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secretary

From: jed.christiansen@mercury-rac.com
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Subject: Public Comment Form

COMMENT

Below is the result of your feedback form. It was submitted by
(jed.christiansen@mercury-rac.com) on Thursday, July 03, 2008 at 08:03:21

commenter_subject: Comment on 73 FR 25669

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commenter_comments: Jed Christiansen is the Managing Director of Mercury Research & Consulting Ltd, a UK-based prediction markets consulting firm. He has worked with a number of corporations to develop and run prediction markets that provide companies with invaluable business intelligence. Jed is a a US citizen, and holds degrees from the University of Michigan and the London School of Economics.

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1. Whether event contracts are within the Commission s jurisdiction and if so, why (or why not)?

I would argue that event contracts do fit within the Commission s jurisdiction, if only because they do not fit under the jurisdiction of any other institution. The Concept Release discusses two lines of reasoning, one of which implies that event contracts can be regulated by the CFTC, and another that implies that they are excluded.

In order to progress and protect this innovative tool, it needs to fall under some institution s jurisdiction. Fundamentally, the CFTC is the institution that is best suited for this task. Though event contracts may be subject to interpretation, it is the CFTC that is best able to make that interpretation and define how and where event contracts are able to be used.

2. If event contracts are within the Commission s jurisdiction, should there be exemptions or exclusions applied to them and if so, why (or why not)?

There should be exemptions or exclusions made for event markets that are being run by and exclusively for an internal corporation, organisation, or academic institution.

For corporate markets, or those run by similar private or non-governmental organisations, there should be virtually no limits on what is allowed. Each organisation will be able to determine what

information is critical for them to aggregate through event contracts. Academic institutions should be allowed to conduct the fullest range of potential markets as they explore the maximum potential and most innovative applications of event contract marketplaces.

The best way to treat academic, corporate or low-value markets is through the safe harbour treatment that a number of economists and academics have already suggested.

The only area where I am hesitant for the Commission to provide exemptions or exclusions would be event contract marketplaces where retail customers could trade. In this case I believe there should be strong Commission involvement to ensure that there are protections for retail customers.

3. How should the Commission address the potential gaming aspects of some event contracts and the possible pre-emption of state gaming laws?

Gaming is a phrase that can be interpreted very differently by different individuals. Some people think that trading wheat and oil futures is the same as gambling. Others think that placing bets at horse tracks isn't gambling if you're knowledgeable about the sport.

Where most people and institutions try and distinguish between what is gaming and what is not comes down to what is being traded. I argue that there is a societal consensus that contracts on the outcome of a random event (spin of a roulette wheel, roll of dice) is gaming. Additionally, I would argue that there is also a societal consensus that contracts on the outcome of a sporting event (football game, basketball game, horse race) constitutes gaming. Except for those situations, there is no broad consensus as to what constitutes gaming, and thus the Commission would certainly be in its rights to address event markets as it sees fit in any other type of contract.

Public Interest

1. What public interests are served by event contracts that are designed and will principally be traded for information aggregation purposes and not for commercial risk management or pricing purposes?

Event contracts do serve the public interest, by providing the public unbiased information on events of concern to society. The public wants to understand what is likely to take place in the future, whether that is the results of a political event, scientific discovery, or even the status of traffic in a major city. Though the event contract is designed for information aggregation, the information revealed can also cause people to change their behaviour, generating systemic feedback.

Additional information, particularly unbiased market-based information, helps individuals and

organisations make better decisions by more accurately planning for the future. If an event is important enough that people will trade on the results, it is important enough to at least some sections of society to have that information.

The news media serves to evaluate masses of information and news and filter it so that the public gets the pieces of news or information that are critical to them. However, this process is fraught with difficulty and bias. Problems with corporate ownership, political bias and lack of deep understanding in technical issues means that media coverage is frequently criticised for being inaccurate. Event contracts can serve the public interest by removing that filter and allowing society as a whole to judge the potential that a particular event would occur. This serves the public as providing a meaningful check and balance against potentially incorrect or sensational news coverage.

Fundamentally, I believe that more information provided to the public about events that concern society is a public interest, and event contracts serve this purpose well.

3. What calculations, analyses, variables, and factors could be used to objectively determine the social value of information to the general public that may be discovered through trading in event contracts? Should this be a factor in determining whether the Commission plays a role in regulating these markets?

I don't think that any calculation, analysis, variable or factor should be used in determining whether the Commission plays a role in market regulation. The key to the growth and social value of event contracts is precisely that they are flexible to respond to the needs of the traders that participate in the marketplace.

Jurisdictional Determination

4. What characteristics or traits are common to or should be used to identify event contracts and event markets?

Event contracts are futures contracts contingent upon the binary result or value of a future event, such as an election, scientific discovery, business development or news item. The event contract serves to aggregate the public opinion on the likelihood of that event occurring, or the value of an event when it occurs.

Each contract has a specific criterion for judgement, which is written into the rules of the contract. Each contract also has a specific date by which the contract is judged.

12. What objective and readily identifiable factors, statutorily based or otherwise, could be used to distinguish event contracts that could appropriately be traded under Commission oversight from transactions that may be viewed as the

functional equivalent of gambling?

Event contracts on the outcome of sporting events and event contracts on the outcome of a random event (spin of a roulette wheel or roll of dice) could certainly be considered gambling by societal consensus. Virtually every other event contract would serve the purpose of information aggregation and not be viewed widely as gambling.

As described above, where most people and institutions try and distinguish between what is gambling and what is not comes down to what is being traded. In the two examples above there is a clear consensus in American society that trading in those event outcomes would be gambling. The same statement would not be true for other events contracts.

14. Should certain underlying events or measures - such as those based on assassinations or terrorist activities - be prohibited altogether due to the social perception and impact of such events? What statutory or other legal basis would support this treatment?

Any event contract that is contingent on a United States civil or criminal law being broken should be prohibited. This would include any contract on assassinations, terrorist activities or similar events. There should never be any incentive to break a law, so there should never be any contracts that would pay someone if a law was broken.

15. Are there event contracts, such as political event contracts, that should be prohibited from trading under the Act, or that deserve separate treatment or consideration, due to the nature and importance of their outcomes? What statutory or other legal basis would support this treatment?

Event contracts on the outcome of a sporting event or the outcome of a random event should be prohibited as they are too akin to gambling. Event contracts that would require breaking a law in order to be judged successful should be prohibited to eliminate any incentive for criminal activity.

All other contracts should be treated equally. Though some may seem deserving of separate treatment, such as political event contracts, that special treatment is simply unnecessary. Any attempt at manipulation simply becomes an opportunity for other traders to correct the market price. Even political event contracts can serve as hedging tools, as companies or industries that would be favourable to one political party over the other could hedge the risk of the unfavourable candidate being elected.

Legal Implementation

16. Is it appropriate for the Commission to direct certain or all event contracts onto markets that are regulated differently from and perhaps less stringently than DCMs? For example, it may be

warranted or necessary to treat event markets that aggregate information solely for academic or research purposes, event markets set-up for internal corporate purposes, or event markets that offer exceedingly low notional value contracts to traders differently than markets that possess the attributes of traditional DCMs.

Event markets established for academic, research, internal corporate purposes, or low-notional-value should be treated under the safe harbour provisions that have been put forward by a number of esteemed academics. Experimentation is essential to allow these unique tools to grow, and a safe harbour for these purposes ensures that the public will not suffer any harm. However, to only allow event contracts to be traded on such markets is a very poor idea. Event markets should be allowed to be traded as other commodity futures, on regulated exchanges.

18. Is the issuance of staff no-action relief, such as the relief issued to the IEM, an appropriate or preferable means for establishing regulatory certainty for event contracts and markets? Is a policy statement appropriate or preferable?

The no-action relief letter would be a suitable regulatory scheme for most low-value markets, such as the IEM. For academic and corporate markets, a blanket policy statement would be preferable to allow new markets to quickly get established and begin practice.

In particular, corporations should be able to quickly establish event contracts and event markets to meet their internal needs. Any CFTC regulations or advisories should be widely published and allow organisations to create markets when and as needed without any further involvement from the CFTC.

Market Participants

20. Would it be appropriate to allow market participants, and in particular, retail customers, to trade on Commission-regulated event markets with the knowledge that the Commission may not be able to effectively monitor the measures or events that underlie certain event contracts?

Absolutely. If retail customers are fully aware of this fact, it is completely appropriate to allow them to trade.

21. What unique protections and prophylactic measures are appropriate or necessary for the protection of retail users of event contracts and markets?

Retail traders of event contracts on event markets need to be provided with clear rules as to how the event will be judged, and a dispute resolution procedure for when those rules are unclear or interpreted differently. They should also be warned appropriately of how the CFTC may or may not be able to monitor the events that underlie the contracts.

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