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VIA ELECTRONIC MAIL

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Re: Prediction Markets Roundtable Submission

I'm writing on behalf of StoneX Group Inc. to share our views regarding prediction markets and event contracts in response to your request for comments in advance of the roundtable. StoneX applauds Acting Chairman Pham and Commission leadership for their recognition that the CFTC must take a forward-looking approach to event contracts and prediction markets.

The time has come for the Commission to deliver the holistic regulatory framework for event contracts that many have sought for decades. We agree with the Commission's decision to shift course to the "common sense regulation of prediction markets."

Event contracts provide market participants with the opportunity to hedge risk differently and more precisely than existing derivatives. An event contract can be used to hedge events as unusual as a pandemic or the discovery or development of a new technology—risks that cannot be precisely hedged using existing instruments. Event contracts also permit market participants to better understand risk by aggregating information and making it public, which fosters the efficiency and competitiveness of markets.

StoneX appreciates the opportunity to provide its perspective on this important topic and hopes that it will inform the Commission's approach to the regulation and oversight of prediction markets.

I. Harnessing Innovation in Prediction Markets and Event Contracts

StoneX is encouraged by the Commission's renewed focus on fulfilling its Congressional mandate to "promote responsible innovation and fair competition" in the ever-evolving derivatives markets that the CFTC regulates. (CEA §3(b); 7 U.S.C. § 5(b)).

For decades, Congress has consistently made clear its intent for the Commission to foster market innovation. To its credit, the CFTC has often worked collaboratively with Congress to promote responsible innovation and fair competition in the derivatives markets. In 2000, Congress passed the Commodity Futures Modernization Act, which created a flexible regulatory framework that

replaced the CFTC’s previous one-size-fits-all style of regulation. By enacting the CFMA, Congress sought “to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions[.]”¹ The CFTC worked closely with Congress to design this regulatory structure, even providing Congress with a detailed staff report recommending many of the changes Congress turned into law. CFTC’s then-Chairman, William Rainer, noted that the CFTC’s proposed framework “promote[d] innovation” and “maintain[ed] the competitive position of the United States markets.”²

To this day, the Commission promotes innovation by giving DCMs and SEFs the freedom to self-certify new products, enabling them to bring these products to their markets quickly, a key factor in the promotion of efficient innovation.³ The CFTC’s principles-based regulatory framework has given the agency the flexibility it needs in order to evolve with the markets it regulates and promote innovation within them.

The Commission has the opportunity to use that flexibility to create a clear regulatory framework for prediction markets, which are invaluable tools that provide critical information about the wide variety of real-world events they predict. Prediction markets are not new, and they have a proven track record of generating forecasts for a host of purposes – from who will win an election, to who will win the Oscar for Best Picture, to how bad the flu season will be in a given year, to whether an earthquake of a certain magnitude will occur anywhere on the planet on a certain date and time.⁴ These types of event contracts, and the many other event contracts one could contemplate, represent “an important new frontier in harnessing the power of markets to assess sentiment to determine probabilities that can bring truth to the Information Age.”⁵

II. The Commission’s 2008 Concept Release on the Appropriate Regulatory Treatment of Event Contracts Provides a Foundation for the Roundtable’s Discussion

In 2008, in response to a “substantial number of requests [beginning in 2005] for guidance on the propriety of trading various event contracts under the CEA,” the CFTC issued a “Concept Release on the Appropriate Regulatory Treatment of Event Contracts.”⁶ Apparently recognizing the

¹ House Report No. 106–711(III) (Sept. 6, 2000).

² CFTC Transmits Regulatory Changes to Congress, (February 22, 2000), <https://www.cftc.gov/sites/default/files/opa/press00/opa4367-00.htm>.

³ The Commission’s recent adoption of the final rule amending Part 40 of the CFTC’s regulations, which set a new “complete” standard for information that DCMs and SEFs are required to provide to the Commission as part of the self-certification process, risks stifling the innovation that the prior, more streamlined approach to self-certification allowed. However, StoneX is confident that the new administration will take a logical approach to the new standard that will align with its broader innovation-friendly position.

⁴ Adam Ozimek, *The Regulation and Value of Prediction Markets* (03/12/2014), MERCATUS WORKING PAPER, Available at SSRN: <https://ssrn.com/abstract=3211624> or <http://dx.doi.org/10.2139/ssrn.3211624>

⁵ CFTC Announces Prediction Markets Roundtable, Release Number 9046-25 (Feb. 5, 2025).

⁶ Concept Release on the Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25669 (May 7, 2008).

substantive and practical concerns that could arise from applying federal regulation to event contracts and markets, the Commission solicited comments from the public, seeking to draw on the expertise of a wide variety of interested persons.⁷

The 2008 Concept Release contained 24 questions that the Commission believed it must consider “in advance of issuing any definitive guidance” on the regulation of event contracts. While the answers to many of those questions are easier to answer 17 years later, they are still an excellent starting point. Accordingly, we have used them throughout our submission.

III. A Holistic Regulatory Framework—Coupled with a Clear Policy Statement Until a Regulatory Framework Is in Place—Is Preferable to No-Action Relief and Regulation Through After-the-Fact Prohibition

The 2008 Concept Release sought comments regarding whether the issuance of staff no-action relief—such as the relief issued to the IEM—was an appropriate or preferable means for establishing regulatory certainty for event contracts and markets. The Concept Release also asked whether a policy statement was appropriate or preferable.

Since the Concept Release was issued 17 years ago, the innovation-stifling results of proceeding through no-action relief and ad-hoc prohibitions on event contracts in the absence of a holistic regulatory framework have become clear. The Commission’s issuance and subsequent revocation of its no-action letter to PredictIt Market, and its order prohibiting KalshiEx’s political event contracts, have demonstrated that the establishment of a holistic regulatory framework as contemplated by Acting Chairman Pham is necessary to foster innovation in prediction markets.

Nearly eight years after issuing a no-action letter to PredictIt in 2014, the Division of Market Oversight withdrew its no-action relief, asserting that “[t]he University ha[d] not operated its market in compliance with the terms of Letter 14-130.”⁸ But the Division did not explain *how* PredictIt violated the terms. It also directed all outstanding PredictIt contracts to be closed out or liquidated in less than six months from the no-action withdrawal, leading to harm to market participants, confusion, and months of litigation.⁹

Even if individual DCMs could rely on no-action relief from the Commission, the fact that only the *Division* of the Commission that issues a no-action letter is bound by it, and “[o]nly the Beneficiary may rely upon the no-action letter,” would make other would-be entrants to prediction markets wary of making investments to develop event contracts and markets and seeking no-action letters based on the Commission’s position reflected in prior no-action letters.¹⁰

⁷ *Id.*

⁸ CFTC Letter No. 22-08 (Aug. 4, 2022); CFTC Letter No. 14-130 (Oct. 29, 2014).

⁹ *Clarke v. Commodity Futures Trading Comm'n*, 74 F.4th 627, 643 (5th Cir. 2023).

¹⁰ 17 C.F.R. § 140.99(1)(2).

The success of PredictIt and KalshiEx—before they became mired in litigation—demonstrates that there is value and wide-spread interest in prediction markets that could grow if the Commission provides a clear regulatory framework. PredictIt gained 29,000 active traders within sixteen months of its launch, and in the lead-up to 2024 election, KalshiEx was the number one downloaded free app in Apple’s App Store, beating out apps like ChatGPT, TikTok, and Instagram.¹¹ Similarly, the successful operation of the Iowa Electronic Markets for more than 35 years shows that prediction market DCMs could provide important information aggregation and synthesis while providing safe and effective markets.

But the current environment of no-action relief revoked without explanation, and regulation through prohibition orders and litigation, creates too much uncertainty for market participants to make significant investments to develop prediction market DCMs or participate in the markets. To foster the value and innovation potential these markets hold, the Commission should develop a holistic regulatory framework for prediction markets and event contracts and issue a clear statement of the Commission’s policy as it works to develop an appropriate regulatory framework.

IV. The CFTC’s Current Approach Is Not Working

In September 2023, the CFTC issued an order (the “Kalshi Order”) that prohibited KalshiEX LLC from listing for trading certified derivatives contracts with respect to political control of the U.S. Senate and House of Representatives (“Congressional Control Contracts”). In the Kalshi Order, the Commission found that the proposed Congressional Control Contracts “involve gaming” and activity that is unlawful under state law,¹² and are contrary to the public interest.

As critics correctly pointed out, in determining that the Congressional Control Contracts are “contrary to the public interest,” the Commission applied an “economic purpose test” that (1) does not exist in the Commodity Exchange Act, and (2) was not designed for event contracts and thus imposes requirements that many event contracts may struggle to meet. Such a test would prohibit the Commission from fulfilling its Congressional mandate to promote market innovation and thus must be revised.

Section 5c(c)(5)(C)(i) of the Commodity Exchange Act provides that the Commission “may determine” that contracts on events that reference terrorism, assassination, war, and gaming are “contrary to the public interest.” The CEA does not define “public interest” for purposes of this section. Nevertheless, in the Kalshi Order, the Commission boldly asserted that the “legislative history” of CEA section 5c(c)(5)(C) indicates that Congress intended for the Commission to consider a form of the “economic purpose test” when evaluating whether an event contract was contrary to the public interest.

¹¹ Matthew Fox, *The surge in election betting has catapulted Kalshi and Polymarket to the top of Apple's App Store*, Business Insider (Nov. 5, 2024) <https://www.businessinsider.com/kalshi-polymarket-top-apple-app-store-downloads-election-betting-surge-2024-11>.

Not so. This supposed “legislative history” is actually nothing more than a brief exchange between two U.S. Senators in 2010 regarding the proposed Dodd-Frank Act provision that became 5c(c)(5)(C). In this exchange, Senator Dianne Feinstein referenced a provision of the CEA that the Commission previously used to decide if any contract – not just an event contract – was contrary to the public interest – a provision that was deleted from the CEA in 2000.

The Kalshi Order’s adoption of this economic purpose test as the primary part of its public interest review is flawed because the test was not designed to effectively evaluate event contracts. The two-pronged test requires the Commission to consider whether the proposed contracts (1) serve an effective hedging function, and (2) have price-basing utility.

This test’s fatal flaw is that it was designed for traditional futures contracts, which drastically differ from the types of binary event contracts the Commission has been asked to provide a regulatory framework for since the mid-2000s. The CFTC knows this, as evidenced by its recognition in 2008 that event contracts generally “are neither dependent on, nor do they necessarily relate to, market prices or broad-based measures of economic or commercial activity.” Yet 17 years later, the Commission still attempted to fit a square peg in a round hole, applying an inappropriate economic purpose test to find that Kalshi’s proposed event contracts were contrary to the public interest.

The Commission’s “economic purpose” review of event contracts in the KalshiEx matter is misguided and must be calibrated differently for event contracts to create a holistic regulatory framework.

V. StoneX’s Proposed Regulatory Framework

With the history and innovation potential of prediction markets and event contracts in mind, StoneX proposes that the Commission adopt a regulatory framework that: (1) adopts a “public interest test” specifically for event contracts; (2) adopts regulations that clarify Section 5c(c)(5)(C)(i); (3) imposes clearing, capital, and risk requirements to protect retail customers; (4) enumerates presumptively acceptable categories of event contracts; and (5) creates an expedited approval process for Commission review of proposed event contracts.

A. A New “Public Interest Test” for Event Contracts

The Kalshi blunder by the Commission in 2023 underscores the need for the Commission to develop a standard for public interest review of event contracts that is better suited to the fundamental nature of these contracts.

StoneX proposes that this new public interest review should evaluate whether the proposed event contract either (1) serves as an information aggregation tool, *or* (2) can be used for hedging purposes.

Prediction markets are critical information-aggregation tools that have proven to be some of the most accurate predictors of future events compared to other types of forecasting. Conducting the kind of information-aggregation that prediction markets provide is a prohibitively expensive endeavor for many individuals and consumers, small businesses, government entities, and policy makers.¹³ But prediction markets bring important information into the public space in real time, providing informational value by aggregating the beliefs of a host of market participants, which allows interested parties—from traders wishing to profit, to researchers, companies, and governments—to engage in risk shifting and price discovery. Any new public interest test that the Commission adopts should recognize the importance of this information-aggregation aspect of prediction markets and allow an event contract to be listed for trading if it serves such a purpose.

Contracts that are traded for information aggregation purposes are not all that different from traditional futures contracts in the utility they provide for risk shifting and price discovery. For example, event contracts could permit market participants to hedge the risk associated with the development of particular technologies, shifts in regulations or laws, or natural disasters.

The economic consequences of occurrences like these, which are likely to be the subject of event contracts, often have the potential to be so substantial that individuals, businesses, and governments not only need to accurately anticipate certain results, but also may want to hedge against an outcome that would be adverse to their interests.

This is easy to imagine in the political event contract scenario, in which one party's policies would negatively impact a company's bottom line, prompting that company to hedge that direct risk stemming from the election of that party. Consider another type of event contract, such as one that predicts, for example, the development of technology that competes with existing AI models at a fraction of the processing power. Developers of microprocessors—or investors who hold their stock—could hedge their investment by purchasing an event contract that predicted the amount of processing power used by AI models on a particular date.

Even sports event contracts serve a valuable hedging purpose for a wide range of businesses. Consider companies that created tens of thousands of hats touting the Kansas City Chiefs as the 2025 Super Bowl champions. Those companies could have hedged this investment by purchasing event contracts that generated a profit if the Chiefs lost the Super Bowl, thereby recouping at least some of the money they otherwise lost in printing the hats.

B. Provide Clarity to Section 5c(c)(5)(C)(i)

To eliminate confusion surrounding the “Special Rule” for certain event contracts (Section 5c(c)(5)(C)(i)), the Commission should make explicit that while it has additional authority to

¹³ “While many prediction markets are likely run without public knowledge, known examples of companies that have used prediction markets include Abbott Labs...Best Buy, Chrysler...Microsoft, Motorola...and TNT.” Ozimek, *supra* note 5.

review event contracts that involve activity in the enumerated categories in Section 5c(c)(5)(C)(i), there is not a blanket prohibition on such contracts. Instead, while contracts in these categories may receive additional scrutiny, the Commission has the authority to regulate them and should allow event contracts that meet the proposed “public interest” test above, even if they are considered, for example, “gaming.”

Acting Chairman Pham has raised concerns about federalism and the risk that the Commission has “bigfoot[ed]” into State regulation of gaming, specifically with respect to its prohibition on Kalshi’s Congressional Control Contracts and the Commission’s 2024 Event Contracts Proposal.¹⁴ Although we believe the Commission is poised to revise its view that “taking a position in the Congressional Control Contracts” proposed by Kalshi amounted to gaming, thereby effectively making all event contracts a form of “gaming,” Acting Chairman Pham’s federalism concerns merit consideration. Therefore, StoneX believes that any approach the Commission ultimately takes to regulating event contracts should account for those concerns.

Finally, Category VI, “[O]ther similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest,” should be eliminated. This ad-hoc authority to deem something a “similar activity” to the array of categories in Section 5c(c)(5)(C)(i) leaves too much discretion and the potential for arbitrary decisions for prediction markets to foster innovation and thrive. The Commission should have the authority to add specific categories to the “Special Rule” when needed as these markets develop, but only specifically enumerated categories of contracts should be reviewed under this Rule.

C. Identify Presumptively Permissible Event Contract Types

Just as Section 5c(c)(5)(C)(i) provides an enumerated list of event contracts that the Commission “may determine” are contrary to the public interest, the Commission should identify categories of event contracts that are presumptively permissible to provide market participants with the clarity needed to invest in the development of prediction markets and event contracts and to allow participants in those markets to purchase contracts without concern that a contract in their portfolio may be rendered valueless by an after-the-fact order from the Commission.

To provide clarity to the market, this list should be as robust as possible based on feedback from the public during the Roundtable process. But at a minimum, it should include political event contracts; gas, oil, metals, and financial instrument close event contracts; weather-related event contracts; box-office and theater event contracts; technology development event contracts; and event contracts that predict natural disasters.

D. Create an Expedited Review Process for Event Contracts

Much of the uncertainty—and litigation costs—around event contracts could be eliminated if the Commission approved event contracts in advance of their offering. But under the current

¹⁴ Dissenting Statement of Commissioner Caroline D. Pham on Event Contracts Proposal, (May 10, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement051024b>

framework, market participants must obtain no-action relief from the Commission (which may later be withdrawn), self-certify under Section 40.2 and hope that they interpreted Commission guidance correctly, or seek Commission approval under Section 40.3, which can take up to 90 days.

For many event contracts, timing is key to foster robust markets. If a DCM introduces a self-certified event contract for an upcoming election, the passage of a bill, or a movie premiere, but the Commission implements a stay and 90-day review, the event may be over before the Commission makes a decision. To incentivize market participants to seek orderly, prior review and approval from the Commission to eliminate uncertainty surrounding self-certified event contracts, the Commission should streamline its review and approval process for voluntary submission of event contracts.¹⁵

This process should provide a streamlined submission for event contracts that fall within the enumerated list of presumptively permissible event contract types. Review of these submissions should be completed within 21 days after receipt by the Commission, with the option to extend the initial 21-day review period by 14 days if the contract presents a novel issue. For event contracts that fall outside of the enumerated list, the Commission should review such submissions within 30 days, with an option to extend for an additional 21 days if the contract presents a novel issue.

Very truly yours,



Renato Mariotti
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¹⁵ We do not advocate any delegation of authority to the National Futures Association in this regulatory framework because market participants find clarity from the Commission itself to be more beneficial.