CME Group

Jonathan Marcus
Senior Managing Director and General Counsel
Legal Department

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VIA ELECTRONIC SUBMISSION

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Commodity Futures Trading Commission Request for Comment on Prediction Markets, RIN 3038–AF65

Dear Mr. Kirkpatrick,

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") request for comment regarding the Advance Notice of Proposed Rulemaking (the "Notice") for prediction markets.[1]

CME Group, a corporate holding company, owns and operates multiple futures exchanges. Our exchanges offer the widest range of global benchmark products across all major asset classes. These products are widely used by market participants for risk management and price discovery. Throughout our corporate history, our exchanges have been involved in most of the major developments that serve as the basis for today's futures industry. For example, we played an integral role in, among other important innovations, the standardization of futures contracts, the formation of the clearing process, as well as the initial introduction of financial futures, cash-settled contracts, and electronic trading. In 2022, CME Group began offering event contracts that allow individuals to trade their views on daily price movements in some of the world's most widely quoted benchmark futures markets, including the E-mini S&P 500 and gold, among others. Over our long history, we have demonstrated ongoing leadership with respect to developing innovative new products.

The Commission is now seeking comment on event contracts traded on designated contract markets ("DCMs"), including comment on how the Commodity Exchange Act (the "Act") Core Principles and CFTC regulations apply to prediction markets, among other topics. CME Group commends the Commission on withdrawing the prior proposed rulemaking and issuing the Notice. The Commission has an opportunity to provide a nuanced, thoughtful approach to these contracts which have caught the attention of the nation, including Congress, the media, and, of course, the traders engaged in trading event contracts.

Before addressing some of the specific issues raised in the Notice, CME Group wants to stress that any discussion around additional regulations for event contracts must start with a thoughtful assessment of the existing regulatory structure. At the center of this structure are the Core Principles, which have allowed for flexibility and innovation in the markets while at the same time establishing a stable and level regulatory

[1] Prediction Markets, 91 Fed. Reg. 12,516 (Mar. 16, 2026).

playing field. The Act accomplishes this not through prescription, but rather by establishing baseline principles and allowing DCMs the freedom to meet those principles however they see fit. As a result, the Act provides for a robust yet flexible regulatory system, and one that is particularly well suited to accommodate innovative products.

In light of the Act's versatile structure, the first question to ask when considering potential rulemaking to address new products is whether the existing framework is sufficient. That is particularly true given that event contracts and swaps are not new and have been subject to the existing regulatory scheme for years without issue. While CME Group recognizes the proliferation of event contracts in new areas over the last 18 months, it continues to believe that the current regulatory scheme, anchored by the Core Principles, provides the proper structure to regulate these products. Indeed, the Core Principles were specifically designed to allow for innovation and flexibility such that they would remain fit for purpose as markets evolve.

Given how well the existing regulatory regime has worked for decades across a myriad of new and innovative products and changes in technology, the CFTC should carefully consider exactly what has changed to warrant a new rulemaking. CME Group questions whether issues that have arisen in the last year with respect to event contracts are less reflective of gaps in the regulations themselves than of unequal adherence to those regulations across DCMs. While the Act provides DCMs flexibility in how they meet the Core Principles, it requires all DCMs to meet the Core Principles without exception. This allows for innovation and flexibility while maintaining an even regulatory playing field across DCMs. For example, CME Group has decades of experience establishing and regulating markets under the Core Principles. It has built the systems and hired personnel to regulate its markets effectively, and has taken its role as a self-regulatory organization ("SRO") not merely as a regulatory obligation but as a necessary part of offering a fair marketplace to everyone. Over the last year, it has become increasingly clear that not all DCMs appear to take their role as an SRO as seriously as CME Group. CME Group believes that the manner in which certain entities structure and police their own markets have in large part led to the concerns underlying the Notice. CME Group respectfully submits that the failures of the few should not result in a new, prescriptive regulatory scheme for all. Rather, in assessing any proposed rulemaking, the Commission should consider whether prescriptive rules are necessary at all, or whether the same goals could be accomplished through even-handed enforcement of the existing regulatory scheme for all DCMs.

Even if the Commission determines that additional regulations are warranted, any regulatory changes must be consistent with the Act and the limited authority granted to the Commission by the Act. It will no doubt be the case that certain parties will propose that an entirely new regulatory regime should be established for certain event contracts, particularly as they relate to swaps on sporting events. Others may propose that certain swaps should be excluded from regulation by the CFTC altogether and left to the states to regulate. CME Group respectfully submits that the Act grants the CFTC no such powers. To state the obvious, once an event contract meets the statutory definition of a swap it is, by law, a swap. And as a swap, the event contract is covered by the comprehensive regulatory scheme that applies to all swaps. Notwithstanding the specific powers granted under Section 5c(c)(5)(C) of the Act, the Act does not grant the CFTC the authority to create an entirely new regulatory scheme applicable to only certain event contracts, nor does it allow the Commission to exclude wholesale a subset of swaps from regulation under the Act.[2]

Finally, even if the CFTC concludes that certain event contracts require a more comprehensive set of regulations and that the agency has the authority to adopt them, it should still consider whether the first

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[2] 7 U.S.C. § 7a-2(c)(5)(C) (stating that, in connection with the listing of event contracts, the CFTC *may* determine that such contracts are contrary to the public interest if they involve one of the enumerated activities).

step should be through Congressional action. Given that the Commission's authority on this score is ambiguous at best, deferring to Congress would be advisable in the interest of regulatory certainty. Without federal legislation, any actions taken by this Commission through rulemaking can just as easily be taken away by a future Commission. The markets demand more certainty for these new products, and the Commission should work with the markets, market participants and Congress to enact a meaningful and enduring regulatory scheme. Short of Congressional action, CME Group believes the best course is to adhere to the existing regulations and ensure that all DCMs are complying with the Core Principles that have served our industry so well for decades.

EXECUTIVE SUMMARY

CME Group respectfully asks the Commission to carefully consider whether an entirely new framework applicable to event contracts is necessary. CME Group believes that the Act's Core Principles are appropriate for event contracts and should be applied to all exchanges. If the Commission decides to enhance its regulatory framework, the Commission should:

- Enforce existing rules and Core Principles consistent with guidance on when sport event contracts may present a heightened risk of price distortion or manipulation.

- Publish further guidance describing any contracts that the Commission deems to carry heightened manipulation or price distortion risks and, thus, may not be listed by an exchange.

- Consider existing protections available to market participants under the intermediated clearing model and how these protections should apply more broadly to protect all market participants that trade event contracts.

- Require exchanges to adhere to existing regulations and the Core Principles in the same manner, ensuring a level playing field, irrespective of the type of technology underlying an exchange's systems. The Commission should not provide exemptions based on technological or structural differences where doing so would reduce or eliminate customer or market protections.

- Prevent exchanges from listing leveraged event contracts where their derivatives clearing organizations ("DCOs") cannot satisfy the CFTC's risk management and other relevant requirements.

- Consider the implications of obligating exchanges to enter into information sharing and data arrangements with sports leagues to ensure that exchanges do not lose the legal protections they are generally afforded as SROs.

- Amend CFTC Regulation 40.11 to address the discrepancy between the statutory language in Section 5c(c)(5)(C) of the Act and CFTC Regulation 40.11. As it is currently codified, CFTC Regulation 40.11 categorically prohibits contracts involving the enumerated activities without the Commission having made the requisite public interest determination. This amendment would ensure that the Commission applies its regulations consistent with the authority Congress granted to the CFTC.

- Define the scope of the enumerated activities in Section 5c(c)(5)(C) of the Act to help DCMs understand when a contract could be prohibited under the Act. Moreover, the Commission should articulate the basis on which it will make a public interest determination, which should include consideration of the “Findings and Purpose” provision of the Act, i.e., Section 3 of the Act. If the Commission believes that contracts involving a particular enumerated activity should be categorically prohibited, it should make a determination that all contracts based on that activity are contrary to the public interest, using the rulemaking as an opportunity to do so.

- Maintain the integrity of the self-certification process, but if the Commission determines that changes are necessary, these changes should not be overly burdensome or introduce competitive disadvantages to markets.

RESPONSES TO SPECIFIC QUESTIONS

I. The Core Principles Remain Fit for Purpose—but Must Be Applied Uniformly

As noted above, CME Group believes that the Act’s Core Principles continue to be the guidepost for CFTC-registered exchanges and clearing houses and remain fit for purpose, including for event contracts. By applying the Core Principles to all market infrastructure, the Commission provides a level playing field for exchanges and market participants, who are afforded the Act’s time-tested customer protections. If the Commission decides to make enhancements to its regulatory framework, CME Group has suggestions about how the Commission could implement changes in the most effective and protective way.

A. DCMs Are Incentivized to Comply With the Core Principles but the Commission Could Adopt Guidance Related to Core Principles if it Deems Changes to Be Necessary

While a DCM is required to comply with all Core Principles, certain Core Principles have garnered additional attention in the context of prediction markets. Core Principle 3 requires that each DCM list for trading only derivative contracts that are not readily susceptible to manipulation.[3] Core Principle 4 requires a DCM to have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process, through market surveillance, compliance, and enforcement practices and procedures.[4] Core Principle 12 requires a DCM to establish and enforce rules to protect markets and market participants from abusive practices, and to promote fair and equitable trading on the DCM.[5]

CME Group has decades of experience in evaluating the appropriateness of listing various products and in enforcing its rules through a responsible and effective Market Regulation Department. DCMs are incentivized to comply with the Core Principles, not only as a regulatory or reputational risk matter, but as a commercial imperative. Customers will neither trust nor want to trade on an exchange where contracts are suspected of being manipulated. The existing regulatory framework under Core Principle 3—and other relevant Core Principles—does not need to be modified in special ways specific to event contracts.

[3] 7 U.S.C. § 7(d)(3).

[4] 7 U.S.C. § 7(d)(4).

[5] 7 U.S.C. § 7(d)(12).

However, CME Group acknowledges that certain event contracts may raise unique considerations that the Commission may wish to address.

CME Group recognizes that Commission Staff has already provided advisory guidance on when sports event contracts may present a heightened risk of price distortion or manipulation, including where the contract settles based on the action of a single individual or a small group of individuals.[6] If the Commission nevertheless believes there are particular contracts for which heightened manipulation or price distortion risks exist—for example, where a contract settles based on whether a person says a given word—it should determine that those categories of contracts do not meet the Core Principle requirements and must be delisted.

If, alternatively, the Commission believes certain controls would satisfactorily mitigate such risks, CME Group would encourage the Commission to incorporate those in any guidance to all DCMs. CME Group notes that its exchanges and Market Regulation Department already provide an established framework to comply with Core Principle 3 and other relevant Core Principles by, among other measures, (1) enforcing position reporting and accountability levels; (2) maintaining trade surveillance systems that use pattern-recognition technology and cross-market correlation tools to detect spoofing, collusive trading, or other disruptive practices; (3) prohibiting trading by any person who is subject to applicable laws, regulations, policies, or contractual obligations that restrict that person from trading, either directly or indirectly, in event contracts; and (4) disciplining rule violators through a well-established enforcement process that includes summary actions, investigations, trading suspensions, substantial monetary penalties, disgorgement of ill-gotten profits, and restitution to victims. CME Group believes other DCMs offering event contracts should, at a minimum, meet such standards.

B. Intermediated Markets Provide Robust Protections and Alternative Models Should Provide the Same Protections

As the Commission contemplates new or different rules for event contracts, these rules should not diverge from the existing framework except where meaningful distinctions exist and, even then, customer protection should be at the forefront of any changes. The regulatory framework for derivative products was created with intermediation in mind. As a result, intermediated markets—through a long-standing governance, risk management, and compliance regime—have consistently provided a platform for fair trading while reducing risks and adapting to innovations in the industry. By contrast, many new entrants offer direct trading and clearing models that do not provide the same protections. The Commission's rulemaking should therefore ensure that the protections provided by intermediated models are also required to be implemented by entities offering non-intermediated trading and clearing.

Under the intermediated model, *multiple* regulated entities monitor customer trading activity. Futures commission merchants ("FCMs") are at the front line implementing the risk-based requirements in CFTC Regulation 1.17, which requires FCMs to maintain sufficient capital commensurate with their own risk-taking and that of their customers to mitigate counterparty risk.[7] To ensure compliance with this capital threshold,

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[6] CFTC Staff Advisory, Letter No. 26-08, 4 (Mar. 12, 2026), https://www.cftc.gov/csl/26-08/download. The CFTC advisory noted that sports event contracts that may present heightened risk for market manipulation or price distortion "could involve those that resolve or settle based on injuries to individual sports participants, unsportsmanlike conduct, or physical altercations between sports participants, as well as contracts that resolve or settle based on the action of a single individual or a small group of individuals, such as officiating actions occurring during a sporting event."

[7] 17 C.F.R. § 1.17 (i.e., minimum financial requirements for futures commission merchants and introducing brokers).

FCMs conduct significant due diligence on their customers in large part because FCMs must use their own capital, when necessary, to cover customer defaults. FCMs are thus incentivized to diligently monitor trader accounts, maintain segregated funds, and limit risk to the extent possible. In this way, FCMs have access to a substantial amount of trader information and can monitor traders' activity for excessive risk, fraud, market manipulation, and other harmful activity and provide a first line of defense in preventing prohibited persons from transacting in markets.

In this intermediated model, DCMs play a distinct role, providing a "competitive, open, and efficient market" that promotes price discovery while protecting their markets and market participants from abusive practices and conducting real-time market monitoring.[8] To comply with these statutory requirements, DCMs typically have robust market regulation departments that conduct market and trade practice surveillance and real-time market monitoring. DCMs must have compliance staff to investigate possible rule violations and procedures for making a finding that a rule violation has occurred.[9] And DCOs have robust frameworks for risk management, default management, and capital protection.

Collectively, the protections embedded in the intermediated ecosystem translate directly to prediction markets by aligning incentives toward continuous risk monitoring and mitigation and effective market surveillance. The same regulations should apply to activities that present the same risks—there is no reason to apply different standards to different models. Proposed regulations regarding prediction markets should therefore consider the protections the intermediated model already provides to the trading ecosystem and how these protections should apply more broadly to protect all market participants that trade event contracts.

C. The Commission Should Ensure Blockchain-Based Platforms Are Held to the Same Standards as Existing Platforms

As explained above, activities that introduce the same risks should be regulated similarly—same business, same risk, same rules. Where DCMs operate using a different technology that introduces new or increased risks, the Commission should introduce guardrails to mitigate these risks, as necessary, and to ensure those DCMs are ultimately held to the same standards as existing DCMs.

Historically, the Commission has espoused a technology-neutral view, evenly applying its rules irrespective of the technology that exchanges or market participants use in their regulated activities. CME Group encourages the Commission to continue applying the same legal and regulatory framework to the same conduct regardless of the technology used. CME Group is cognizant that decentralized blockchain platforms can be distinguished from centralized exchanges. For example, certain blockchain platforms allow for pseudonymous accounts, lack an intermediary that verifies traders' identities, and conduct surveillance via blockchain forensics as opposed to traditional audit trail data. However, those platforms ultimately perform the same business as existing platforms and, as such, the same regulatory standards should apply. While the market integrity and customer protections must be equivalent, those protections—including, but not limited to, Core Principles 2 (Compliance with Rules), 13 (Disciplinary Procedures), and 20 (System Safeguards)[10]—may nevertheless need to account for the structural characteristics unique to blockchain technology. For example, market surveillance functions and system safeguards must be

[8] 7 U.S.C. §§ 7(c)(4), (9).

[9] 17 C.F.R. § 38.158.

[10] 7 U.S.C. §§ 7(d)(2), (13), (20).

appropriately tailored to the particular risks that arise from blockchain technology. Similar issues may present themselves in centralized markets in the context of novel technology solutions that provide for intermediated access or new payment flows. CME Group does not believe that the structural differences warrant any form of exemptive relief to the extent the relief reduces protections for customers or for the market.

D. The Commission Should Not Permit Prediction Markets to Offer Trading on Margin Unless the DCO Can Satisfy Existing Regulatory Requirements

DCOs[11] that clear leveraged products must have sufficient risk management practices in the form of robust financial resources, robust customer protections, backtesting practices, stress testing practices, valuation models, at least once daily mark-to-market, default management, margining practices (including model development and calibration), and model sufficiency testing.[12]

DCOs, when calibrating margin models, must account for a wide range of potential outcomes and market events, including stress periods. Generally, DCOs use historical data to inform potential future outcomes in conjunction with a variety of different mathematical and statistical techniques to determine the volatility profile and appropriate margin amount for a contract. Input data must be of good quality and reflect the risks faced by the DCO to ensure the model performs as designed. Certain events may not have historical data of sufficient quality, thereby degrading the DCO's ability to appropriately calibrate its margin model. If this is the case, risks are presented to the DCO and its market participants. Each event is different and careful consideration should be given to constructing time series of historical data across different events to inform potential future outcomes. The lower the correlation between current and past markets, the more difficult the model calibration will be. Model calibration is especially challenging where exogenous events impact data correlations (e.g., end-of-season "tanking," league rule changes, social media, etc.).

These data quality concerns can present similar challenges in the context of designing stress scenarios that capture extreme but plausible market conditions. Event contracts are often binary (yes/no) with a binary payoff making them inherently more risky if offered on a leveraged basis than other traditional derivatives instruments. Additionally, the risk of a leveraged contract with a binary payoff can be further exacerbated by the "gap" risk (i.e., the risk that a contract's price will fall dramatically in a non-linear manner) that may arise from a single news event (e.g., a court ruling or an election result) both in the context of contracts that resolve around that news event and in other contracts that may be indirectly related to such news events. Gap risk in conjunction with leverage can lead to losses accumulating more quickly, all else equal.

Further, additional costs may be incurred during a liquidation if a default occurs. Margin and stress testing frameworks must account for these liquidation and concentration risk factors. Generally, margin requirements should be commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios, consistent with CFTC Regulation 39.13(g)(2). It has been consistently recognized that auto-liquidations conducted at an exchange level for leveraged contracts present inherent risks to market participants, particularly retail participants. Where auto-liquidations are employed at an exchange level for leveraged event contracts, they run the risk of artificially moving prices, which could create a cascade of auto-liquidations that lead to

[11] CME is also registered as a DCO. On July 18, 2012, the Financial Stability Oversight Council designated CME as a systemically important financial market utility ("SIFMU") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). As a SIFMU, CME is also a systemically important DCO.

[12] 17 C.F.R. §§ 39.11; 39.13(g)(7), (h)(3), (e); 39.16; 1.20(g); 22.3.

additional volatility and magnify market participant losses. This can further lead to auto-deleveraging if there is not sufficient liquidity and capital resources.

Any margin offsets offered across different leveraged event contracts (or across event contracts and traditional derivatives) must be consistent with CFTC Regulation 39.13(g)(4), which provides that a DCO can offer offsets only if the price risks of different positions are reliably correlated and if there is a conceptual basis for the correlation. Considering some of the event contracts being offered today, we believe it is unlikely that such reliable correlation could be broadly demonstrated to support margin offsets. To the extent that margin offsets for event contracts are ever deemed permissible, the additional benefits of the FCM clearing model would provide a critical additional safeguard for financial market stability.

Lastly, should a DCO ever be able to show that it has the capability to risk manage event contracts on a leveraged basis in accordance with the requirements highlighted above, clearing house risk management best practices dictate that leverage should only be offered based on the risk factors inherent to the products cleared rather than the counterparty type. CME Group is aware that other exchanges are contemplating a structure that would permit institutional customers to trade on leverage, while requiring retail participants to continue trading on a fully-collateralized basis. In addition to risk management concerns, CME Group questions the impact to the predictive efficacy—to the truth telling capabilities—of a platform that permits one side of the contract to cover a portion of the contract value while requiring its counterparty to pay the full notional value of the contract.

E. The Commission Should Consider the Implications of Information Sharing and Data Arrangements With Leagues as Recommended in the Staff Advisory

The Staff advisory recommends that DCMs consider whether to enter into information sharing and data arrangements with sports leagues.[13] CME Group believes that the integrity of its markets is paramount and similarly takes very seriously the integrity of the markets which underly our derivatives contracts. And consistent with guidance in Appendices B and C to Part 38, CME Group has entered information sharing agreements with third-party sources of information when practical and necessary to detect and prevent manipulative behavior. Importantly, though, when the third party is not an SRO, the information sharing agreements only provide for a unidirectional flow of data and information *from* the third party *to* the DCM; confidential information does not, typically, flow from the DCM to the third party. If the Commission is contemplating bidirectional sharing between DCMs and sports leagues, the Commission must weigh the risks of exposing confidential information to entities that lack parallel statutory obligations and legal protections.

CFTC guidance in Appendix B to Part 38 provides that for cash-settled contracts DCMs should be able to access, either directly or through information sharing agreements, traders' positions and transactions in reference markets.[14] Similarly, Appendix C to Part 38 provides that DCMs should, whenever practical, enter into information sharing agreements with third-party providers that calculate cash settlement price series to better detect and prevent manipulative behavior.[15] By design, these are one-way information sharing agreements—agreements pursuant to which the third-party provides information to the DCM, but information does not flow in the other direction. Regardless of the interests of the third party, only the DCM

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[13] CFTC Letter No. 26-08, 6.

[14] 17 C.F.R. Part 38, Appendix B.

[15] 17 C.F.R. Part 38, Appendix C.

is statutorily required to conduct investigations of potential rule violations, bring enforcement actions against violators, and make public those disciplinary actions. This one-way flow of information to the DCM is critical to protecting the integrity of the regulatory investigation, preserving the status quo, and avoiding potential destruction of evidence and interference with witnesses.

Additionally, CME Group notes that courts generally afford legal privileges to SROs, whereas leagues and other third parties do not possess these same privileges. If the CFTC requires a DCM to enter into a mutual information sharing or data arrangement with a league or other party, the disclosure from a DCM to the third party could waive the DCM's own privilege. This privilege helps protect CME Group Market Regulation's investigative techniques, analytical models, thought processes, and sources of information. Accordingly, CME Group would encourage the Commission, as it is contemplating information sharing requirements for these markets, to ensure that DCMs are able to navigate any requirements in a way that would allow them to fulfill their own regulatory obligations effectively and not jeopardize the legal privileges afforded to DCMs in their capacities as SROs.

II. The Commission's Regulations Must Be Consistent With the Act

A. The Commission Should Amend CFTC Regulation 40.11 to Be Consistent With the Act

The Commission should ensure that its regulatory framework is consistent with the Act. Put simply, the statute provides discretion, but the regulation provides a categorical prohibition. The Dodd-Frank Act amended the Act to add Section 5c(c)(5)(C), establishing that the Commission *may* determine that a contract involving an activity enumerated in the Act is contrary to the public interest and, therefore, may not be listed or made available for trading or clearing by a DCM or DCO or other registered entity. The activities enumerated in this provision include: "(i) activity that is unlawful under Federal or State law; (ii) terrorism; (iii) assassination; (iv) war; (v) gaming; and (vi) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest."[16] The statute indicates that, for the Commission to exercise its authority to prohibit a contract from being listed, it must engage in a two-step process. First, it must find that the contract involves an enumerated activity. Second, it may determine that the contract is "contrary to the public interest."[17]

As it is currently codified, CFTC Regulation 40.11 categorically prohibits contracts involving these enumerated activities without the Commission having made the second, and important, public interest determination. The Commission should amend CFTC Regulation 40.11 to address this omission. This amendment would ensure that the Commission applies its regulations consistent with the authority Congress granted to the CFTC.

Further, as a matter of housekeeping, CME Group would recommend that the Commission modify the language used to reference event contracts in CFTC Regulation 40.11 to more closely align with the language used in the statute to describe event contracts: "agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency

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[16] *Id.*

[17] 7 U.S.C. § 7a-2(c)(5)(C).

(other than a change in the price, rate, value, or levels of a commodity described in section 1a(19)(i) of the Act)."[18]

B. The Commission Should Propose Definitions of the Enumerated Activities and, if it Categorically Bans Contracts, the Commission Should Identify and Apply the Public Interest Factors Relevant to Such a Determination for Each Category of Contracts

Throughout the Notice, the Commission posed various questions about the activities enumerated in the Act and asked whether the meanings of certain terms were "self-evident" and whether the Commission should consider various factors to determine the scope of these activities.[19] CME Group believes that the Commission should define the scope of these enumerated activities. The definitions should provide clarity to help DCMs understand when a contract could be prohibited under Section 5c(c)(5)(C) of the Act. While, as noted above, there must still be a public interest determination, it would be helpful for DCMs to have more clarity around when such a process would be triggered.

Additionally, CME Group believes that the Commission should articulate the basis on which it will make a public interest determination. In making this determination, it is appropriate for the Commission to consider Section 3 of the Act and, specifically, the "Findings and Purpose" provision. Section 3(a) of the Act provides that covered transactions "are **affected with a national public interest** by providing a means for **managing and assuming price risks**, **discovering prices**, or **disseminating pricing information** through trading in liquid, fair and financially secure trading facilities".[20] As described by former Commissioner Dan Berkovitz (who was then the General Counsel of the CFTC), the Findings and Purpose provision "is an implicit authority for the Commission to make a determination of whether the contract would accomplish something consistent with the purpose of the Act, such as managing and assuming price risks."[21]

Further, CME Group notes that there has been much debate over the "economic purpose" test. By way of background, the limited power granted to the CFTC under Section 5c(c)(5)(C) to bar certain event contracts that it determines to be contrary to the public interest resembles far broader authority that the CFTC had at its creation to prevent the listing of *any* futures contract unless the DCM demonstrated that the contract "will not be contrary to the public interest."[22] The legislative history of the original, much broader provision includes a discussion of the "public interest" standard, explaining that it would encompass whether the contract served an "economic purpose"—namely, whether the contract would provide producers, merchants, or consumers "a basis for determining prices" or provide "a means of hedging themselves against possible loss through fluctuations in price."[23] A contract that would be used "entirely or almost entirely for speculation" would not satisfy that standard.[24] What has generated some confusion is that this standard—as applied broadly to the listing of all futures contracts—was subsequently removed in the

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[18] We note this is slightly modified from the language of Section 5c(c)(5)(C) of the Act to account for what appears to be a typographical error, i.e., the reference to section 1a(2)(i) of the Act, which does not exist.

[19] *See, e.g.,* Questions 15-19; 91 Fed. Reg. 12,521.

[20] 7 U.S.C. § 5(a) (emphasis added).

[21] CFTC Public Meeting to Consider the Trading of Contracts Based on Motion Picture Box Office Receipts and Gather Views of Interested Parties Transcript 32:16-20 (May 19, 2010).

[22] 7 U.S.C. § 7(g) (1982).

[23] H.R. Rep. No. 1383, 93rd Cong., 2d Sess., at 36 (1974).

[24] H.R. Rep. No. 975, 93rd Cong., 2d Sess., at 29 (1974).

Commodity Futures Modernization Act of 2000 ("CFMA"). However, Congress added the Core Principles (several of which touch on matters similar to those addressed by the public interest test), and longstanding Section 3(a) of the Act carries forward what Congress has conceived as the public interests served by the derivatives markets. As a result, CME Group does not believe that Section 5c(c)(5)(C)'s public interest test is too amorphous, but instead believes the Commission has the authority to make determinations about a contract in light of these relevant factors.

Finally, if the Commission believes that contracts involving a particular enumerated activity should be categorically prohibited, such as a contract involving assassination, war, or terrorism, it should use the rulemaking as an opportunity to make a determination that all contracts involving the specified activity are contrary to the public interest. This kind of categorical prohibition—as long as the Commission defines the scope of the activity and makes a public interest determination taking into account and applying the factors we identified above—would not be inconsistent with the Act.

C. The Commission Should Maintain the Integrity and Efficiency of the Self-Certification Process

Pursuant to CFTC Regulation 40.2, a DCM may list a new contract one business day after submitting by self-certification the contract's terms and conditions and information explaining why the contract is not readily susceptible to manipulation, among other things.[25] Thus, a DCM typically may bring an event contract swap, or an event contract futures that settles to the price of a futures contract, to market within one business day. The self-certification process works well in the derivatives industry, enabling DCMs to bring new contracts to market quickly. Speed to market can be critical to provide liquidity and price discovery to market participants.

The self-certification process established under CFTC Regulation 40.2 has long facilitated the timely listing of contracts while preserving a mechanism for Commission Staff review and prohibition of unlawful contracts. CME Group thus is not advocating for changes to the self-certification process; if the Commission determines that changes are warranted, the Commission should make these changes narrowly, with careful consideration to the rationale for the changes and how the Commission will implement the changes in practice. Specifically, CME Group acknowledges that a one business day review is a narrow window within which to determine whether the CFTC should invoke its authority to conduct a 90-day review under CFTC Regulation 40.11. The Commission could, for example, provide for an initial brief extended self-certification period to determine whether an event contract falls within the list of enumerated activities. If the contract does not, it could be listed at the end of the initial review period for event contracts. If it does, then the Commission could use the remainder of the statutory 90-day review period to determine whether an event contract involving an enumerated activity is contrary to the public interest. If the Commission believes a special review period for event contracts is necessary or desirable, the Commission should ensure that this period is not overly burdensome or introduce competitive disadvantages to markets. Importantly, we also note that with respect to all self-certifications, both in the context of event contracts and beyond, the Commission has the authority to stay filings if false certifications have been made and, further, DCMs are at all times required to comply with the Core Principles. We encourage the Commission to exercise this existing authority as necessary to protect our markets.

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[25] 17 C.F.R. § 40.2(a). CME Group notes that it would be helpful for the Commission to articulate the precise timing of the one business day rule and ensure consistent adherence to that time frame.

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CME Group appreciates the opportunity to provide comments on the Notice. The Notice provides an opportunity for the Commission to recalibrate prior approaches and tailor action that supports innovation within the CFTC's regulatory framework. CME Group strongly believes that the Core Principles remain fit for purpose and should be applied evenly to all markets within the CFTC's jurisdiction. We look forward to further engagement with the Commission on the important issues raised in the Notice.

Should you have any questions or require more information concerning the above, please contact me at (312) 930-2324 or via e-mail at jonathan.marcus@cmegroup.com.

Sincerely,

Jonathan Marcus

Jonathan Marcus
Senior Managing Director and General Counsel
CME Group Inc.

cc: Chairman Michael Selig