

No. 22-51124

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

KEVIN CLARKE; TREVOR BOECKMANN; HARRY CRANE; CORWIN
SMIDT; ARISTOTLE INTERNATIONAL, INCORPORATED; PREDICT IT,
INCORPORATED; MICHAEL BEELER; MARK BORGHI; RICHARD
HANANIA; JAMES D. MILLER; JOSIAH NEELEY; GRANT SCHNEIDER;
AND WES SHEPHERD,
Plaintiffs-Appellants,

v.

COMMODITY FUTURES TRADING
COMMISSION,
Defendant-Appellee.

On appeal from the United States District Court for the
Western District of Texas (1:22-cv-00909-LY)

PLAINTIFFS-APPELLANTS' RECORD EXCERPTS

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**Application for admission pending*

Counsel for Plaintiffs-Appellants

January 25, 2023

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Respectfully submitted,

/s/ Michael J. Edney

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Borghi, Richard Hanania, James D. Miller,
Josiah Neeley, Grant Schneider, and Wes
Shepherd*

CERTIFICATE OF SERVICE

I, Michael J. Edney, counsel for Plaintiffs-Appellants, hereby certify that on January 25, 2023, I caused a true and correct copy of the foregoing Plaintiffs-Appellants' Record Excerpts to be electronically filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit by using the Appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system. I further certify that Counsel for Appellee, Kyle Druding, has been served by email at the address listed below:

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/s/ Michael J. Edney
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Tab 1

APPEAL,ML,MOTION_REFERRED

**U.S. District Court [LIVE]
Western District of Texas (Austin)
CIVIL DOCKET FOR CASE #: 1:22-cv-00909-LY**

Clarke et al v. Commodity Futures Trading Commission
Assigned to: Judge Lee Yeakel
Demand: \$0
Case in other court: Fifth Circuit, 22-51124
Cause: 05:551 Administrative Procedure Act

Date Filed: 09/09/2022
Jury Demand: None
Nature of Suit: 899 Other Statutes:
Administrative Procedures Act/Review or
Appeal of Agency Decision
Jurisdiction: U.S. Government Defendant

Plaintiff

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V.

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Date Filed	#	Docket Text
09/09/2022	<u>1 (p.9)</u>	COMPLAINT for Declaratory and Injunctive Relief (Filing fee \$ 402 receipt number ATXWDC-16506830), filed by Predict It, Inc., Corwin Smidt, Kevin Clarke, Harry Crane, Trevor Boeckmann, Aristotle International, Inc.. (Attachments: # <u>1 (p.9)</u> Exhibit Ex. 1 - No-Action Relief, # <u>2 (p.56)</u> Exhibit Ex. 2 - Revocation, # <u>3 (p.62)</u> Exhibit Ex. 3 - Request for No-Action Relief, # <u>4 (p.64)</u> Civil Cover Sheet Civil Cover Sheet)(Byron, John) (Entered: 09/09/2022)
09/09/2022	<u>2 (p.56)</u>	REQUEST FOR ISSUANCE OF SUMMONS by Aristotle International, Inc., Trevor Boeckmann, Kevin Clarke, Harry Crane, Predict It, Inc., Corwin Smidt. (Byron, John) (Entered: 09/09/2022)
09/09/2022	<u>3 (p.62)</u>	RULE 7 DISCLOSURE STATEMENT filed by Aristotle International, Inc.. (Byron, John) (Entered: 09/09/2022)
09/09/2022	<u>4 (p.64)</u>	RULE 7 DISCLOSURE STATEMENT filed by Predict It, Inc. identifying Corporate Parent Aristotle International, Inc. for Predict It, Inc.. (Byron, John) (Entered: 09/09/2022)
09/09/2022		Case assigned to Judge Lee Yeakel. CM WILL NOW REFLECT THE JUDGE INITIALS AS PART OF THE CASE NUMBER. PLEASE APPEND THESE JUDGE INITIALS TO THE CASE NUMBER ON EACH DOCUMENT THAT YOU FILE IN THIS CASE. (rn) (Entered: 09/12/2022)
09/09/2022		If ordered by the court, all referrals and consents in this case will be assigned to Magistrate Judge Lane (rn) (Entered: 09/12/2022)
09/12/2022	<u>5 (p.66)</u>	Summons Issued as to All Defendants. (rn) (Entered: 09/12/2022)
09/20/2022	<u>6 (p.72)</u>	MOTION to Appear Pro Hac Vice by Kyle Druding by on behalf of Commodity Futures Trading Commission. (Attachments: # <u>1 (p.9)</u> Proposed Order)(Druding, Kyle) (Entered: 09/20/2022)
09/20/2022	<u>7 (p.76)</u>	MOTION to Appear Pro Hac Vice by Anne Whitford Stukes as an attorney employed by the U.S. government by on behalf of Commodity Futures Trading Commission. (Attachments: # <u>1 (p.9)</u> Proposed Order)(Stukes, Anne) (Entered: 09/20/2022)

09/20/2022	<u>8 (p.80)</u>	MOTION to Transfer Case by Commodity Futures Trading Commission. (Druding, Kyle) (Entered: 09/20/2022)
09/22/2022	<u>9 (p.94)</u>	NOTICE of Attorney Appearance by Michael James Edney on behalf of Aristotle International, Inc., Trevor Boeckmann, Kevin Clarke, Harry Crane, Predict It, Inc., Corwin Smidt. Attorney Michael James Edney added to party Aristotle International, Inc. (pty:pla), Attorney Michael James Edney added to party Trevor Boeckmann(pty:pla), Attorney Michael James Edney added to party Kevin Clarke(pty:pla), Attorney Michael James Edney added to party Harry Crane(pty:pla), Attorney Michael James Edney added to party Predict It, Inc. (pty:pla), Attorney Michael James Edney added to party Corwin Smidt(pty:pla) (Edney, Michael) (Entered: 09/22/2022)
09/22/2022	<u>10 (p.96)</u>	ORDER GRANTING <u>6 (p.72)</u> Motion to Appear Pro Hac Vice as to KYLE MITCHELL DRUDING. Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. Registration is managed by the PACER Service Center Signed by Judge Lee Yeakel. (cc3) (Entered: 09/22/2022)
09/22/2022	<u>11 (p.97)</u>	ORDER GRANTING <u>7 (p.76)</u> Motion to Appear Pro Hac Vice as to ANNE W. STUKES. Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. Registration is managed by the PACER Service Center Signed by Judge Lee Yeakel. (cc3) (Entered: 09/22/2022)
09/30/2022	<u>12 (p.98)</u>	MOTION for Preliminary Injunction by Aristotle International, Inc., Trevor Boeckmann, Kevin Clarke, Harry Crane, Predict It, Inc., Corwin Smidt. (Attachments: # <u>1 (p.9)</u> Memorandum in Support of Plaintiffs' Motion for a Preliminary Injunction, # <u>2 (p.56)</u> Appendix to the Memorandum in Support of a Preliminary Injunction, # <u>3 (p.62)</u> Proposed Order)(Edney, Michael) (Entered: 09/30/2022)
10/04/2022	<u>13 (p.196)</u>	Memorandum in Opposition to Motion, filed by Aristotle International, Inc., Trevor Boeckmann, Kevin Clarke, Harry Crane, Predict It, Inc., Corwin Smidt, re <u>8 (p.80)</u> MOTION to Transfer Case filed by Defendant Commodity Futures Trading Commission (Edney, Michael) (Entered: 10/04/2022)
10/06/2022	<u>14 (p.216)</u>	ORDER REFERRING MOTION: <u>8 (p.80)</u> MOTION to Transfer Case and <u>13 (p.196)</u> Memorandum in Opposition to Motion, re <u>8 (p.80)</u> MOTION to Transfer Case. Signed by Judge Lee Yeakel. Referral Magistrate Judge: Mark Lane. (cc3) (Entered: 10/06/2022)
10/06/2022	<u>15 (p.217)</u>	AMENDED COMPLAINT <i>FOR DECLARATORY AND INJUNCTIVE RELIEF</i> against Commodity Futures Trading Commission amending <u>1 (p.9)</u> Complaint,, filed by Predict It, Inc., Corwin Smidt, Kevin Clarke, Harry Crane, Trevor Boeckmann, Aristotle International, Inc.. (Attachments: # <u>1 (p.9)</u> Exhibit, # <u>2 (p.56)</u> Exhibit, # <u>3 (p.62)</u> Exhibit)(Edney, Michael) (Entered: 10/06/2022)
10/11/2022	<u>16 (p.266)</u>	REPLY to Response to Motion, filed by Commodity Futures Trading Commission, re <u>8 (p.80)</u> MOTION to Transfer Case filed by Defendant Commodity Futures Trading Commission (Druding, Kyle) (Entered: 10/11/2022)
10/13/2022	<u>17 (p.278)</u>	Response in Opposition to Motion, filed by Commodity Futures Trading Commission, re <u>12 (p.98)</u> MOTION for Preliminary Injunction filed by Plaintiff

		Predict It, Inc., Plaintiff Corwin Smidt, Plaintiff Kevin Clarke, Plaintiff Aristotle International, Inc., Plaintiff Harry Crane, Plaintiff Trevor Boeckmann (Druding, Kyle) (Entered: 10/13/2022)
10/20/2022	<u>18</u> (p.308)	REPLY to Response to Motion, filed by Aristotle International, Inc., Michael Beeler, Trevor Boeckmann, Mark Borghi, Kevin Clarke, Harry Crane, Richard Hanania, James D Miller, Josiah Neeley, Predict It, Inc., Grant Schneider, Wes Shepherd, Corwin Smidt, re <u>12</u> (p.98) MOTION for Preliminary Injunction filed by Plaintiff Predict It, Inc., Plaintiff Corwin Smidt, Plaintiff Kevin Clarke, Plaintiff Aristotle International, Inc., Plaintiff Harry Crane, Plaintiff Trevor Boeckmann (Attachments: # <u>1</u> (p.9) Exhibit A (NADEX Order), # <u>2</u> (p.56) Exhibit B (Victoria University of Wellington Ltr), # <u>3</u> (p.62) Appendix Request for Hearing on Motion for Preliminary Injunction)(Edney, Michael) (Entered: 10/20/2022)
10/28/2022	<u>19</u> (p.330)	MOTION to Dismiss by Commodity Futures Trading Commission. (Druding, Kyle) (Entered: 10/28/2022)
11/14/2022	<u>20</u> (p.358)	ORDER Setting Hearing on <u>8</u> (p.80) Defendant's Opposed MOTION to Transfer Venue: Motion Hearing set for 12/1/2022 at 10:00 AM before Judge Mark Lane. Signed by Judge Mark Lane. (jv2) (Entered: 11/14/2022)
11/14/2022	<u>21</u> (p.359)	Response in Opposition to Motion, filed by Aristotle International, Inc., Michael Beeler, Trevor Boeckmann, Mark Borghi, Kevin Clarke, Harry Crane, Richard Hanania, James D Miller, Josiah Neeley, Predict It, Inc., Grant Schneider, Wes Shepherd, Corwin Smidt, re <u>19</u> (p.330) MOTION to Dismiss filed by Defendant Commodity Futures Trading Commission (Edney, Michael) (Entered: 11/14/2022)
11/18/2022	<u>22</u> (p.386)	ORDER REFERRING MOTION: <u>19</u> (p.330) MOTION to Dismiss and <u>21</u> (p.359) Plaintiff's Memorandum in Opposition to Motion to Dismiss. Signed by Judge Lee Yeakel. Referral Magistrate Judge: Mark Lane. (cc3) (Entered: 11/18/2022)
11/18/2022	<u>23</u> (p.387)	MOTION to Expedite <i>Hearing and Resolution of Plaintiffs' Motion for Preliminary Injunction</i> by Aristotle International, Inc., Michael Beeler, Trevor Boeckmann, Mark Borghi, Kevin Clarke, Harry Crane, Richard Hanania, James D Miller, Josiah Neeley, Predict It, Inc., Grant Schneider, Wes Shepherd, Corwin Smidt. (Attachments: # <u>1</u> (p.9) Proposed Order PROPOSED ORDER, # <u>2</u> (p.56) Exhibit 1 - Clarke Declaration, # <u>3</u> (p.62) Exhibit 2 - Phillips Declaration)(Edney, Michael) (Entered: 11/18/2022)
11/21/2022	<u>24</u> (p.407)	ORDER SETTING HEARING on <u>19</u> (p.330) MOTION to Dismiss : for 12/1/2022 at 10:00 AM before Judge Mark Lane. Signed by Judge Mark Lane. (cc3) (Entered: 11/21/2022)
11/21/2022	<u>25</u> (p.408)	REPLY to Response to Motion, filed by Commodity Futures Trading Commission, re <u>19</u> (p.330) MOTION to Dismiss filed by Defendant Commodity Futures Trading Commission (Druding, Kyle) (Entered: 11/21/2022)
11/25/2022	<u>26</u> (p.424)	Response in Opposition to Motion, filed by Commodity Futures Trading Commission, re <u>23</u> (p.387) MOTION to Expedite <i>Hearing and Resolution of Plaintiffs' Motion for Preliminary Injunction</i> filed by Plaintiff James D Miller, Plaintiff Kevin Clarke, Plaintiff Michael Beeler, Plaintiff Harry Crane, Plaintiff Mark Borghi, Plaintiff Wes Shepherd, Plaintiff Trevor Boeckmann, Plaintiff Corwin Smidt, Plaintiff Predict It, Inc., Plaintiff Aristotle International, Inc., Plaintiff Grant Schneider, Plaintiff Josiah Neeley, Plaintiff Richard Hanania (Druding, Kyle) (Entered: 11/25/2022)
11/28/2022		

	<u>27</u> (p.427)	REPLY to Response to Motion, filed by Aristotle International, Inc., Michael Beeler, Trevor Boeckmann, Mark Borghi, Kevin Clarke, Harry Crane, Richard Hanania, James D Miller, Josiah Neeley, Predict It, Inc., Grant Schneider, Wes Shepherd, Corwin Smidt, re <u>23</u> (p.387) MOTION to Expedite <i>Hearing and Resolution of Plaintiffs' Motion for Preliminary Injunction</i> filed by Plaintiff James D Miller, Plaintiff Kevin Clarke, Plaintiff Michael Beeler, Plaintiff Harry Crane, Plaintiff Mark Borghi, Plaintiff Wes Shepherd, Plaintiff Trevor Boeckmann, Plaintiff Corwin Smidt, Plaintiff Predict It, Inc., Plaintiff Aristotle International, Inc., Plaintiff Grant Schneider, Plaintiff Josiah Neeley, Plaintiff Richard Hanania (Edney, Michael) (Entered: 11/28/2022)
11/30/2022	<u>28</u> (p.432)	CERTIFICATE OF SERVICE by Aristotle International, Inc., Michael Beeler, Trevor Boeckmann, Mark Borghi, Kevin Clarke, Harry Crane, Richard Hanania, James D Miller, Josiah Neeley, Predict It, Inc., Grant Schneider, Wes Shepherd, Corwin Smidt <u>5</u> (p.66) Summons Issued, <u>2</u> (p.56) Request for Issuance of Summons (Byron, John) (Entered: 11/30/2022)
12/01/2022	<u>29</u>	Minute Entry for proceedings held before Judge Mark Lane: Motion Hearing held on 12/1/2022 re <u>19</u> (p.330) MOTION to Dismiss filed by Commodity Futures Trading Commission, <u>8</u> (p.80) MOTION to Transfer Case filed by Commodity Futures Trading Commission. Written order forthcoming. (Minute entry documents are not available electronically) (Court Reporter FTR GOLD - ERO)(cc3) (Entered: 12/01/2022)
12/08/2022	<u>30</u> (p.439)	MOTION for Leave to File Supplemental Memorandum in Opposition to Defendant's Motions to Transfer and Dismiss by Aristotle International, Inc., Michael Beeler, Trevor Boeckmann, Mark Borghi, Kevin Clarke, Harry Crane, Richard Hanania, James D Miller, Josiah Neeley, Predict It, Inc., Grant Schneider, Wes Shepherd, Corwin Smidt. (Attachments: # <u>1</u> (p.9) Proposed Order Proposed Order Granting Motion for Leave to File Supplemental Memorandum, # <u>2</u> (p.56) Exhibit Supplemental Memorandum in Opposition to Defendant's Motion to Transfer and Dismiss, # <u>3</u> (p.62) Exhibit Ex. 1 to Supplemental Memorandum (Clarke Declaration), # <u>4</u> (p.64) Exhibit Ex. 2 to Supplemental Memorandum (Lowery Declaration), # <u>5</u> (p.66) Exhibit Ex. 3 to Supplemental Memorandum (Anunciato v. Trump), # <u>6</u> (p.72) Exhibit Ex. 4 to Supplemental Memorandum (Data Marketing Pship v. Dept. of Labor)), # <u>7</u> (p.76) Exhibit Ex. 5 to Supplemental Memorandum (Nat. Assoc. of Manufacturers v. SEC))(Edney, Michael) (Entered: 12/08/2022)
12/12/2022	<u>31</u> (p.505)	REPORT AND RECOMMENDATIONS re <u>8</u> (p.80) Motion to Transfer Case and DENYING <u>30</u> (p.439) MOTION for Leave to File Supplemental Memorandum in Opposition to Defendant's Motions to Transfer and Dismiss. Signed by Judge Mark Lane. (cc3) (Entered: 12/12/2022)
12/23/2022	<u>32</u> (p.513)	Appeal of Order entered by District Judge <u>14</u> (p.216) , <u>22</u> (p.386) by Aristotle International, Inc., Michael Beeler, Trevor Boeckmann, Mark Borghi, Kevin Clarke, Harry Crane, Richard Hanania, James D Miller, Josiah Neeley, Predict It, Inc., Grant Schneider, Wes Shepherd, Corwin Smidt. (Filing fee \$ 505 receipt number ATXWDC-16896749) (Edney, Michael) (Entered: 12/23/2022)
12/27/2022		NOTICE OF APPEAL following <u>32</u> (p.513) Notice of Appeal (E-Filed), by Harry Crane. Filing fee \$ 505, receipt number ATXWDC-16896749. Per 5th Circuit rules, the appellant has 14 days, from the filing of the Notice of Appeal, to order the transcript. To order a transcript, the appellant should fill out a (Transcript Order) and follow the instructions set out on the form. This form is available in the Clerk's Office or by clicking the hyperlink above. (cc3) (Entered: 12/27/2022)

12/27/2022	<u>33</u> (p.517)	OBJECTION to <u>31</u> (p.505) Report and Recommendations by Aristotle International, Inc., Michael Beeler, Trevor Boeckmann, Mark Borghi, Kevin Clarke, Harry Crane, Richard Hanania, James D Miller, Josiah Neeley, Predict It, Inc., Grant Schneider, Wes Shepherd, Corwin Smidt.. (Attachments: # <u>1</u> (p.9) Exhibit Hearing Transcript (Excerpts))(Edney, Michael) (Entered: 12/27/2022)
12/29/2022	<u>34</u> (p.555)	Transcript filed of Proceedings held on December 1, 2022, Proceedings Transcribed: Motions Hearing. Court Reporter/Transcriber: Arlinda Rodriguez, Telephone number: 512-391-8791. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 1/19/2023, Redacted Transcript Deadline set for 1/30/2023, Release of Transcript Restriction set for 3/29/2023, Appeal Record due by 1/13/2023, (Rodriguez, Arlinda) (Entered: 12/29/2022)

Tab 2

916–17 (5th Cir. 1964) (taking action that would delay consideration of preliminary injunction regarding school session until after that session had “the practical effect” of denying the injunction); *U.S. v. Lynd*, 301 F.2d 818, 822 (5th Cir. 1962) (holding that declining to rule on motion for temporary injunction was “in all respects a ‘refusal’” sufficient for interlocutory appeal); *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1449–50 (9th Cir. 1992) (holding that the district court’s delaying a hearing on a motion for preliminary injunction to stop construction of an astrophysical complex until after an access road had been constructed “effectively denied the motion” and gave the Court jurisdiction to hear the appeal); *Cedar Coal Co. v. United Mine Workers of Am.*, 560 F.2d 1153, 1161 (4th Cir. 1977) (holding that indefinite continuance of hearing on injunction “amounted to the refusing of an injunction and [wa]s appealable as such”); *see also Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610, 612 (6th Cir. 2020) (holding that district court’s denial of a temporary restraining order also effectively denied a motion for preliminary injunction because the district court showed no indication of ruling on that motion expeditiously and the case would become moot in three weeks).

The Court has effectively denied Plaintiffs’ Motion for Preliminary Injunction. Plaintiffs filed the Motion on September 30. ECF No. 12. It asks the Court to enjoin enforcement of a Commission mandate to end trading of and liquidate all PredictIt Market contracts by 11:59pm on February 15, 2023, pending resolution of the merits. *Id.* at 2. The Motion was fully briefed over two months ago on October 20. *See* ECF No. 18. On November 18, Plaintiffs moved to expedite consideration of the motion so that it would be decided by Christmas, in light of detailed and accelerating irreparable harms in December. ECF No. 23, at 2–4. The motion informed the Court that, in the absence of a process to decide the motion by Christmas, it would regard the motion as effectively denied. *Id.* at 6. As of this date, the Court has neither scheduled a hearing on nor taken

any action on the request for a preliminary injunction. Under Fifth Circuit precedent, the Court's failure to act has effectively denied the motion for preliminary injunction. Plaintiffs now notice this appeal of that effective denial.

Dated: December 23, 2022

Respectfully submitted,

By: /s/ Michael J. Edney

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Mark Borghi, Richard Hanania, James
D. Miller, Josiah Neeley, Grant
Schneider, and Wes Shepherd*

CERTIFICATE OF SERVICE

On December 23, 2022, I filed this document with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to counsel of record for all parties.

/s/ Michael J. Edney
Michael J. Edney

Tab 3

Tab 4

Tab 5

Confidential Treatment Requested by Victoria University of Wellington

June 26, 2014

Request Under 7 U.S.C. Sec. 6(a)

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Director

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1155 21st Street, NW

Washington, DC 20581

RE: VICTORIA UNIVERSITY OF WELLINGTON'S REQUEST FOR NO-ACTION LETTER FOR A
SMALL-SCALE, NOT-FOR PROFIT, EVENT FUTURES MARKET FOR EDUCATIONAL
PURPOSES

Requester:

Victoria University of Wellington

Macdiarmid Building, Am404

Kelburn Parade

Wellington, 6012, New Zealand

Phone:

Dear Mr. McGonagle:

On behalf of Victoria University of Wellington, New Zealand ('Victoria University' or 'the University') I am writing to request a no-action letter from the Division of Market Oversight to permit the establishment and operation of a not-for profit, event futures market and offer event futures contracts to U.S. persons without registering as a designated contract market under Section 5 of the Commodity Exchange Act.

Proposal

Victoria University proposes the creation of a small-scale, not-for-profit, electronic real-money event futures market in the U.S. for educational and research purposes. The venture will be modelled

after the Iowa Electronic Market (IEM), which has operated for more than 20 years under two no-action letters from the CFTC.¹ The University intends to establish a subsidiary (to operate on a not-for-profit basis) in the U.S. for the project.

Certain changes are proposed to the IEM model. These changes are intended to insure that the system produces more accurate results and fulfills the educational public interest purpose of the project. As more specifically described below, we intend to accomplish this by offering upgraded technology that we consider more user- friendly, eliminating any upfront user fee, increasing the number of participants, raising the 1992 dollar limits to 2014 levels, employing Know-Your-Customer authentications to strengthen the integrity of the system, requiring that users be at least 18 years old, and facilitating ease of registration, deposits and withdrawals.

Given the important academic and educational benefit we hope to be derived from this research and the purposes and manner of operation of the proposed market, the University believes that the market will be a valuable academic tool and entirely consistent with the public interest. However, because the proposed contracts would be available to U.S. persons, we are concerned that, absent the relief requested in this letter, the operation of the proposed market without obtaining designation as a contract market would be prohibited by the Commodity Exchange Act (the "Act") and the regulations promulgated thereunder.² Accordingly, the University seeks confirmation from the Division that it will not recommend enforcement action against the University or its agents for operating the proposed market and offering event contracts without contract market designation.

Description of the Market:

Customized software will be used to operate a market-based political and economic forecasting system. The University's key employees overseeing the project will be three University professors and one administrator. Neither the professors nor the administrator will receive any compensation or other payment, directly or indirectly, for operating the markets. Neither Victoria University nor any of the key personnel operating the proposed markets is required to register with the Commission, nor is any of these persons or entities a business affiliate of any person required to register with the Commission.

The written and other descriptive materials concerning the Proposed Market will prominently disclose that this is an experimental, research-based market that is being operated for academic purposes, and is not regulated by, nor are its operators registered with, the Commodity Futures Trading Commission or any other regulatory authority.

Educational Purposes and Uses of Market Information:

The University proposes to utilize the results of the market information for educational and research uses and purposes, including: courses in statistical analysis, market theory, and trader psychology; and to publish related research papers and analyses. Like IEM, the results may be made available to other participating academic institutions for the same purposes.

Examples of Contracts to be Offered

Political Event Contracts. As with IEM, we hope the market will be open to users worldwide.³

Political Event Contracts will include the following:

¹ See <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/92-04a.pdf> and <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/93-66.pdf>

² 7 U.S.C Sec. 1 *et seq.*, and Commission rules and regulations found at 17 C.F.R Part 34.

³ See <http://tippie.uiowa.edu/iem/faq.html#who> ("The IEM is operated for research and teaching purposes. All interested participants world-wide can trade in our political markets.")

- Presidential Elections Submarket:
 - Winner-Take-All contracts to predict which presidential candidate will win their parties' primaries, the general election popular vote, and the Electoral College;
 - Winner-Take-All contracts to predict who will be the major party nominees for Vice President
 - A Vote Share contract to predict what percentage of the vote the two major party candidates will receive
- Congressional Control Submarket to predict which party will control the next Congress.
 - Congress 2014 contract-- based on the composition of both houses of Congress
 - House2014 contract -- based on the composition of the U.S. House of Representatives
 - Senate2014 contract -- based the composition of the U.S. Senate
- Other Significant U.S. Elections Submarket
 - Contracts to predict the outcome of other significant U.S. Elections not falling within the other markets
- International Elections Submarket
 - Contracts to predict the outcome of certain foreign elections, such as the Canadian elections described in the 1993 IEM no-action letter.

Economic Indicator Contracts

- Federal Reserve Monetary Policy Winner-Takes-All.
 - The Federal Reserve Monetary Policy Submarket B (FedPolicyB) is a real-money event contract. Contract payoffs are determined by monetary policy decisions of the Federal Open Market Committee regarding the federal funds target rate.

The market may list additional event-driven contracts based on significant Political Events. It may also list additional Economic Indicator Contracts. However no Economic Indicator Contracts shall compete with any contracts that are listed by a regulated contract market at the time of listing by the market and the market shall not list more than 5 Economic Indicator Contracts at any one time. Participation in Economic Indicator Contracts shall be limited to students, faculty and staff at any participating universities. The market will not list any contracts that involve, relate to or reference terrorism, assassination or war.

Structure of Contracts

Shares are initially priced at \$1. Contracts for the correct outcome pay off at \$1. All other contracts pay off at zero. As a result, the price of the contract at any given time is the probability that the traders believe that event will happen. There will be no additional fees other than those necessary to cover the basic expenses of running the market, including the University's expected costs and those of any service providers as described herein. Participants will execute their own trades, and no brokerage service will be available or allowed. Participants will invest their own funds, buy and sell listed contracts, and bear the risk of loss.

Know Your Customer Requirements

The University intends that an age and identity verification process be employed that will follow Know Your Customer Requirements ("KYC"). The KYC process, performed by an established and credible third party, is a critical and essential component of our proposed system, and a major difference from IEM's structure. KYC will be implemented to strengthen the overall integrity and stability of the system and to improve the accuracy of the results, by reducing the likelihood of fraud, market manipulation, use of the system by minors, and excessive amounts being deposited by individuals using multiple accounts. This process will be operated by a third party, Aristotle International, Inc., whose Integrity authentication service is a leading global provider of age and identity verifications for government and business, having successfully performed over 50 million authentications. Aristotle is also one of only 6

Federal Trade Commission-approved Safe Harbors for compliance with the Child Online Privacy Protection Act COPPA. A description of Aristotle and its Integrity Service can be found at <http://integrity.aristotle.com/>.

Number of Traders in Each Market

IEM is limited to 2000 total traders in any particular election. We propose raising the limit to 5000 total traders in any particular election.

As the purpose of the market is an academic and educational tool, restricting the number of participants too greatly is likely to result in a market that is not as close to an efficient and effective a prediction tool as it could be and therefore impacts the value of the academic research generated by the project.

Specifically, there is nothing in the way of academic or comparative study to justify or even suggest that IEM's limitation is needed to optimize the accuracy of the market. What is known is that there are compelling reasons to raise the limit on the number of traders participating in a market:

1. Prediction markets work because they aggregate information from "a group of traders, and groups are almost always smarter than the smartest people in them."⁴
2. Thinly-traded contracts give single users an outsized voice in the market, creating the potential for results that skew in one direction or the other.⁵
3. A limited trader base will restrict the number and nature of prediction questions, as there will be too small a trading base for specialized questions or regional questions. Prediction questions with few participants are illiquid and have limited appeal to participants. Greater market liquidity is linked to market accuracy. Without liquidity there is less incentive to trade and therefore less information sources available to the market. In our experience this concentrates trading into a small number of prediction stocks and limits the market scope.
4. Limiting participant numbers limits informational sources for the market. The purpose of the market is to bring into the public domain private information. Prediction markets are successful because they are informationally efficient. Restrictions on participation may lead to the market not factoring in some available information, directly reducing accuracy.

⁴ See <http://www.utsandiego.com/news/2010/feb/01/1c01prediction/> quoting James Surowiecki in his 2004 book, "The Wisdom of Crowds".

⁵ See, e.g., **Betting on a future market**, <http://www.nbcnews.com/science/betting-future-market-6C10405016?franchiseSlug=sciencemain>; See also, Betting on Politics--and Getting it Right, CNN November 16, 2011 <http://tippie.uiowa.edu/iem/media/story.cfm?ID=2718> :

"Many of the markets are thin, and that's a problem," Fair said....Thinly traded contracts give single users an outsized voice in the market, creating the potential for results that skew in one direction or the other. And around the margins—when a candidate stands very little chance of winning, or has already locked up the race—the market becomes far less perfect," Fair said.

See also, **Prediction Markets Are Hot, But Here's Why They Can Be So Wrong** (May 19, 2008) Wired Magazine, <http://archive.is/eZ0E5#selection-1877.9-1877.691> :

Like financial markets, prediction markets are big information processors, distilling the collective wisdom of their traders. But the success of any market depends upon the stakes and the pool of traders. Most prediction markets aren't anywhere near as robust as those they emulate on Wall Street. "They are thin, trading volumes are anemic, and the dollar amounts at risk are pitifully small," market analyst Barry Ritholtz wrote in January. That opens them up to all kinds of problems as information processors. Political markets, for example, have a lot of political junkies but few real insiders or outsiders, so they're not very good at catching something the polls might miss.

5. When there is too small a cap as with IEM, people who sign up, but who do not participate or who participate very infrequently, are effectively blocking legitimate participants who could better help the market to realize its beneficial educational purpose.
6. Although IEM has frequently been praised for beating the polls a large percentage of the time, this does not mean that the IEM market is as accurate as it could be, or that IEM is beating the polls as often and by as large a margin as it could.
7. In a letter written by 22 professors who are experts in prediction markets (including those professors who operate IEM), although a “modest” annual cap on deposits by an individual was proposed, they specifically did not propose a limit on the number of participants.⁶
8. Limiting the maximum number of traders too severely can greatly limit the ability to add additional sponsoring universities, a consequence that severely undercuts the educational reach and purpose of the market.
9. We do not anticipate that more than a few thousand traders will participate in any particular election, other than for U.S. President. We expect that the level of public interest in a particular contract will in fact be the strongest and most natural limiting factor. However, where there is a particularly significant event contract in which many thousands more would want to participate, then rejecting those participants would utterly defeat the educational purpose of the project.

We therefore propose that the number of traders in any particular election be increased to 5000. We are of the strong opinion that greater limits on participants will significantly undermine the academic utility of the project. We anticipate that the higher cap proposed, coupled with a slightly higher maximum deposit limit (discussed below), will make the proposed markets more efficient by minimizing the likelihood of thinly-traded contracts, while preserving the small-dollar, educational purpose of the project, similar to IEM.

Markets Open to Non-Academic Traders

We also propose that Political Event Contracts not be limited to a fixed minimum percentage of “academic traders”, such as the students and staff of educational institutions. There is nothing to suggest that any such limit used by IEM is in any way related to the educational purpose or the accuracy of the market, or has been justified by any comparative studies. Many of the same reasons stated above for expanding the number of traders would also logically apply to this issue as well.

There is simply no reason to believe a fixed minimum of academic participants will help with educational and research purposes of the market. In fact this is likely to bias the markets and reduce access to a broader range of informational sources therefore reducing accuracy. The primary educational and research purposes of the market rely on the market being informationally efficient and accurate. We also foresee a number of questions that will provide useful information for researchers, in which questions one would not want a quota for academic participation especially where the public debate is already led or heavily influenced by academics.

⁶ See **The Promise of Prediction Markets.**, Science 16 May 2008, <http://www.sciencemag.org/content/320/5878/877.full>.

See also, **Betting on a future market**, NBC News, Science, <http://www.nbcnews.com/science/betting-future-market-6C10405016?franchiseSlug=sciencemain>. The Researchers making this request, and their affiliations at the time, were: Kenneth J. Arrow, Paul Milgrom and Erik Snowberg of Stanford University; Robert Forsythe of the University of South Florida; Michael Gorham of the Illinois Institute of Technology; Robert Hahn of the American Enterprise Institute; Robin Hanson of George Mason University; John O. Ledyard of the California Institute of Technology; Saul Levmore and Cass R. Sunstein of the University of Chicago Law School; Robert Litan of the Kauffman Foundation; Forrest D. Nelson and George R. Neumann of the University of Iowa; Marco Ottaviani of Northwestern University; Thomas C. Schelling of the University of Maryland at College Park; Robert J. Shiller and Paul C. Tetlock of Yale University; Vernon L. Smith, Philip E. Tetlock and Hal R. Varian of the University of California at Berkeley; Justin Wolfers of the University of Pennsylvania; and Eric Zitzewitz of Dartmouth College

Amount of Trader Investment

Under the 1992 and 1993 no-action letters addressing the original IEM proposals⁷, the “maximum investment by any single participant in any one Submarket is \$500.” IEM continues to use that limit. However, using the Consumer Price Index, \$500 in 1992 had the same buying power as \$844.99 in 2014⁸. Therefore, we propose raising the limit to \$850, to allow participants the ability to participate in several more contracts than they might otherwise if limited to 1992 levels. This will make the proposed markets more efficient by minimizing the likelihood of thinly-traded contracts, while preserving the small-dollar, research and academic purpose aspects of the IEM. This \$850 limit also compares favorably with the \$2000 annual investment limit recommended by 22 researchers (including two of the IEM’s co-founders) in their 2008 request to Congress and the CFTC to clear up uncertainty in the regulation of prediction markets.⁹

Methods of Registration

The system will be employed to allow electronic registration to facilitate trader participation, while simultaneously safeguarding against duplicate or multiple accounts for the same user, or registration by minors. These registrations will be verified and authenticated through the KYC process to be provided by Aristotle’s Integrity, and can take place in real-time.

Methods of Deposit/Withdrawal

Complementing the efficiency of electronic registration, and to otherwise make the proposed market system easier to use, the system will allow credit card deposits and withdrawals for those authenticated through the Integrity KYC process. Those transactions will be processed through Aristotle, which has years of experience handling such transactions. For example, Aristotle’s Integrity service has processed over 50 million authentications using a database of government-issued ID and other government records. Aristotle also is an experienced processor, well versed in regulatory reporting and compliance, having handled millions of dollars in campaign contributions over the years for hundreds of candidates and political action committees through its service at www.campaigncontribution.com.

User Fees/Covering Costs

Neither the University nor its key personnel operating the market will receive any compensation or other payment for operating it. The pricing for the project will be set to cover anticipated regulatory compliance and operating costs. At this time, it is projected that, unlike IEM, the market terms will not require any upfront charge or fee. The only user fees will be those designed to cover for costs of credit card processing of deposits and withdrawals, fulfillment of the KYC process, and all other regulatory compliance and operating costs.

Marketing

We understand that one aspect of the IEM, as spelled out in the no-action letters, was that no one involved in the operation could engage in any “advertising” of the IEM. However, the IEM market would be less efficient, and therefore less valuable from a research standpoint, if the markets draw an inadequate pool of participants as a result of the marketing restrictions. It is the University’s view that, in order to reach a pool of widely dispersed but interested political users, one must do limited advertisement to attract sufficient and diverse users to the market. The University believes that the reason that significant research based upon the data derived from prediction markets has been limited is due to a failure to reach a wider audience. Moreover, although IEM may not do “advertising”, it does

⁷ See <http://www.cftc.gov/files/foia/repfoia/foirf0503b002.pdf>

⁸ See, e.g., <http://www.dollartimes.com/calculators/inflation.htm>

⁹ See n. 7, *supra*.

appear that it engages in promotional activity such as press releases¹⁰ and links to earned media¹¹. In short, we believe that the limitations on the modest amounts to be invested, together with efficient KYC controls to prevent multiple accounts and participation by minors, will be sufficient to preserve the non-commercial nature of the proposed markets without prohibiting limited efforts to publicize our activities. Any such promotional activities would contain a disclosure that the market is unregulated, and would be limited by targeting only media outlets where there is a high likelihood of reaching those interested in the subject matter of the contracts at hand. Promotional activity would not be directed at the general retail investing public.

Experimental Nature of Prediction Markets

Finally, as noted above, although IEM is reported to perform generally better than polls, this does not mean that the structure developed for IEM in the late 1980's, and approved by the CFTC in the 1992 and 1993 no-action letters, is optimal for an educational market. As the 22 leading academics wrote in their 2008 letter to the CFTC:

The CFTC should allow researchers to experiment with several aspects of prediction markets—fee structures, incentives against manipulation, liquidity requirements and the like—with the goal of improving their design. Prediction markets are in an early stage, and if their promise is to be realized, researchers should be given flexibility to learn what kinds of design are most likely to produce accurate predictions. Of course, exchanges would need to inform their customers so that they are aware of the risks and benefits of participating in these markets.

Given that the market we propose is a small-money market, and has far greater safeguards than IEM to preserve the integrity of the operation, we believe that the design we have proposed will be in the public interest.

If you have any questions or require additional information, please do not hesitate to contact the undersigned.

Respectfully submitted,

Victoria University of Wellington

By: 

Neil Quigley
Deputy Vice-Chancellor, Research

¹⁰ See, e.g., <http://tippie.uiowa.edu/iem/media/releases.cfm>

¹¹ See, e.g., http://tippie.uiowa.edu/iem/media/news_current.cfm

Tab 6



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
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Division of
Market Oversight

CFTC Letter No. 14-130
No-Action
October 29, 2014
Division of Market Oversight

Neil Quigley
Deputy Vice-Chancellor, Research
Victoria University of Wellington
Macdiarmid Building, Am404
Kelburn Parade
Wellington, 6012, New Zealand

Re: Victoria University of Wellington's Request for No-Action Letter regarding the Operation of a Small-Scale, Not-For-Profit Market for the Trading of Event Contracts for Educational Purposes

Dear Mr. Quigley:

This letter is in response to your letter to the Division of Market Oversight ("DMO" or "Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission") dated August 26, 2014, requesting no-action relief that would allow Victoria University of Wellington, New Zealand ("Victoria University")¹ to operate a not-for-profit market for the trading of event contracts and the offering of such event contracts to U.S. persons.

As you note in your letter, the Division of Trading and Markets ("T&M"), which preceded DMO as the CFTC division with oversight responsibilities for regulated markets, granted no-action relief by letter dated June 18, 1993, to the University of Iowa to permit the operation of a non-profit electronic market ("Iowa Electronic Markets" or "IEM").² The IEM consists of submarkets for binary contracts concerning political elections and economic indicators — it is operated for academic research purposes only, and its operators, who are faculty at the University, receive no separate compensation.

¹ Victoria University was founded as Victoria College in 1897. The University comprises four campuses, more than 2,000 staff and 16,000 students. Additional information about the University's history, faculty, academic offerings, reputation, rankings, and related matters is available at <http://www.victoria.ac.nz/about/>.

² CFTC No-Action Letter No. 93-66 (June 18, 1993), *available at* <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/93-66.pdf>.

Victoria University proposes the creation of a small-scale, not-for-profit, online market for event contracts in the U.S. for educational purposes that will use the IEM as a model, with certain features that would vary from that model. As such, you request on behalf of Victoria University similar no-action relief with respect to the operation of your proposed market for event contracts as was granted to the University of Iowa with respect to operation of the IEM. In particular, you request that DMO recognize that Victoria University's market for event contracts, as proposed, should not be required to register as a designated contract market ("DCM") under section 5 of the Commodity Exchange Act ("CEA") and part 38 of the Commission's regulations, nor as a foreign board of trade ("FBOT") under section 4 of the CEA and part 48 of the Commission's regulations, and that its operators need not register under the CEA or the Commission's regulations.

I. Background

Based upon the representations contained in your letter, as supplemented by telephone conversations with DMO staff, we understand the facts to be as follows. Victoria University (henceforth "University") intends to operate two submarkets: one for political event contracts, and the other for economic indicator contracts. The University proposes to utilize the results of the market information derived from trading in these contracts for educational and research purposes. For example, the University plans to utilize the results from its market as teaching tools in its courses on statistical analysis, market theory, and trader psychology. The University has also expressed plans to utilize the results to publish related research papers and analyses.

All of the proposed event contracts would be structured as follows:

- all contracts would be initially priced at \$1;
- each contract for the correct outcome would pay off at \$1, while all other contracts (i.e., contracts with incorrect outcomes) would not pay-off; and
- the price of each contract at any given time would reflect the probability that the traders believe that the event will happen.

The proposed submarket for political event contracts will include winner-take-all contracts to predict the following outcomes:

- which presidential nominee will win his or her party's primary, the general election popular vote, and the Electoral College;
- who will be the major party nominees for Vice President; and
- which party will control the next Congress.

The proposed submarket for economic indicator contracts will include winner-take-all contracts to predict monetary policy decisions of the Federal Open Market Committee regarding the federal funds target rate. The University represents that it will not list any economic indicator contract that would compete with any contract that is listed by a CFTC-regulated contract market, and the University would not list more than five economic indicator contracts at any one

time. Participation in the submarket for economic indicator contracts would be limited to students, faculty and staff at any participating universities.³

By design, the University's model for its proposed market for event contracts bears many close similarities to the IEM model, including the following items:

- The University's key employees overseeing the project will be three University professors and one administrator.
- Neither the professors nor the administrator will receive any compensation or other payment, directly or indirectly, for operating the market.
- Neither the University nor any of the key personnel operating the proposed market is required to register with the Commission, nor is any of these persons or entities a business affiliate of any person required to register with the Commission.
- There will be no additional fees other than those necessary to cover the basic expenses of running the market, including the cost of credit card processing of deposits and withdrawals, fulfillment of the know-your-customer ("KYC") process,⁴ and all other associated regulatory compliance and operating costs.
- Participants will execute their own trades, no brokerage service will be available or allowed, and no commissions will be charged.

However, the University's proposed market for event contracts would feature certain aspects that would distinguish it from the IEM model. The following four departures from the IEM model, you argue, would cause the University's market for event contracts to produce more accurate results, thereby furthering the educational public interest purpose of the project, by permitting:

- (1) a larger allowable number of traders in each contract;
- (2) a larger number of traders that are not affiliated with the University to trade political event contracts;
- (3) a larger allowable investment by any single market participant; and
- (4) a limited level of advertising.

1. Number of traders in each contract

Participation in IEM is limited to 2000 total traders in any particular election for which a political market is operated, and to 1000 total trades in any particular economic indicator submarket. The University proposes to have a limit of 5000 total traders in any particular contract, explaining that broader participation would make these contracts more efficient and effective prediction tools. The University anticipates that the higher proposed cap on participation, coupled with a higher maximum deposit limit (discussed below), would together

³ The University represents that several U.S. universities have indicated a willingness to participate in the University's market for event contracts. Thus far, the University has neither sought nor obtained firm commitments from any of the universities contacted and does not intend to do so until it obtains the necessary relief from Commission staff. Such participation by other universities, as planned, would be similar to the participation by several universities in the IEM that the University of Iowa has been able to obtain.

⁴ The University represents that it will implement an age and identity verification system as part of a KYC process, performed by an outside independent party: Aristotle International, Inc.

increase the value of the academic research generated by the project by reducing the likelihood of thinly-traded contracts. Thinly-traded contracts, the University explains, would likely allow individual users to have an outsized impact on contracts, thereby creating the potential for artificially skewed results and undermining the academic utility of the project.

2. Access to submarket for political event contracts

IEM limits participation in its political submarket to primarily students, faculty and staff at participating universities, and restricts participation in its economic indicator submarket to only such “academic traders.” While the University proposes that participation in its economic indicator submarket be restricted to only academic traders at participating universities, the University has also proposed that trading in its political submarket not be limited to primarily academic traders. In support of its proposal, the University posits that many of the same reasons stated above for expanding the maximum number of allowable traders would also logically apply to this issue — a reduced number of traders would bias the market and reduce access to a broader range of informational sources, thereby reducing accuracy and academic utility.

3. Larger allowable investment by any single market participant

IEM limits the maximum investment by any single participant in any particular contract to \$500. The University proposes raising the limit on investment by any single participant in any particular contract to \$850. The University represents that, using the Consumer Price Index, \$500 in 1992 (the year in which the Division first granted no-action relief to the University of Iowa) had the same buying power as \$844.99 in 2014. The University explains that increasing the maximum allowable investment would allow participants the ability to participate in several more contracts than they might otherwise if limited to 1992 dollar levels. This, the University explains, would make its market more efficient by minimizing the likelihood of thinly-traded contracts, while still adhering to the small-dollar, educational purpose of the IEM model.

4. Advertising would be permitted

In its 1993 relief request, IEM represented that none of its operators, nor any other person involved with the IEM, engages in any advertising concerning the IEM. The University proposes to engage in limited advertisement of its market in media outlets where there is a high likelihood of reaching those interested in the subject matter of its contracts. Any such advertisements would prominently disclose that the proposed market is unregulated, experimental, and being operated for academic purposes. It is the University’s view that limited advertisement is necessary to attract sufficient and diverse users to its proposed market.

The University represents that it will use little, if any, paid advertisements to market its contracts. Instead, the University would attract participants through channels of communication within the academic community, including word-of-mouth marketing, articles and interviews with media.

DMO notes that the University’s proposed political event contracts can be distinguished from the North American Derivatives Exchange’s (“Nadex”) political event contracts that were

disapproved by Commission Order on April 2, 2012.⁵ Specifically, the University's request for no-action relief was not in any way premised upon claims that its proposed event contracts have any hedging or price-basing utility. Much to the contrary, the University's proposed market for event contracts represents an academic exercise demonstrating the information gathering and predictive capabilities of markets. Another important distinction is that the University's proposed market would operate on a non-profit basis. Furthermore, because participation levels and maximum allowable investments in the University's proposed contracts would each be capped at very low levels, the University's proposed political event contracts would not have the same potential for compromising the integrity of elections as would Nadex's disapproved political event contracts, which were much larger.

II. Scope of no-action relief provided by DMO

Based upon your representations concerning the purposes and manner of operation of your proposed market for event contracts, the Division does not believe that operation of this proposed market without registration as a DCM, FBOT, or swap execution facility ("SEF"),⁶ or without registration of its operators, would be contrary to the public interest. The Division's conclusion is based upon the facts that, among others, your proposed market for event contracts has been designed to serve academic purposes and the operators will receive no compensation. Furthermore, the Division would allow the University's four proposed variations from the IEM model, as discussed above, because each is intended to produce more accurate results, which would promote the educational public interest purpose of the project while maintaining the small-scale, not-for profit nature of the proposed market.

Consequently, based upon your representations, DMO will not recommend that the Commission take any enforcement action in connection with the operation of your proposed market for event contracts based upon the operators' not seeking designation as a contract market, registering under the Act or otherwise complying with the Act or Commission regulations.

DMO does not render any opinion as to whether the operation of your proposed market for event contracts violates any state law provisions, nor does the Division's position excuse non-compliance with any such law.

This letter is based upon the information that has been provided to the Division and is subject to the conditions stated above. Any different, changed or omitted material facts or circumstances may render this no-action relief void.

This letter, and the no-action position taken herein, represents the views of DMO only, and does not necessarily represent the positions or views of the Commission or of any other division or

⁵ *Order Prohibiting the Listing or Trading of Political Event Contracts* (April 2, 2012), available at <http://www.cftc.gov/ucm/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf>. The disapproved Nadex contracts were binary option contracts that would have paid out based upon the results of various U.S. federal elections in 2012.

⁶ DMO staff believes that the proposed event contracts could be characterized as swaps pursuant to CEA section 1a(47)(A)(ii). In general, no person may operate a facility for the trading or processing of swaps unless the facility is registered as a SEF or as a DCM. See CEA section 5h(a)(1).

office of the Commission. As with all no-action letters, DMO retains the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact David Van Wagner, Chief Counsel, Division of Market Oversight, at (202) 418-5481 or dvanwagner@cftc.gov, or David Pepper, Attorney Advisor, Division of Market Oversight, at (202) 418-5565 or dpepper@cftc.gov.

Sincerely,

Vincent McGonagle
Director, Division of Market Oversight

Tab 7



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

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Wellington 6012, New Zealand

Re: Withdrawal of CFTC Letter No. 14-130

Dear Dr. Hyland:

As you are aware, on October 29, 2014, the Division of Market Oversight (“DMO” or “Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) issued CFTC Letter No. 14-130 (“Letter 14-130” or “Letter”) granting the request of Victoria University of Wellington, New Zealand (“the University”) that the Division not recommend enforcement action (*i.e.*, “no-action” relief) against the University in connection with its operation of an online, not-for-profit, event contract market in the U.S. for educational and research purposes, without registration as a designated contract market, swap execution facility, or foreign board of trade, and without registration of its operators, subject to certain terms outlined in the Letter.¹

According to the terms of the Letter, DMO granted the relief based upon the representations of the University that the proposed event contract market would:

- (1) be small-scale and not-for-profit;
- (2) be operated for academic and research purposes only;
- (3) be overseen by faculty at the University, without receipt of separate compensation;
- (4) offer event contracts consisting of two submarkets for binary option contracts concerning political election outcomes and economic indicators;

¹ Letter 14-130, <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/14-130.pdf>.

- (5) be limited to 5,000 traders per contract, with an \$850 investment limit per participant in any contract;
- (6) not offer brokerage services or charge commissions to participants;
- (7) utilize a third-party service provider to perform know-your-customer (“KYC”) due diligence on its participants²;
- (8) only charge those fees necessary to cover the fulfillment of the KYC process, regulatory compliance, and basic expenses to operate the proposed event contract market; and
- (9) limit advertising to media outlets where there is a high likelihood of reaching those interested in the subject matter of its event contracts, provided that such advertising prominently discloses that the platform is unregulated, experimental, and being operated for academic purposes.³

The University has not operated its market in compliance with the terms of Letter 14-130.⁴ As a result, Letter 14-130 is hereby withdrawn and, as such, is not available for the listing or operation of any new or related contracts. To the extent that the University is operating any contract market, as of the date of this letter, in a manner consistent with each of the terms and conditions provided in Letter 14-130, all of those related and remaining listed contracts and positions comprising all associated open interest in such market should be closed out and/or liquidated no later than 11:59 p.m. eastern on February 15, 2023.

Should you have any questions, please do not hesitate to contact Brigitte Weyls, Assistant Chief Counsel, Division of Market Oversight, bweyls@cftc.gov or 312-596-0547, or Rachel Kaplan Reicher, Senior Special Counsel to the Director, Division of Market Oversight, reicher@cftc.gov or 202-418-6233.

Sincerely,

Vincent McGonagle
Director
Division of Market Oversight

² *Id.* at 3.

³ *Id.*

⁴ In Letter 14-130, DMO stated that it “retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.” *See id.* at 6.

Tab 8

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

KEVIN CLARKE, in his individual capacity,
TREVOR BOECKMANN, in his individual
capacity, HARRY CRANE, in his individual
capacity, CORWIN SMIDT, in his individual
capacity, PREDICT IT, INC., a Delaware
corporation, and ARISTOTLE
INTERNATIONAL, INC., a Delaware
corporation, MICHAEL BEELER, in his
individual capacity, MARK BORGHI, in his
individual capacity, RICHARD HANANIA,
in his individual capacity, JAMES D.
MILLER, in his individual capacity, JOSIAH
NEELEY, in his individual capacity, GRANT
SCHNEIDER, in his individual capacity, and
WES SHEPHERD, in his individual capacity,

Case No. 2022-cv-00909

Plaintiffs,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

DECLARATION OF KEVIN CLARKE

I, Kevin Clarke, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct, and that I am competent to testify to the matters stated herein:

1. My name is Kevin A. Clarke. I am a resident of Austin, Texas, where I am the owner of Clarke Mineral Estate and Geosciences, LLC, and an Assistant Coach for the University of Texas at Austin’s Policy Debate Team.
2. I have personal knowledge of the facts stated herein.
3. I have traded on the PredictIt Market for two years. At the time I began trading on the PredictIt Market, I investigated the Market’s operations and discovered that the Market

is operated pursuant to CFTC Letter No. 14-130 (the “No-Action Relief”), which I understand permitted the PredictIt Market to operate without formally registering as an exchange with the CFTC. Knowing that the CFTC had signed off on the PredictIt Market’s operations assured me that, when I bought contracts on the PredictIt exchange, they would be permitted to trade until they were settled by the outcome of the election or political event they predicted.

4. I am aware that the CFTC revoked the No-Action Relief in CFTC Letter 22-08, entitled “Withdrawal of CFTC Letter No. 14-130” (the “Revocation”). The Revocation has had a direct and immediate impact on the value of PredictIt Market event contracts.

5. Specifically, I have witnessed the following distortions since the Revocation decision:

- A general loss of trading volume on the Market due to traders exiting the Market. I often cannot find anyone to sell a position to at any reasonable price or in any reasonable amount of time.
- A destabilization of prices causing the potential for high volatility. Given this state of affairs, a relatively small development causes a negative feedback loop without many traders to come in and smooth the pricing. Such a feedback loop could quickly crash the prices with no chance of recovery.

6. These distortions have altered the reliability of the Market’s predictions and significantly affected my ability to sell my investments into the Market, at the opportunities and intervals I would have expected. The Market’s current numbers on specific contracts vary from what an experienced trader would expect in light of recent events like the midterm elections, if traders were viewing the contract as one that could be held until the projected election outcome or event occurred.

- As one example, I purchased several contracts in the Republican Party Presidential Nomination Market, prior to the Commission’s decision to require all PredictIt

contracts to liquidate on February 15, 2023, predicting that third or fourth tier candidates would win the nomination. I purchased these contracts at relatively low prices this summer. In a Market not disrupted by the Commission's decision, I would expect these contracts to significantly rise in value once Former President Trump was wounded by poor election results and given the possibility of the top two candidates wounding each other and opening up a spot for a third or fourth level candidate. One would expect to see third and fourth level candidates surging on the Market. But that is not happening, as I presume that traders do not believe that the Market will exist long enough for these candidates to even announce their candidacies for President. As such, I am left with investments that are under water and on which I am going to lose substantial sums, if I had to sell at today's prices. If I exited at today's prices, I would lose 20 percent on my investment that Mike Pence is going to be the nominee, 33 percent on Tim Scott, 40 percent of Mike Pompeo, 80 percent on Ted Cruz, at 65 percent on Josh Hawley.

7. These market distortions have left me stranded with several valuable positions, unable to find buyers who are trading on projections of the outcome of the election or political event. The Commission's arbitrary cut off date is causing me today to loss money and not have a meaningful option to sell my positions to other parties who are looking to the outcome of a later election, as I was when I bought the contracts.

8. I expect these market distortions to become substantially worse in December, as traders become no longer focused on the midterm elections and turn their attention to the February 15 liquidation date interfering with seeing a contract on the 2024 election through to its conclusion.

9. Finally, the CFTC's February 15, 2023 cut-off date also guarantees loss of investment, and the most sophisticated traders will be more adversely effected. If the market operators liquidate at the price entered, then unrealized gains will be erased. If the Market

operators return the money based on market price at a time certain, then this opens up the markets to manipulation, where traders could buy up the price seconds before the deadline.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on November 18, 2022

/s/ Kevin Clarke

Kevin Clarke

Tab 9

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

KEVIN CLARKE, in his individual capacity,
TREVOR BOECKMANN, in his individual
capacity, HARRY CRANE, in his individual
capacity, CORWIN SMIDT, in his individual
capacity, PREDICT IT, INC., a Delaware
corporation, and ARISTOTLE
INTERNATIONAL, INC., a Delaware
corporation, MICHAEL BEELER, in his
individual capacity, MARK BORGHI, in his
individual capacity, RICHARD HANANIA,
in his individual capacity, JAMES D.
MILLER, in his individual capacity, JOSIAH
NEELEY, in his individual capacity, GRANT
SCHNEIDER, in his individual capacity, and
WES SHEPHERD, in his individual capacity,

Case No. 2022-cv-00909

Plaintiffs,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

DECLARATION OF JOHN PHILLIPS

I, John Phillips, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct, and that I am competent to testify to the matters stated herein:

1. My name is John Phillips. I am the Chief Executive Officer of both Aristotle International, Inc. (“Aristotle”), and PredictIt, Inc. (“PredictIt”).
2. I have personal knowledge of the facts stated herein.
3. We have a team of seven fully dedicated and 18 shared employees that service the PredictIt Market and ensure that the Market is running efficiently, reliably, and smoothly for our tens-of-thousands customers. Our team is now facing the task of complying with the August 4, 2022,

revocation decision of the Commodity Futures Trading Commission that orders the PredictIt Market to close and to liquidate all exiting contracts held by private traders on or before 11:59 pm on February 15, 2023. It is a significant understatement that determining how to liquidate these contracts and to stand up a system to do so cannot happen overnight. As explained below, Aristotle International, Inc., and PredictIt, Inc., will have to divert nearly all PredictIt employee resources and hundreds of thousands of dollars to establish a system for liquidating existing contracts starting no later than early December 2022.

4. Aristotle, PredictIt, and several traders and academics have asked the Court for a preliminary injunction that would push back this mandatory contract liquidation date while the Court considers our claims that the revocation decision was insufficiently explained and too arbitrary, in violation of the Administrative Procedure Act. Pushing back this date, even to 90 days after this Court decides the underlying case, will spare Aristotle and PredictIt the massive expense and diversion of resources required to stand up a system to liquidate these contracts before February 15, 2023.

5. With regard to that date, I am not aware of any reason why the CFTC decided contracts had to be liquidated by February 15, 2023, or why the CFTC cannot let the contracts that were trading on the date of its revocation decision continue trading until the elections or other political events they predict occur. The date itself seems to be chosen from thin air, and I have not seen a defense by the agency of why that date or another must be enforced. I believe the agency has virtually no interest in requiring the premature liquidation of PredictIt contracts, much less in requiring that such liquidation occur on February 15, 2023, rather than some later date that allows the Court to decide this matter before our companies start spending hundreds of thousands on compliance.

6. I want to explain further why we must begin in early December 2022 plunging significant resources into programming a system for compliance with the February 15, 2023, date. Every PredictIt market depends on a ‘trade engine’—a series of coded procedures—to execute trades between counterparties and to settle contracts when they are deemed closed by the site’s

Rules Committee. This engine or process has been designed so that contract closure requires a determination by the Committee that a contract shall either be paid out in full—in other words, at a \$1 value when its underlying predication has been deemed correct or liquidated with no compensation to the contract holder when the prediction has been deemed incorrect. That is a binary decision. There is no provision in the coding of the PredictIt trade engine for contracts to be settled for anything other than \$1 or \$0, as this is inimical to the trading logic on which the site operates.

7. When a contract has a linked outcome, such as the winner of a nomination or election, the engine requires the designation of one, and only one, contract to be paid out in full. All other associated margin-linked contracts are then settled at zero value. For instance, only one of the 17 candidates currently listed in the 2024 Republican Presidential nomination market can win the nomination; the other 16 contracts would settle at zero under existing market rules.

8. We are not currently equipped to settle markets in any way other than by the outcome of the election or the occurrence of a political event on which the contract turns. To settle contracts on an arbitrary date, like February 15, 2023, at a price other than \$1 or \$0 will require the selection, design, coding, testing, and execution of an entirely new settlement procedure. Implementation of such a process involves multiple steps of engaging staff with different expertise.

- First, PredictIt must choose a method by which to settle contracts prematurely, contrary to the established rules governing those contracts and without guidance from the CFTC. The method must be fair to traders but must also be designed to ensure that there are sufficient funds to settle all markets. Consideration of the most appropriate settlement method is already underway and key company staff are already being diverted from their normal duties for this purpose.
- Second, having selected a settlement method, the company's software development department and data analysts must develop calculations and processes by which to

assess the feasibility of these decisions in the site's existing coding environment. These processes are subject to review by management. Working backwards from a 4–5-week software development process (discussed below) this conceptual design process must begin in early December to meet the February 15 deadline. Contracts with linked outcomes (*i.e.* contracts pertaining to a multi-candidate election) pose a particular challenge since PredictIt employs a risk-calculation mechanism that reduces the collateral required for traders buying related contracts. In brief, the trade engine recognizes that a trader shorting multiple presidential candidates, for example, is guaranteed to “win” all but one of those positions, at minimum, since only one person can win the election. In the normal settlement of contracts, such linked short positions are unwound in a parallel fashion. But such “multiple-contract markets” typically have collective valuations near to but not exactly \$1 while they are active, leaving the possibility that settlement at live price will not fully restore funds to all traders or will generate a deficit in the clearing house.

- Third, after determination and review of a settlement method, PredictIt staff need to create a private, parallel instance of the live market in order to test procedures. Software developers need to write altogether new code for the trade engine to allow for the execution of the extraordinary settlement method. Once written, this code needs to be reviewed by quality assurance specialists, revised, and tested, through several iterations. This entire development process would consume four to five business weeks, at minimum. Because the CFTC's market shut down deadline of February 15 is not flexible and must be complied with on pain of massive threatened government penalties, we must allow more than the projected five weeks to allow for possible programming delays. Thus, programming must begin during the month of December.

9. The diversion of programmers for the extended period necessary to implement these changes will impose substantial direct and opportunity costs on the company. All of the employees assigned to PredictIt, comprising 20% of Aristotle’s total workforce, will be affected by a partial or complete diversion of their work from other efforts to shut down tasks. Not only will we incur salary and overhead costs for that period of work, we will also delay or lose the projects those programmers would otherwise be completing. In total this diversion of effort threatens to trigger a two-to-three month delay in the launch of our next major business venture.

10. Finally, we have experienced a significant withdrawal of funds from the PredictIt market in the days since the mid-term election. The combination of the CFTC’s prohibition on new markets and the impending shutdown order has left traders with few attractive investment choices in the market. As the CFTC’s shutdown deadline approaches, liquidity in remaining markets is likely to decrease as more traders sell their positions and exit the market entirely. Increasingly illiquid markets increase the risk of extreme price movements unrelated to underlying political events and make it more difficult for remaining traders to exit their positions at fair prices.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on November 18, 2022

/s/ John Phillips

John Phillips

Tab 10

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

KEVIN CLARKE, in his individual capacity,
TREVOR BOECKMANN, in his individual
capacity, HARRY CRANE, in his individual
capacity, CORWIN SMIDT, in his individual
capacity, PREDICT IT, INC., a Delaware
corporation, and ARISTOTLE
INTERNATIONAL, INC., a Delaware
corporation,

Plaintiffs,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

Case No. 2022-cv-00909

DECLARATION OF CORWIN SMIDT

Pursuant to 28 U.S.C. § 1746, I, Corwin Smidt, do hereby declare:

1. My name is Corwin Smidt. I am a resident of Michigan, where I am an Associate Professor in the Department of Political Science at Michigan State University. I submit this declaration in support of Plaintiffs’ Motion for a Preliminary Injunction.

2. I have personal knowledge of the facts stated herein.

3. The PredictIt Market has provided trading data free of charge to the academic community since its inception.

4. I have used the PredictIt Market and the data it generates in my research on the reliability of public expectations as an indicator of future political outcomes and intended to use PredictIt data again in my future research.

5. I understand that the CFTC has revoked the No-Action Letter under which the PredictIt Market operated and has ordered that the Market close or liquidate all contracts on or before February 15, 2022. These would include certain contracts regarding the outcome of the 2024 presidential elections that I plan to study.

6. The agency's decision renders trade/pricing data on event contracts that will not close before February 15, 2022 valueless to my research plans. What assists my research is the behavior of market traders trying to accurately predict the outcome of an election or other political event, backed by a small investment that will reduce the risk of personal biases affecting that prediction. I am studying whether the effect of backing a prediction with a small investment affects accuracy and how a liquid market attempting to predict the outcome of an election reacts to certain material events, such as revelations about a candidate or geopolitical developments.

7. The agency announcement is causing traders now to shift from predicting the correct political outcome to salvaging their investment leading up to February 15, 2022. This understandable market behavior is rendering the PredictIt data useless for my research plans.

8. Though other political event-contract markets exist or have existed in the past, the PredictIt Market has been a particularly valuable data resource because it offers event contracts further in advance of the events they predict than other markets. This gives researchers, like myself, the opportunity to analyze the public's changing attitudes toward political outcomes based on a variety of factors that unfold well in advance of the event on which the contracts are based.

9. Additionally, various political-event markets have operated at various points in time and within slightly different parameters, it is difficult to compare data generated between markets with different rules and different cohorts of traders. The distortion in the PredictIt

Market created by the agency's decision will significantly reduce the value of previous research using PredictIt data, as it will be difficult to compare those results to data created by a Market operating under the same rules in future election cycles. The markets varied parameters may produce inconsistent results from one market to the next where as taking data generated by one market under stable parameters over a long period of time would be far more reliable.

I declare under penalty of perjury that the foregoing is true and correct.



Executed on September 28, 2022

Corwin Smidt

Tab 11

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

In the Matter of the Self-Certification by North American Derivatives Exchange, Inc., of Political Event Derivatives Contracts and Related Rule Amendments under Part 40 of the Regulations of the Commodity Futures Trading Commission

**ORDER PROHIBITING THE LISTING OR TRADING OF POLITICAL
EVENT CONTRACTS**

By a submission dated and received by the Commodity Futures Trading Commission (“Commission”) on December 19, 2011, the North American Derivatives Exchange (“Nadex” or “Exchange”) self-certified, pursuant to Section 5c(c)(1) of the Commodity Exchange Act (“CEA”) and Commission Regulations 40.2(a) and 40.6(a), new contracts: a Democratic Majority in the U.S. House of Representatives Binary Contract; a Republican Majority in the U.S. House of Representatives Binary Contract; a Democratic Majority in the U.S. Senate Binary Contract; a Republican Majority in the U.S. Senate Binary Contract; and ten 10 U.S. Presidency Binary Contracts (collectively, the “Political Event Contracts”) and related rule amendments. The Political Event Contracts are each binary option contracts that pay out based upon the results of the various United States federal elections in 2012. Having reviewed the complete record in this matter, including Nadex’s submission, public comments and a Nadex supplementary submission, the Commission makes the following findings and rulings:

WHEREAS, under CEA Section 5c(c)(5)(C)(i), the Commission may determine that a contract in certain excluded commodities, as defined in CEA Section 1(a)(19), is contrary to the public interest if the contract involves: (1) activity that is unlawful under any Federal or State

law, (2) terrorism, (3) assassination, (4) war, (5) gaming, or (6) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest;

WHEREAS, the legislative history of CEA Section 5c(c)(5)(C) indicates that the relevant question for the Commission in determining whether a contract involves one of the activities enumerated in CEA Section 5c(c)(5)(C)(i) is whether the contract, considered as a whole, involves one of those activities;

WHEREAS, CEA Section 5c(c)(5)(C)(ii) mandates that no “contract . . . determined by the Commission to be contrary to the public interest under Section 5c(c)(5)(C)(i) may be listed or made available for clearing or trading on or through a registered entity”;

WHEREAS, Commission Regulation 40.11(a)(1) provides that registered entities, as defined in CEA Section 1(a)(40) and inclusive of designated contract markets such as Nadex, shall not list for trading any contract based upon an excluded commodity, as defined in CEA Section 1(a)(19), that “involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law”;

WHEREAS, several state statutes, on their face, link the terms gaming or gambling (which are used interchangeably in common usage, dictionary definitions and several state statutes) to betting on elections,¹ and state gambling definitions of “wager” and “bet” are analogous to the act of taking a position in the Political Event Contracts;²

¹ See, e.g., 720 ILL. COMP. STAT. ANN. 5/28-1 (West 2011) (“A person commits gambling when he . . . [m]akes a wager upon the result of any game, contest, or any political nomination, appointment or election”); NEB. REV. STAT. § 28-1101(4) (2011) (“A person engages in gambling if he or she bets something of value . . . upon the outcome of a game, contest, or election”); N.M. STAT. ANN. § 44-5-10 (1978) (“Bets and wagers on an election authorized by the constitution and laws of the United States, or by the laws of this state, are gaming within the meaning of this chapter [on gambling debts and losses.”); N.D. CENT. CODE ANN. § 12.1-28-01 (West 2011) (“‘Gambling’ means risking any money . . . upon . . . the happening or outcome of an event, including an election . . . over which the person taking the risk has no control.”). See also GA. CODE ANN. § 16-12-21(a)(2) (West 2011) (“A person commits the offense of gambling when he . . . [m]akes a bet upon the result of any political nomination, appointment, or election”); MISS. CODE ANN. § 97-33-1 (West 2011) (“If any person . . . shall wager or bet . . . upon the result of any election . . . he shall be fined in a sum not more than Five Hundred Dollars”); S.C. CODE ANN. § 16-19-90 (2011) (“Any person who shall make any bet or wager of money . . . upon any election in this State

WHEREAS, a federal statute defines the term “bet or wager” as “the staking or risking by any person of something of value upon the outcome of a contest of others. . . .”³ and taking a position in a Political Event Contract fits the plain meaning of a person staking “something of value upon a contest of others,” as the Political Event Contracts are all premised either directly (in the case of the presidential Political Event Contracts) or indirectly (in the cases of the House and Senate majority control Political Event Contracts) on the outcome of a contest between electoral candidates;

WHEREAS, the legislative history of CEA Section 5c(c)(5)(C) indicates Congress’s intent to restore, for the purposes of that provision, the economic purpose test that was used by the Commission to determine whether a contract was contrary to the public interest pursuant to CEA Section 5(g) prior to its deletion by the Commodity Futures Modernization Act of 2000;

WHEREAS, the restored economic purpose test calls for an evaluation of an event contract’s utility for hedging and price basing purposes;

WHEREAS, the unpredictability of the specific economic consequences of an election means that the Political Event Contracts cannot reasonably be expected to be used for hedging purposes;

WHEREAS, there is no situation in which the Political Event Contracts’ prices could form the basis for the pricing of a commercial transaction involving a physical commodity, financial asset or service, which demonstrates that the Political Event Contracts have no price basing utility;

shall be guilty of a misdemeanor”); TEX. PENAL CODE ANN. § 47.02(a)(2) (West 2011) (“A person commits an offense if he . . . makes a bet on the result of any political nomination, appointment, or election”).

² See, e.g., N.H. REV. STAT. ANN. § 287-D:1(VI) (2011) (“‘Wager’ means a monetary agreement between 2 or more persons that a sum of money . . . shall be paid to one of them on the happening or not happening of an uncertain event.”); WIS. STAT. ANN. § 945.01(1) (2011) (“A bet is a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement.”)

³ 31 U.S.C. §§ 5361–5367 (2006).

WHEREAS, the Commission has the discretion to consider other factors in addition to the economic purpose test in determining whether an event contract is contrary to the public interest;

WHEREAS, the Political Event Contracts can potentially be used in ways that would have an adverse effect on the integrity of elections, for example by creating monetary incentives to vote for particular candidates even when such a vote may be contrary to the voter's political views of such candidates;

The Commission FINDS that the Political Event Contracts involve gaming as contemplated by CEA Section 5c(c)(5)(C)(i)(V) and Commission Regulation 40.11(a)(1);

The Commission FURTHER FINDS that the Political Event Contracts are contrary to the public interest as contemplated by CEA Section 5c(c)(5)(C);

Therefore:

IT IS HEREBY ORDERED that, pursuant to CEA Section 5c(c)(5)(C)(ii) and Commission Regulation 40.11(a)(1), the Political Event Contracts shall not be listed or made available for clearing or trading on the Exchange.

Issued in Washington, D.C. this 2nd day of April, 2012.

By the Commission



David Stawick
Secretary

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 26, 2023

Mr. Michael J. Edney
Hunton Andrews Kurth, L.L.P.
2200 Pennsylvania Avenue, N.W.
Washington, DC 20037

No. 22-51124 Clarke v. CFTR
USDC No. 1:22-CV-909

Dear Mr. Edney,

You must **OVERNIGHT** the 4 paper copies of your record excerpts required by 5TH CIR. R. 30.1.2 **We remind attorneys that the paper copies of record excerpts filed with the court must contain physical tabs that extend beyond the edge of the document to facilitate easy identification and review of tabbed documents. See 5TH CIR. R. 30.1.7(c).**

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

cc:
Mr. Kyle Druding
Ms. Anne Whitford Stukes