

From: Douglas F.
Organization(s):

Comment No: 70772
Date: 9/25/2022

Comment Text:

I am an attorney with a practice that focusses on administrative law. I generally support the public's involvement in administrative matters, and I would ordinarily thank the CFTC for inviting comment from the public on this matter. However, in this case, I cannot. Admirable as the sentiment of "let's hear from the public" doubtless is, I, and I imagine many of the public, generally prefer that federal agencies follow the law.

In this case, the law is clear. A stay under 7 U.S.C. 7a-2(c)(5)(C) and 40.11 is not allowed, and violates the basic statutory provision in chapter 7 of the U.S. Code that requires the CFTC to approve all contracts that comply with the statute and the regs. The statutory framework is clear. This point has been covered by a number of commenters on this action. It was also covered accurately by two commissioners at different times. Because the CFTC's last two go arounds on this contract was rather, for lack of a better word, "sparse" on reasoned analysis, I thought it would be helpful to actually adopt, as my own, the reasoning from these two statements (yes, people actually do read dissents and statements from the Commissioners! Keep them coming.)

Accordingly, for the purposes of the APA and the record before the CFTC as you perform your statutory obligation to approve or prohibit this contract, in response to their request for public comment, I call your attention to the analysis in Commissioner Pham's dissent here and to Commissioner Quintenz's statement on ErisX RSBIX NFL Contracts. In addition to my interest in administrative law, I care about the environment, a care that I know is shared deeply with the Chairman and members of CFTC (kudos for your work on this!). Accordingly, I will eschew attaching their statements on the assumption that there are at least several people in the CFTC who will have all comments and attachments printed unnecessarily. Instead, I provide links to them. However, please note, that my decision to provide a link to the CFTC's own website does not mean that the substance is not somehow removed from the record and does not have to be considered under the APA. There is no such rule.

The link to Commissioner Pham's dissent is here, and I adopt the analysis there as my comment to you. <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement082622>

The link to Commissioner Quintenz's statement is here, and I adopt the analysis there as my comment to you. <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement032521>