Regulating event contracts in prediction markets: International developments and Thailand's regulatory perimeter

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Technological developments and changes in financial markets have contributed to the emergence of increasingly diverse and complex financial products. One product that has attracted attention in recent years is a contract whose payoff is determined by reference to the outcome of an event (event contract)* traded on prediction market platforms, particularly following the growth of Kalshi and PredictIt in the United States. These platforms allow investors to trade contracts linked to the outcomes of various events, including economic data, election results, and social and political events.

Internationally, these markets and products have generated debate and divergent views. One view is that event contracts can serve as tools for aggregating information and rapidly reflecting market expectations, contributing to the expansion of event contracts in recent years. Another view raises questions as to whether this type of product should truly be regarded as a financial innovation that helps aggregate information and reflect market expectations; how suitable it is for investors, given the potential availability of high leverage for speculative purposes, which may give rise to very high investment risk; and whether existing regulatory frameworks can accommodate such new product formats. These questions have led regulators in several jurisdictions to consider appropriate regulatory approaches.

Regulatory approaches to event contracts in other jurisdictions

In recent years, regulators in several jurisdictions have developed **regulatory frameworks and approaches for assessing** event contracts, with increasing emphasis on economic purpose, risks to investors, and implications for market fairness, for example:

- The CFTC (United States) has published an approach for reviewing the regulation of event contracts, expressing concerns that certain types of event contracts may not be consistent with the role of derivatives markets or may be contrary to the public interest. However, the CFTC has not prohibited all event contracts, but has set out criteria for consideration based on economic purpose, risk-management utility, and implications for the public interest. This approach has been evolved following several legal disputes, including the case between **Kalshi and the CFTC**, which reflects the need to establish clearer regulatory criteria.

- ESMA (European Union) has published a statement emphasizing that event contracts with an all-or-nothing payoff structure that qualify as financial instruments under MiFID II** are considered binary options, which may not be offered or marketed to retail investors. In determining whether an event contract falls within this scope, consideration should not be based solely on the product name, but must take into account the payoff structure, as well as the linkage between the reference event and the underlying assets specified by law, such as securities or interest rates. In addition, ESMA views that the assessment of event contracts should not consider only their legal status as financial instruments, but should also take into account their economic function, risk-management utility, or genuine economic activity, as well as potential risks to retail investors, while reminding service providers to comply with applicable laws with due regard to investors' best interests.

These approaches reflect that regulators today do not consider only whether a product falls within capital market laws, but also assess the product's economic function and implications for the public interest. This is consistent with IOSCO's principles for the regulation of derivatives markets, which emphasize contract design, the role of risk management, price discovery, and the preservation of market fairness. Based on the regulatory approaches and principles discussed above, the key dimensions for the design and regulation of event contracts can be summarized as follows:

First dimension: Economic role and public interest

The assessment of such products should take into account broader implications for the market system and society: what function the product performs in the economy, and whether it supports risk management, price discovery, or economic activity. This concept reflects a regulatory approach that emphasizes consideration of a product based on the substance of the transaction (substance over form), which is another dimension of regulation that has gained increasing importance in several jurisdictions.

In the case of event contracts, the key issue is therefore not merely the “reference to an event,” but **the extent to which that event is linked to economic activity or economic utility.** If there is no clear linkage to economic activity, more careful consideration may be necessary.

Second dimension: Investor protection

In addition to their economic role, regulators also consider whether a product is suitable for each type of investor, particularly in the case of products with complex structures or payoff features that may make it difficult for investors to assess risks. This forms the basis for product governance and suitability assessment measures adopted in several jurisdictions. Issues considered include, for example, product complexity, adequacy of disclosure, investors’ ability to understand risks, and suitability for each investor group.

Third dimension: Behavioral risk

In recent years, regulators have increasingly focused on behavioral risk, based on insights from behavioral economics indicating that product characteristics can affect investors’ decision-making behavior. Products with short contract terms, continuous trading availability, and all-or-nothing payoff structures may encourage investors to pursue short-term returns or engage in outcome-based speculation rather than assessing the fundamentals of assets. This type of risk is therefore another factor considered by regulators in assessing suitability, particularly for retail investors. In addition, an easily accessible digital environment with continuous trading may further stimulate such behavior. Regulators have therefore begun to incorporate behavioral factors into the design of measures such as disclosure, suitability assessment, and offering restrictions.

Fourth dimension: Market integrity and fairness

In addition to implications for investors, market fairness and integrity are also important issues. For event contracts, regulators may further consider whether certain market participants have the ability to influence the reference event, as this could create incentives to cause or prevent the event from occurring in accordance with their own interests. This is an issue that may differ from derivative products referencing general economic variables.

Event contracts and the regulatory context under Thai law

As event contracts are contracts whose payoffs are determined by reference to the outcome of a pre-specified event, such as election results or various social events, once investors know the outcome of such event, they will receive money or be required to make payment in accordance with the agreed terms. However, the event outcome referenced by event contracts is not a "commodity" (such as securities, gold, or oil) or a "variable" (such as an exchange rate or interest rate) under the definition of the Derivatives Act B.E. 2546 (2003) (Derivatives Act), which specifies the eligible underlying references for derivatives contracts.

In addition, event contracts do not have the characteristic of requiring the parties to deliver goods, or make payment for goods in the future, or to make payment equal to an amount calculated from the difference between the price of goods or variable specified in the contract and the price of such goods or variable at period of time in the future, or of granting a party the right to require the other party to deliver goods or make payment, which differs from derivatives contracts under the Derivatives Act.

For this reason, event contracts do not fall within the definition of derivatives contracts under the Derivatives Act and are therefore not subject to the Thai SEC's supervision. Accordingly, Thai investors interested in trading such products should carefully study the relevant information and associated risks, consider the credibility of the service provider platform, and assess the suitability of the investment against the level of risk they can tolerate before making an investment decision.

Although many jurisdictions are currently still considering appropriate approaches to regulating event contracts, these developments reflect the challenge faced by regulators globally in striking a balance between promoting innovation and managing potential risks to investors in the capital market. In Thailand, event contracts are not currently within the SEC's regulatory perimeter. However, the SEC will closely monitor developments and regulatory approaches in other jurisdictions, particularly in relation to investor protection, behavioral risk, and market integrity, which are factors that regulators globally consider important and will likely remain issues to be monitored if such products expand in the future.

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Notes:

* Event contracts are a type of financial contract that provides for payoffs based on the outcome of a future event, such as election results, economic figures, or other verifiable events. They are products traded on prediction market platforms to reflect the probability of outcomes through market mechanisms. These contracts do not involve the delivery of commodities, shares, or bonds upon maturity, but are settled by reference to the outcome of the actual event (cash settlement).

**MiFID II (Markets in Financial Instruments Directive II) is the European Union's capital market legal framework that sets out rules on the provision of investment services, the trading of financial instruments, and investor protection in EU Member States.

References

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