

## Cabinet News and Views

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### Unpredictable Future of Political Prediction Markets



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On August 4, the U.S. Commodity Futures Trading Commission (“CFTC”) had [withdrawn its no-action letter](#) (i.e., permission to operate) with respect to PredictIt, an online prediction market operated by the University of Wellington, New Zealand and ordered PredictIt to shut down its operations as of February 15, 2023. This no-action letter was issued in 2014 and allowed the University of Wellington to operate a small-scale, not-for-profit market in futures or swaps event contracts for educational purposes, without registration as a designated contract market, foreign board of trade, or swap execution facility (i.e., an exchange), and without registration of its operators.

Mainly, PredictIt’s event contracts allowed participants to bet on the outcome of political elections – for example, PredictIt’s contract was very accurate in predicting the win for Donald Trump in the 2016 U.S. Presidential elections. PredictIt was able to justify its social utility on the basis of the efficient market theory that financial markets operate on all available information and therefore are much more accurate than political polls. PredictIt lists actively traded futures contracts on the results of the 2022 elections as well as the 2024 upcoming presidential nomination and election.

Under the Commodity Exchange Act (“CEA”), the CFTC is required to oversee and regulate operation of commodity derivative markets and particularly scrutinize event markets, such as political elections results markets because these may not be in the public interest. Under the CEA, political events, such as elections or Congressional control results, are considered “commodities,” and the public trading of futures contracts on commodities may qualify as an exchange. Previously the CFTC had already [shut down](#) a similar event market in 2012. However, years before, the CFTC had issued a [similar no-action letter](#) to the University of Iowa to operate a prediction market for educational purposes, which is still effective.

On August 26, the CFTC further signaled that all political event contract markets are under enhanced scrutiny by posting for [public comment](#) KalshiEX’s proposed

Congressional control futures contract.

Collectively the withdrawal of PredictIt's no-action letter and the review of KalshiEX's contract are indicative of the CFTC's increased reluctance to allow the development of political prediction markets. However, soon the CFTC will have to come up with more definitive guidance for political event contracts. On September 9, several academics, traders and a technology provider filed a [suit](#) in Texas seeking a court order blocking the CFTC's action (as arbitrary and capricious) and asking the court to allow all existing markets to resolve in an orderly manner past February 2023. This action is likely to force CFTC's hand in making a definitive finding whether political events futures contracts are gambling and not in the U.S. public interest under [CEA 5c\(C\)\(5\)\(c\)](#).

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