



AMSTERDAM ATLANTA CALGARY CHICAGO HOUSTON LONDON NEW YORK SINGAPORE WINNIPEG

August 8, 2024

Via Electronic Submission

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

RE: CFTC Event Contract Proposal (RIN 3038-AF14)

Dear Mr. Kirkpatrick:

Intercontinental Exchange Inc., on behalf of itself and its subsidiaries (collectively “ICE”), appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) notice of proposed rulemaking relating to event contracts (the “Proposal”).¹ ICE operates regulated marketplaces for the listing, trading and clearing of a broad array of derivatives contracts and financial instruments, such as commodities, interest rates, foreign exchange and equities as well as corporate and exchange-traded funds, or ETFs. We operate multiple trading venues, including 13 regulated exchanges and six clearing houses, which are strategically positioned in major market centers around the world, including the U.S., U.K., European Union, or EU, Canada, Asia Pacific and the Middle East.

ICE supports product innovation in the futures markets. America’s financial markets have thrived through innovation, as regulated exchanges develop new products to meet market demand and to allow market participants to hedge risks. ICE recognizes the CFTC’s history of supporting innovation in the derivatives markets. The Commodity Exchange Act (“CEA”) directs the Commission with “promoting responsible innovation and fair competition” among market participants. In promulgating the CFTC’s mission, Congress was careful to ensure that innovation is advanced responsibly and does not jeopardize the integrity or financial stability of the markets or customer protections. When listing new contracts, regulated exchanges must determine that new contracts comply with the CEA and its mission to advance the “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.” To that end, it is crucial that the CFTC establish a transparent, accountable, and consistent process for new products so that regulated exchanges have certainty regarding regulatory requirements and exchanges can continue to innovate.

Consistent with the goal of fostering innovation, Section 5c(c) of the CEA and Part 40 of the Commission’s Rules permit a designated contract market or swaps execution facility to list a new contract by self-certification. Section 5c(c)(5)(C) of the CEA provides a narrow exception

¹ Event Contract (RIN 3038-AF14), 89 Fed. Reg. 112 (June 10, 2024).



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under which the CFTC *may* determine that contracts based on the occurrence of an event are contrary to the public interest if the contracts involve (i) activity that is unlawful under any federal or state law, (ii) terrorism, (iii) assassination, (iv) war, (v) gaming, or (vi) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.² A contract that is determined to be contrary to the public interest may not be listed or made available for clearing or trading on or through a registered entity.

The Proposal would revise existing Rule 40.11 to track the statutory language in CEA Section 5c(c)(5) and would categorically prohibit the listing for trading or clearing of contracts in excluded commodities involving one of the categories of activity enumerated above. The Proposal would further define the enumerated activity of “gaming” to include the staking or risking by any person of something of value on (i) the outcome of a political contest, including an election or elections; (ii) the outcome of an awards contest; (iii) the outcome of a game in which one or more athletes compete; or (iv) an occurrence or non-occurrence in connection with such a contest or game, regardless of whether it directly affects the outcome.

In ICE’s view, the proposed categorical prohibition of an entire type of contract is inconsistent with Section 5c(c)(5)(C) of the CEA. Instead, the CFTC is required to make the determination that a contract is contrary to the public interest based on an analysis of the terms of that contract. If Congress had sought to make all contracts relating to the enumerated activities in CEA Section 5c(c)(5) categorically unlawful without further analysis it would have done so. The CEA instead contemplates a public interest determination be made by the Commission based on relevant evidence and analysis which the Proposal does not do. Accordingly, ICE does not support the CFTC’s proposed determination and amended Regulation 40.11(a)(1) that event contracts involving each of the enumerated activities in CEA section 5c(c)(5)(C) (gaming, war, terrorism, assassination, and activity that is unlawful under federal or state law) are, as a category, contrary to the public interest and prohibited from being listed for trading or accepted for clearing on a registered entity.

Further, as a matter of policy, prohibiting entire categories of exchange-traded contracts without analysis by the Commission is unprecedented and conflicts with the CFTC’s mission and the CEA’s directive to promote product innovation. The Proposal’s approach is a disservice to regulated exchanges and market participants as it precludes innovation in entire categories of products without consideration of whether the contracts can be constructed in a manner that addresses concerns about the underlying activities. The Proposal does not appropriately implement the Commission’s authority provided by Congress.

ICE also disagrees with the Commission’s approach to defining “gaming” for purposes of the CEA Section 5c(c)(5) and Rule 40.11. ICE does not believe the proposed broad definition of

² CEA Section 5c(c)(5)(C) was added to the CEA in 2010 by the Dodd-Frank Act and permits the Commission to prohibit an event contract from being listed for trading on an exchange if: 1) the contract involves one of five enumerated activities (*i.e.*, activity that is unlawful under Federal or State law; terrorism; assassination; war; or gaming); and 2) the Commission determines that the contract is contrary to the public interest. CEA Section 5c(c)(5)(C) also provides that the Commission may determine, by rule or regulation, that an event contract involves “other similar activity” to the five enumerated activities, which would subject event contracts involving that similar activity to the “contrary to the public interest” standard.



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gaming, which would include contracts relating to any occurrence or nonoccurrence in connection with a contest or game, would be appropriate. If the Commission's goal is to define gaming to include betting on the outcome of sporting or similar events, it should draft a narrower definition. ICE further believes that the CFTC's proposal to extend the concept of gaming to include any contract involving staking or risking something of value based on a political contest goes well beyond the statutory language. If the Commission believes that contracts based on a political contest are contrary to the public interest and thus unlawful, it should make that determination through a specific order or rulemaking after evaluating evidence and undertaking analysis of that contract, not by distorting the term "gaming" beyond its generally understood meaning.

Ultimately, Congress intended that the Commission regulate event contracts within the framework of the Section 5c(c)(5) prohibitions. However, instead of providing clear guidance on how the Commission will regulate exchanges and the listing of new event contracts, the Commission has identified broad categories of event contracts that simply may not be listed for trading. If the Commission believes that certain types of event contracts are contrary to the public interest, the Commission should provide specific analysis of those contracts on a case-by-case basis and considering the statutory language and goals of the CEA. As Proposed, the amendments would interfere with the development of new types of contracts that may be appropriate for exchange trading and may be beneficial to market participants.

ICE appreciates the opportunity to comment on the Proposal. ICE shares the Commission's goals of promoting transparency, accountability, and predictability and facilitating effective oversight. ICE respectfully requests that the Commission consider its comments in light of those goals.

Sincerely,

Kara Dutta
Vice President, Head of Legal, US Futures & Clearing
Intercontinental Exchange Inc.

cc: Honorable Chairman Rostin Benham
Honorable Commissioner Christy Goldsmith Romero
Honorable Commissioner Kristen N. Johnson
Honorable Commissioner Summer Mersinger
Honorable Commissioner Caroline D. Pham