

CLIENT ALERT

# CFTC Staff Pull Longstanding No-Action Relief for Event Market PredictIT

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## AUTHORS

Neal E. Kumar | Serge B. Agbre | Alexandra K. Calabro

On August 4, 2022, the Commodity Futures Trading Commission's ("CFTC") Division of Market Oversight ("DMO") revoked prior no-action relief issued to the Victoria University of Wellington, New Zealand ("**University**") that allowed it to operate an event contract market known as PredictIT serving U.S. customers without registering with the CFTC as an exchange.<sup>1</sup> The initial no-action relief granted in CFTC Letter 14-130 was based on several representations made by the University as to how its contract market would operate. DMO withdrew the no-action relief because "[t]he University has not operated its market in compliance with the terms of Letter 14-130."<sup>2</sup> CFTC staff rarely revoke no-action relief for substantive reasons, so market participants should take notice of the representations made when requesting no-action relief given the willingness of the CFTC to assess continued adherence to those terms.

Under DMO's 2014 no-action relief, the University was allowed to operate an event contract market that consisted of two submarkets: one for political event contracts, and the other for economic indicator contracts. The University also intended to use the results of the market information derived from trading in these contracts for educational and research purposes. For example, the University explained that it planned to utilize the market as a teaching tool in various school courses and utilize the data to publish research papers.

<sup>1</sup> CFTC Letter No. 22-08 (Aug. 4, 2022) revoked the no-action relief issued in CFTC Letter No. 14-130 (Oct. 29, 2014). Pursuant to the initial no-action relief, the University was not required to register as a designated contract market ("**DCM**"), swap execution facility ("**SEF**"), or a foreign board of trade ("**FBOT**").

<sup>2</sup> CFTC Letter No. 22-08 at 2.

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DMO granted the no-action relief in 2014 in reliance on certain representations made by the University, including that the proposed 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;
- (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 charging commissions to participants;
- (7) utilize a third-party service provider to perform know-your-customer (“KYC”) due diligence on its participants;
- (8) only charge those fees necessary to cover the fulfilment of the KYC process, regulatory compliance, and basic expenses to operate the proposed event contract market; and
- (9) limiting 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 disclose that the platform is unregulated, experimental, and being operated for academic purposes.<sup>3</sup>

When DMO revoked the no-action relief earlier this month, it did not identify how the University failed to comply with these representations. DMO staff likely had discussions with the University prior to revoking no-action relief, and the result may imply that not only was the University out of compliance with the terms of CFTC Letter 14-130, but the staff thought that the University was either unwilling or unable to come into compliance.

The most likely next step for the University would be to exclude U.S. customers from trading on its platform. If the University wants to make its market available to U.S. customers, it would need to pursue registration with the CFTC. It also remains a possibility that DMO staff could refer (or have already referred) the University to the CFTC’s Division of Enforcement because the violation of the terms of the letter granting no-action relief meant that the University was required to register as a DCM, SEF, or FBOT, but failed to do so.

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<sup>3</sup> *Id.* at 1-2.

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DMO's revocation of the University's no-action relief serves as a reminder for market participants to ensure that representations made in connection with relief remain true and that participants continue to comply with any terms for relief.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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**Neal E. Kumar**

202 303 1143

[nkumar@willkie.com](mailto:nkumar@willkie.com)

**Serge B. Agbre**

202 303 1173

[sagbre@willkie.com](mailto:sagbre@willkie.com)

**Alexandra K. Calabro**

202 303 1456

[acalabro@willkie.com](mailto:acalabro@willkie.com)

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