



Via Submission at FOIA.gov

July 28, 2025

FOIA Compliance Office
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Freedom of Information Act Request

Dear FOIA Compliance Office:

Under the Freedom of Information Act (“FOIA”),¹ and the FOIA regulations of the Commodity Futures Trading Commission (“CFTC”),² Better Markets requests that the CFTC, including all of its offices, divisions, or components, make the records described herein available to Better Markets.³ For the reasons explained below, we are also asking the CFTC to process this FOIA request on an expedited basis and to waive all of the fees associated with the processing of this request.

We are making this records request to shed light on the CFTC’s recent and sudden approval on July 9th of an application from QCX LLC (also known as “QC Exchange” and referred to herein as “QCX”) to become a designated contract market (“Application”). That approval promises to be extremely advantageous to QCX and its parent, Polymarket, but it also poses serious threats to the public interest. It appears that Polymarket, acting through QCX, will offer public trading in a wide variety of binary options or “event contracts” based on the outcome of elections, sports contests, and other events. These types of contracts were never intended to be traded in the legitimate derivatives markets. Moreover, they are likely to be illegal under the Commodity Exchange Act (“CEA”) and the CFTC’s own rules since it appears they will involve gaming and activity that is unlawful under state law. These contracts will also pose serious threats to investors, markets, and the ability of the CFTC to discharge its core duties under the CEA. The CFTC’s approval of the Application and the circumstances surrounding and related to the Application, QCX, and Polymarket are therefore matters of public interest and warrant further transparency and scrutiny.

¹ 5 U.S.C. § 552.

² 17 C.F.R. Ch. I, Pt. 145.

³ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans’ jobs, savings, retirements, and more.

The timeline, process, and approval of the Application and related matters also raise ethical concerns. The circumstances surrounding the approval of the Application and the involvement of QCX, Polymarket, and possibly others raise important ethical questions and concerns about the way in which CFTC officials, including possibly the Acting Director of the CFTC, Caroline Pham (“Pham”), handled and approved the Application. We seek the records described below also to shed light on this aspect of CFTC’s handling of the Application and related matters.

BACKGROUND

The Application and Its Approval

QCX submitted its Application to the CFTC on June 16, 2022. The Application included 23 items, but QCX requested and obtained confidential treatment for most of that material. The public portions of the Application largely amount to rote assurances that QCX will comply with the “Core Principles” and other standard requirements applicable to designated contract markets (“DCMs”). The publicly available information in the Application contains very little information, including but not limited to almost nothing about the specific types of contracts QCX intends to trade.

The CFTC took no action on the application for more than three years, according to information available to the public. Recently and inexplicably, however, on July 9th, the CFTC issued an order approving the Application. Shortly thereafter, it was reported that QCX was being acquired for \$112 million by Polymarket, which touts itself as “[t]he worlds largest prediction market.” Polymarket itself has never been approved by the CFTC as a DCM. Moreover, as a result of a 2022 settlement of a CFTC enforcement action, Polymarket has been prohibited from allowing U.S. participants on its platform.

The CFTC is thus clearing the way for Polymarket to offer its huge inventory of event contracts on everything from election outcomes to sporting events to the vast U.S. gaming market through QCX as its conduit. By virtue of the CFTC’s approval, it will be able to do so without subjecting itself to the regulatory scrutiny that normally attends an application for contract market designation under the CEA and it may be able to do so without violating the terms of the settlement agreement. The CFTC, acting under Pham’s leadership, has thus conferred a huge benefit on Polymarket, while apparently turning a blind eye to the obvious potential that Polymarket will unleash a new wave of illegal and harmful gaming event contracts on the public. These developments raise serious legal, policy, and ethical concerns and they warrant much greater transparency.

Potential Illegality

To the extent the CFTC allows Polymarket to offer its event contracts that involve gaming or activity that is unlawful under state or federal law, the CFTC will be countenancing plainly illegal activity. In Section 5c of the CEA, Congress gave the CFTC authority to review and prohibit certain types of event contracts as contrary to the public interest, including those involving

“gaming” as well as “activity that is unlawful under any Federal or State law.”⁴ The CFTC implemented this provision by adopting a rule that flatly prohibits any registered entity from listing any event contract that “involves, relates to, or references . . . gaming, or an activity that is unlawful under any State or Federal law.”⁵

Until recently, and for 30 years, the CFTC consistently took the position that wagering on election contests through event contracts constituted unlawful “gaming” activity prohibited by Section 5c and Rule 40.11. It accordingly banned or severely restricted election gambling contracts due to concerns about their harmful impact on the public interest. It did so through guidance, no-action letters, and rule makings.⁶ In 2023, under its prior leadership, the CFTC issued an order banning event contracts offered by KalshiEX LLC (“Kalshi”) that allowed participants to wager on the outcome of congressional elections.⁷ After Kalshi filed suit challenging the CFTC’s decision, the CFTC vigorously defended its position that Kalshi’s election wagering contracts were “gaming” contracts within the meaning of Section 5c of the CEA that should be prohibited as contrary to the public interest. And after the district court ruled in favor of Kalshi in a deeply flawed decision,⁸ the CFTC aggressively pursued an appeal.⁹

Event contracts based on the outcome of sporting events are even more clearly illegal, as even under the district court’s decision in *Kalshi*, they constitute “gaming” within the meaning of Section 5c and Rule 40.11. Kalshi clearly conceded this in its litigation with the CFTC as it sought to defend its election wagering contracts and distinguish them from other types of gaming contracts involving sporting events.¹⁰ Moreover, any sports wagering event contracts that do not comply with state gaming laws—such as those offered by Kalshi—are unlawful under state law and therefore prohibited by Section 5c and Rule 40.11 for this reason as well.

However, under the new Administration and Acting Chair Pham, the CFTC has completely reversed its position and taken steps that consistently favor these gaming activities on CFTC-registered platforms. For example, in May this year, the CFTC abandoned its appeal in the *Kalshi* litigation, leaving intact the district court’s erroneous decision that allowed the continued trading of event contracts based on election outcomes. The CFTC also abandoned its attempt to enforce

⁴ 7 U.S.C. § 7a-2(c)(5)(C)(i).

⁵ 17 C.F.R. § 40.11(a).

⁶ See Brief Amicus Curiae, by Consent, of Better Markets, Inc., in Support of Appellant and Reversal, *KalshiEx LLC v. CFTC*, Case No. 24-5205, at 25-28 (D.C. Cir.) (filed Oct. 23, 2024), <https://bettermarkets.org/newsroom/appellate-court-must-protect-democracy-investors-and-the-cftc-by-prohibiting-gambling-on-elections/>.

⁷ CFTC, *CFTC Disapproves KalshiEX LLC’s Congressional Control Contracts* (Sept. 22, 2023), <https://www.cftc.gov/PressRoom/PressReleases/8780-23>.

⁸ *KalshiEX LLC v. CFTC*, No. 23-3257 (JMC), 2024 WL 4164694 (D.D.C. Sept. 12, 2024).

⁹ *KalshiEx LLC v. CFTC*, No. 24-5205 (D.C. Cir.).

¹⁰ See Defendant’s Supplemental Brief in Opposition to Plaintiff’s Motion for Preliminary Injunction, *KalshiEX v. Martin*, Case No.: 25-cv-1283-ABA, at 4-8 (D. Md. filed June 13, 2025) (detailing Kalshi’s own position that event contracts based on sports and other events are clearly gaming instruments, that they “don’t have any real economic value,” and that “Congress sought to prevent exchanges from facilitating casino-style or sports gambling.”).

conditions it had imposed on PredictIt, another gaming platform. In that case, the CFTC acquiesced to the entry of a court order *finding in favor of PredictIt* on the merits and granting PredictIt nearly all of the relief it had sought against the CFTC.¹¹ It took this position even though the case was based on the widely if not universally rejected claim that a narrow, limited no-action letter from one of the CFTC’s divisions was a final and binding action of the CFTC, which the letter expressly stated it was not.¹² In yet another action, the CFTC recently dropped its investigation into allegations that Polymarket was violating a 2022 consent order that prohibited U.S. persons from trading on the platform.¹³ And the CFTC has done nothing to challenge Kalshi’s listing of a wide variety of sports wagering contracts that are not licensed by state gaming commissioners. Those contracts clearly violate the CEA and Rule 40.11 both as “gaming” and as activity that is unlawful under state law. In short, the CFTC continues to flout the law by refusing to enforce Section 5c and the agency’s own rule 40.11 against gaming platforms, as it appears intent on fostering the growth of this sector of the gambling industry.

Potential Harm to the Public Interest

Beyond the legal issues presented are the serious threats to the public interest that the approval of QCX’s Application poses. First, the process itself is unacceptable, as it allows Polymarket to access U.S. markets as a de facto registrant without any of the scrutiny that it should undergo in accordance with the CEA. Purchasing a registered shell company is a regulatory strategy that the disgraced crypto firm FTX used to its advantage, with dire consequences for the thousands of investors who suffered when FTX ultimately collapsed.¹⁴

With respect to the trading activity, event contracts that allow wagering on election outcomes threaten the integrity of our elections, foster market manipulation, injure investors, and distract the already under-resourced CFTC from its primary mission of overseeing the legitimate commodities markets so Americans can rely on stable prices for the goods they depend on in their everyday lives. Contracts based on sporting events also pose serious threats, as they likely exploit AI-supercharged gamification features that hyper-target unsuspecting and often highly vulnerable investors, including those who are susceptible to addictive gambling behaviors. And neither the

¹¹ Order Granting Defendant’s Motion for Judgment on the Pleadings in Favor of Plaintiffs, *Clarke v. CFTC*, Case No. 1:24-cv-00614 (W.D. Tex. July 22, 2025).

¹² See Defendant CFTC’s Motion to Dismiss, *Clarke v. CFTC*, Civil Docket No. 1:22-cv-00909-LY, at 10-15 (W.D. Tex. filed Oct. 28, 2022) (arguing that staff no-action letters are neither “agency action” nor “final” and observing that “[l]ongstanding case law involving directly analogous no-action letters issued by Securities and Exchange Commission staff unanimously and persuasively confirms the lack of ‘final’ agency action”).

¹³ Lydia Beyoud, Sridhar Natarajan and Nicola M White, *Polymarket Set for US Return After Deal to Buy Tiny Exchange*, BLOOMBERG (July 21, 2025), <https://www.bloomberg.com/news/articles/2025-07-21/crypto-betting-site-polymarket-set-for-us-return-after-deal-to-buy-qcx>; Dan Mangan, *Trump administration ends Polymarket investigations without charges*, CNBC (July 15, 2025), <https://www.cnbc.com/2025/07/15/polymarket-investigations-doj-cftc-betting-market.html>.

¹⁴ Press Release, Better Markets, *CFTC Should Investigate Polymarket’s FTX-Like Backdoor Strategy to Gain Control of a U.S. Registered Entity Without Regulatory Scrutiny* (July 24, 2025), <https://bettermarkets.org/newsroom/cftc-should-investigate-polymarkets-ftx-like-backdoor-strategy-to-gain-control-of-a-u-s-registered-entity-without-regulatory-scrutiny/>.

election bets nor the sports wagers offer any bona fide risk-hedging function that is characteristic of legitimate futures and swaps. The threat is steadily growing while the CFTC is derelict in its duties under its statutory mandates, as new entrants seek access to CFTC-registered platforms to offer their gaming event contracts.¹⁵

The result is a constant proliferation of toxic event contracts, offered on CFTC-registered platforms, which Congress clearly intended to prohibit. And the process has been utterly lacking in transparency, with no credible explanation from the CFTC for its willingness to expand the world of unlawful event contracts and turn a blind eye to widespread violations of its own rules.

Potential Ethical Questions

The timeline, process, and circumstances of the CFTC's Approval and the major benefit it provides to Polymarket raises the possibility of a behind-the-scenes coordination by persons at the CFTC (including but not limited to Acting Director Pham), Polymarket, and QCX. The QCX application had been pending for over three years, yet the CFTC suddenly granted its approval just as public reports indicated that the platform was being acquired by Polymarket, an exchange that has for years been unable to access U.S.-based customers for its event contracts.

Did anyone at the CFTC directly or indirectly coordinate with Polymarket and expedite action on the long-dormant QCX Application to accommodate Polymarket's effort to gain quick access to the immensely profitable U.S. market for gaming contracts? For example, was this an attempt by any CFTC officials to ingratiate themselves with an industry participant that could offer lucrative positions once they leave the CFTC? After all, for example, Pham has stated that she will "return to the private sector upon Brian Quintenz's likely confirmation" and that "[w]hile I don't have any plans yet, I hope to make some while we wait for [Quintenz's] hearing to be scheduled."¹⁶

Other considerations validate these concerns. This is not the first time Pham may have assisted a gaming platform as it navigates the CFTC's regulatory landscape. In December 2022, Better Markets called for an Inspector General investigation into Pham's alleged release of confidential CFTC information apparently to help Kalshi avoid the CFTC's anticipated rejection of its application to offer wagers on congressional elections.¹⁷

We don't yet know the answers to the important questions surrounding the CFTC's approval of the QCX Application. However, depending on those answers, the government's ethics

¹⁵ *DraftKings Considers Acquisition of Prediction Market Platform Railbird*, NEWSNET5.COM (July 15, 2025), <https://www.newsnet5.com/news/draftkings-acquisition-railbird-prediction-market/>.

¹⁶ Declan Harty, *Acting CFTC head plans to leave Wall Street regulator*, POLITICOPRO (May 15, 2025), <https://subscriber.politicopro.com/article/2025/05/acting-cftc-head-plans-to-leave-wall-street-regulator-00351800>.

¹⁷ Press Release, Better Markets, *Better Markets Files Complaint with CFTC IG To Investigate CFTC Commissioner Pham's Apparent Disclosure of Highly Confidential Agency Information Involving Kalshi's Application*, Better Markets (Dec. 9, 2022), <https://bettermarkets.org/?s=IG+should+investigate+Pham+release+of+confidential+information>.

code may have been violated. First, the code applicable to all government employees provides that “[e]mployees shall not engage in outside employment or activities, *including seeking or negotiating for employment*, that conflict with official Government duties and responsibilities.”¹⁸ In addition, the ethics code provides that “[e]mployees shall endeavor to avoid any actions creating the *appearance* that they are *violating the law* or the *ethical standards* set forth in this part.”¹⁹ The potential role of CFTC officials in orchestrating the sudden and conveniently-timed approval of the QCX Application—which comes on the heels of the CFTC’s dropping an investigation into Polymarket for violating a past consent order, and which may lead to widespread trading in event contracts that violate the law—at least raises questions about whether these ethical standards may have been violated in connection with the approval of the Application.²⁰

The foregoing facts and circumstances, individually and collectively, raise substantial questions about the integrity of the regulatory approval of the Application from both a legal and ethical standpoint. Better Markets therefore seeks the documents described below to help the public gain further insight into those facts and circumstances, expose possible breaches of law and ethics by the CFTC and its leadership, increase transparency in government operations, enhance the deliberative process going forward, and protect investors and the financial markets.

REQUESTED RECORDS

Please provide copies of the following records:

1. All records relating directly or indirectly to the Application or its approval by the CFTC.
2. All records embodying, referring to, or reflecting any face-to-face discussions, telephonic discussions, texts, emails, or any other forms of communication between or among Pham, any other CFTC commissioner, any CFTC staff member, any employee or representative of QCX (also known as QCX Exchange), or any employee or representative of Polymarket, including but not limited to those relating directly or indirectly to:
 - a. QCX;
 - b. the QCX Application;
 - c. Polymarket;
 - d. the acquisition of QCX by Polymarket; and
 - e. whether approval of the Application was in full compliance with all applicable ethics codes and legal requirements.
3. All records relating to or reflecting the specific types of contracts that QCX intends to offer for trading on its platform.

¹⁸ See Basic Obligations of Public Service, 5 C.F.R. § 2635.101(b)(10) (emphasis added).

¹⁹ *Id.* at § 2635.101(b)(14) (emphasis added).

²⁰ See also CFTC Rules, Subpart C—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission (§ 140.735–1 to § 140.735–8) (prohibiting, *inter alia*, having financial interests in registered entities and prohibiting accepting employment or compensation from registered entities).

4. All records relating directly or indirectly to whether the contracts that QCX intends to offer for trading on its platform violate the CEA or the CFTC's rules, including but not limited to, 17 C.F.R. § 40.11.
5. All portions of the Application that have been withheld from the public either in response to QCX's request for confidential treatment or for any other reason.
6. All records relating directly or indirectly to the CFTC's decision to end its investigation into possible violations by Polymarket of the 2022 settlement agreement between Polymarket and the CFTC.
7. All records relating directly or indirectly to the CFTC's decision not to enforce the CEA or Rule 40.11 against any event contracts offered by Kalshi that any state alleges are unlawful under state gaming laws.
8. All records relating to or reflecting any action taken or not taken at each step in the CFTC's process for reviewing or approving the Application.
 - a. This request includes, but is not limited to, all records relating to or reflecting the process for voting on the Application, including descriptions of each step in the process and when the draft decision was made available or assigned to each Commissioner's office for a seriatim vote.
 - b. This request also includes, but is not limited to, all records relating to or reflecting how each CFTC Commissioner voted on the Application and their reasons for their respective votes.

This request encompasses all records whether they are on official government devices or personal devices and whether they are public or confidential communications, including those made via Signal or any other similar type of communication channel.

If any of the requested records (or portions thereof) are claimed to be exempt or privileged from disclosure for any reason, please identify the records or portions thereof that are being withheld and state the basis for the denial for each such record or portion thereof. Additionally, please provide all nonexempt portions of the requested records. Better Markets further requests that any records produced in response to this request be provided in electronic form wherever possible.

REQUEST FOR EXPEDITED PROCESSING

We request expedited processing of this request. Under the CFTC’s FOIA rules, a request may be given expedited processing if the requester demonstrates a compelling need for the requested records. With respect to a person or organization primarily engaged in disseminating information, a “compelling need” is present where there is an urgency to inform the public about an actual or alleged federal government activity.²¹

This FOIA request meets all of these criteria. Better Markets satisfies the threshold test because it is a public interest advocacy organization primarily engaged in disseminating information and advocacy about the regulation of the financial markets, including the derivatives markets.²² Better Markets’ activities have included participation in hundreds of administrative rulemakings on financial market topics through comment letters and related public advocacy in mainstream and social media. Better Markets is a staunch advocate for investor protection, the integrity of the derivatives markets, and transparency in both the financial markets and the operations of the agencies that regulate those markets. All of those issues and concerns are raised in this matter. Furthermore, and more specifically, Better Markets has engaged extensively on the legal and policy issues surrounding the offer of event contracts, including through comment letters, amicus briefs filed in court, and various fact sheets and other advocacy materials.²³

Further satisfying the requirements for expedited processing, there is an urgent need to inform the public about the CFTC’s handling of the Application, particularly given that the approval is almost certain to unleash a potentially unprecedented amount of gambling on the public, much of it likely in violation of the CEA, applicable rules, and the CFTC’s statutory duties. The records, discussions, meetings, and decisions that are the subject of this request relate to a critically important CFTC regulatory activity, namely the Commission’s oversight of the derivatives markets. More specifically, the event contracts that Polymarket is evidently planning to list via QCX include wagers on a wide range of elections and sporting events. As observed above, such contracts pose significant threats to elections, investors, markets, and the CFTC itself. They will allow widespread gambling among retail traders in what has historically been a derivatives market reserved primarily for commercial enterprises that need to hedge against price fluctuations in the commodities they use and produce. Moreover, many of these contracts would appear to be illegal under the CEA and the CFTC’s rules, as shown above. Finally, as also explained above, the known facts and circumstances regarding the CFTC’s approval of the Application and related matters raise legitimate questions and concerns about the conduct of CFTC

²¹ See 17 C.F.R. § 145.7(j).

²² See generally <https://www.bettermarkets.org>.

²³ See, e.g., Better Markets Comment to CFTC Regarding KalshiEx, LLC’s Proposed Political Event Contract, (Sept. 25, 2022), https://bettermarkets.org/wp-content/uploads/2022/09/Better_Markets_Comment_Letter_KalshiEX.pdf; Press Release, Better Markets, *Better Markets Urges CFTC to Reject Request to Allow Gambling on Elections* (Sept., 28, 2022), <https://bettermarkets.org/impact/better-markets-urges-cftc-to-reject-request-to-allow-gambling-on-elections/>; Press Release, Better Markets, *The CFTC Should Protect Democracy, Markets, and Investors by Rejecting Request to Allow Gambling on Elections* (Sept. 26, 2022), <https://bettermarkets.org/newsroom/the-cftc-should-protect-democracy-markets-and-investors-by-rejecting-request-to-allow-gambling-on-elections/>.

personnel in connection with and related to advancing the interests of Polymarket and QCX. It is important that the facts related to and underlying the approval of the Application come to light as soon as possible so that the public has answers to those questions and any necessary and appropriate corrective action can be taken and further harm to the public interest can be avoided.

In accordance with the CFTC’s FOIA regulations,²⁴ the undersigned certifies the foregoing to be true and correct to the best of their knowledge and belief.

REQUEST FOR FEE WAIVER

Better Markets is also asking for a fee waiver in connection with this request for records. Under the CFTC’s FOIA regulations, a requester who seeks a waiver or reduction of fees must show that such a waiver or reduction would be in the public interest.²⁵ More specifically, the rules provide that the CFTC will waive or reduce the fees if “the Commission determines that the disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”²⁶

This FOIA request satisfies these criteria as well. As explained above, disclosure of the documents requested herein will be in the public interest, as the records produced will shed important light on the CFTC’s disposition of the Application, a matter with profound and far-reaching consequences for the financial markets, investors, the CFTC itself, and the electoral process. Furthermore, the records and information produced in response to this request will certainly increase the public’s understanding of the operations or activities of the government—in this case the CFTC—as it addressed and resolved the Application. And the records and information sought will also enhance the public’s knowledge of and insight into the legitimate questions and concerns regarding the CFTC’s approval of the Application and whether the Application and related matters were handled appropriately.

In addition, disclosure of the request information is not primarily in the commercial interest of Better Markets because Better Markets is a non-profit organization dedicated entirely to promoting the public interest in the financial markets. It has no commercial interest in this matter.

Finally, to the extent this request for a waiver of fees is denied, Better Markets agrees to pay all fees that are associated with the processing of this records request.

CONCLUSION

Thank for your attention to this FOIA request. If you have any questions about the handling of this request, you may telephone Stephen Hall at 202-618-6422 or email him at shall@bettermarkets.org.

²⁴ 17 C.F.R. § 145.7(j).

²⁵ 17 C.F.R. § 145.7(g).

²⁶ 17 C.F.R. Pt. 145, Appendix B(b)(2).

Sincerely,



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Co-founder, President, and CEO



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