433 W Van Buren St.
Chicago, IL
60607
United States

cboe.com

July 27, 2026

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

Re: Prediction Markets; Public Interest Determinations (Release No. 9249-26; RIN 3038–AF65)

Dear Mr. Kirkpatrick,

Cboe Global Markets, Inc. ("Cboe") appreciates the opportunity to respond to the proposal[1] by the Commodity Futures Trading Commission ("CFTC" or the "Commission") to amend Regulation 40.11 (the "Proposal"). In recent years, prediction markets have experienced rapid growth and garnered significant interest from both retail and institutional investors. As with any financial product, it is important that event contracts are offered in a manner prioritizing investor protection and market integrity.

The Proposal centers on event contracts implicated by the Commodity Exchange Act ("CEA") Section 5c(c)(5)(C), which provides that the CFTC may determine that contracts based on the occurrence of an event are contrary to the public interest if the contracts involve terrorism, assassination, war, gaming, or an activity that is unlawful under state or federal law ("enumerated activities"). The Proposal seeks to amend Regulation 40.11 (also known as the "Special Rule"), which establishes a review process for event contracts involving those enumerated activities.

We applaud the Commission for taking this step to improve the regulatory framework for event contracts that may conflict with the public interest. We believe, however, that this is only the first of several regulatory actions necessary to adequately address event contracts, especially those that do not involve the enumerated activities.

Comprehensive Regulation for All Event Contracts

Per the CEA, derivative transactions affect a national public interest by "providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information

[1] Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806 (June 12, 2026).

through trading in liquid, fair and financially secure trading facilities."[2] To better serve this national public interest, we believe there needs to be a comprehensive regulatory framework that applies consistently to all event contracts listed on CFTC-registered exchanges, not just those impacted by the Special Rule.

The Commission itself acknowledges that the Special Rule applies "in addition to other requirements applicable to event contracts traded on a prediction market,"[3] and that "the Special Rule applies only if the event contract is certified to be in compliance with all other requirements."[4] Cboe welcomes this clarification, as it confirms that all event contracts, regardless of whether they involve an enumerated activity, must adhere to the Core Principles[5] applicable to designated contract markets ("DCMs"), derivatives clearing organizations ("DCOs"), and swap execution facilities ("SEFs"). Questions involving the Special Rule should not overshadow the equally important task of ensuring that event contracts unrelated to the Special Rule are regulated with the rigor that the CEA demands.

Given the need for comprehensive and consistent oversight across all event contracts, Cboe reiterates the recommendations set forth in our response[6] to the Commission's advance notice of proposed rulemaking on event contracts[7] (Cboe's "ANPR Response"). Cboe refers the Commission to our ANPR Response for further details.

<u>Securities Must Not Trade on DCMs</u>

There is a persistent misconception that the CFTC holds exclusive jurisdiction over all event contracts. This is simply not accurate. The CEA states unequivocally that the CFTC shall have no jurisdiction over "any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities . . . including any group or index of securities, or any interest therein or based on the value thereof."[8] This provision operates in tandem with the Swap Security Exception in CEA § 1a(47)(B)(iii), which excludes any "put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof,"[9] from the definition of swap where that instrument is subject to the Securities Act of 1933 and the Securities Exchange Act of 1934.

---

[2] CEA sec. 3, 7 U.S.C. 5.
[3] 91 Fed. Reg. at 35810.
[4] *Id*.
[5] CEA sec. 5(d)(3), 7 U.S.C. 7(d)(3)
[6] *See* Letter from Patrick Sexton, Cboe Global Markets, Inc., dated May 5, 2026, available at https://cdn.cboe.com/resources/government_relations/Cboe-Response-to-CFTC-ANPR-on-Prediction-Markets.pdf
[7] *See* Prediction Markets, 91 Fed. Reg. 12516 (March 16, 2026).
[8] CEA § 2(a)(1)(C)(i)(I)
[9] Div. of Corp. Fin., Div. of Investment Mng't, Div of Trading and Markets, Statement on Tokenized Securities, Securities and Exchange Comm'n (January 28, 2026) https://www.sec.gov/newsroom/speeches-statements/corpfin-statement-tokenized-securities-012826-statement-tokenized-securities#_ftn25.

Read together, these provisions make clear that binary option event contracts with payoffs that are determined directly by the value of a security or securities index are options on securities and therefore securities subject to the SEC's exclusive jurisdiction. Despite this, CFTC-registered DCMs are currently listing binary option event contracts based on the closing value of broad-based securities indices, including the S&P 500 and the Nasdaq 100. Continuing to allow securities such as these types of event contracts to trade on CFTC-regulated platforms exposes retail investors to harm that federal securities laws were explicitly designed to prevent. Cboe requests that the Commission exercise its authority to require the immediate delisting of any event contract that constitutes a security currently trading on a CFTC-registered DCM. Cboe also recommends that any product certification involving an event contract that could potentially be classified as a security be subject to enhanced review, including mandatory interagency consultation with the SEC.

Application of the Core Principles to Prediction Markets

We encourage the Commission to develop clear and consistent standards for compliance with the Core Principles.[10] To that end, we reiterate the recommendations discussed in our ANPR Response:

- **Manipulation safeguards:** The Commission should provide guidance clarifying how prediction market DCMs are expected to demonstrate, consistent with Core Principle 3, that their event contracts are not readily susceptible to manipulation, and what constitutes an adequate surveillance program to monitor for such conduct.
- **Source agency integrity:** The Commission should provide guidance for identifying credible source agencies for settlement.
- **Settlement transparency:** The Commission should provide guidance directing DCMs to clearly define and publicly disclose settlement conditions to minimize ambiguity.
- **Filing transparency:** The Commission should not allow DCMs to assert overly broad confidentiality claims when submitting self-certifications.

Leveraged Non-Intermediated Retail Clearing

We also remain concerned with direct, non-intermediated retail clearing of event contracts. The FCM-intermediated model provides an essential layer of risk management and investor protection. If direct retail clearing by DCOs displaces that intermediation, at the very least, DCOs must adhere to relevant obligations currently applicable to FCMs. If not, investor protections evaporate, and a competitive distortion arises since FCMs bear compliance costs that DCOs do not. In the case of leveraged, non-intermediated retail clearing, the Commission should carefully consider whether this should be permitted at all. If allowed, any DCO seeking to offer such a model should be required to affirm through rigorous and publicly available analysis

[10] CEA sec. 5(d)(3), 7 U.S.C. 7(d)(3)

that adequate risk management mechanisms are in place to mitigate unintended consequences for customers, FCMs, DCOs, and the broader financial market.

Lastly, Cboe is concerned that prediction market DCMs may circumvent existing margin rules by offering financing through third-party lenders, potentially even utilizing affiliates to fund leveraged trading of event contracts. Extending credit through a third-party non-FCM lender does not eliminate systemic risk but just relocates it, unconstrained by the margin limits of Regulation 39.13. If allowed, this would mean that what appears to be a fully-collateralized event contract to the DCO or FCM would not be collateralized to a meaningful degree, if at all. This introduces material risk to the market and should not be allowed.

Proposed Amendments to Regulation 40.11

On the proposed amendments to Regulation 40.11, Cboe offers the following recommendations to ensure that the Commission's review authority under the Special Rule is effective:

The 10-Day Window Is Insufficient and Should Be Extended to at Least Six Months

The Proposal would require the Commission to commence any review of an event contract raising a Regulation 40.11 concern within 10 days of its listing. That timeframe is insufficient and impractical, especially given the volume of event contracts being listed, the novelty and complexity of the legal and factual issues each contract may present, and the significant ramifications of the public interest determination.

Prediction markets are rapidly growing, with the Commission itself noting that the daily average number of event contracts listed for trading on one of the largest prediction markets increased from approximately 1,600 in April 2025 to 162,000 in April 2026.[11] Considering this, a 10-day window creates unnecessary structural pressure, leaving insufficient time to analyze certifications and potentially forcing the Commission to initiate reviews prematurely based on incomplete analysis. Questions on Regulation 40.11 are worth careful consideration and should not be rushed within a 10-day timeframe, which does not allow for the level of analysis needed.

Accordingly, Cboe recommends extending the 10-day window to at least six months from the date of listing. Six months would give the Commission sufficient time to conduct a thorough and holistic analysis. This could also give prediction markets ample notice of the Commission's concerns, enabling constructive engagement before a formal review begins.

The Commission Should Have Authority to Halt Trading in Event Contracts Under Active Review

---

[11] 91 Fed. Reg. at 35844.

The Proposal provides that once the Commission commences a formal review, it may “request” that the prediction market suspend listing or trading during the review period. However, Cboe believes this request-based mechanism is inadequate. Prediction markets are specifically designed around events, many of which are imminent. A prediction market that has listed an event contract that may conflict with the public interest has every commercial incentive to decline a Commission request to suspend trading, knowing the contract will likely expire before the Commission's 90-day review is complete.

The result effectively neuters the review process: each time the Commission completes a review and issues an adverse finding, the prediction market could already have settled the contract at issue, thereby achieving the commercial purpose of the offending contract while avoiding any effective regulatory consequence.

Because of these concerns, Cboe recommends the following amendments to the Proposal:

- Once the Commission issues a written determination commencing a formal review under proposed Regulation 40.11(c)(1), the Commission should have the authority, but not the obligation, to require the prediction market to immediately delist the event contract under review.
- Non-compliance with a Commission order to delist or restrict trading in contracts under active review should be treated as a violation of the prediction market's self-regulatory obligations and lead to enforcement action.
- The Commission should consider whether a pattern of listing substantially similar event contracts following an adverse public interest determination constitutes a basis for broader supervisory action, including a finding that the prediction market has failed to comply with its DCM obligations.

Cboe acknowledges that these recommendations represent a more assertive posture than what the Commission has proposed. However, a regulatory framework in which event contracts may expire faster than the review process can operate and the Commission can merely request, rather than compel, suspension of trading during that review is not a sufficient investor safeguard.

Conclusion

Cboe remains committed to building derivatives markets that are designed to support hedging and risk transfer, while simultaneously fostering innovation consistent with market integrity and investor protection. We are encouraged by the Commission's interest in the regulation of prediction markets and by its recognition that all event contracts, not just those implicating the Special Rule, must adhere to the Core Principles and the broader architecture of the CEA.

****

Thank you for the opportunity to share our perspective. We welcome any questions or further discussion.

Sincerely,

s/Patrick Sexton

Patrick Sexton
EVP, General Counsel, and Corporate Secretary
Cboe Global Markets, Inc.