ForecastEx

August 8, 2024

BY ELECTRONIC SUBMISSION

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

Re: Event Contracts in Certain Excluded Commodities

ForecastEx LLC ("ForecastEx") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") proposed rulemaking concerning event contracts in certain excluded commodities. ForecastEx is a Designated Contract Market ("DCM") and Derivatives Clearing Organization ("DCO") that lists Forecast Contracts, which are a subset of event contracts, on macroeconomic and climate events.

ForecastEx is supportive of the Commission's goal to increase the transparency surrounding the listing of event contracts by creating rules that clearly define what types of contracts are prohibited under Section 5c(c)(5)(C) of the Commodity Exchange Act ("CEA"). Such rules are long overdue and can help registered entities by providing clear standards that can guide their decision-making processes. However, as proposed, the CFTC's revisions to 40.11 do not accomplish this goal, but instead make the regulatory environment more opaque for registered entities.

The Commission's proposal appears to be focused on achieving two things, prohibiting election-related contracts and reducing the amount of resources that the CFTC devotes to reviews. In their effort to prohibit contracts related to elections, the Commission is pursuing overly broad interpretations of statutory language related to the terms "involve", "gaming", and "activity unlawful under federal or state law." While the proposal may achieve the Commission's short term goal of banning election contracts, it will come at the expense of a consistent, clear, and well-supported regulatory regime surrounding the listing of event contracts. Given this potential to stunt the growth of a new and innovative market, ForecastEx cannot support the Commission's proposal. A comprehensive regime surrounding event contracts is needed, but this proposal is not it.

To be clear, ForecastEx is not commenting on the merits of election contracts. Instead, ForecastEx is deeply concerned by the process through which the Commission is going about its prohibition. Event contracts are a new and developing field of products, and ForecastEx suspects that the Commission has not yet fully evaluated or considered all of the potential consequences of this rulemaking. As a self-regulatory organization that has been solely focused on event contracts for close to three years, ForecastEx believes it may be uniquely suited to comment on these downstream consequences. ForecastEx hopes that its comments will be helpful to the Commission as it attempts the complicated task of regulating this innovative category of products.

I. Contracts that "Involve" Enumerated Activities

ForecastEx requests that the Commission provide additional guidance as to when a contract "involves" an enumerated activity. The Commission is proposing to revise CFTC Regulation 40.11 so that it refers to event contracts that "involve" an enumerated activity.[1] However, the only guidance that the Commission gives as to when a contract "involves" an enumerated activity is plain meaning definitions of involve from several dictionaries. The Commission also states that a contract may involve an enumerated activity even in situations where the contract's underlying is not an enumerated activity.[2]

As currently proposed, CFTC Regulations will not give designated entities clarity as to what contracts are prohibited under CFTC Rules. An argument could be made that virtually any conceivable event contract "involves" enumerated activities. For example, terrorist attacks have historically had large impacts on economies and financial markets. Does a contract on the GDP growth rate involve terrorism because terrorism "….relate[s] to or affect[s]" GDP growth and an event contract position predicting GDP growth "ha[s] as an essential feature or consequence" the prediction that there will not be a large-scale terrorist attack that causes massive economic damage? Does an event contract with a global climate underlying, such as a global drought index, involve war because it has been shown that climate change "relates closely to" the incidence of armed conflict?[3] Does an event contract on corporate profits involve activity that is unlawful under any state or federal law if it is shown that at least one company whose profits were included earned a portion of their profits through unlawful means? Similarly, does an event contract on the revenue collected by a state government "entail" activity that is unlawful under state law since a portion of the revenue will be from fines collected for violations of state law? While GDP growth and corporate profit contracts could not be prohibited under Regulation 40.11 because they meet the definition of an excluded commodities under CEA section 1a(19)(i), a broad interpretation of "involve" could conceivably be used to prohibit any other contracts. ForecastEx does not believe that it is the Commission's intent to prohibit these types of contracts, and ForecastEx strongly believes that such contracts should not be considered to involve enumerated activities.

However, by leaving the definition of "involve" vague, the proposal leaves open the possibility that the Commission could prohibit any contract because it involves an enumerated activity. The possibility is also raised that the rules may be applied arbitrarily, with some contracts being accepted and others rejected when contracts have a similar tangential relationship to the enumerated activity. This problem is worsened by the Commission proposing to categorically prohibit any contract involving enumerated activity. At least under the current rules, the Commission has to determine both that a contract involves or relates to an enumerated activity and that it additionally is against the public interest. The proposal would prohibit any contract involving an enumerated activity regardless of any positive public interest benefits. Finally, a broad interpretation of "involve" will likely increase the amount of resources that the Commission has to devote to reviewing event contracts since nearly every proposed contract could involve an enumerated activity under the interpretation, resulting in an increased number of 40.11 reviews. The Commission states that its purpose in proposing the amendments to CFTC Regulation 40.11 is to "…support efforts by registered entities to ensure compliance with the CEA by more clearly identifying the types of event contracts that may not be listed for trading or accepted for clearing."[4]

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[1] 89 FR 48968, 48973
[2] 89 FR 48968, 48974
[3] Solomon M. Hsiang et al. ,Quantifying the Influence of Climate on Human Conflict. Science 341, 1235367 (2013). DOI:10.1126/science.1235367
[4] 89 FR 48968, 48969

Unless the Commission more clearly defines when a contract "involves" enumerated activity, the proposed amendments to CFTC Regulation 40.11 will not achieve this goal.

While the Commission cannot foresee every possible event contract that could be submitted involving enumerated activities, it is not unreasonable to expect the Commission to provide guidelines describing when they would consider such a situation to exist. ForecastEx suggest the following three criteria as a starting point for such guidance.

First, the Commission should recognize that an enumerated activity affecting the outcome of an event contract is not a sufficient basis alone for determining that an event contract involves the enumerated activity. Making this recognition in its guidance will appropriately limit the scope of the enumerated activities as the list of event contracts that affect or are affected by an enumerated activity is close to infinitely broad. Further, this standard is consistent with giving the term involve its ordinary meaning. Dictionaries, including those cited by the Commission, define the word "involve" in multiple ways. Generally, involve is defined as both "to include as a necessary and important part" and as "to affect." For example, Merriam-Webster defines involve as both "to require as a necessary accompaniment : ENTAIL" and "Affect".[5] This pattern is consistent across many widely-used dictionaries.[6] Since there are two definitions of involve, the Commission should only apply one of those definitions to US Code 7a-2(c)(5)(C)(i). Further, because of how broadly interpreting involve to mean "affect" would apply the statute, defining involve to mean only "a necessary part" would provide a clearer guideline for market participants, registered entities, and the Commission to evaluate potential contracts. This guideline would provide clarity that all four of the contracts described earlier do not involve enumerated activity.

Second, the Commission should specify that an event contract is considered to involve an enumerated activity when an enumerated activity, or the extent of an enumerated activity is likely to determine the outcome of the event underlying the event contract. This is an appropriate way of determining if an enumerated activity is a necessary part of a contract. For example, a measure of corporate profits may include some profits which were earned through unlawful means, but such profits would represent a very small percentage of the total corporate profits, and an increase or decrease in illicit activity would be

[5] See involve Definition, Merriam-Webster.com, available at https://www.merriam-webster.com/dictionary/involve (last visited June 14, 2024)

[6] Involve Definition: Oxford Learner's Dictionary, available at: https://www.oxfordlearnersdictionaries.com/us/definition/english/involve?q=involve (last Visited June 14, 2024) has multiple definitions of involve including "if a situation, an event or an activity involves something, that thing is an important or necessary part or result of it" and "if a situation, an event or an activity involves somebody/something, they take part in it or are affected by it"
Involve Definition: American Heritage Dictionary, available at: https://www.ahdictionary.com/word/search.html?q=involve (last visited June 14, 2024) has multiple definitions of involve including "To have as a necessary feature or consequence; entail" and "To relate to or affect"
Involve Definition: Collins Dictionary, available at https://www.collinsdictionary.com/dictionary/english/involve (last visited June 14, 2024) has multiple definitions of involve including "to include or contain as a necessary part" and "to have an effect on; spread to"
Involve definition: Cambridge English Dictionary, available at https://dictionary.cambridge.org/dictionary/english/involve (last visited June 14, 2024) has multiple definitions of involve including "If an activity, situation, etc. involves something, that thing is a part of the activity, etc." and "If a situation involves someone or something, he, she, or it is affected by it"
Webster's New World College Dictionary, Fifth Edition, 2020. Page 766. Has multiple definitions of involve including "6 to include by necessity; entail; require [a project involving years of work] 7 to relate to our affect [the matter involves his honor]"

unlikely to be a significant enough portion of corporate profits in order to cause the outcome of a corporate profits event contract to change.

Third, the Commission should specify that contracts that have an identical risk profile as a contract on an enumerated activity involve that enumerated activity. In other words, contracts involve an enumerated activity if they serve as a proxy for a contract on enumerated activity. For example, take a hypothetical event contract, "Will there be a victory parade in downtown Kansas City between February 10, 2025 and February 17, 2025?" While such a contract would potentially not meet the Commission's proposed gaming definition, since many different victory parades could hypothetically cause the contract to settle to Yes, the contract provides essentially the same risk profile as the contract "Will the Kansas City Chiefs win Super Bowl LVIII?" which clearly is a gaming contract. This standard ensures that it is clear to registered entities that they cannot avoid the restrictions on enumerated activities by listing perfectly or nearly perfectly correlated events.

The above guidelines, if adopted by the CFTC[7] would give registered entities clear boundaries while also not requiring the Commission to undertake an excessive number of 40.11 reviews which are disruptive for market participants, costly for registered entities, and resource intensive for the Commission.

II. Proposed Gaming Definition

ForecastEx is not commenting on the virtues of political event contracts. However, ForecastEx is concerned with the processes that the Commission is employing through this proposed rulemaking in order to prohibit these contracts. The Commission appears to be primarily concerned with creating a definition of gaming that excludes political event contracts, as opposed to a definition that aligns with Congressional intent and brings clarity to markets.

Including elections and other contests in the definition of gaming does not appear consistent with congressional intent. In the colloquy between Senators Lincoln and Feinstein, when explaining the gaming provision, Senator Lincoln articulated that "it would be quite easy to construct an 'event contract' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose."[8] The only examples of gaming given in the colloquy are sporting events. Furthermore, given that "gaming" is not commonly understood to include elections, it appears likely that Congress would have articulated elections as a separate enumerated category if they intended for it to be an enumerated activity.[9] As a result, the Commission's gaming definition is inconsistent with congressional intent. Instead, the Commission should adopt a definition of gaming that is limited to contracts on the outcome of games, contracts on the performance of a competitor in a game, and any other occurrence or non-occurrence in connection with one or more games.

A second problem with the Commission's proposed gaming definition relates to how the definition is framed. The Commission's definition of gaming is not wholly dependent on the content of the contract

[7] Note that adopting these or similar guidelines would not require a re-proposal because such guidance could be articulated in the final rule and would not necessitate an amendment to the proposed language.
[8] 156 Cong. Rec. S5906–07
[9] This point was also raised by Commissioner Mersinger in her dissent. 89 FR 48968, 48994. "Congress easily could have included elections and awards as enumerated activities, but it did not. Confronted with this Congressional silence, I do not believe the Commission can simply decree that elections and awards are enumerated activities."

but whether the participant who enters the contract is undertaking gambling activity.[10] This is a problematic interpretation as it risks providing an air of legitimacy to speculative strategies which are effectively gambling in other CFTC regulated products. Strategies using existing financial products, such as 0DTE options, should not be considered any less gambling than wagering funds on the outcome of a sports contest. Virtually any contract offered at a CFTC-registered exchange can be used in a manner akin to gambling. The CFTC articulated a similar concern in the proposal when justifying its position that gaming contracts should be universally prohibited. The Commission is concerned about "…conflating gambling and financial instruments in a manner that could particularly create confusion and risk for retail market participants. Among other things, it could improperly signal to certain retail investors that these contracts are instruments to be used for investment purposes…"[11] While the Commission was discussing the risks of allowing gaming products to trade on CFTC exchanges, the same effect could occur by declaring certain products to be "gambling". Products not declared gambling, even if they could be used in a manner akin to gambling, could be seen by retail investors as legitimized, leading to a conflation of gambling and financial instruments in a manner that could confuse retail market participants. It is not difficult to imagine a retail customer being told by an unscrupulous advisor that the CFTC defined which contracts are gambling, and the risk-laden, speculative, 0DTE options strategy that they are pushing were not included on that list. The Commission can side-step this risk entirely, by adopting a more clear and well-defined definition of gaming that defines gaming contracts as contracts on or related to games, as opposed to contracts which constitute gambling.

The Commission's insistence on prohibiting election contracts as "gaming" is especially odd given that the CEA gives the Commission a way to prohibit election contracts without involving "gaming". 5c(c)(5)(C)(VI) gives the Commission the ability to prohibit contracts through rule or regulation that it determines are "similar" to the enumerated categories. This category allows the Commission to prohibit contracts not cleanly falling into the enumerated categories that the Commission believes are against the public interest. From the perspective of process, this would provide a far superior method for restricting the trading of election contracts as it would not involve defining "gaming" and "unlawful under federal and state law" in ways that bring confusion to registered entities. Commissioner Mersinger echoes this point where she states: "I am baffled at why the Commission is tying itself into knots by trying to reason its way from "gaming" to "gambling" to "contests" to elections and awards, rather than simply do what Congress said it could do: consider whether elections and awards are similar to "gaming" (or another enumerated activity). This is not a matter of form over substance. Approach matters when it comes to exercising our authority under the CEA..."[12]

ForecastEx also questions if it is currently inappropriate for the Commission to attempt to codify its restrictions on election contracts at this time given ongoing litigation. Kalshi is challenging the CFTC's

[10] 89 FR 48968, 48974-48975 "The Commission proposes to define ''gaming'' in new § 40.11(b)(1) as the staking or risking by any person of something of value upon: (i) the outcome of a contest of others; (ii) the outcome of a game involving skill or chance; (iii) the performance of one or more competitors in one or more contests or games; or (iv) any other occurrence or non-occurrence in connection with one or more contests or games…. the terms ''gaming'' and ''gambling'' are used interchangeably in common usage and dictionary definitions. The proposed definition further recognizes that, under a number of state statutes, ''gambling,'' ''betting,'' or ''wagering'' is recognized to include a person staking or risking something of value upon a game or contest, or the performance of competitors in a game or contest"

[11] 89 FR 48968, 48982

[12] 89 FR 48968, 48994

denial of its election contracts in a currently pending case in the DC Circuit Court.[13] If Kalshi prevails, much of the Commission's proposal here would be invalidated. The Commission even recognized in the proposal that it could potentially lose the Kalshi case.[14] A ruling against the CFTC in that legal action would prevent the CFTC from passing its proposal in its current form. Furthermore, the Commission's ability to appropriately respond to comment letters on this proposal in a reasoned manner may be limited by ongoing litigation due to the impact that the Commission's responses could have on the case. There also does not appear to be an alternative to the Commission's proposal that would be a logical outgrowth of the current proposal given an adverse ruling. Declaring that elections are a similar activity to gaming or similar to activity that is unlawful under any federal or state law would likely require a re-proposal as the CFTC would be changing the fundamental statutory basis for its decision. For a Commission that is apparently committed to using its resources as efficiently as possible, it is odd that the Commission would propose regulations whose ability to be passed into a final rule is dependent on the outcome of ongoing litigation.

III. Election Contracts are not Unlawful under State Law.

The CFTC's claim that event contracts on elections are unlawful under state law impermissibly expands the category of unlawful activity far beyond what Congress intended. The Commission argues that because a number of states have laws which prohibit gambling on elections, that contracts on election outcomes are unlawful under state law.[15] However, as the CFTC notes, "the Commission has exclusive jurisdiction over futures and swaps contracts traded on a CFTC-registered exchange, preempting the application of state law with respect to such transactions—and meaning that transacting in such contracts on a CFTC-registered exchange cannot, of itself, constitute unlawful activity for state law purposes…"[16] The Commission goes on to claim that even if the application of state law is preempted, this does not stop a contract from involving activity unlawful under state law.[17] The Commission released an expanded version of this analysis in their order prohibiting Kalshi's Congressional control contracts:

> Taking a position in the Congressional Control Contracts would be staking something of value on the outcome of contests between electoral candidates, such that wagering on elections is "an essential feature or consequence" of the contracts. Thus, while transactions in the Congressional Control Contracts on a DCM do not violate, for example, state bucket-shop laws, they nevertheless involve an activity that is unlawful in a number of states—wagering on elections. To

[13] See Kalshiex LLC v. Commodity Futures Trading Commission. Docket available at: https://www.pacermonitor.com/public/case/51199717/KALSHIEX_LLC_v_COMMODITY_FUTURES_TRADING_COMMISSION

[14] 89 FR 48968, 48977. "If, on judicial review, it is determined that staking something of value on the outcome of a political contest does not involve ''gaming,'' the Commission may consider whether that activity is ''similar to'' gaming."

[15] 89 FR 48976-48977: "The Commission notes that a number of states prohibit betting or wagering on a variety of occurrences or non-occurrences associated with athletic games, as well as non-sporting events. This highlights that in some instances, event contracts that involve 'gaming,' as proposed to be defined, may also involve a second Enumerated Activity—'activity that is unlawful under . . . State law.' For example, as discussed in section I.C.3, supra, the Commission found in the Kalshi Order that the subject contracts involved both gaming and activity that is unlawful under state law."

[16] 89 FR 48977, Footnote 84.

[17] 89 FR 48977, Footnote 84.

> permit such transactions on a DCM would undermine important state interests expressed in statutes separate and apart from those applicable to trading on a DCM.[18]

The Commission's position is fundamentally flawed. A contract cannot "involve" unlawful activity if the activity is not unlawful. Context matters in a legal analysis and determining whether an activity is unlawful is fundamentally a legal analysis. The Commission's attempt to divorce the activity from the context in which it occurs inevitably leads to a distortion of what is lawful as is seen here. The Commission claims that wagering on elections is an "essential feature or consequence" of election contracts and that wagering on elections is illegal under numerous state laws. But this is not exactly correct. Wagering on the outcome of an election is illegal under a number of state laws when it is done outside of a CFTC-regulated DCM. Nothing in an election contract suggests that an essential feature of the contract is wagering on elections outside of a CFTC-regulated environment. The only contexts in which wagering on elections can occur under such a contract are lawful ones. When the CFTC reinterprets an activity so that it removes important context behind that activity, that activity can no longer be considered an essential feature. The fact that state laws might prohibit an activity if it is undertaken outside of a CFTC-regulated marketplace does not mean that it involves activity unlawful under state law.

But even more critically, the Commission's argument cannot be universally applied without prohibiting all event contracts. Many states have broad laws concerning illegal gambling, which apply to risking anything of value upon any uncertain outcome.[19] This point was even recognized by the Commission

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[18] Ibid, Kalshi Order, Footnote 28.

[19] See for example, N.H. Rev. Stat § 647.2 "A person is guilty of a misdemeanor if such person knowingly and unlawfully: (a) Permits gambling in any place under the person's control. (b) Gambles, or loans money or any thing of value for the purpose of aiding another to gamble… Gambling " means to risk something of value upon a future contingent event not under one's control or influence, upon an agreement or understanding that something of value will be received in the event of a certain outcome."
Also see N.Y. Penal Law § 225.00 "A person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome." In 2013 the State of New York passed an amendment to the New York State Constitution which banned gambling in all forms except state run lotteries, pari-mutual betting on horse races, and at casinos approved by the state legislature. Constitution of the State of New York, Article I, Section 9, Paragraph 1 "except as hereinafter provided, no lottery or the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature, the net proceeds of which shall be applied exclusively to or in aid or support of education in this state as the legislature may prescribe, except pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government, and except casino gambling at no more than seven facilities as authorized and prescribed by the legislature shall hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section."
Also see Michigan Penal Code Act 328 of 1931, 750.301 "Accepting money or valuable thing contingent on uncertain event" Sec 301 "Any person or his or her agent or employee who, directly or indirectly, takes, receives, or accepts from any person any money or valuable thing with the agreement, understanding or allegation that any money or valuable thing will be paid or delivered to any person where the payment or delivery is alleged to be or will be contingent upon the result of any race, contest, or game or upon the happening of any event not known by the parties to be certain, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00."
Also see Va. Code § 18.2-325 ""Illegal gambling" means the making, placing, or receipt of any bet or wager in the Commonwealth of money or other consideration or thing of value, made in exchange for a chance to win a prize, stake, or other consideration or thing of value, dependent upon the result of any game, contest, or any other event the outcome of which is uncertain or a matter of chance, whether such game, contest, or event occurs or is to occur

during their discussion of the gaming definition.[20] The Commission concluded that gaming should not be defined so broadly because it "…could encompass event contracts that were not intended by Congress to be subject to the Commission's heightened authority pursuant to CEA Section 5c(c)(5)(C) including the types of event contracts described in section II.A.1.b, supra [CEA Section 1a(19)(i) excluded commodities]."[21] This poses a serious problem for the Commission's interpretation.

If separated from the context of a CFTC-regulated exchange, any possible event contract, or any derivative that a DCM could list would be unlawful under these state laws. The Commission's exact language in the Kalshi Order could be applied to any event contract, as demonstrated in the below example for a Real GDP contract:

> Taking a position in the Real GDP contract would be staking something of value on the outcome of a future contingent event, such that wagering on future contingent events is "an essential feature or consequence" of the contracts. Thus, while transactions in the Real GDP contracts on a DCM do not violate, for example, state bucket-shop laws, they nevertheless involve an activity that is unlawful in a number of states - wagering on the outcome of future contingent events. To permit such transactions on a DCM would undermine important state interests expressed in statutes, and state constitutions,[22] separate and apart from those applicable to trading on a DCM.

"Real GDP" could be replaced with any event contract and the logic would remain identical. The Commission cannot even claim that there is a lesser state interest in preventing the staking of something of value on the outcome of future contingent events as New York's gambling prohibition is enshrined in their state constitution[23] and making that determination would cause the Commission to serve "…as an arbiter of a state's own public interest determination…",[24] a role the Commission has determined is inappropriate for the CFTC. The only way to apply the Commission's logic consistently would be to declare all event contracts unlawful.[25] As the CFTC has recognized this result would be contrary to congressional intent[26] and applying the interpretation arbitrarily is not a viable option under the Administrative Procedures Act. The only remaining option is for the Commission to reject an

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inside or outside the limits of the Commonwealth." Va. Code § 18.2-326 "Except as otherwise provided in this article, any person who illegally gambles or engages in interstate gambling as defined in § 18.2-325 shall be guilty of a Class 3 misdemeanor. If an association or pool of persons illegally gamble, each person therein shall be guilty of illegal gambling."

[20] 89 FR 48968, 48975. "The Commission acknowledges that several state statutes recognize ''gambling,'' ''betting,'' or ''wagering,'' to encompass, more broadly, a person staking or risking something of value upon the outcome of any contingent event not in the person's influence or control—and not just a game or a contest of others."

[21] 89 FR 48975

[22] See footnote 19 above regarding New York Law.

[23] See footnote 19 above regarding New York Law.

[24] 89 FR 48968, 48981

[25] The Commission might as well claim that all exchange traded futures transactions are unlawful under Federal law because the CEA makes it "…unlawful for any person to offer to enter into, to enter into… a contract for the purchase or sale of a commodity for future delivery…" (7 USC §6(a)) Even though the products are traded on an exchange, which is the exception in the above referenced CEA section, they contain as necessary part a contract for the purchase of a commodity for future delivery, which is prohibited. This logic is clearly absurd, but it is not substantively different from what the Commission has offered in their proposal.

[26] 89 FR 48968, 48975 as previously quoted.

interpretation which determines that lawfully transacting contracts on a CFTC exchange involves activity unlawful under state law.[27]

IV. Public Interest Factors

ForecastEx generally agrees with the Commission's conclusion that it is not limited to evaluating the hedging or price-basing utility of an event contract as part of its public interest determination and may evaluate both these and other factors.[28] However, based on the factors which the Commission has articulated, it appears that the Commission is underestimating the positive benefits of event contracts while overstating their potential harms.

a. Excluded Commodities and Public Interest Evaluations

The Commission analyzes the enumerated categories to identify the types of public interest considerations that should be evaluated when analyzing whether an event contract is in the public interest. Since the congressional record is limited to the colloquy between Senators Feinstein and Lincoln, there is limited public record for the Commission to base their public interest determinations off of. However, a textual analysis of CEA Section 5c(c)(5)(C) reveals additional factors that should be considered in the CFTC's public interest determinations. In addition to naming enumerated categories contrary to the public interest, the statute also identifies product categories, specifically those meeting the excluded commodity definition in CEA Section 1a(19)(i), which are excluded from public interest reviews. The only reasonable explanation for such an exclusion is that the framers of CEA Section 5c(c)(5)(C) believed that event contracts meeting the excluded commodities definition were in the public interest. The Commission appears to endorse such a view when discussing the gaming definition. The CFTC rejected a broader interpretation of gaming due to the fact that such a definition "could encompass event contracts that were not intended by Congress to be subject to the Commission's heightened authority… including the types of event contracts described in section II.A.1.b, supra [CEA Section 1a(19)(i) excluded commodities]."[29] As a result, when the Commission is developing a framework for determining if a contract is in the public interest, an important consideration should be whether the factors that make up that framework would suggest that event contracts on CEA Section 1a(19)(i) excluded commodities are contrary to the public interest. If the public interest factors that the Commission uses would suggest a negative public interest determination for those products, it is likely that the public interest factors the Commission is using do not align with the congressional intent of CEA Section 5c(c)(5)(C).

b. Hedging value of Event Contracts

ForecastEx believes it is important for the Commission to recognize that hedging in an event market may not appear like a typical hedge in other markets that the Commission regulates. Event contracts typically

[27] ForecastEx believes it is important to note that the Commission's analysis of state laws, while it does not support a position that election contracts are unlawful under state law, may support a position that election contracts are similar to the enumerated category of activities unlawful under state law, which could serve as the basis for a prohibition under Section 5c(c)(5)(C)(i)(VI) of the CEA.
[28] 89 FR 48968, 48978
[29] 89 FR 48968, 48975

do not provide a 1-to-1 pure hedge for other financial instruments. Instead, they provide hedges for specific risks within a given portfolio.

Market Participants can use event contracts to hedge risks in their financial portfolios. Uncertainty about events, particularly uncertainly related to macroeconomic and climate risks expose participants in financial markets to substantial risk.[30] These risks cannot accurately be hedged without event contracts. Instead, participants in financial markets must hedge their exposure after macroeconomic data releases occur. Typically, on trading days with a major macroeconomic release, a flurry of activity in bond and equity markets follows the release with increased price volatility. These releases give market participants new information, and significant surprises in the releases expose participants to unwanted risks. For example, just this past week, significant market turmoil resulted from a higher than expected unemployment rate and lower than expected payrolls in the Bureau of Labor Statistics Current Employment Situation Report.[31] Participants then must hedge the risks they did not fully understand previously after the macroeconomic release.

Event contracts have the potential to revolutionize this process. Since event contracts pay participants when macroeconomic releases are higher or lower than expected, they allow participants to hedge risks associated with these announcements. For example, market participants who hold retail stocks may hedge their exposure to a poor retail sales report by purchasing event contracts that pay out when retail sales are lower than expected. Alternatively, a bond investor could use event contracts on inflation levels to hedge their bond portfolio due to inflation's impact on interest rates. Using event contracts allows participants to directly hedge these macroeconomic risks[32] before the macroeconomic data is released. Importantly, because event contracts are specifically targeted at specific events and macroeconomic data releases, they allow participants to hedge their exposure to that particular event without sacrificing all of the upside in their instruments like a 1-to-1 pure hedge would require. No other derivatives now available in the market can produce this result.

Similarly, uncertain future climate change and associated climate policies also present risks for financial market participants.[33] Current options for hedging climate risk are limited. Participants can invest in green energy or in de-carbonized stock indexes, but these alternatives permit only indirect climate hedges at best, leaving substantial residual climate risks in their portfolios. In contrast, event contracts can provide a more refined climate hedge. Event contracts defined on future global temperatures can protect an investor from risk that climate change is greater or less than expected. Event contracts can also be created around specific climatic events (such as drought, sea level rise, polar ice volumes, and agricultural yields) that can help financial Market Participants to hedge against the adverse effects of these events on their portfolios.

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[30] See for example: Turan G. Bali, Stephen J. Brown, and Yi Tang. Macroeconomic Uncertainty and Expected Stock Returns. American Economic Association. December 2014.

[31] On Friday August 2, 2024 at 8:30am ET, the Current Employment Situation Report for July 2024 showed 4.3% unemployment, which was above market consensus estimates and a 114,000 increase in payroll employment, which was below market consensus estimates. https://www.bls.gov/news.release/empsit.nr0.htm
The S&P 500 Index opened at 9:30am ET, 3.64% lower than the previous night's close.

[32] See for example: Hartley, Jonathan, Recession Prediction Markets and Rare Macroeconomic Disaster Risk in Asset Prices (March 25, 2020). Available at SSRN: https://ssrn.com/abstract=3524686 which demonstrates that a binary recession prediction market can be used as a hedge for macroeconomic recession risk in equity and bond markets.

[33] Marco Tedeschi, Matteo Foglia, Elie Bouri, Peng-Fei Dai, How does climate policy uncertainty affect financial markets? Evidence from Europe, Economics Letters, Volume 234, 2024.

Put another way, standard futures contracts provide linear exposure to an uncertain future value (the price of X good on Y date). For hedgers that face nonlinear risks, futures may be insufficient for their hedging needs. Standard options contracts can provide nonlinear exposure, but also include a volatility component to their pricing that may not be useful to hedgers, making them imperfect for many applications. The price information created by futures and options markets shows hedgers, businesses, and policymakers a single-point estimate of value for an uncertain future event. Those decisionmakers may need more complete information than what can be provided by futures and options prices. For example, they may want to know how uncertain the market is about its future estimate and whether that uncertainty is skewed to one side or the other.

Event contracts can help make markets more complete by providing this information. A series of event contracts with the same underlying event, but different threshold prices can help estimate the cumulative market forecast distribution of uncertain future values. For example, take a series of event contracts based on average global temperature in 2040 with increments between 1.0 degrees Celsius above the 20th century average to 2.5 degrees Celsius above the 20th century average. The prices of these contracts would show the probability of any given temperature and together form a probability distribution that would allow hedgers to see the uncertainty and skewness in the market's prediction. This would allow hedgers to construct any hedge they needed to hedge their non-linear risks. Forecast contracts will help improve efficiency by allowing participants to hedge risks they cannot currently. These contracts thus will help complete the markets, improve economic efficiency, and lower hedging costs.

The Commission has yet to find that an Event Contract has hedging value in any of its 40.11 reviews and it does not describe any event contracts it believes have hedging value in the proposed rule. The Commission should recognize that event contracts have legitimate hedging and risk-management utility when used in the manner described above.

c. Price-basing Value of Event Contracts

In determining if an event contract is contrary to the public interest, the Commission, in part, evaluates the price-basing utility of that contract,[34] which the Commission has referred to as a "critical function of a derivatives market."[35] The CFTC has stated, "price-basing occurs when producers, processors, merchants, or consumers of a commodity establish commercial transaction prices based on the futures price for that or a related commodity"[36] In a futures market, the market price is based upon the orders and trades of a diverse set of participants, representing the current "best estimate" of the value of the underlying commodity at some future time. This "best estimate" price facilitates commercial transactions by reducing uncertainty about the future.

[34] 89 FR 48968, 48995, "The two prongs of the 'economic purpose test,' which the Proposal adopts as a primary basis for prohibiting entire categories of event contracts as being contrary to the public interest, evaluate: (1) the contract's utility for price basing; and (2) whether the contract can be used for hedging purposes."
[35] Concept Release on the Appropriate Regulatory Treatment of Event Contracts, 73 FR 25672. https://www.federalregister.gov/documents/2008/05/07/E8-9981/concept-release-on-the-appropriate-regulatory-treatment-of-event-contracts
[36] Commodity Futures Trading Comission."In the matter of the Certification by KalshiEX LLC of Derivatives Contracts with Respect to Political Control of the United States Senate and United States House of Representatives." September 22, 2023. Available at: https://www.cftc.gov/sites/default/files/filings/documents/2023/orgkexkalshiordersig230922.pdf

Similar to futures, the market price of an event contract is based on the orders and trades of a diverse set of participants. The market price of an event contract can best be viewed as the market's "best estimate" of the probability of the occurrence of the underlying event. Thus, an event contract can reduce uncertainty about the likelihood of future events. Studies have shown that event contracts have an "uncannily accurate ability to predict future events"[37] and generally exhibit lower statistical errors than professional forecasters and polls.[38] There is a myriad of academic research that confirms prediction markets can be an effective tool in predicting the outcome of future events.[39] Indeed, the CFTC has

[37] Ray, R. (2012). Journal of Investing. *Managing Financial Risk Via Prediction Markets.* https://www.pm-research.com/content/iijinvest/21/2/76

[38] Snowberg, E., Wolfers, J., and Zitzewitz, E., (July 2012). *Prediction Markets for Economic Forecasting.* National Bureau of Economic Research. https://www.nber.org/system/files/working_papers/w18222/w18222.pdf

[39] Berg, Joyce E and Rietz, Thomas A. (2003). Prediction Markets as Decision Support Systems. University of Iowa. https://www.biz.uiowa.edu/faculty/trietz/papers/Decision%20Support.pdf

Gjerstad, Steven. (2004, November). Risk Aversion, Beliefs, and Prediction Market Equilibrium. University of Arizona. https://econwpa.ub.uni-muenchen.de/econ-wp/mic/papers/0411/0411002.pdf

Wolfers, Justin and Zitzewitz, Eric. (2006, April). Interpreting Prediction Market Prices as Probabilities. EconStor. https://www.econstor.eu/bitstream/10419/33261/1/510931871.pdf

Putintseva, Maria. (2011, June). Predictive Power of Information Market Prices. Swiss Finance Institute. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1878445

Dana, J., Atanasov, P., Tetlock, P., and Mellers, B. (January 2023). Are markets more accurate than polls? The surprising informational value of 'just asking'. Cambridge University. https://www.cambridge.org/core/journals/judgment-and-decision-making/article/are-markets-more-accurate-than-polls-the-surprising-informational-value-of-just-asking/B78F61BC84B1C48F809E6D408903E66D

Bragues, George. (January 2012). Prediction Markets: The Practical and Normative Possibilities for the Social Production of Knowledge. Cambridge University. https://www.cambridge.org/core/journals/episteme/article/abs/prediction-markets-the-practical-and-normative-possibilities-for-the-social-production-of-knowledge/36F03D51DE5FBDABBF3645F65E07B2CE

Bassamboo, A., Ruomeng, C., and Moreno, A. (2015). The Wisdom of Crowds in Operations: Forecasting Using Prediction Markets. University of Iowa. https://www.hbs.edu/faculty/Pages/item.aspx?num=53237

Tziralis, G. and Tatsiopoulos, I. (2007). *Prediction MarketS : an Information Aggregation Perspective to the Forecasting Problem.* National Technical University of Athens. https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=ff2934ffbbcf420e04d8f708c404f83e041ec179

Lohrmann, C. and Luukka, P. (August 2018). *Classification of Intraday S&P 500 Returns with a Random Forest.* (2019). International Journal of Forecasting. https://www.sciencedirect.com/science/article/abs/pii/S0169207018301481

Berg, J., Nelson, F., and Rietz, T. (January 2008). *Prediction Market Accuracy in the Long Run.* University of Iowa. https://www.biz.uiowa.edu/faculty/trietz/papers/long%20run%20accuracy.pdf

Manski, Charles. (March 2004). *Interpreting the Predictions of Prediction Markets.* National Bureau of Economic Research. https://www.nber.org/system/files/working_papers/w10359/w10359.pdf

Wolfers, J. and Zitzewitz, E. (2004). *Prediction Markets.* Journal of Economic Perspectives. https://pubs.aeaweb.org/doi/pdfplus/10.1257/0895330041371321

Watkins, J. (2007). *Prediction Markets as an Aggregation Mechanism for Collective Intelligence.* UCLA. https://escholarship.org/uc/item/8mg0p0zc

Graefe, A. and Weinhardt, C. (January 2008). Journal of Prediction Markets. *Long-Term Forecasting with Prediction Markets – A Field Experiment on Applicability and Expert Confidence.* https://www.researchgate.net/publication/46524837_Long-Term_Forecasting_with_Prediction_Markets_-_A_Field_Experiment_on_Applicability_and_Expert_Confidence

McHugh, P., and Jackson, A. (2012). Journal of Prediction Markets. *Prediction Market Accuracy: the Impact of Size, Incentives, Context and Interpretation.* https://www.proquest.com/openview/284978a9b900f39f2055ebce2349e12e/1?pq-origsite=gscholar&cbl=5455937

Stastny, Bradley J and Lehner, Paul E. (January 1, 2023). *Comparative Evaluation of the Forecast Accuracy of Analysis Reports and a Prediction Market.* Cambridge University.

previously stated, "The trading of such contracts can facilitate the discovery of information by assigning probabilities, through market-derived prices, to discrete eventualities… innovative event markets have the capacity to facilitate the discovery of information, and thereby provide potential benefits to the public."[40] As a result, the CFTC should recognize that the predictive power of event markets is effectively price-basing. Even if the CFTC does not want to consider it price-basing, the CFTC should recognize the informational value of event contracts as a positive public interest factor that should be at the forefront of any public interest evaluation. Given that informational value of event contracts is typically touted as their main public interest benefit in academic research, ForecastEx finds it troubling that the Commission does not mention these benefits when discussing the public interest factors it will consider, other than a couple passing mentions to traditional price-basing.

While Event Contracts reduce uncertainty about the future, the value of that predictive power will vary depending on the underlying event as not every reduction in uncertainty creates a public good. For example, a gaming contract based on the outcome of the Kentucky Derby is unlikely to create any public good, even if it reduces the uncertainty involved in the outcome of the Kentucky Derby. There are four criteria that the Commission should be evaluating when determining if the price-basing function of an event contract contributes to the public good.

First, does the event contract generate information that is useful for businesses when planning their future decisions? This is akin the classic formulation of price-basing in futures markets. A farmer may use the futures prices of agricultural goods to determine the future supply and demand on various crops, which is a useful informational input when determining which crops should be planted in a given year. Similarly, a business can glean information from various event contracts to determine their optimal strategy. For example, an event contract on retail sales would provide a useful input for a business deciding whether or not to expand its operations as retail sales projections can be used to forecast future demand for goods.

Second, does the event underlying the contract provide information that impacts the pricing of other financial products? This is similar, though subtly different than evaluating the hedging utility of a contract. For example, an event contract on whether or not a recession will occur within a given timeframe would provide useful information to an investor who is trying to determine whether or not equities are overvalued regardless of whether they were attempting to hedge equity exposure.

Third, does the event contract provide valuable information to the non-investing public? The informational benefits that an event contract provides are not necessarily limited to individuals who are actively involved in financial markets. For example, an event contract based upon the number of manufacturing jobs could provide factory workers with valuable insight into their job security over the medium to long run regardless of their investment portfolios.

Finally, does the event contract provide information that will be valuable to policymakers? For example, an event contract based on the amount of CO2 in the atmosphere would provide policymakers with estimates of future carbon emissions, provide a clear estimate of the public's belief on the future

https://www.cambridge.org/core/journals/judgment-and-decision-making/article/comparative-evaluation-of-the-forecast-accuracy-of-analysis-reports-and-a-prediction-market/3360FC0D8835FC8B2C241F835C9288EB
Bossaerts, Frederik, et al. (September 19, 2022). Price Formation in Field Prediction Markets: the Wisdom in the Crowd. Cornell University. https://arxiv.org/abs/2209.08778
Gordon M, Viganola D, Dreber A, Johannesson M, Pfeiffer T (2021) Predicting replicability—Analysis of survey and prediction market data from large-scale forecasting projects. PLoS ONE 16(4): e0248780. https://doi.org/10.1371/journal.pone.0248780

[40] 73 F.R. 25670

trajectory of global warming, while also providing an estimate of future pollution levels, all of which would be valuable to a policymaker determining climate policy.

If the answers to any of the four criteria is yes, that should be weighed in favor of the contract in the Commission's public interest analysis. A contract in which multiple criteria are weighted positively is highly unlikely to be contrary to the public interest. The above approach is reinforced by examining the excluded commodities described in CEA section 1a(19)(i). Contracts on these excluded commodities, which Congress identified as in the public interest due to their exclusion from 40.11 reviews, are likely to provide significant informational benefits and reductions in uncertainty for businesses, investors, the general public, as well as policymakers. Any of the contracts that the CFTC has identified as falling under Section 1a(19)(i) exclusion would show significant price-basing benefits under the crtieria proposed above. This demonstrates that our proposed approach is consistent with congressional intent. Evaluation of the price-basing or informational value of an event contract should be a critical piece of any public interest analysis.

d. Educational Value of Event Contracts

Apart from the value that event contracts offer as hedging and informational vehicles, event contracts also contribute to the public interest because of their educational value. This positive public interest factor has not been recognized by the Commission. Fundamentally, event contracts create a financial incentive for market participants to be better informed about the events that are the subject of various event contracts. At the same time, event contracts punish false beliefs by subjecting their holders to financial penalties. The result is an incentive system which rewards participants who garner greater knowledge and discard false beliefs. In fact, research has demonstrated that participation in event markets can change opinions about complex and entrenched beliefs like climate change. A 2023 study published in Nature Climate Change by researchers at Columbia and Northwestern Universities found that participating in climate prediction markets alters participant opinions on climate change.[41] Specifically they found that participation had a statistically significant impact on the participant's concern about climate change, support for remedial climate action, and knowledge about climate issues.[42] Moran Cerf, the lead co-author of the study, claimed that "...when people encounter a present-day monetary cost for holding false beliefs about the future, even entrenched perceptions can begin to move. Prediction markets are a proven tool to change views on climate change and finding a way to scale them has the potential to make a recognizable impact for society."[43] Similarly, Sandra Matz, another co-author of the study, argued that prediction markets are an effective tool for changing opinions not only on climate, but other areas of controversy as well because individuals are forced to reflect their views through the quantitative lens of market economics as opposed to the more polarizing domain of publicly stated opinion.[44] Event contracts can

[41] Cerf, M., Matz, S.C. & MacIver, M.A. Participating in a climate prediction market increases concern about global warming. Nat. Clim. Chang. 13, 523–531 (2023). https://doi.org/10.1038/s41558-023-01679-4
[42] Ibid, Cerf.
[43] Columbia Business School Press Release. June 8, 2023. https://business.columbia.edu/newsroom/press-release/changing-climate-perceptions-promise-prediction-markets
[44] Ibid Columbia Press Release. "The engagement with climate prediction markets in a domain that is quantitative and less polarizing than politics could not only change climate concerns but also act as an ultimate tool to help scientists, activists, and politicians aggregate public opinion about trends, policy preferences, and future scientific predictions. The research shows promise for the use of prediction markets in other areas of controversy where an agreed-upon arbiter of truth could allow individuals to reflect their views through market economics rather than publicly stated opinions."

help build consensus around critical societal issues and strengthen democratic institutions by bringing objectivity to polarizing topics, framing effective research, and providing the impetus for needed policy action. The Commission should accordingly recognize an event contract's positive educational value when determining if it is in the public interest.

e. Revisions are Needed to the Commission's National Security and Public Good Standards

In addition to hedging and price-basing, the CFTC argues that "national security and, more broadly, the public good, are relevant factors for consideration in an evaluation of whether a contract, or category of contracts, is contrary to the public interest."[45] ForecastEx asks that the Commission provide greater clarification on these factors.

First, the Commission should clarify when national security will be considered a relevant factor in a review. Senator Lincoln's statement from the colloquy describing contracts that "…involve betting on the likelihood of events that threaten our national security"[46] is too broad of a formulation for this review. This is particularly relevant to ForecastEx as a portion of ForecastEx's offerings involve contracts related to climate change. Climate change has been recognized as a threat to national security by elements of the Federal Government including the White House[47] and the Department of Defense.[48] ForecastEx believes that the Commission should clarify that event contracts related to climate change would not raise national security concerns under the Commission's public interest framework. Contracts related to climate change have substantial public interest benefits which range from their potential to serve as a hedge, the price-basing/informational value of the contracts, and their educational value. More specifically, ForecastEx would suggest that the Commission adopt the revised standard related to harm we describe below in Section IV.h of this comment letter. That will give the Commission a clear guideline with which to assess the national security concerns raised in the colloquy.

Second, it is not clear how an evaluation of whether a contract is in the public good would differ in any meaningful way from an evaluation of whether a contract is in the public interest. The Commission should provide greater clarification on what a public good evaluation entails and if it is any different than a public interest evaluation.

Beyond national security and public good, the CFTC identifies three additional standards that it believes are relevant to public interest reviews. All three of these standards are problematic as the CFTC has articulated them.

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[45] 89 FR 48968, 48980.

[46] 156 Cong. Rec. S5906–07

[47] White House. "Fact Sheet: Prioritizing Climate in Foreign Policy and National Security". October 21, 2021. Available at: https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/21/fact-sheet-prioritizing-climate-in-foreign-policy-and-national-security/ "Climate change will increasingly exacerbate a number of risks to U.S. national security interests, from physical impacts that could cascade into security challenges, to how countries respond to the climate challenge. While the IC judges that all of these risks will increase and that no country will be spared from challenges directly related to climate change."

[48] Department of Defense Climate Risk Analysis. DOD. October 2021. Available at: https://media.defense.gov/2021/Oct/21/2002877353/-1/-1/0/DOD-CLIMATE-RISK-ANALYSIS-FINAL.PDF "The 2014 DoD Climate Change Adaptation Roadmap, building off of a previous 2012 roadmap, identified climate change as a national security threat and detailed vulnerabilities to a changing climate."

f. The Commission's Regulatory Remit should not be Considered in a Public Interest Evaluation

First, the CFTC proposes to evaluate "the extent to which the contract, or category of contracts, would draw the Commission into areas outside of its primary regulatory remit…"[49] Being drawn into areas outside of its primary regulatory remit should not be a factor the Commission considers in its public interest reviews. ForecastEx believes that this point was argued quite effectively by Commissioners Mersinger and Pham in their respective dissents. Commissioner Mersinger wrote:

> The Proposal raises in alarmist tones the red herring that sweeping public interest determinations are necessary so that the CFTC does not get drawn into a regulatory or enforcement role for which it is not well-equipped… To be clear: The CFTC does not administer, oversee, or regulate elections, sporting events, gambling, or any other activity or event discussed in the Proposal – and that will not change with respect to any event contract that is found not to be contrary to the public interest. Rather, the CFTC would exercise its exact same authorities under the CEA that it does with respect to all other derivatives contracts… After all, the CFTC has anti-fraud and anti-manipulation enforcement authority with respect to futures contracts on broad-based security indices, but that does not mean the CFTC regulates the securities markets or that it is tasked with the protection of the integrity of the securities markets or enforcement of securities laws – the Securities and Exchange Commission ("SEC") does all that. The CFTC similarly has enforcement authority with respect to natural gas and electricity since there are futures contracts on those commodities, but that does not mean the CFTC regulates the transmission of natural gas or electricity or that it is tasked with the protection of the integrity of physical natural gas or power markets, or enforcement of the Natural Gas Act or the Federal Power Act – the Federal Energy Regulatory Commission ("FERC") does all that.[50]

In a similar vein, Commissioner Pham opined:

> The Commission is not the crop yield police and hasn't displaced the role of the USDA. The Commission is not the police for changes to corporate officers or asset purchases and has not displaced the role of the SEC. The Commission is not the police for regional insured property losses, which is the domain of state insurance regulators. The Commission is not the bankruptcy police, which is the domain of the courts. The Commission is not the temperature police, and so on and so forth.[51]

ForecastEx would further argue that no possible event contract can be outside of the Commission's regulatory remit. Congress specifically placed all event contracts inside of the CFTC's regulatory remit by the Dodd-Frank's acts creation of the CEA Swap definition[52] and by the creation of CEA Section

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[49] 89 FR 48968, 48980.
[50] 89 FR 48968, 48997
[51] 89 FR 48968, 49000
[52] Event Contracts are swaps under the CEA's swap definition. In relevant part, the CEA defines a swap as "…any agreement, contract, or transaction… that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;" CEA § 1a(47), 7 U.S.C.§ 1a(47).
Additionally, "The Dodd-Frank Act amended the Commodity Exchange Act (CEA) to establish comprehensive regulation of swaps by the Commission." CFTC. Interpretative Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations. Last visited July 18, 2024. Available at:

5c(c)(5)(C). Because event contracts are under the CFTC's regulatory and enforcement jurisdiction, any regulatory or enforcement action that the CFTC takes with regards to event contracts is explicitly within the CFTC's regulatory remit. If the CFTC believes that it is not well equipped to exercise the authority that Congress has granted to it, the CFTC's response should be to equip itself, though additional staff training, hiring of subject matter experts, or other means, so that it is properly positioned to fulfill its statutory obligations. Determining that a market is contrary to the public interest simply because the CFTC is has not overseen such markets previously is an abdication of the CFTC's statutorily assigned duties and will stifle innovation in CFTC-regulated markets.

g. The Commission's Market Manipulation Standard is Poorly Defined

The second standard the CFTC proposes is "whether characteristics of the contract, or category of contacts, may increase the risk of manipulative activity relating to the trading or pricing of the contract…"[53] The CFTC further comments that this review would be distinguished from reviews related to whether a DCM meets Core Principle 3 requiring that contracts are not readily susceptible to manipulation.[54] However, it is not clear how such a review would or even could be so distinguished. If an event contract has an increased risk of manipulation to the extent that the Commission determines the contract is contrary to the public interest, how could such a contract possibly meet DCM Core Principle 3? ForecastEx does not believe that any such contract could fulfill these conditions. Conversely, if a DCM has demonstrated its proposed contract meets Core Principle 3 and is not readily susceptible to manipulation, it is unclear how the Commission could reasonably conclude that the contract is contrary to the public interest because of manipulation concerns. The Commission should abandon this standard as manipulation concerns are already addressed by Core Principle 3.

g.1. The lack of a Cash Underlying does not make an Event Contract Susceptible to Manipulation

The Commission uses this manipulation standard when proposing its categorical determination that gaming contracts are contrary to the public interest. Specifically, the Commission opines that gaming contracts are more susceptible to manipulation because they have no underlying cash market. [55] ForecastEx disagrees with the Commission's assertion that event contracts are more susceptible to manipulation when there is no underlying cash market. There are three reasons for this. First, event contract prices do not impact the likelihood of the underlying event. As a result, a market participant trading an event contract has no way of altering or changing the underlying event. This substantially reduces the incentive that market participants have to engage in manipulation. A contract will still have the same event resolution and final settlement value of $0 or $1, regardless of any manipulative activity that occurs in the contract. Further, because the prices of an event market without an underlying spot

https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/crossborder_factsheet_final.pdf

[53] 89 FR 48968, 48980.

[54] 89 FR 48968, 48980.

[55] 89 FR 48968, 48982. "The Commission further notes that most contracts falling within the proposed definition of ''gaming'' would have no underlying cash market with bona fide economic transactions to provide directly correlated price forming information… The lack of price forming information for contracts involving ''gaming,'' or the availability of only opaque and unregulated sources of price forming information, may increase the risk of manipulative activity relating to the trading and pricing of such contracts, while decreasing the ability of the offering exchange, or the Commission, to detect such activity."
While discussing its reason for prohibiting all contracts related to gaming, the Commission raises the preceding points as part of its proposed public interest determination.

market are not perfectly correlated to any particular financial instrument, it becomes impractical to attempt any cross-market manipulation strategies where a participant would attempt to change the price of a secondary derivative or market by manipulating the price of the event contract.

Second, research conducted on event contracts has demonstrated that event markets are not more susceptible to manipulation than other contracts. Studies of existing prediction markets have typically shown that markets are difficult to manipulate and that the effects of any manipulation are quickly corrected by market forces.[56] Furthermore, experiments involving lab-run prediction markets have also supported these results. In one experiment, some participants were given incentives to manipulate the market price, but were unable to do so, because participants without a manipulation incentive quickly overrode the effect of the attempted manipulators.[57] In another, introducing manipulators into the prediction market improved the accuracy of the market because there were increased returns for informed trading.[58] These studies and others led Erik Snowberg, Justin Wolfers, and Eric Zitzewitz, three NBER economists associated with Caltech, Wharton, and Dartmouth respectively, to conclude that "prediction markets are quite difficult to manipulate."[59] This is not to say that manipulation cannot occur in event markets or that the CFTC and self-regulatory organizations should be unconcerned about manipulation in these markets, but existing research contradicts the Commission's view that manipulation is more likely.

Third, techniques used by registered entities to prevent manipulation are effective in event markets without an underlying cash market. As the CFTC notes, "DCMs and SEFs have a statutory obligation to ensure that the contracts that they list for trading are not readily susceptible to manipulation."[60] Patterns of manipulative behavior can be detected, even in the absence of an underlying cash market. The strategies used by manipulators would not significantly change, allowing self-regulatory organizations and the CFTC to effectively detect manipulative activity. Predictive markets also have the potential that actors who can influence or have non-public information about the outcome of the event may attempt to participate in order to profit, but this type of activity can be detected and prevented by using the same techniques commonly used in the securities space to prevent insider trading on stocks. Again, the lack of a cash market does not make these methods less effective. DCMs are well-equipped to prevent manipulative activity on any event market they could list, including those without a cash underlying.

Furthermore, if the lack of a cash underlying was a public interest concern that Congress wanted the CFTC to address, excluded commodities in CEA Section 1a(19)(i) would not have contained products without an underlying cash market. Congress determined that these products were in the public interest, and many of them, including, among others GDP, CPI, retail sales, and building permits do not have an underlying cash market. The lack of an underlying cash market should not be considered a factor that is against the public interest.

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[56] Wolfers, Justin and Andrew Leigh. 2002. "Three Tools for Forecasting Federal Elections: Lessons From 2001." Australian Journal of Political Science 37(2):223–240.
[57] Hanson, Robin, Ryan Oprea and David Porter. 2006. "Information Aggregation and Manipulation in an Experimental Market." Journal of Economic Behavior & Organization 60(4):449–459. https://www.sciencedirect.com/science/article/abs/pii/S0167268105001575
[58] Hanson, Robin and Ryan Oprea. 2009. "A Manipulator Can Aid Prediction Market Accuracy." Economica 76(302):304–314 https://doi.org/10.1111/j.1468-0335.2008.00734.x
[59] Snowberg, Eric, Wolfers, Justin, and Zitzewitz, Eric. 2013. Prediction Markets for Economic Forecasting. Handbook of Economic Forecasting. 657-687. https://www.sciencedirect.com/science/article/abs/pii/B9780444536839000116
[60] 89 FR 48968, 48980. Footnote 108.

In fact, contracts without a cash underlying present unique public interest benefits. Event contracts provide informational value as we have previously demonstrated. If there is no underlying cash market, this informational value increases, as the event contracts is then the only market-based mechanism for setting prices (probabilities) about the underlying event. Because the event market is filling gaps in available information, this is an additional factor that should be weighed in favor of an event market without an underlying cash market. ForecastEx believes that this benefit should outweigh any concerns of increased manipulation given the preceding points. At a minimum, these factors will tend to balance each other out, which again makes the lack of an underlying cash market an inconsequential concern when determining if a contract is in the public interest.

h. The Commission's Harm to Other Person's Standard is Poorly Defined

The third standard that the Commission proposes to consider when evaluating whether a contract is in the public interest is "whether the contract, or category of contracts, could result in market participants profiting from harm to any person or group of persons."[61] The Commission bases this standard off the colloquy where Senator Lincoln noted that one of the purposes of Section 5c(c)(5)(C) was to prevent market participants from "profit[ing] from devastating events".[62] This standard, as articulated by the Commission, fundamentally misunderstands how financial markets work and misinterprets the colloquy between Senators Lincoln and Feinstein.

Whether a contract allows a person to profit from harm to any persons is an unworkable standard because every single derivatives contract in existence would be implicated by it. The events that underlie event contracts, as well as other futures, options, and swaps regulated by the CFTC have substantial financial, economic, and monetary consequences for a wide variety of persons. Significant movement in one direction or another from these derivatives will almost always signal harm to one group of persons or another, meaning that holders of the derivative have the opportunity to profit off of that harm. For example, if the price of oil rises dramatically, increasing the price of oil futures, millions of businesses and consumers will suffer harm from increased transportation and gasoline prices, while holders of long futures will profit. Conversely, if the price of oil drops dramatically, decreasing the price of oil futures, oil and gas businesses will suffer significant harm, but holders of short futures will profit. A drop in the S&P 500, and resulting drop in e-mini futures gives participants the ability to profit off of widespread economic damage. Weather derivatives give market participants the ability to profit from a hurricane making landfall in a specific region which can cause substantial physical and financial harm to persons. A similar story plays out over virtually every derivative listed on a CFTC-regulated exchange. This is also the case in securities markets. Credit default swaps and stock short sales also allow market participants to profit when a business fails. It also holds true for event contracts covered by the excluded commodities definition. Market participants can use CPI event contracts to profit from the harm of reduced purchasing power suffered by consumers. Corporate profits event contracts allow profiting from harm to the business community caused by an economic slowdown. 30-year mortgage rate event contracts allow profiting from the harm caused to homebuyers from higher mortgage rates. As demonstrated earlier in this letter, if a public interest standard implicates excluded commodities under CEA Section 1a(19)(i), that standard is contrary to Congressional intent and should not be used as part of a public interest review.

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[61] 89 FR 48968,48980

[62] 156 Cong. Rec. S5906–07 "Chairman Dodd and I maintained this provision in the conference report to assure that the Commission has the power to prevent the creation of futures and swaps markets that would allow citizens to profit from devastating events and also prevent gambling through futures markets."

On a fundamental level, for a contract to function as an effective hedge, it must be used to mitigate risk. The contract's usefulness as a hedge is necessarily dependent on the probability and magnitude of harm from that risk. This means that for a contract to serve effectively as a hedge, a goal which "…the CEA recognizes… as a public interest…",[63] the contract must be correlated with a risk that causes harm to a person or group of persons. On an even more fundamental level, if one participant profits from a derivatives contract, another participant suffers a loss. The only way that one can profit from a derivative is if the opposing side suffers financial harm.

It should not be considered against the public interest if a market participant receives a profit from a derivative contract that correlates to harm caused to a person or group of persons. The perspective that the CFTC should take towards these sorts of situations is not that market participants are benefitting from harm to other persons, but instead that they are profiting from being able to make accurate predictions and sharing that information with the market. The informational value of being able to predict a negative outcome is just as great, if not greater, than the value of predicting a positive one. It is in the public interest for individuals who can accurately predict impending harm to persons or a group of persons to be incentivized to share that information. A contract which allows an individual to profit when harm occurs to a person or group of persons is not against the public interest.

Furthermore, the Commission has misinterpreted the congressional record related to the Lincoln colloquy. The Commission is making a sizeable jump from Senator Lincoln's language related to "disastrous events" to the much broader category of "harm to any persons or group of person". There is no evidence that Congress wanted the statute interpreted this broadly. It appears unlikely that was Congress's intent given that they recognize the value of hedging in CFTC-regulated markets,[64] and as demonstrated previously, any useful hedging contract will necessarily involve a participant profiting off of an event that could harm others. Additionally, based on the full context of the colloquy, the "disastrous events" comment by Senator Lincoln appears to have been a topline summary of the conference report's position. Senator Lincoln elaborates further on this statement later in the colloquy. Specifically, she states:

> National security threats, such as a terrorist attack, war, or hijacking pose a real commercial risk to many businesses in America, but a futures contract that allowed people to hedge that risk would also involve betting on the likelihood of events that threaten our national security. That would be contrary to the public interest.

Given this elaboration, it appears that her statement about "disastrous events" was much more limited than the CFTC has interpreted it. Senator Lincoln's elaboration seems to instead imply that the prohibition she is discussing is related to the enumerated categories of terrorism, assassination, and war. This more limited interpretation of the colloquy is superior because it does not require undermining fundamental market principles.

Finally, the Commission should instead adopt a refined standard which is much narrower and more specifically addresses the concerns raised by Senators Lincoln and Feinstein. There is a common thread between the "national security" enumerated categories of terrorism, assassination, and war. The outcome of an event contract involving any of these three categories can be altered by the actions of a single person or entity. This is problematic because it gives individuals an actionable financial incentive to attempt to change the outcome by committing violent acts. A terrorist organization could purchase contracts about whether a terrorist attack will occur and then execute just such an attack, giving them a

[63] 89 FR 48968, 48979
[64] "A futures market is for hedging." 156 Cong. Rec. S5906–07

financial incentive and additional funding for pursuing their goals. A sovereign nation or their agents could purchase contracts about whether or not they will invade another country and then use the contracts to fund their war effort. Such incentives are clearly contrary to the public interest. The Commission could still recognize the potential damage that these contracts could cause by adopting the following standard:

> Does the contract create an actionable financial incentive for an individual or entity to attempt to change the outcome of the contract by committing acts of violence or engaging in illegal activity?

This standard would focus the Commission's review on whether the contract would incentivize activity that is contrary to the public interest. The standard contains the term "actionable" as for an incentive to be contrary to the public interest, it has to be large enough that it is likely to change someone's behavior. A contract on assassination or terrorism creates an actionable incentive because one person can change the outcome. A contract on the amount of revenue a state receives from traffic light cameras does not create an actionable incentive because even if an individual attempted to influence outcome by incurring a massive number of fines, the financial penalty of the fines would create a larger disincentive and even if they incurred hundreds of fines, it would be unlikely that their actions would alter the total revenue to the extent that it would change the outcome of the contract.[65] Due to the enumerated category of activities that are illegal under federal and state law, an incentive to engage in illegal activity, even non-violent illegal activity, was also incorporated into the standard.[66]

V. Categorical Bans are not Permitted under the CEA

The Commission doesn't have the authority to determine entire categories are contrary to the public interest. CEA Section 5c(c)(5)(C) doesn't state that public interest determinations regarding event contracts involving enumerated activities may be made categorically. More specifically, if Congress' intent was for all products in those categories to be banned, Congress would have simply said that all products in those categories are banned. Instead, the statute states if a product is in a category, and they are against the public interest, the CFTC may ban them. Therefore, Congress didn't intend for all the products in the categories to be banned. To be consistent with Congressional intent, the CFTC should not issue a categorical ban on an entire category of event contracts. As Commissioner Mersinger says in her statement on the proposed rule, "There is no provision in CEA Section 5c(c)(5)(C) for public interest determinations regarding event contracts involving enumerated activities to be made by category...If Congress had intended for the Commission to wield this immense authority, surely it would have said so."[67]

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[65] ForecastEx also notes that this analysis should apply to economic indicators as well. Even though one could argue that starting a war or conducting a terrorist attack could potentially cause enough impact on an economy to change the outcome of an economic event contract, those impacts would be diffuse and hard to predict, making it unlikely that this method could be used effectively. Furthermore, currently existing economic contracts, such as the S&P 500 stock index could theoretically be used in the same manner, so economic contracts will not be creating a new incentive. There is also no evidence that entities have used existing economic contracts for such purposes, making it unlikely that these strategies would be employed.

[66] The review of whether an activity encourages illegal activity should be separate from the analysis of whether a contract is readily susceptible to manipulation under Core Principle 3. The review should not be focused on whether market manipulation or insider trading is incentivized by the contract. Core Principle 3 reviews will adequately assess this question. Instead, the review should target whether a non-decisionmaker could alter the outcome of the event by committing illegal acts.

[67] 98 FR 48968, 48994

VI. Contracts Involving Unlawful Activity Should not be Universally Prohibited

ForecastEx strongly disagrees with the Commission's proposed determination that all contracts that involve activity that is unlawful under Federal or State law be prohibited. Activities that are unlawful under Federal or State law is an extremely broad category with a diverse set of potential contracts. A categorical ban will likely have the effect of prohibiting all contracts related to matters of law. Many of these potential contracts could have substantial public interest benefits. The Commission should take the time to evaluate these contracts on a case-by-case basis as opposed to instituting a poorly conceived categorical ban.

a. The Commission's Rationale for a Universal Ban is Flawed, Simplistic, and Incomplete

The Commission makes several flawed arguments in support of its proposed universal prohibition on contracts involving unlawful activity. The Commission first notes that legislative bodies serve the public good and establish the illegality of activity that is contrary to the public good.[68] This analysis, even if accepted, is simplistic and certainly not universally true. The Commission is attempting to pass a universal ban on a category of products. In order to support that ban, the Commission needs to show that their position is correct in every case. Instead the Commission makes generalized arguments which have clear exceptions and counter-examples. This is not a sufficient basis for meaningful public policy and certainly not a sufficient basis for banning an entire category of products.

The Commission additionally claims "…that permitting trading… in contracts that involve activity that is unlawful… potentially in some circumstances creating opportunities to profit from illegal activity - would undermine important state interests."[69] This argument, as the CFTC has formulated it, does not support a universal ban. The Commission states that contracts involving unlawful activity "potentially in some circumstances" create a profit opportunity off of illegal activity. Necessarily, this means that sometimes in other circumstances, such a profit opportunity is not created. If by the Commission's own admission, public harm is not universally created by these contracts, than a universal ban cannot be justified. This sentiment was echoed by Commissioner Mersinger in her dissent: "A belief for which no evidence is cited, and that is acknowledged not to be true across-the-board, cannot justify an absolutist determination that all event contracts involving an activity are automatically contrary to the public interest, nor can it justify a prohibition on trading all event contracts in that category."[70]

Furthermore, the Commission's argument has the same problem as the harm standard they articulated earlier in their proposal. Such a contract would only be against the public interest, and would only undermine state interests if it created an actionable incentive to engage in the unlawful activity that was the basis of the contract. The Commission's claim of this being an issue of "comity with states" has a similar problem. If persons are not incentivized to engage in illegal activity, the Commission does not

[68] 89 FR 48946, 48981 "Legislative bodies are intended to serve the public good, and such bodies generally bar or prohibit activity that they recognize as causing, or posing, public harm. Judges and judicial bodies, applying statutes and developing common law, also establish the illegality of activity that is recognized as causing, or posing, public harm."
[69] 89 FR 48968, 48981
[70] 89 FR 48968, 48997

articulate any way that state interests are undermined.[71] In fact, if there is no actionable incentive, a contract may support state interests as the informational value of the contracts could assist state policymakers. Having an accurate assessment of how much illegal activity is likely to occur is in the public interest. The Commission can effectively assess whether a contract undermines state interests by adopting the actionable incentive standard we proposed in Section IV.h.

Finally, the Commission claims that a universal prohibition prevents them from having to serve as an arbiter of state level public interest determinations.[72] There are two problems with this assertion. First, prohibiting all contracts related to unlawful activity necessarily involves making public interest determinations. This is specifically stated by the Commission when they propose a determination that all contracts related to unlawful activity are against the public interest.[73] As the Commission notes, there are variations between state laws. By determining that activity unlawful under one state law is against the public interest, the Commission is arbitrating between the states' public interest determinations by disregarding the determination of any other state which has determined such activity is lawful. One example of this is right-to-work laws. Right-to-work laws make it unlawful for labor agreements to require that employees who are not union members contribute to the cost of union representation. These laws vary dramatically from state-to-state. In Illinois, the state constitution prohibits the legislature from passing a right-to-work law.[74] Conversely, in Tennessee, the state's right-to-work law is enshrined in the state constitution.[75] These sorts of conflicting public interest determinations by various states, make it inevitable that a universal prohibition will involve the Commission acting as an arbiter of states' public interest determinations. Second, the Commission can avoid acting as an arbiter by adopting the actionable financial incentive standard. With this standard, the Commission does not have to rule whether a state's law is in the public interest or not. Instead, it only has to examine whether the contract gives individuals an incentive to break those laws. The Commission should abandon its proposed universal prohibition and

[71] It could be argued that if an event contract shows that state policies are likely to have negative consequences or are ineffective, that this undermines state interests because it could be embarrassing to state policymakers. Even if true, this interest would necessarily be less than the public interest served by bringing information about a state's failure to the public's attention.

[72] 89 FR 48968, 48981 "The Commission believes that a determination that an event contract that involves activity that is unlawful under state law is contrary to the public interest—which turns the focus of the analysis to the questions of whether the activity, itself, is recognized as unlawful, and, if so, whether the contract ''involves'' such unlawful activity—eliminates the possibility that the Commission would have to serve, in its public interest analysis of a particular contract involving particular activity, as arbiter of a state's own public interest determination, as expressed in statute and/or common law, in recognizing specific activity as causing, or posing, public harm."

[73] 89 FR 48981 "to amend § 40.11(a)(1) to include a determination that any event contract that involves activity that is unlawful under federal or state law is contrary to the public interest and may not be listed for trading or accepted for clearing on or through a registered entity"

[74] Illinois Constitution, Article I, Section 25. "SECTION 25. WORKERS' RIGHTS (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

[75] Tennessee Constitution, Article XI, Section 19. "Section 19. It is unlawful for any person, corporation, association, or this state or its political subdivisions to deny or attempt to deny employment to any person by reason of the person's membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor union or employee organization."

instead judge contracts that involve activity that is unlawful under federal and state law with the actionable financial incentive standard.

Furthermore, the three paragraphs that the Commission presented in its proposal to support a universal ban on contracts involving unlawful activity contains such weak analysis that it does not even justify the prohibition of extreme contracts related to unlawful activity. Take the hypothetical contract, "Will the US violent crime rate be above X level in 2025?" It is not at all clear how such a contract would undermine state interests. The Commission asserts such contracts are problematic because they create "…opportunities to profit from illegal activity".[76] That contract does not create an actionable incentive for a person to commit violent crimes. One individual or entity does not have sufficient resources to affect the violent crime rate in any meaningful way, certainly not to the extent that it would create the possibility of profiting off of the above hypothetical event contract by engaging in violence. The only other reasoning is that if the contract creates the possibility of profiting off of an illegal event, whether or not the contract creates an actual incentive to do that event, the contract should be prohibited. As has been previously argued, such a standard would run counter to the way that markets work and would be inconsistent with how virtually every other one of the Commission's markets are regulated. Profiting off of harm to a group of persons is an essential feature of any derivatives contract. As a result, the reasoning presented by the Commission does not articulate a single public interest concern that would justify prohibiting the above contract.

In fact, there are significant public interest considerations that would suggest such a contract is in the public interest. Event contracts are a powerful predictive tool that can aggregate diverse opinions and sets of information into accurate forecasts as we have previously demonstrated. Having accurate forecasts about likely future trends in violent crime is clearly in the public interest and supports, rather than undermines, state interests. That information can provide policymakers with a valuable tool to gauge the effectiveness of current policy at combating violent crime. It appears likely that the forecasting value of event contracts provides more of a public good than any public harm creating by incentivizing violent activity. At the very least, contracts such as these have a complex web of public good considerations which should be evaluated on a case-by-case basis as opposed to being subject to a universal prohibition.

This is not to say that every single contract involving unlawful activity is in the public interest, quite the contrary. For example, a contract based on the amount or value of narcotics seized by the US border patrol during a given timeframe could provide a means for international criminal organizations to "hedge" against the risk of more of their narcotics being seized than they expect. This would certainly create an actionable incentive to engage in illicit activity, contrary to the public interest. The point ForecastEx is trying to emphasize is that the topic of illegal activity is complex and contracts involving these activities deserve case-by-case attention as opposed to universal prohibitions.

b. A Categorical Ban may Lead to Market Disruption

Laws change. It is entirely possible that an event contract when listed does not involve activity that is unlawful under federal or state law, but due to a change in state or federal legislation, regulation, or judicial interpretation, such activity becomes unlawful during the life of an event contract. This would force a DCM or SEF to halt trading in existing contracts which could have a disruptive impact on markets. Forcing market participants to pre-maturely close their positions could disrupt their trading strategies, and cause them to take losses during liquidation, not to mention the difficulties this process

[76] 89 FR 48981

would cause for a registered entity attempting to implement this type of change in an orderly fashion. This would be especially problematic in situations where a law was vacated by a federal court, making a contract involve unlawful activity. A court's decision could be appealed to a higher court and potentially overturned. Situations could arise where a district court's decision makes an activity illegal, and thus makes event contracts related to that activity prohibited under the CFTC's proposal. Subsequent to the market disruption that occurs from delisting active products, an appeals court could overturn the district court's decision, potentially creating further disruption. The losers in these situations will be Market Participants who have positions in these contracts. The Commission should evaluate contracts differently when a change in law or judicial interpretation makes activity unlawful. The market disruption that could occur from delisting actively traded contracts is a public interest concern that should be taken into account when determining if a contract is in the public interest. A categorical ban on products involving unlawful activity deprives the Commission of the needed flexibility to address delicate situations where the laws change.[77] Case by case analysis is the most appropriate course of action.[78]

c. Many Categories of Contracts Involving Unlawful Activity are in the Public Interest

c.1 Contracts involving activity that is unlawful in a single, or a minority of states cannot be presumed contrary to the public interest.

As the Commission correctly notes, there are "variations across state law in the specific actions that are recognized as unlawful."[79] Due to this variation, many activities that would be recognized as lawful in one jurisdiction would be unlawful in another jurisdiction. This is of particular concern when dealing with the variations in business regulation, licensing, labor laws, and the sale of goods. In these circumstances, a total ban on event contracts involving activity unlawful under state law will have much more far reaching consequences than the Commission likely intends.

For example, many contracts related to economic transactions would be considered to involve activity that is unlawful under state law due to California Proposition 65.[80] California Proposition 65 declares that it is unlawful for a person to sell a good to another person that contains a substance found by the state of California to cause cancer without including a warning label stating that the product may contain

[77] for Example, the CFTC could determine to allow the contracts that are currently listed to remain listed until expiration while also requiring that DCMs and SEFs not list any additional strikes or expirations of those contracts, which would dramatically reduce any market disruption associated with these types of events.

[78] The number of listed contracts, the liquidity of the listed contracts, the open interest in the listed contracts, whether market participants roll their positions in the listed markets into future expirations to execute their risk management strategies, and the time to expiration of the listed contracts would all be important factors that should be considered when examining the extent of any potential market disruption. Because of the wide degree of variability in these factors, a one-size fits all approach does not appear appropriate.

[79] 89 FR 48981

[80]CA HEALTH AND SAFETY CODE – HSC, DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS, CHAPTER 6.6. Safe Drinking Water and Toxic Enforcement Act of 1986, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=20.&title=&part=&chapter=6.6.&article

carcinogens.[81] Due to the wide variety of chemicals included on California's Prop 65 list,[82] this has resulted in a vast number of consumer products being required to have Prop 65 notices in order to comply with California Law. In other states, these warnings are not required and thus typically not affixed to goods. This makes the majority of goods sold in the 49 states outside of California unlawful under California state law because the goods do not have the appropriate Prop 65 warning labels. As a result, it could easily be determined that any contracts dealing with the sale of consumer goods generally or any particular consumer good[83] on a national level involves activity that is unlawful under state law since those sales would violate California Prop 65. Such contracts could serve clear hedging and price-basing functions. Further, such contracts would not create an incentive to engage in illegal acts or allow market participants to profit from illegal activities. Any reasoned public interest analysis would not find that such contracts are contrary to the public interest.

A second issue with a universal prohibition on contracts involving activity unlawful under state law is that it effectively empowers state governments to dictate national policy. The Commission suggests that if an activity is unlawful in some states but not others, the CFTC will automatically, through its categorical prohibition, ban trading in event contracts related to that activity. The decision of one state's government will limit the types of financial transactions that citizens of all 50 states will be able to participate in. This upsets the balance and separation of powers between federal and state lawmakers. The government of Florida should not be able to determine what kinds of financial products residents of New York can trade, and vice versa. In an extreme example, a single state passes a law which determined that the risking or staking of money upon events related to weather or climate is illegal. Under the CFTC's proposal, the state would effectively be setting national policy by taking advantage of the CFTC's universal prohibition to prohibit all contracts related to weather and climate nationally.

In keeping with previous points, ForecastEx is not arguing that all contracts involving activity that is unlawful under state law should be determined to be in the public interest. Instead, the Commission should recognize that the intricacies of overlapping and competing state laws are a complicated topic not suited for universal prohibitions. Whether or not a contract involving activity that is unlawful under state law is contrary to the public interest should be determined on a case-by-case basis.

c.2 Contracts which depend on legislative and judicial determinations of legality should be considered to be in the public interest.

Under the broad category of contracts involving activity that is unlawful, there is a sub-category of products which should generally be determined to be in the public interest: contracts which revolve around the decisions of legislative and judicial bodies about the legality of certain actions. Examples of contracts in this category could include:

(i) Will New Hampshire pass a right-to-work law before the end of 2025?

[81] CA HEALTH AND SAFETY CODE – HSC, DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS, CHAPTER 6.6. Safe Drinking Water and Toxic Enforcement Act of 1986, 25249.6 "Required Warning Before Exposure To Chemicals Known to Cause Cancer Or Reproductive Toxicity. No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10."

[82] Proposition 65 List. Available at: https://oehha.ca.gov/proposition-65/proposition-65-list

[83] California lists products that are typically required to have prop 65 warnings. These include food products, vehicles, petroleum products, gas stations, and rental properties among others. https://www.p65warnings.ca.gov/places

(ii) Will the DC Circuit Court of Appeals overturn the Protecting Americans from Foreign Adversary Controlled Applications Act?
(iii) Will Congress pass a law providing a path to citizenship for undocumented workers by the end of 2025?
(iv) Will at least 25 states allow abortion through the end of the second trimester by December 2026?
(v) Will the DC Circuit Court of Appeals determine that Google violated anti-trust laws in USA v. Google LLC?
(vi) Will Congress pass an Assault Weapons ban by the end of 2025?

Such contracts would likely be considered to involve unlawful activity because they deal with activity that is currently unlawful, or will be unlawful depending on the resolution of the contract.[84]

These contracts do not raise the same concerns as contracts that the Commission is looking to prohibit. Contracts on whether a legislative body will take a given action do not give market participants an actionable incentive to engage in illegal activity.[85] Further, market participants do not even profit off of any unlawful activity with these contracts as they do not turn on the amount of unlawful activity but simply whether an activity will be unlawful or not. There is no state interest that is harmed by the listing of these contracts. Furthermore, such contracts are highly likely to create positive public interest benefits. Legislative acts can have significant impacts on the values of businesses and financial portfolios, especially when such acts concern the legality of certain activities. Market participants can use these products to hedge exposure to legislative risk. Using the above examples, right-to-work laws significantly change the business environment of a state, and whether or not one is in place in a given state could have a substantial impact on the success of a business in that location. The Tik-Tok Ban and Google antitrust cases have substantial implications for not only those companies but also for other tech companies as the cases will set precedent for how similar situations can be handled in the future, significantly impacting the outlook of a number of firms. The contracts also have substantial informational, price-basing, and planning value, as they can inform market participants about likely future legislative conditions which have significant value for businesses attempting to strategize future moves.

Further, contracts related to legislative decisions, while political in nature, do not have the same weaknesses that the Commission has raised related to election contracts. In the Kalshi order, the Commission argued that election contracts based on the control of a chamber of congress could not be effectively used as a hedging vehicle because an election outcome does not necessarily mean that a policy will be implemented, meaning that the economic consequences of an election are unpredictable.[86] In

[84] As previously noted, right- to-work laws make it unlawful for labor agreements to require the payment of union dues by non-union employees. The Protecting Americans from Foreign Adversary Controlled Applications Act determines that Tik-Tok must be sold or cease operations in the United States. Undocumented workers have broken US immigration laws by entering the country illegally. Abortion is banned in a number of US states. USA v. Google LLC turns on the question of whether Google committed unlawful activity. An Assault weapons ban would make the possession of assault weapons unlawful.

[85] Note that it could be argued that such contracts create an incentive for decisionmakers to alter the outcome of the contract. However, as long as a registered entity prohibits the participation of decisionmakers (see for example ForecastEx Rule 509), such a contract should not be more likely to result in illegal activity. Similar protections that exist in securities markets to prevent insider trading can be applied to these markets. If such protections are in place, it is unlikely that decisionmakers who can affect the outcome would be able to profit by trading the contracts and altering their votes to influence the outcome.

[86] Kalshi order, 16 "WHEREAS, the Commission finds that while control of a chamber of Congress may ultimately have economic effects, those eventual economic effects are both diffuse and unpredictable. While the likelihood of adoption of a given policy may increase or decrease based on the composition of Congress, many intervening events

contrast, contracts based on whether or not a specific action is legalized do have predictable economic consequences as they directly concern whether specific policies are enacted. The contracts additionally do not impact the integrity of elections and could not be used to manipulate a legislative process as the value of the contracts does not determine how a legislature will act. As long as a DCM or SEF has appropriate protections in place to prevent insider trading and market manipulation, such contracts would not pose different concerns than any other event contract.

As a result, the Commission should consider event contracts related to whether or not legislative or legal decisions make an activity unlawful to be generally in the public interest. At minimum, since the public interest rationale articulated by the Commission does not apply to this type of contract, they should not be subject to a universal prohibition and instead evaluated on a case-by-case basis.

c.3 Contracts related to societal trends should not universally be considered contrary to the public interest

Finally, ForecastEx believes that there are a number of potential contracts related to unlawful activity that are in the public interest because of the valuable information they will provide about societal trends and "hot button" political issues.

One such category would be contracts related to immigration. Contracts involving statistics such as net migration,[87] southwest land border encounters,[88] and population growth[89] all likely involve activity that is unlawful under federal and state law because they necessarily include undocumented workers who entered the United States illegally. Contracts on these statistics would not raise the public interest concerns the Commission articulates; an individual would not be incentivized to illegally immigrate to the United States because of such a contract.[90] Contracts on these statistics would however be in the public interest. These contracts would provide substantial price-basing and informational value for a variety of persons. Immigration and population statistics have a direct impact on labor costs, government spending, the availability of housing, consumer demand, and the level of strain on healthcare and educational systems. Predictive contracts that shows trends for immigration would thus provide consumers, businesses, and policymakers with valuable forward looking information. Additionally, immigration has become one of the most controversial topics in the American political sphere. Instead of politically charged rhetoric, such contracts would provide an un-biased and market-based mechanism of viewing and understanding the complex issues surrounding the topic, which should strengthen the democratic process by improving public discourse and analysis, as well as providing a useful tool for policymakers.

Immigration is not the only topic that falls into this category. Topics ranging from gun control, abortion, suicide, and fentanyl-overdoses have substantial economic and social consequences and are the center of often heated political debates. Contracts on these topics would involve unlawful activity, but would not provide an incentive to engage in illegal activity. They would however be a "…tool to help scientists,

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and variables exist between control of a chamber of Congress and the actual implementation of such a policy" https://www.cftc.gov/sites/default/files/filings/documents/2023/orgkexkalshiordersig230922.pdf

[87] National Population Totals and Components of Change: Vintage 2023. Census Bureau. https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html

[88] US Customs and Border Protection. Southwest Land Border Encounters. Available at: https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters

[89] Ibid, Footnote 74 Census Bureau.

[90] For example, in 2023 there were 2,475,669 Southwest Land Border Encounters. One additional person, or even an additional family group immigrating would have a negligible impact on the overall statistic. This means an individual could not change the outcome of the contract in any meaningful way and thus would not be incentivized to engage in illegal immigration as a result of the contract.

activists, and politicians aggregate public opinion about trends, policy preferences, and future scientific predictions."[91] At minimum, such topics require individualized and nuanced discussions of public interest, not a blanket prohibition.

The Commission should abandon its proposed universal prohibition and instead adopt the standard of actionable financial incentives to determine if contracts involving unlawful activity are contrary to the public interest. This will provide a clear standard for judging these contracts that is readily understandable to both the Commission and regulated entities. In fact, this will likely reduce the number of reviews related to this enumerated category that the Commission will have to perform as the CFTC and regulated entities will be on the same page with regards to which contracts are allowed, as opposed to the opaque and broad regime the Commission has proposed.

VII. Gaming Contracts should not be universally prohibited

Because the Commission included a fourth prong on their gaming definition, there are many contracts that could be defined as gaming that should not be subject to a universal prohibition. The Commission proposes that gaming includes any "…occurrence or non-occurrence in connection with one or more contests or games."[92] This greatly expands the category of gaming and would likely include many contracts that have legitimate hedging and price-basing potential. Most notably, contracts related to the economics of the sports sector including contracts on team and league valuations, broadcasting rights, league revenues, likelihood of stadium construction and stadium construction costs, as well as contracts related to the valuation and growth of the sports betting industry. These contracts all involve occurrences or non-occurrences in connection with games, but such contracts are not likely to be contrary to the public interest. Because these contracts are focused on the economics of the sports industry, there are valuable hedging and price-basing functions for these contracts. Contracts on team and league revenues would have clear hedging value for market participants in the sports industry. Contracts on likelihood of new stadium construction could have price-basing value for local businesses and landowners looking for inputs to help assess the value of their properties. The sports betting industry is one of the fastest growing industries in the country; contracts on the growth of this industry could provide a wealth of informational value for individuals as well as state policymakers considering whether further regulations on the industry might be necessary. Furthermore, none of these contracts would be construed as purely gambling, as none of them involve betting on the outcome or performance of players in a game. The rationale that the Commission forwarded in their proposal for making a categorical determination would not apply to this type of contract. The sports and entertainment sectors are important pieces of the economy, similar contracts related to other sectors of the economy would not be prohibited; the CFTC should not prohibit similar contracts for the entertainment industry simply because it does not want to do the work of evaluating contracts on a case-by-case basis. At minimum, if the CFTC adopts their proposed definition of gaming, the CFTC should not issue a categorical determination prohibiting contracts that meet the fourth prong of that definition.

[91] Ibid, Columbia Press Release.
[92] 89 FR 48968, 48974.

VIII. General Comments

a. Resource Management

Throughout the proposal, the Commission goes out of its way to note that conducting reviews under 40.11 are resource intensive for the Commission, and that it views reducing the number of 40.11 reviews as an important goal.[93] While ForecastEx can sympathize with the Commission's desire to perform a fewer number of 40.11 reviews, this is not sufficient justification for limiting the types of event contracts that can be listed by DCMs and SEFs. The Commission has seemingly prioritized reducing the amount of work that its staff must accomplish over allowing innovative products being brought into the market. As Commissioner Mersinger noted in her dissent "We do not get to override a requirement under the law because it will be hard or require more work for us."[94]

Furthermore, it is not at all clear that absent universal prohibitions that the Commission will be required to undertake an excessively large number of contract reviews. As noted by the CFTC, to date, the CFTC has completed a total of two 40.11 reviews and begun, but not completed, two others.[95] This is an average of one review for every three-and-a-half years[96] since the passage of CEA Section 5c(c)(5)(C), hardly a crisis of resource inefficiency. Even if the number of reviews rises with an increased number of event contracts being listed, this initial increase should not be expected to persist. As the Commission makes determinations on various contracts, the Commission will not need to undertake a resource-intensive review on similar contracts in the future as the matter will already be decided.

Finally, the path that the Commission is currently pursuing in the proposal, broad and vaguely defined enumerated categories that involve automatic prohibitions, will likely lead to an increased, not a reduced number of 40.11 reviews. With vaguely defined bounds that could potentially implicate any event contract, it becomes inevitable that the Commission's view of where the enumerated categories end will differ from that of DCMs and SEFs. The Commission's proposal will require more 40.11 reviews, not less.

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[93] 89 FR 48968, 48969. "...this will be of significant benefit to the Commission and its staff, since, in the Commission's experience, a single § 40.11(c) review is resource-intensive and consumes hundreds of hours of staff time."
89 FR 48968, 48973 "The Commission believes that this also will support the more efficient use of CFTC staff resources in connection with the review of event contract submissions"
89 FR 48968, 48988 "In the Commission's experience, a review pursuant to § 40.11(c) is resource-intensive and consumes hundreds of hours of staff time. Based on prior experience, the Commission estimates that each review conducted pursuant to § 40.11(c) takes, on average, approximately 625 hours of Commission staff time, at a cost of approximately $220,012."
89 FR 48968, 48972 "…the proposed amendments would reduce the frequency of event contract submissions to the Commission that raise potential public interest concerns, which would allow for more efficient use of Commission and staff resources by reducing the need to conduct individualized event contract reviews pursuant to § 40.11(c)."
[94] 89 FR 48968, 48996. "I recognize that a contract specific approach to making public interest determinations regarding event contracts may be difficult and resource-intensive for the CFTC. But aside from my view that a contract-specific approach is required by the CEA, it also is a better approach from a policy perspective precisely because it would permit the CFTC to consider these practical questions in the context of the specific circumstances applicable to a particular event contract. We do not get to override a requirement under the law because it will be hard or require more work for us."
[95] 89 FR 48968, 48971-48972.
[96] Two of the reviews involved the same Kalshi contract, just with slightly different terms and conditions from when Kalshi withdrew and then resubmitted their contract. If more reasonably, this is counted as just a single review instead of two, the incidence drops to just one review every five years.

b. The Commission should primarily rely on its authority to prohibit "similar" contracts

To be consistent with statute, the Commission should not be looking to promulgate a broad interpretation of the enumerated categories under CEA Section 5c(c)(5)(C). In order to "…support efforts by registered entities to ensure compliance with the CEA by more clearly identifying the types of event contracts that may not be listed for trading or accepted for clearing"[97] the Commission should focus on codifying interpretations of the enumerated categories that have clear, well-defined boundaries. Even if these narrower interpretations do not immediately catch all of the contract types that the Commission believes are contrary to the public interest, the CEA provides a way for the Commission to prohibit contracts that do not fall within the bounds of the enumerated categories.

Through a formal rulemaking process, the Commission may determines a contract is "similar" to an enumerated category and prohibit its listing. Section 5c(c)(5)(C) of the Commodity Exchange Act ("CEA") provides that...the Commission may determine that …[event contracts] … are contrary to the public interest if they involve… (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest."[98] The language of the statute highlights the method by which the Commission can make these determinations, "by rule or regulation", which necessarily entails a formal rulemaking process. Instead of following this clearly defined process, the Commission appears to be attempting to circumvent it by defining the enumerated categories as broadly as possible. The Commission notes that it is not proposing to exercise its authority under this section.[99] This is not surprising. The way the Commission has broadly defined the enumerated categories allows the Commission to use 40.11 reviews to arbitrarily prohibit any contract they do not like without having to go through a process of formal rulemaking. This is contrary to statute.

c. Recommendations for Excluded Commodities

The Commission proposes to identify categories of contracts that are excluded under 40.11 reviews based on the CEA Section 1a(19)(i) definition of an excluded commodity. ForecastEx believes that the Commission's interpretation is correct that CEA Section 5c(c)(5)(C) contains a typographical error and correctly refers to 1a(19)(i). Section 1a(2) of the CEA is not relevant to 5c(c)(5)(C) and the language in 5c(c)(5)(C) mirrors the language in the excluded commodity definition.

The Commission also asks for comment on what items should be considered macroeconomic indexes and measures.[100] ForecastEx agrees with the Commission's assessment that economic indicators, financial, indicators, as well as currency and exchange rates all fall within the excluded commodities definition. However, ForecastEx believes that the CFTC can better define the scope of macroeconomic indexes and measures. First, because macroeconomics is generally concerned with entire economic systems,[101]

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[97] 89 FR 48968, 48969

[98] 7 U.S. Code § (c)(5)(C)(i)(VI)

[99] 89 FR 48968, 48984. "While the Commission is not proposing to exercise this authority at this juncture, the Commission reiterates that it retains the authority under CEA section 5c(c)(5)(C)(VI) to determine, in the future, that other activities are similar to the Enumerated Activities, and that event contracts involving such similar activities are contrary to the public interest and may not be listed for trading or accepted for clearing on or through a registered entity."

[100] 89 FR 48968, 48973

[101] Merriam Webster, "macroeconomics", (last accessed July 11, 2024): https://www.merriam-webster.com/dictionary/macroeconomics "a study of economics in terms of whole systems especially with reference to general levels of output and income and to the interrelations among sectors of the economy."

indicators should only be macroeconomic if its measurement is on a national or global scale. Economic indicators relating to states, and other sub-national regions should not be considered macroeconomic measures. US Building Permits is a macroeconomic measure. Texas Building Permits is not.

Second, the CFTC should clarify that macroeconomic measures and indexes are not limited to measures of the United States economy. Similar measures of foreign nations should also be considered macroeconomic measures. All of the examples contained within the Commission's illustrative examples of contracts not within the scope of CFTC Regulation 40.11 are measurements of the US economy. CEA Section 1a(19)(i) does not distinguish between US macroeconomic measures and the macroeconomic measures of foreign economies so the CFTC should not either.[102]

Finally, ForecastEx believes that there is an additional category which the Commission should add to the list of excluded commodities: fiscal and monetary policy measures.[103] Monetary policy measures include items like policy interest rates, reserve requirements, and quantitative easing. Fiscal policy measures include items such as government spending, tax rates, and measures of government debt. Monetary and fiscal policy measures should be considered macroeconomic indexes and measures, and specifically macroeconomic measures. These policies are the primary levers by which a government influences the national economy. As a result, these metrics are macroeconomic measures needed to study and understand the overall state of the macroeconomy. Further, the primary measure of economic activity, Gross Domestic Product, contains government spending as one of its four main inputs. Government policy is generally described as falling under the umbrella of macroeconomics.[104] As a result, these important macroeconomic measures should be included within the Commission's definition of macroeconomic measures for determining which contracts are not subject to 40.11 reviews.

d. Revisions to 90-Day Review

The Commission's proposed revisions to 40.11 preserve the Commission's ability to call a 90-day 40.11 review upon a review of the terms and conditions of the contract.[105] Additionally, the CFTC will request that the registered entity suspend the listing or trading of the contract during the pendency of the

[102] ForecastEx notes that if the reporting in a foreign nation is unreliable, or if the CFTC lacks a memorandum of understanding, a DCM may have a substantially higher burden in order to demonstrate that a macroeconomic contract on a foreign country meets the requirements of CFTC Regulation Part 38 Subpart D and is not readily susceptible to manipulation. This however, is a separate issue from whether such a contract should be considered to fall under one of the enumerated categories for the purposes of CFTC Regulation 40.11.

[103] Some monetary policy measures, like the federal funds rate are already included as financial indicators within the Commission's proposal. ForecastEx would like to see any monetary policy measures that are not considered financial indicators to be included as their own category.

[104] Federal Reserve. What is Macroeconomics. https://www.federalreserve.gov/faqs/what-is-macroeconomics.htm (last accessed July 11, 2024). "Importantly, macroeconomists also study the role government has in determining the pace of growth, the long-run rate of potential output in an economy, and the inflation rate."
Note also that the Fed defines both Fiscal Policy and Monetary Policy as subsets within the broader field of Macroeconomics when categorizing the specializations of its economics staff. Federal Reserve. Meet the Researches https://www.federalreserve.gov/econres/macroeconomics-c.htm (last accessed June 17, 2024).

[105] 89 FR 48968, 48992. "The Commission may determine, based upon a review of the terms or conditions of a submission made by a registered entity under § 40.2 or § 40.3, that an agreement, contract, transaction, or swap as described in paragraph (a) of this section may involve-an activity enumerated in paragraphs (a)(1) or (2) of this section, and is subject to a 90-day review."

review.[106] ForecastEx believes this provision can be improved. If the Commission initiates a 90-day review on contracts that have already begun to trade, this would lead to market disruption, and has the potential to harm customers whose strategies may involve exiting their positions prior to expiration. Instead, if the Commission initiates a 90-day review on a product that has already begun to trade, the Commission should instead require the registered entity to place the contract into a closing-only state so that market participants who have a position in the contract under review still have the opportunity to exit their positions if they so choose.

IX. Conclusion

Event contracts are much more than contracts related to elections. Event contracts show great promise as information aggregation, risk management, price-basing, and educational tools. The Commission should be encouraging innovation in this space given the public interest benefits it promises by providing a clear and consistent regulatory framework. The Commission's proposal currently fails to do that. By adopting the revisions that ForecastEx has proposed, the Commission can improve their regulation of event markets and avoid doing widespread damage to this burgeoning field of products.

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ForecastEx appreciates the opportunity to comment on the CFTC proposal, and is available to provide further input as the Commission may request. If the Commission has any questions or comments regarding this letter, please feel free to contact me through email at gdeese@forecastex.com.

Respectfully,

Graham Deese
ForecastEx Chief Regulatory Officer

[106] 89 FR 48968, 48992. "The Commission shall request that the registered entity suspend the listing or trading of the agreement, contract, transaction, or swap subject to the 90- day review during the pendency of the review period."