

August 7th, 2024

I write to express my disagreement with the Commission's proposed amendments to its rules concerning event contracts ("17 CFR Part 40 Event Contracts") [1].

Summary

I appreciate the Commission's desire to provide clarity in the area of event contracts to reduce burden and wasted effort by registered entities, new applicants, and the Commission's staff. However, I believe that the Commission has incorrectly evaluated the public interest consideration of these contracts - contracts involving political events are very much *in* the public interest, serving to strengthen, not weaken, our democratic electoral process. The volatile political events of this summer 2024, occurring after the amendments were proposed, highlight the demand and need for fast access to the wisdom of the crowds provided by these event contracts. The Commission should be wary of the unintended consequences of limiting these contracts to platforms where Americans cannot participate and where the Commission cannot regulate them. Finally, I ask the Commission to reconsider and identify alternative solutions to its concerns with regards to how to structure political event contracts (to avoid putting the Commission in the position of an elections cop), and how "activity unlawful under state law" relates to event contracts.

Outline of Arguments

1. Contracts involving political events are very much *in* the public interest. The political events of summer 2024 have shown the importance and demand of the wisdom generated by such event contracts.
2. If the Commission is genuinely concerned about the impact of political event contracts on the integrity of our elections, it should strongly consider the unintended consequences of further cementing the influence of unregulated offshore event contract platforms accessible only to foreign actors.
3. The Commission can enable event contracts to be structured in ways that do not put it in the position of being an elections cop.
4. The Commission's interpretation about political event contracts "involves activity that is unlawful under state law" is misguided upon closer reading of the authority given to the Commission.

Arguments

The Commission asks: "Are there factors, in addition to those described herein, that may be relevant when evaluating whether a contract, or category of contracts, is contrary to the public interest?"

1. Contracts involving political events are very much *in* the public interest. The political events of summer 2024 have shown the importance and demand of the wisdom generated by such event contracts.

Commenters in favor of political event contracts have spoken at length to their value in previous comment periods relating to Nadex and, more recently, Kalshi [2]. I submit my personal support in favor of these contracts. While I personally do not trade in significant volume on platforms like PredictIt or Kalshi, I am a frequent consumer of the wisdom they provide. Those platforms, along with play-money prediction markets like Manifold, are the primary ways I get my news, especially political news. They allow me to be a more informed citizen due to their wisdom-of-the-crowds approach of aggregating all other news sources into quantitative probabilities. These markets are the most effective method we have of deriving intelligence (i.e. “price discovery” of political outcomes) that financially rewards those who are free of opinion and bias for anything but the truth.

In footnote 125 of the notice of proposed rulemaking, the Commission rightly states that “Certain commenters on the contracts subject to the Kalshi Order asserted that event contracts involving occurrences in connection with political election contests could serve as a check on misinformation and inaccurate polling, stating that market-based alternatives tend to be more accurate than polling or other methods of predicting election outcomes.” I agree with those commenters.

The Commission goes on to express the concern that “a seemingly false or unreliable poll [can cause] significant movement on an event contract market and [suggests] that such poll could have been, or at least could be, created to cause such market movement; further arguing that such false polls can have a real and detrimental effect on elections.” citing an article [3] by former FiveThirtyEight journalist Harry Enten. Since writing that article, Enten has publicly commented [4] on the usefulness of political event markets to understand the conventional wisdom and regularly references such markets in his current position as a Senior Data Reporter at CNN [5]. This suggests that the fear of fake polling having a significant negative impact on the value of prediction markets is overblown relative to the value these markets provide. In my anecdotal experience in the political forecasting twittersphere, misinformation and inaccurate polls are noticed and publicized *as a result of* the overall trading community having a financial incentive to identify and flag them

All this said, these arguments in favor of political event contracts do not yet seem to have been persuasive to the Commission, as suggested by these latest proposed amendments to categorize political event contracts as “contrary to the public interest”. Therefore, I implore the Commission to reconsider its position given the volatile political events of summer 2024 following the Commission’s notice of this proposed rulemaking.

This summer, which has seen unprecedented political uncertainty following the presidential debate between President Biden and former President Trump, an attempted

assassination of former President Trump, President Biden's subsequent withdrawal from the race, Vice President Harris' quick rise to nomination, and two major party vice presidential candidate selections, has shown the importance and demand of the wisdom generated by prediction market platforms offering political event contracts or the like. Polymarket alone has hit record high trading volume [6] in both June (\$111.6M) and July (\$387.0M), up to over 600% of its previous high in May (\$63.0M), suggesting that we are in an era that is different and distinct from the time during which the proposed rulemaking was drafted. As such, the Commission should take a renewed look at its perspective that political event contracts are "contrary to the public interest".

2. If the Commission is genuinely concerned about the impact of political event contracts on the integrity of our elections, it should strongly consider the unintended consequences of further cementing the influence of unregulated offshore event contract platforms accessible only to foreign actors.

As evidenced by the aforementioned increase in demand of Polymarket's political events contract product, I urge the Commission to carefully consider whether it wants to hand the gift of a monopoly on political event contracts to Polymarket. It is illegal for Americans to participate in Polymarket, and as such, it is only available to foreign actors. If the Commission is genuinely concerned about the impact of political event contracts on the integrity of our elections, and Polymarket is becoming an authoritative source on political news through its political events contracts, the Commission should consider unintended consequences of excluding Americans from these markets. These are the people who are closest to, as Chairman Benham stated [7], the "uniquely American experience of participating in the democratic electoral process" who could provide improved accuracy to "price discovery" on political topics. As such, the Commission should carefully evaluate the risks of cementing the influence of foreign actors through these unregulated offshore platforms.

3. The Commission can enable event contracts to be structured in ways that do not put it in the position of being an elections cop.

In Chairman Benham's statement [7], he expresses the concern that "Allowing these contracts would push the CFTC, a financial market regulator, into a position far beyond its Congressional mandate and expertise. To be blunt, such contracts would put the CFTC in the role of an election cop." This seems like it could be easily avoided by ensuring clear resolution terms for a contract. For example, rather than a contract that resolves according to a particular winner of an election, the Commission could require event contracts along the lines of "Who will be president on January 21st, 2025?" (the day after inauguration day) with clear instructions, including potential delay in resolution as needed, in the event of any disputes. Similarly, the Commission could decide not to permit "the outcome of a political contest, including an election or elections" but permit "an occurrence or nonoccurrence in connection with such a contest or game, regardless of whether it

directly affects the outcome”, such as whether a certain individual is reported by the New York Times as being sworn in on Inauguration Day. The Commission would therefore be only responsible for investigating fraud, manipulation, and the like to the reporting by such an organization, not the underlying political events themselves.

The Commission requests comment on all aspects of its proposed public interest determination with respect to contracts involving activity that is unlawful under federal or state law.

4. The Commission’s interpretation about political event contracts “involves activity that is unlawful under state law” is misguided upon closer reading of the authority given to the Commission.

Even if the Commission believes that political event contracts are contrary to the public interest, I agree with Kalshi’s argument [8] that the Commission’s authority in determining whether a contract is contrary to the public interest is limited only to if “the contract “involve[s]” one of six enumerated activities [including] “activity that is unlawful under any Federal or State law”. Given that elections are not unlawful, then contracts on them should not be subject to the public interest evaluation. The Commission’s perceived authority to subject a contract to an evaluation of public interest simply because the act of trading on such contract may be unlawful under a state law is an overreach - it’s not the trading that is subject to state law, but rather the underlying event in the contract.

Thank you for your consideration,

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Footnotes (all sites accessed August 6th, 2024)

[1] <https://www.cftc.gov/sites/default/files/2024/06/2024-12125a.pdf>

[2]

https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7394&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=1

[3] <https://fivethirtyeight.com/features/fake-polls-are-a-real-problem/>

[4] <https://x.com/ForecasterEnten/status/1028732014265073664>

[5]

<https://www.google.com/search?q=site:https://transcripts.cnn.com+%22betting+markets%22+enten>

[6] <https://dune.com/rchen8/polymarket>

[7] <https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement051024>

[8] https://business.cch.com/srd/20231101_KalshiEx-v-CFTC_complaint.pdf