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Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20036

RIN No. 3038–AF14

Dear Mr. Kirkpatrick:

Nasdaq, Inc. ("Nasdaq")[1] appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission'") Request for Comment ("RFC") on the notice of proposed rulemaking regarding event contracts in CFTC regulated markets. Nasdaq supports the Commission's efforts to formalize the rules regarding event contracts but suggests incorporating certain changes to the proposed rule. In particular, Nasdaq believes political event contracts ("PEC") are not a form of gambling and as such, Designated Contract Markets ("DCMs") should be allowed to list such contracts for trading pursuant to §40.11 of the Commission's Regulations. Nasdaq appreciates the thoughtful series of questions included in the RFC and submits the comments below with the intent of aiding the Commission in appropriately regulating event contract markets in the United States. We look forward to ongoing engagement with the Commission as it considers adopting policy in this space.

As a preliminary matter, Nasdaq would like to voice its support for the Commission's overall proposal to exclude event contracts that involve terrorism, assassination, war, and illegal activities. Nasdaq agrees with the Commission that event contracts focused on these topics are contrary to the public interest and should be prohibited from being listed on a DCM. In the context of gaming, Nasdaq also believes that the proposal to exclude event contracts is appropriate and that it would be best to allow state gaming regulators to continue to exert jurisdiction in this space. Nasdaq disagrees however, with the Commission's proposal to include PECs within the definition of gaming. For the reasons outlined below, Nasdaq suggests the Commission revise its proposed rule and allow for the listing of such contracts on DCMs. Nasdaq believes allowing the listing and trading of PECs will enhance the public interest by providing valuable insight into the state of the political environment in the United States and abroad. PECs will also benefit from the system of federal regulation that CFTC would provide in this marketplace.

PECs are contracts that pay out based on the outcome of an election, or the occurrence or non-occurrence of an event related to a political event. PECs can serve as a valuable source of information for policymakers, analysts, journalists, and the general public, as they reflect the aggregated beliefs and expectations of market participants and members of the voting public. PECs can also provide incentives for information discovery and dissemination.

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1 Nasdaq (Nasdaq: NDAQ) is a S&P 500 global technology company serving the capital markets and other industries. Our diverse offering of data, analytics, software and services enables clients to optimize and execute their business vision with confidence.

PECs have been traded on various platforms, such as PredictIt, Iowa Electronic Markets, and Betfair, for many years, and have attracted significant attention and participation from the public. PECs can offer a useful tool in analyzing elections and other political phenomena, as they can complement traditional sources of information, such as polls, surveys, and expert opinions. Furthermore, PECs possess certain characteristics that make them better suited to predicting the outcome of a given election than alternative sources of information. For example, most PEC markets operate on a continuous basis with price formation taking place through the purchase and sale of contracts throughout the election cycle by a large number of market participants. The price discovery that takes place through this process is based on a large pool of data and therefore a sound representation of the sentiment of the voting public. In contrast, a poll of potential voters can be influenced by the questions asked by the polling entity, the number of individuals polled and the public sentiment at the specific time the poll was conducted. PEC markets on the other hand represent public opinion on an ongoing basis and incorporate all publicly available information about the election in real-time.

There is empirical data supporting the position that the PEC markets provide a better forecast of election results than polling. While there is a positive correlation between PEC results and polling outcomes, data suggests that PECs provide a more accurate assessment of voter sentiment of real-time developments during the election cycle and are better at forecasting the winner as the election draws closer.[2] Research also suggests that event contracts in general produce accurate and reliable forecasts due to three factors. The market mechanism itself is an algorithm for aggregating information; there is a financial incentive to be truthful when trading in contracts in order to reap the benefits of operating under correct assumptions; and the existence of the market provides incentives for discovering new information and trading based on that information.[3] It is notable that these factors are not present in polling. Research also suggests that event contracts are difficult to manipulate.[4]

The Commission should also consider that PECs do not possess certain core characteristics that are found in gaming contracts and for that reason, should be allowed to trade on CFTC regulated markets. Unlike gaming contracts, PECs serve a broader purpose than merely providing a means of entertainment for the trader of the contract. As noted above, PECs are a form of information aggregation and expression that provide a means of determining voter sentiment. The trading volume, change in value of individual contracts and open interest throughout the lifecycle of the election, allow political and social scientists to assess the current and future state of the political environment in the United States. PECs do not involve the same social harms or negative risks as gaming, such as addiction, crime, or corruption. On the contrary, political event contracts can promote civic engagement, political literacy, and public discourse.

Nasdaq would also like to note that allowing for the listing and trading of PECs will bring transparency to the market and allow it to operate under a unified umbrella of national regulation. Relegating PECs to the purview of individual states will have multiple drawbacks. First, it will prevent residents in certain states from participating in these markets since gaming is not legal in all fifty states. Second, dividing the same PEC across multiple states will reduce the trading volume and market participants for identical contracts thus reducing the benefit obtained by allowing large pools of market participants, and the resulting data their trading produces, to trade within one market. The true value of data obtained from any individual PEC comes in large part from the aggregation of large pools of data associated with the trading in a single, national market. Dividing an election into dozens of individual

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2 Hailey Lynn Leister, Prediction Marvets vs. Political Polls: Forecasting Election Outcomes (2024).

3 Erik Snowberg, Justin Wolfers, Eric Zitzewitz, Prediction Markets for Economic Forecasting (2012).

4 Id at 11, citing multiple studies suggesting prediction markets are difficult to manipulate.

markets will limit the value and accuracy of the data from any individual market within a given state.

We would further note that the Commission should place certain limitations on PECs, as it does with other commodity markets, to mitigate the potential for manipulation, price distortion and disruption, excessive speculation and other related market abuses. Nasdaq believes clearly defined position limit rules and/or accountability regimes when trading in a specific market are prudent regulatory tools to ensure a well-functioning and transparent PEC market. Additionally, individual trades in PECs could have specific dollar limits as an additional mechanism to prohibit manipulative and fraudulent behavior. Position limits can further be defined for individuals and bona fide market makers subject to certain obligations. We believe the above is in the public interest and will benefit prediction markets.

For the foregoing reasons, we recommend that the Commission adopt a clear and consistent definition of event contracts that excludes PECs from the scope of gaming or wagering. We believe that regulating event contracts, especially PECs, will bring many benefits to the marketplace and the political discourse in the United States. Regulation will provide legal certainty and legitimacy to PEC markets and platforms, which will encourage innovation and competition. Regulation will also enhance transparency and accountability, which will reduce fraud, manipulation, and abuse.

We thank the Commission for its leadership and vision in proposing a regulatory framework for event contracts. We hope that our comments and suggestions will be helpful in the finalization and implementation of the rulemaking. We look forward to working with the Commission and other stakeholders in developing and promoting event contract markets and platforms.

Sincerely yours,

Kevin J. Kennedy

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