April 29, 2026
VIA ELECTRONIC TRANSMISSION

Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Prediction Markets (RIN 3038-AF65)

Dear Mr. Kirkpatrick:

Brogan Law PLLC ("**Brogan Law**") and The Venture Dept. respectfully submit this response to the Commodity Futures Trading Commission's ("**CFTC**" or the "**Commission**") March 12, 2026 Advance Notice of Proposed Rulemaking entitled "Prediction Markets."

Brogan Law is a boutique law firm that represents participants in the digital-asset space. It represents a number of businesses directly and indirectly participating in regulated derivatives markets, including prediction markets. It frequently comments on issues of prediction markets law in media, and has been at the forefront of developments in the space since 2024. Brogan Law also regularly submits comments in response to federal rulemaking across federal agencies.

The Venture Dept. is an early-stage venture capital fund focused on the future of finance. Led by former regulators Matthew Homer and Jon Blattmachr and supported through a network of former-regulator fund LPs, The Venture Dept. invests in and guides portfolio companies through regulatory considerations.

As advocates for the budding prediction market industry, Brogan Law and The Venture Dept. have closely followed the emerging legal issues that CFTC-registered Designated Contract Markets ("**DCMs**") have faced. In particular, we are concerned by the attempted application of state gambling laws to these federally regulated markets. Against that backdrop, we strongly endorse the Commission's rulemaking and recent legal actions in support of federally regulated prediction markets.[1]

Federally regulated event contracts offer a valuable mechanism for private actors to manage risk arising from uncertain future events, while also developing and disseminating pricing information.

[1] *See e.g.,* Brief for the CFTC as Amicus Curiae Supporting Appellant, *Commonwealth of Massachusetts v. KalshiEX LLC*, No. SJC-13906 (Mass. Apr. 24, 2026).

The advent of public marketplaces for these contracts makes financial products that once required costly professional intermediaries readily accessible.

There has been significant disagreement in recent years surrounding the use of these markets as substitutes for state-regulated gambling products. There are, however, several advantages of DCM-based prediction markets relative to state-licensed gambling. State-licensed gambling markets are generally administered by the "house," a party that faces the bettor as a counterparty. This configuration creates perverse incentives that have led to documented problems in such markets.[2] In contrast, federally regulated DCMs do not face participants as counterparties. Because no "house" is taking the other side, prices emerge from participant beliefs rather than being subtly skewed by a profit-seeking intermediary, making the market a cleaner, more truthful aggregation of information rather than a gambling product. This, among other advantages, suggests that to the extent these markets are substitutes for state-licensed gambling, it may be to the advantage of users.

For this reason, we support the continued development of a regulatory regime that encourages the growth of federal markets, and preserves their access by ordinary Americans. We have reviewed the questions the Commission posed and provide question-by-question responses below to those which we believe we have useful experience or perspective on.

We are grateful to the Commission for engaging the public in advance of a formal rules notice on these important topics.

RESPONSES

QUESTION 7

The Commission asks: "*As described above, CEA section 5c(c)(5)(C) provides for the Commission to make a determination that event contracts are 'contrary to the public interest' if the event contracts involve any of five listed activities or 'other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.'*

In general, what factors should the Commission consider in making a public interest determination under this section? (Public interest factors specific to the five listed activities are discussed in part II.C., below, in connection with those activities.)"

[2] Katherine Sayre, *Sports Betting Companies Weed Out Winners. Gamblers Want to Know Why.*, Wall St. J. (July 13, 2024), https://www.wsj.com/business/media/sports-betting-companies-limit-winners-f06ea822.

Under the Commodity Exchange Act ("**CEA**") section 5c(c)(5)(C), the Commission has broad permissive authority to determine if event contracts are contrary to the public interest, provided that they first fit within one of six categories:[3]

> (I) activity that is unlawful under any Federal or State law;
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> (II) terrorism;
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> (III) assassination;
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> (IV) war;
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> (V) gaming; or
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> (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

The Commission should develop clear, narrow parameters under which contracts fitting within one of these categories may also be determined to be "contrary to the public interest."

While there is limited legislative history on the public interest determination, the text of the CEA provides some insight as to what the Commission might consider. Generally, the 5c(c)(5)(C) categories suggest the Commission is empowered to find that activities are contrary to the public interest where contracts premised upon them might induce illegal or harmful activity. For example, terrorism is included as a category, but natural disasters are not, despite both having devastating consequences.

It is a long-standing principle of contract law that a party should not profit from its own wrongful conduct,[4] and so the categories of 5c(c)(5)(C) are tailored to activities that, in theory, a participant could induce individually like crime, assassination, and terrorism. By prohibiting such public event contracts from listing, the Commission can prevent perverse incentives to participate in crime or bad acts, while also preventing individual participants from profiting from them. If the Commission believes that these markets' existence increases the likelihood of individuals participating in bad acts, then it is appropriate to prohibit trading any event contracts in such markets.

However, the rule need not be that any contract premised on an event listed in one of the 5c(c)(5)(C) categories must be prohibited. Where the incentive to participate in unlawful or socially harmful activity is muted, and the public benefit of such markets is relatively large, it may be appropriate to permit contracts involving events in some of these categories. This may be especially likely in categories like war and gaming.

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[3] *KalshiEX LLC v. CFTC*, Civil Action No. 23-3257 (JMC), 2024 LX 46673, at *8 (D.D.C. Sep. 12, 2024).
[4] *See e.g. Liu v. SEC*, 591 U.S. 71, 79–80 (2020).

War, for example, is largely outside of any private individuals' control or influence. And while it may be uncomfortable for anyone to profit from its outcome, it is undeniable that it has enormous economic consequences that many private actors may have substantial hedging needs against.[5] While some public officials may be able to influence war, the prohibited transactions language under CEA section 4c(a)(3), and associated regulations concerning market manipulation, may be a sufficient bulwark against such markets promoting war in general.[6]

To be clear, we are not advocating the Commission approve war contracts for trading, but want to ensure the Commission considers the potential advantages the general public could have in accessing such contracts to hedge against negative consequences that may flow from war, whether ancillary or direct. In these cases, the Commission should carefully consider whether the costs of contract availability outweigh the potential benefits to the public interest. In doing so, it should analyze whether the potential public interest in not promoting the underlying activity, as well as the risk that a market will cause such promotion, is sufficient to outweigh the benefit that the public will receive from accessing financial markets to shift adverse event risk.

QUESTION 12

The Commission asks: "*How do event contracts compare to, or substitute for, insurance contracts? Should the liquidity and availability of insurance with respect to a particular event be a factor in the Commission's public interest determination?"*

An event contract is a close economic analogue to a parametric insurance contract.[7] The difference between the two is primarily one of regulatory regime, underwriting, and availability. Generally, the need to hedge the outcome of an event is the *same* as the need to purchase insurance. Where an insurance purchaser faces the insurance provider, however, an event contract purchaser faces the public. This is relevant because price discovery, rather than a deliberative process of a single experienced counterparty, is (likely) the product of many independent judgments, which may or may not be informed. This may result in more or less expensive hedging than traditional insurance contracts.

A likely more significant difference, however, is regulatory status. Insurance is a highly regulated industry in the United States, with price ceilings implemented in some jurisdictions.[8] These price

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[5] *See e.g. Opening Statement of Commissioner Kristin N. Johnson before the Energy and Environmental Markets Advisory Committee*, Sept. 20, 2022 (acknowledging, "Geopolitical events in Europe, specifically, the invasion of Ukraine has led to remarkable disruptions in energy and agriculture markets.")

[6] *7 U.S.C § 6c (a)(3)*.

[7] *See* Swiss Re Corporate Solutions, *What Is Parametric Insurance?* (July 7, 2023), https://corporatesolutions.swissre.com/insights/knowledge/what_is_parametric_insurance.html.

[8] *See* Ryan Bourne & Sophia Bagley, *California Insurance Market: Another Victim of the War on Prices*, Cato Inst.: Cato at Liberty (Jan. 10, 2025), https://www.cato.org/blog/california-insurance-market-another-victim-war-prices.

ceilings, in turn, may make it impossible for insurance providers to offer insurance in certain high-risk locales, like fire insurance in Southern California or hurricane insurance in Florida. Because the CEA expressly preempts state law, there is less risk that event contracts will be subject to such local capture, and so it is reasonable to imagine that they could be the only widely available hedging product against certain risk vectors.

The Commission should consider two conclusions from this fact pattern. First, in evaluating whether it is in the public's interest to prohibit trading in a certain category of markets, the Commission should consider the availability of robust insurance markets in a category. If such markets are thin, that should weigh against prohibiting a given market.

Second, for markets to effectively underwrite risk of tail events, they require volume. It is likely that this volume will result in some parties with no hedging interest participating in the markets. It follows that to realize the public benefit of hedging, the Commission should tolerate some participation that occurs with no pre-existing financial interest. This suggests that such broad public use should not be a factor, or should at least be mediated as a factor, in determining that a contract is against the public interest.

QUESTION 19

The Commission asks: "*The fifth activity is gaming. What factors should the Commission consider in determining the scope and public interest implications of this activity?"*

Since sports-based event contracts were first introduced in early 2025, their treatment has been a major question in derivative regulation. Sports-based event contracts are a close substitute for state-licensed sports betting, with some crucial differences. This means that states that license gambling regimes generally have a substantial interest in limiting the availability of sports-based event contracts, which are outside of their regulatory and tax remit.

One of the most salient arguments advanced by these states is that sports-based event contracts involve "gaming" within the meaning of section 5c(c)(5)(C)(i)(V). Many arguments against these markets proceed from the view that sports are a subset, or otherwise involve, gaming.

We disagree. Merriam-Webster defines "gaming" as "the practice or activity of playing games for stakes" or "gambling." A sport is not "gambling," and while such contests, played professionally, may have prizes, they do not fit naturally within this definition which intends to encompass traditional casino games. A second definition, "the practice or activity of playing games (such as board games, card games, or video games)." Similarly, this definition is drawn narrowly away

from "sports," which is generally a physical contest, and to these recreational hobbyist table games.[9]

Admittedly, the distinction between "games" and "sports" could be muddy at the margin, but the use of the term "game," when sports were readily available, suggests a limiting principle towards these dictionary-defined pursuits, rather than the broader category of all games. In ordinary parlance, sports is not "gaming."

Another common argument is that purchasing event contracts premised on sports *is itself gaming*, and therefore subsumed within section 5c(c)(5)(C)(i)(V). This view, however, was appropriately rejected in *KalshiEx LLC v. CFTC*. In that decision, Judge Cobb noted that, if this view were correct, "all event contracts would be subject to review under the special rule because they all involve purchasing (and thus risking money on) some contingent event with the hope of receiving a payoff."[10]

Accordingly, sports-based event contracts should not be treated as categorically involving "gaming" under section 5c(c)(5)(C)(i)(V), and the Commission should not subject them to public-interest review on that basis.

Even if they did involve gaming, however, the Commission should still not find that such contracts are against the public interest. As previously mentioned, prediction markets have provided a means for businesses and other individuals to hedge the risk associated with events of economic consequences, including sporting events. The Commission should consider such hedging as a legitimate public interest in access to markets that trade on sporting (and other entertainment) event outcomes.

For example, professional sports franchises all support a range of corporate sponsors, stadium vendors, and nearby businesses that may want to manage risks related to whether that franchise has a successful season. Some season ticket holders sell their seats to others throughout the season and may wish to manage risks related to decreased value of their tickets as the sports franchise crawls through a losing season. While the economic significance of professional sports is less than major elections or war, it is still highly consequential to large numbers of people. This hedging need should not be discounted in evaluating sports-based event contracts.

QUESTION 20

The Commission asks: *"CEA section 5c(c)(5)(C)(i)(VI) provides that the Commission may determine that an event contract is contrary to the public interest if it involves another 'similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.'*

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[9] Gaming, Merriam-Webster.com. https://www.merriam-webster.com/dictionary/gaming.
[10] *KalshiEX LLC v. CFTC*, Civil Action No. 23-3257 (JMC), 2024 LX 46673, at *24 (D.D.C. Sep. 12, 2024).

What factors should the Commission consider in determining whether an activity is similar to the activities listed in CEA section 5c(c)(5)(C)? Are there any examples of existing event contracts involving potentially similar activities that should be a factor in the Commission's determination on this issue? Are there any differences in how the public interest determination should be applied to such similar activities, as compared to the listed activities?"

The Commission should consider only a very narrow subset of activities that could potentially qualify under CEA section 5c(c)(5)(C)(i)(VI). This is not because there are not a number of events that may meet the criteria we described above in our response to Question 7, but because almost all activities which the Commission may wish to avoid inducing are already encompassed in CEA section 5c(c)(5)(C)(i)(I) "activity that is unlawful under any Federal or State law."

Federal and State law provide an already comprehensive repository of actions that Congress, and the respective state legislatures, have deemed against the public interest. For the Commission to reach beyond this and promulgate rules prohibiting additional categories of contract as against the public interest, there would have to be evidence of extraordinary social cost induced by the existence of markets in that area.

For example, there has been significant controversy around the availability of markets premised on sporting event outcomes. There is no doubt that some individuals are harmed by access to these public markets, while other individuals are able to hedge exposure to the outcome of sporting events through these markets (see for example, our response to Question 19 above). But it is very difficult to imagine significant social cost redounding to the public from the access to these contracts through DCMs.

This is because state-licensed gambling is a widely available substitute. If these markets were not traded on DCMs, there is no reason to think that the marginal position would not be opened. Rather, it is likely that these positions would be opened on a market with less favorable rules than those governing DCMs. This animates against a finding that such markets are against the public interest, because in this way, their access actually serves the public interest.

While the Commission has historically expressed reticence concerning its capacity to regulate new markets underlying event contracts,[11] this concern should be distinguished from the public interest itself, and so should not be considered, or at least discounted, when promulgating new categories under section 5c(c)(5)(C)(i)(VI).

QUESTION 29

[11] *See* Statement of Chairman Rostin Behnam (Sept. 22, 2023), Commodity Futures Trading Commission, https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement092223

The Commission asks: "*The price on a prediction market could be viewed as an indication of how likely the underlying event is to occur. The price may be a more reliable indicator of probability if the people trading on the prediction market have some insight into how likely the underlying event is to occur. On the other hand, trading by these informed participants may lead to manipulation, unfairness, and the misuse of inside information. Is there some public interest utility if people with an asymmetric information advantage on a particular event contract are able to trade on prediction markets? Does the public interest utility depend on the type of event in question? What factors should the Commission consider in evaluating and balancing the public interest in this scenario?"*

Consistent with the purpose of the CEA to "discover[] prices, or disseminat[e] pricing information through trading in liquid, fair and financially secure trading facilities,"[12] it is possible that traditional "insider information" may facilitate these goals. However, any such increase in price discovery or dissemination of information may undermine the fairness of such markets by imposing a corresponding cost on uninformed participants.[13]

In our view, this is a close commercial issue. If all participants are aware of the rules of participation, then any end state may be fair, but participants may be less willing to participate in markets where insider information is allowed.

DCMs and Swap Execution Facilities operate within a self-regulatory framework under CFTC oversight. The CEA and implementing regulations require them to establish, maintain, and enforce rules governing trading on their markets, including rules designed to prevent manipulation, abusive practices, and market disruptions.[14] This deputizes them as "self-regulatory organizations" ("**SROs**") to establish and police rules for participants. SROs are able to determine the correct internal rules for informed trading, and provided those rules are publicly available and adequately enforced, we do not believe this issue requires Commission intervention. SROs are best positioned to make such determination, as they have direct incentive to balance the price discovery benefits of informed markets against the corresponding commercial costs of reduced participation.

QUESTION 33

The Commission asks: "*As noted above, event contracts may be covered by the statutory definition of the term 'swap' in CEA section 1a(47)(A).*

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[12] *7 U.S.C § 5(a).*

[13] *See* Econometrica, Vol. 53, No. 6 (November, 1985) *Continuous Auctions and Insider Trading*, Albert S. Kyle https://www.jstor.org/stable/1913210 ("Since they cannot distinguish the trading of the insider from the trading of noise traders, the noise traders in effect provide camouflage which enables the insider to make profits at their expense.")

[14] *7 U.S.C § 7(d)(3)-(4)*.

What aspects of prediction markets are relevant to whether event contracts should, or should not, appropriately be classified as swaps? What aspects, if any, distinguish event contracts from other types of swaps? The definition in CEA section 1a(47)(A)(ii) includes an event contract that 'is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.'

What potential financial, economic, or commercial consequences underlie event contracts? Similarly, CEA section 1a(47)(A)(i) includes an event contract that is an option 'based on the value, of . . . financial or economic interests or property of any kind.'

How are any event contracts based on the value of financial or economic interests or property? What idiosyncratic risks embedded in event contracts differentiate them from other commodity derivative instruments? How should the Commission take these risks into account when considering how to regulate event contracts and prediction markets? Commodity options are also covered by the statutory swap definition in CEA section 1a(47)(A)(i).

How are event contracts similar to, or different from, other types of commodity options?"

At core, "event contracts" as a subset of "swaps" are legally contiguous with other swaps. The current definition of "swap" included in CEA section 1a(47)(A) was introduced as part of Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, with the express purpose of capturing the formerly opaque universe of "derivatives in which two parties exchange certain benefits based on the value of an underlying reference" within the CEA's jurisdictional remit.[15]

While individual court decisions have determined that some event contracts premised on the outcome of contests are not swaps because the "ordinary meaning of event in terms of sports would be the [contest] itself, not who wins it,"[16] we argue that the language of 1a(47)(A) was intended to encompass such events. Even assuming, *arguendo,* that the CEA's use of "event" was intended to be drawn narrowly, Congress included, in the same sentence, the outcome as of a "contingency" as a separate basis for such contracts. It is our view that properly structured event contracts generally should be classified as swaps where their payout is tied to an event or contingency with potential financial, economic, or commercial consequences. This definition includes the outcome of contests.

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[15] 156 Cong. Rec. S5902, S5915 (July 15, 2010). https://www.govinfo.gov/content/pkg/CREC-2010-07-15/html/CREC-2010-07-15-pt1-PgS5902.htm

[16] *N. Am. Derivatives Exch., Inc. v. Nev. on Rel. of the Nev. Gaming Control Bd.*, 815 F. Supp. 3d 1169 (D. Nev. 2025).

Contracts premised on the outcome of single events may have idiosyncratic exposure to manipulation where they are determined by the action of a single person or settled on the basis of a single measurement. For instance, if a contract is settled on the basis of the length of one individual's jump, or the duration of a single individual's speech, that individual has the unilateral ability to determine the outcome of the contract, which makes it fundamentally vulnerable to manipulation. Similarly, a recent news item reported that weather sensors at Paris' Charles de Gaulle airport represented a single point of failure in a scheme to manipulate offshore temperature markets.[17]

While this does pose greater risk than markets premised on the outcome of multiple individuals, or multiple measurements, this risk (i) can be managed through the DCM's enforcement of manipulation[18] and (ii) should be balanced against the legitimate uses of such markets. Temperature readings, for example, may have outsized importance in hedging certain economic outcomes, and so should not be prohibited despite the apparent sensitivity to manipulation. Over time, it is likely that markets will harden measurement systems, settlement criteria, and policing practices to ensure integrity.

CONCLUSION

For the foregoing reasons, we urge the Commission to adopt a narrow, common-sense regulatory approach to prediction markets. The Commission should prohibit contracts under section 5c(c)(5)(C) only where the markets pose significant risks of inducing bad acts, where manipulation risks cannot reasonably be addressed through contract design, surveillance, position limits, disclosure, or enforcement, or where the markets otherwise are disproportionately harmful to the public interest. The Commission should consider the public's need to hedge risk, and the availability of robust insurance market substitutes, when making such determinations. Informed trading on these markets is a difficult commercial issue and is best addressed by SROs.

We thank the Commission for this opportunity to comment.

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[17] *Weather Sensors at Paris Charles de Gaulle Airport at Center of Suspected Manipulation on Polymarket*, Le Monde (Apr. 24, 2026), https://www.lemonde.fr/en/pixels/article/2026/04/24/weather-sensors-at-paris-charles-de-gaulle-airport-at-center-of-suspected-manipulation-on-polymarket_6752780_13.html.

[18] *7 U.S.C § 7(d)(3)-(4)*.

Respectfully submitted,

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