d. Kalshi (asking for public comment)

In Nadex, the public was treated to nothing more than a string of loosely correlated and unsupported conclusions. In ErisX, the CFTC was treated to an exquisite dish of nothing, and had not Commissioners Quintenz and Berkovitz ridden (or rode?) into the breach, and more or less spilled the beans, the public would have known nothing (including those who commented). In PredictIt, the

CFTC said nothing more than its conclusion that there were violations (yes, we'll be breaking out the popcorn to watch this one unfold. Have fun in the Western D of Texas!) In Kalshi, though, the CFTC broke from tradition and gave a cacophonous retort to Commissioner Pham's dissent, cogently explaining why the public should NOT be concerned that the agency that is trying to get crypto is breaking the law and violating the CEA by doing an illegal stay . . .or not. Actually, the silence was exquisite and no doubt the Commission feels itself above the need to explain anything to the public, after all, it is the public who should be explaining to the CFTC. Whatever, just pipe down and crypto will be ok, OK? It is hardly in the public interest, something that the CFTC seems pretty interested in, to act like this. If I sound bitter at this point, please don't let my tone fool you, I am not. In fact, I write in rapture, and I want to assure you, that I don't take my right and ability, and perhaps my duty, to publicly note the minor failings of a federal agency for failing to administer its duties appropriately lightly. This is a golden right, and one that we should treasure.

In an age of concerns about the legitimacy of some of our most hallowed institutions, I cannot but feel confident that the good folk in the CFTC reading this comment will appreciate the points I am making and not trash my comment simply because it points out the CFTC's flaws or is slightly whimsical. That would not only be illegal and wrong, it would be hypocritical because that would of course undermine the public's faith in the public comment process and ultimately, this kind of dismissive behavior of critical comments, would lead be delegitimizing.

I think that in this case it behooves the Commission to pay close attention to the data from the comments regarding how the contracts will be sued to hedge. This is because the questions, could be read to indicate that the Commission does not think that elections, in fact, actually impact people. That might sound so unlikely as to be dismissed as hyperbole, but such a luxury is to be denied. For the reading of the questions is rather clear, and the question implies that there is at least doubt as to the answer . . . That is a slightly surprising stance from a body that is part of the elected government. Certainly elections impact the Commission! And they impact us common folk too! This is actually something that I assume Commissioner Johnson will have some strong thoughts on because of her announced upcoming meeting on retail traders. I certainly hope and urge the Commissioner to resist some paternalistic tendency in the regulator to make choices on behalf of the retail trader. The CFTC's view of what my risks are, and how I should hedge them, are not better than my views. If you want to increase access to the financial markets, and raise the awareness of financial markets and tools in inner cities and brown and black communities that have

traditionally been locked out of the markets, don't perpetuate the problem. There is nothing that would help right that wrong more than these contracts which will also help to energize voter engagement and education. These are all goals clearly within the public interest and I urge you to throw your full support behind these contracts.

Finally, I close with a point on fairness. PredictIt would have continued on its merry way but for some unnamed violation(s) (we have no clue if it's a singular or plural). How would that be fair? How would that be encouraging competition? It's a bit astounding actually. Why wouldn't the CFTC WANT this activity to happen on exchanges? Is it worried it will be associated with something sordid, and by withholding its imprimatur it can avoid the stench? But have these markets stunk? Or have they blossomed like a rose? And doesn't unfairness, fundamental unfairness such as letting this activity happen off exchange but not on exchange, stink worse? And speaking of that, this mid-terms, it cannot be forgotten, WILL have election contracts traded regardless of what the CFTC does with Kalshi. Sure, there are concerns about winding down contracts, etc. etc. etc. but is there something more there? I like to think that there are those in the Commission who have taken that step back, taken a deep breath, and had the moral fortitude to take a fresh look at the statute, the data, and the obvious and compelling public interest in these contracts. These brave ones are the ones with vision, who are the true leaders in the regulatory world. I hope this view spreads, and I urge the Commissioners to take an honest look at the statute, an honest look at what everyone has said in the comments, and not get stuck by what was or ancillary other interests that should not even be part of the discussions on these contracts. Because the statute is clear, the data is clear, and public interest for these contracts is clear.

Thank you very much!