POARCH BAND of CREEK INDIANS

April 30, 2026

Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
Submitted via the Federal eRulemaking Portal

Re: Prediction Markets (RIN 3038-AF65) — Comments on Advance Notice of Proposed Rulemaking on Event Contracts, 91 Fed. Reg. 12516 (March 16, 2026)

Dear Secretary Kirkpatrick:

I write on behalf of the Poarch Band of Creek Indians ("Tribe") to submit this comment in response to the Commodity Futures Trading Commission's ("CFTC") Advance Notice of Proposed Rulemaking ("ANPRM") regarding event contracts. Our comment does not address every question in the ANPRM but instead focuses on questions that relate to online sports gambling that Designated Contract Markets ("DCMs") offer through prediction markets.

We focus this comment on "gaming" because of the importance of Indian gaming to tribal government economies and because of the Tribe's ongoing concerns with the heightened risks that online sports betting through prediction markets poses to our youth, those facing addiction, and related mental health and personal financial concerns.

Indian tribes established modern day Indian gaming operations in the 1970s to generate revenue for our general treasuries. Tribal governments use 100 percent of revenue from Indian gaming to fund basic tribal governmental programs and services for our communities, including health care, education, public safety, and infrastructure. In 2025, Indian gaming nationwide generated more than 680,000 American jobs for mostly rural communities.

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The U.S. Supreme Court in California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987), reaffirmed that Indian tribes possess the inherent sovereign right to regulate gaming on Indian lands. In 1988, Congress enacted the Indian Gaming Regulatory Act ("IGRA") "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments."[1] IGRA established the National Indian Gaming Commission ("NIGC") as an independent federal regulatory authority "to protect such gaming as a means of generating tribal revenue."[2]

DCMs, registered with the CFTC, are using prediction market platforms to offer online sports gambling on every Indian reservation in the United States and in all 50 states. They pose an existential threat to Indian gaming by infringing on tribal sovereignty and illegally operating on tribal lands, and siphoning revenue from tribal gaming operations that fund vital programs for our community and nearby local governments.

Moreover, we are concerned that our tribal youth will be impacted by prediction market apps that mirror online sports betting apps. The Poarch Band of Creek Indians and the State of Alabama prohibit online gambling in our jurisdictions. This is an ongoing debate that must take place at the local level. The federal government and its agencies must respect local decision-making authority to determine the best interests of our young people. Any effort to federalize this decision is a direct violation of tribal and state sovereignty.

The CFTC should not engage in rulemaking that would legitimize this unlawful activity. Instead, the agency must enforce its existing regulations against event contracts involving gaming. The CFTC should immediately issue guidance reaffirming that sports-related event contracts are categorically prohibited as contrary to the public interest and take swift and decisive enforcement action against prediction markets that offer these illegal gambling instruments.

Sincerely,

Stephanie A Bryan

Stephanie A. Bryan, Tribal Chair/CEO

Poarch Band of Creek Indians



[1] 25 U.S.C. § 2702(1).
[2] 25 U.S.C. § 2702(3).

A. Core Principles and Commission Regulations

Question 2(a): With respect to the following DCM Core Principles, what factors are relevant to prediction markets? Core Principle 2 states that a DCM "shall establish, monitor, and enforce compliance with the rules of the [DCM], including—(i) access requirements; . . . and (iii) rules prohibiting abusive trade practices." Regulation 38.151, adopted under this core principle, requires that a DCM provide "impartial access to its markets and services, including . . . [a]ccess criteria that are impartial, transparent, and applied in a non-discriminatory manner." What aspects of prediction markets affect how a DCM provides impartial access and prohibits abusive trade practices? Are there potential barriers to impartial access that the Commission should consider? Are there particular risks of abusive trading?

The CFTC Should Not Engage in Rulemaking Because Existing Regulations Clearly Prohibit Event Contracts Involving Gaming.

Section 5c(c)(5)(C) of the Commodity Exchange Act ("CEA") prohibits the listing or trading of contracts that involve gaming or other activities contrary to the public interest. The CFTC has implemented this statutory mandate through 17 C.F.R. Part 40.11, which provides that "[a] registered entity shall not list for trading or accept for clearing" any agreement, contract, transaction or swap that "involves, relates to, or references" gaming. 3 These provisions clearly prohibit sports-related event contracts.

Prediction markets that list or facilitate trading in contracts that "involve" gaming are operating in violation of Regulation 40.11. The CFTC has the authority and the obligation to investigate such activity and to bring enforcement actions where appropriate. Failure to do so undermines the integrity of the entire regulatory system and risks arbitrary and capricious agency action if the CFTC were perceived to depart from its own precedent.4

Administrative law confirms that no further rulemaking is required where the governing framework is clear. Agencies are not obligated to promulgate new rules to enforce existing law when they may proceed through adjudication, interpretive guidance, and enforcement. 5 What is required here is not clarification, but enforcement of existing law and regulations.

Gaming-Related Event Contracts Epitomize Abusive Trading by Exposing Vulnerable Retail Participants to Significant Risks of Addiction, Financial Harm, and Exploitation.

DCMs that offer gaming-related event contracts openly advertise their products as "betting" and "gambling". In January 2025, KalshiEX LLC ("Kalshi") – a DCM registered with the CFTC – advertised that it is "The First Nationwide Legal Sports Betting Platform". Kalshi also ran advertisements during the 2025 NCAA basketball tournament in Texas and California, where all sports betting is illegal, which urged users to "Make $ on March Madness" and claimed: "Legal in Texas" and "Legal in California". Kalshi and other DCMs offering sports betting through prediction markets encourage participation that is driven not by hedging or commercial need, but by speculative and recreational motives indistinguishable from traditional gambling.



[3] 17 C.F.R. § 40.11(a)(1).
[4] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).
[5] *SEC v. Chenery Corp.* (Chenery II), 332 U.S. 194, 202–03 (1947).

Prediction markets offering sports-related event contracts disproportionately attract younger and less experienced participants, including individuals who may lack the sophistication to assess risk, understand pricing, or detect manipulation.

DCMs claim that they are disrupters and innovators working to unrig the financial system by using new technology, but they have invented nothing. Prediction markets offer gambling on the outcomes of sporting events. These are the same gambling products that are offered by legal sportsbook authorized by tribal and state governments: moneylines, totals, parlays and prop bets.

The only key differences are that: (1) prediction markets avoid established tribal and state regulatory systems that protect consumers and the integrity of American sports; and (2) prediction markets ignore strict age requirements imposed by other regulatory regimes and fail to address concerns with problem gambling.

DCMs offering sports-related event contracts target young people and individuals located in tribal and state jurisdictions that prohibit online sports gambling. They advertise on platforms like Instagram, TikTok, and X, in addition to hiring entertainers and social media influencers. We are only starting to see the devastating impact on our kids' mental health and their finances.

An April 10, 2026, report from Fortune highlighted a young man who downloaded the Kalshi app two days after his 18th birthday. A resident of Indiana, where the minimum age for gambling is 21, he was able to place bets on sports on Kalshi. While he started betting on the Rotten Tomatoes score of a movie, he branched out to sports gambling, stating, "Kalshi was my entrance to gambling. Every single dime I had, I lost on [the app]."6

Regarding problem gambling, a Kalshi representative made clear that consumer protection is not his client's problem. In July of 2025, speaking at the National Conference of Legislators from Gaming States' summer meeting in Lexington, Kentucky, Josh Sterling, Kalshi's attorney in several of its federal court cases, declared, "People are adults, and they're allowed to spend their money however they want it, and if they lose their shirt, that's on them."7

As you are aware, the CFTC itself has determined that gambling-related contracts "could raise broad investor protection concerns by conflating gambling and financial instruments in a manner that could particularly create confusion and risk for retail market participants." *Event Contracts*, 89 Fed. Reg. 48,968, 48,992 (Jun. 10, 2024).

B. Public Interest

**Question 7: 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?**

**Event Contracts Involving Gaming Are Categorically Prohibited as Contrary to The Public Interest Under Regulation 40.11.**



[6] Fortune, *Prediction markets have made betting easier than ever – and young men are paying the price* (April 10, 2026) https://fortune.com/2026/04/10/prediction-markets-gambling-addiction/
[7] https://sbcamericas.com/2025/07/11/kalshi-nclgs-sports-contract-debate/

**Question 13: Why, or why not, would it be appropriate for the Commission to propose any changes to its regulations related to its public interest determination?**

**The CFTC Should Not Amend its Public Interest Regulations Because Existing Law Already Prohibits Event Contracts Involving Gaming.**

Dodd-Frank amended the CEA at 7 U.S.C. §7a-2 ("Common Provisions Applicable to Registered Entities") to include a special rule for CFTC review and approval of event contracts and swaps. The special rule provides that the CFTC may determine that "agreements, contracts, or transactions are contrary to the public interest if [they] involve – activity that is unlawful under any federal or state law; terrorism; assassination; war; gaming; or other similar activity determined by the Commission by rule or regulation, to be contrary to the public interest." (emphasis added).

On July 27, 2011, the CFTC implemented this provision through a rulemaking process, which found that swaps relating to "gaming" or "activity that are unlawful under any State or Federal law" are contrary to the public interest. Those regulations, set forth at 17 C.F.R. Parts 40.1-40.12, provide the following:

"(a) Prohibition. A registered entity shall not list for trading or accept for clearing on or through the registered entity any of the following:

(1) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law; or

(2) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which involves, relates to, or references an activity that is similar to an activity enumerated in section 40.11(a)(1), and that the Commission determines, by rule or regulation, to be contrary to the public interest."

See 17 C.F.R. § 40.11(a) (emphasis added).

This regulation, adopted unanimously by a five-member CFTC, has stood for fifteen years and has not been challenged by a DCM or any other entity doing business with the CFTC. We are concerned that the current one-person CFTC is engaging in this advance notice of proposed rulemaking to undo this now longstanding public interest determination with the implicit goal of loosening legal restrictions to accommodate DCMs acting as casino operators.

There is no urgent need to amend the CFTC's existing regulations. Instead, the agency should enhance and engage in enforcement of its existing regulations.

Regarding the concern with blurring the lines between investing and "gaming", the Commission, in publishing its 2011 rulemaking, made clear that it was following congressional intent by including "gaming" as a prohibited listing for trading. The CFTC acknowledged the following:

> "Finally, the Commission would like to note that its prohibition of certain 'gaming' contracts is consistent with Congress's intent to 'prevent gambling through the futures markets' and to 'protect the public interest from gaming and other events contracts.'"

76 Federal Register 44786 (July 27, 2011) (citing the Congressional Record and the colloquy between Senate Agriculture Committee Chair Lincoln and Senator Feinstein, emphasizing that the Commission "needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed event contracts.").

The language in the Part 40.11 mirrors the language that Congress enacted in the Dodd-Frank special rule at §7a-2(c)(5)(C). Congress' intent was to prohibit swaps and similar transactions that reference or relate to the five listed categories: terrorism, assassination, war, gaming or activity unlawful under any State or Federal law. In 2011, the CFTC made the public interest determination that those five categories are contrary to the public interest and are prohibited from being listed.

Congress and the CFTC acknowledged certain other swaps that involve or reference "similar activity" could be separately determined to be contrary to the public interest. The CFTC made that distinction crystal clear when it published the final rule for Part 40.11. "The Commission may, at some future time, adopt regulations that prohibit products that are based upon activities 'similar to' those enumerated in Section 745 of the Dodd-Frank Act. It has determined not to propose such regulations at this time."8

This distinction is important, because the CFTC and DCMs seem to claim that the agency has not yet made a public interest determination that "gaming" or the other prohibited activities are contrary to the public interest. They imply that Part 40.11 requires a two-step process where 40.11(1) lists activities that may be prohibited, but only if the CFTC makes a separate public interest determination under 40.11(2). The CFTC's own website reflects this misreading. The following comes directly from the CFTC's "Contracts & Products" page under the heading "Event Contracts":

> "CFTC Regulation 40.11 prohibits event contracts that reference terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law, or that involves, relates to, or references an activity that is similar to any of those activities and that the CFTC determines by rule or regulation to be contrary to the public interest."9

This is dangerous disregard for the clear language of the Commodity Exchange Act and the CFTC's own regulations, again which were adopted unanimously by a full five-member Commission. Again, administrative law dictates that no further rulemaking is required where the governing framework is clear. Agencies are not obligated to promulgate new rules when they may proceed through adjudication, interpretive guidance, and enforcement.10 What is required here is not clarification, but enforcement of existing law and regulations.

The sports-related event contracts offered by DCMs are clearly contrary to the public interest for purposes of the CEA for several reasons. They lack any bona fide economic purpose. Sports-related event contracts are not linked to underlying economic exposure and do not mitigate risk; they exist solely to enable speculative wagering. Instruments devoid of economic utility fall outside the core purposes of the CEA and weigh decisively against the public interest. As detailed above, inadequately regulated sports-related event contracts pose substantial and easily foreseeable harms to youth and consumers.



[8] 76 Federal Register 44786 (July 27, 2011).
[9] https://www.cftc.gov/IndustryOversight/ContractsProducts/index.htm (emphasis added).
[10] *SEC v. Chenery Corp.* (Chenery II), 332 U.S. 194, 202–03 (1947).

Finally, these contracts undermine tribal sovereignty and conflict with the federal Indian policy promoting tribal economic development and self-sufficiency.[11] Sports-related event contracts pose an existential threat to Indian gaming by violating tribal-state gaming compacts, eroding tribal bargaining power in Class III gaming compact negotiations, and reducing gaming revenue that provides vitally needed services to tribal communities.

For all of these reasons, event contracts that relate to the outcomes of sporting events are contrary to the public interest. The CFTC clearly made this public interest determination in promulgating its 2011 regulations. There is no need to revisit that determination.

C. Activities Listed in CEA § 5c(c)(5)(C)

Question 16: The first listed activity is an "activity that is unlawful under any Federal or State law." What types of event contracts could potentially involve such activity? What steps should the Commission appropriately take in order to determine which State laws may be involved in a particular event contract? What steps should the Commission appropriately take in order to determine which Federal laws, such as the Exchange Act, may be involved in a particular event contract? If an event contract involves an activity that is unlawful under some State laws, but not others, how should this conflict be resolved? What public interest factors should the Commission consider for event contracts involving unlawful activity?

Event Contracts Involving Gaming Are Contrary to the Public Interest Because They Violate State and Federal Laws.

Section 5c(c)(5)(C) authorizes the CFTC to prohibit event contracts that involve activity unlawful under federal or state law, and Part 40.11(a)(1) bars the listing of contracts that violate such laws. These provisions reflect the principle that CFTC-regulated derivatives markets must not be used to facilitate illegal activity. Where an event contract implicates unlawful activity, it is contrary to the public interest and DCMs are prohibited listing such contracts or swaps.

Both the CEA Special Rule and Part 40.11 acknowledge and respect the fact that gambling in the United States has been subject to the local decision-making of tribal and state governments. Where they choose to legalize the activity, states and tribes establish gaming commissions and control boards to oversee gambling operations and enforce local laws and regulations.

Legal and regulated gambling on the outcomes of sporting events has a more relatively recent history. In 1992, Congress sought to prohibit all forms of sports betting in the United States through enactment of the Professional and Amateur Sports Protection Act ("PASPA"). While several state governments were exempted from the nationwide prohibition, gambling on sporting events was generally prohibited at the federal level for more than 25 years.

On May 14, 2018, the Supreme Court, in Murphy v. NCAA, struck down PASPA as violating the Tenth Amendment's anti-commandeering doctrine. Murphy returned oversight of sports betting to local tribal and state government policymakers. In the eight years since the Murphy decision, sports betting has grown slowly on a tribe-by-tribe and state-by-state basis.

Several states chose to continue the prohibition against sports betting for religious, moral, public policy, and other reasons.



[11] *See* 25 U.S.C. § 2702(1); 25 U.S.C. § 5302(b); *Bay Mills*, 572 U.S. at 810 (Sotomayor, J., concurring).

Two states, Utah and Hawaii, criminally prohibit nearly all forms of gambling within their jurisdictions. Nine other states – Alabama, Alaska, California, Georgia, Idaho, Minnesota, Oklahoma, South Carolina, and Texas – prohibit sports betting, while others prohibit online sports gambling.

The jurisdictions that have legalized sports betting set strict parameters, including age restrictions, with the great majority restricting sports betting to those 21 years of age and older. Other regulatory approaches include problem gambling measures, prohibitions against betting on local sports teams, prohibitions against betting on high school and college sports, prohibitions against player proposition bets, and some also require operators to offer mandatory deposit limits and session time limits, integrated with local problem gambling helplines and self-exclusion systems.

Tribal and state regulatory systems ensure full transparency, working with the sports leagues to protect the integrity of American sports and maintain strict consumer safeguards and responsible gaming practices. States and tribes have developed a proven framework that protects players and the public while delivering resources to benefit local community.

Under this system, elected leaders in each tribe and state decide whether to allow sports betting, and in return, economic and tax benefits flow directly back to their communities. IGRA requires that tribal governments use all revenue generated from gaming, including sports betting, to fund tribal government programs and services as well as contributions to state and local governments. Pursuant to some tribal-state gaming compacts, tribes also share a portion of their sports gambling revenue with state governments. In 2025, state governments generated approximately $3 billion from taxes and fees on sports wagering. States and tribes use the revenue generated from sports gambling to offset the costs of regulation, implement problem gambling programs, and direct remaining revenue towards local priorities, including education and elder programs, property tax relief, infrastructure and public services, and other initiatives.

DCMs that offer sports-related event contracts mimic online sports gambling. Online gambling is part of a decades long debate among tribal and state governments. To some, online sports betting poses added risks to underage and problem gambling, heightened risks of addiction, mental health concerns, and personal financial and other concerns. Determining whether and to what extent any form of gambling is permissible in a state or tribal jurisdiction and the nature, scope, and rules/regulations/standards that apply is a fundamental aspect of sovereignty. Overriding tribal and state sovereignty and the legitimate police power of these sovereigns through a cynical re-interpretation of a statute never intended to apply to gaming would constitute an extraordinary intrusion into the rights and authority of tribal and state governments.

DCMs that offer online sports betting through prediction markets sidesteps these local debates over online gambling and ignore the consequences by forcing sports gambling into the homes and dorm rooms of every young person with a smart phone.

In addition, for Indian Country, prediction markets that offer sports gambling directly violate tribal sovereignty and IGRA. Prediction markets offer their online gambling contracts in all 50 states and on every Indian reservation in the nation. These operators conduct gaming activities on Indian lands without tribal government consent, licensure, or regulatory oversight.

This is a direct violation of IGRA, which confers exclusive authority to tribal governments to regulate gaming activities on Indian lands.

In sum, sports-related event contracts involve activity that is unlawful under both state and federal laws. Under § 5c(c)(5)(C) and Regulation 40.11, such contracts are categorically contrary to the public interest and DCMs are prohibited from listing such contracts and swaps.

Question 19: The fifth activity is gaming. What factors should the Commission consider in determining the scope and public interest implications of this activity?

Regulation 40.11(a)(1) Prohibits Event Contracts that Involve Gaming including Sports-Related Event Contracts.

Question 19(a): What sources should inform the Commission's determination of the scope of the term "gaming"? For example, is gaming synonymous with, or more or less extensive than, the scope of activities covered by State and Federal gambling statutes? Are there characteristics—such as an entertainment purpose, or an element of chance—that distinguish gaming from other activities?

The term "gaming" clearly includes sports-related event contracts.

Question 19(b): In this regard, how should the Commission distinguish between various types of contests? For example, should a sports competition be treated differently than an award competition, and if so, what factors support this distinction? What other types of contests should or should not be considered to be gaming?

The CFTC has determined that event contracts involving gaming are aontrary to the public interest.

Question 19(d): How should the Commission factor into its public interest determination the characteristics of market participants that trade event contracts involving gaming? For example, do these market participants tend to be younger than those trading other financial instruments, and if so, how should this inform the Commission's consideration?

Sports-related event contracts encourage underage gambling.

**Question 19(e): What aspects of responsible gaming standards, such as self-exclusion programs, monetary or time limits, or advertising limits, disclaimers, or warnings, should the Commission consider in its public interest determination?**

**Ensuring responsible gaming safeguards is beyond the CFTC's remit.**

Event contracts that offer contracts or swaps on the outcomes of sporting events replicate sports gambling that is regulated and sanctioned by some tribal and state governments. These contracts mimic wagering on the outcomes of sports events and clearly constitute "gaming" within the meaning of Section 5c(c)(5)(C) and Part 40.11. The CFTC has already made the public interest determination that contracts and swaps that involve, reference or relate to gaming are contrary to the public interest. This decision should be enforced and not watered down.

While the law and regulation are clear, DCMs that use prediction markets to offer contracts and swaps related to sporting events intentionally mislead consumers and violate tribal and state gambling laws.

The most prolific DCM currently registered with the CFTC that offers gambling on the outcome of sporting events is Kalshi. In 2024, in defense of its event contracts relating to the outcomes of the 2024 federal elections, Kalshi admitted that the CEA and CFTC regulations prohibit event contracts on the outcome of sporting events. Below is a list of examples of Kalshi's admissions in federal court:

- "Congress did not want sports betting to be conducted on derivatives markets." - Kalshi's Initial Brief filed in the D.C. Circuit on Nov. 15, 2024, at p. 41
- "[C]ontracts relating to games—again, activities conducted for diversion or amusement—are unlikely to serve any 'commercial or hedging interest.'" - Kalshi's Initial Brief filed in the D.C. Circuit on Nov. 15, 2024, at p. 45
- "Congress was particularly concerned at the time it enacted this statute about sports betting and that was probably what they were getting at with the word 'gaming.'" - Kalshi to the D.C. Circuit at the January 17, 2025, oral argument (at 49:50-50:08)
- "The 'gaming' category reaches contracts contingent on games—for example, whether a certain team will win the Super Bowl. It thus functions as a check on attempts to launder sports gambling through the derivatives markets." - Kalshi MOL in Support of MSJ, Jan. 25, 2024, at 16
- "Football, horseracing and golf. They're all games…. It's something that has no inherent economic significance." - Kalshi's May 30, 2024, oral argument to the district court on its motion for summary judgment, Dkt. # 40, at p. 15
- "Contracts that involve games are probably not the type of contracts that we want to be listed on an exchange, because they don't have any real economic value to them." - Id.

See Daniel Wallach LinkedIn post at https://www.linkedin.com/posts/amanda-fischer-21877210_the-maryland-federal-court-is-right-to-demand-activity-7335376474855661570-uib_

As noted above, the only key differences between tribal and state regulated sports gambling and prediction markets that offer contracts on the outcomes of sports are that: (1) prediction markets avoid the regulatory systems that tribes and states have established to protect the integrity of American sports; and (2) they ignore the strict age requirements imposed by tribes and states and fail to address concerns with problem gambling, and they give nothing back to the local community.

Prediction markets make their gains by targeting young people and those in tribal and state jurisdictions that prohibit online sports gambling. They advertise on platforms like Instagram, TikTok, and X, in addition to hiring entertainers and social media influencers.

Finally, prediction markets on sports outcomes are gambling, not peer-to-peer offerings. Kalshi and other DCMs offering prediction markets on sporting events falsely claim that there is no "house", and thus, what they offer is not gambling.

However, Kalshi employs institutional market makers like the hedge fund Susquehanna International Group, Jump Trading (a proprietary trading firm that uses high frequency trading and algorithms), and Kalshi Trading (owned and operated by Kalshi) to juice liquidity for its own contracts. They also price bids/asks, significantly influencing odds, which is identical to the house in a regulated sports book moving the odds. These market makers move odds to mitigate their own risk to ensure profits.

Kalshi and other DCMs benefit from this "action" by taking a fee on every transaction, similar to a sports books taking a "vig" or fee from every bet.[12]

These market makers do not participate to promote fairness. As reported in the Daily Citizen, "Kalshi does not disclose what contracts its trading arm buys and sells, or how much money it makes from it."[13] They have an edge and an advantage in trading, which they use against retail sports gamblers. This is not innovation. What DCMs offer is a mirror to traditional sports gambling authorized by state and tribal governments, but without the guardrails, regulations, or oversight.

F. Types of Event Contracts and Other Issues

Question 33: As noted above, event contracts may be covered by the statutory definition of the term "swap" in CEA section 1a(47)(A). 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?

Event Contracts Involving Sports Events Are Not Swaps.

The CEA defines the term "swap" **to include** "any agreement, contract, or transaction… that provides for any purchase, sale, payment, or delivery… that is dependent on the occurrence, nonoccurrence, or extent of the **occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence."**[14]

Sports-related event contracts are not swaps because they lack any connection to economic risk, price discovery, or commercial activity. They are wagers on contingent outcomes. As Kalshi acknowledged in federal court, the CEA does not permit DCMs to launder sports gambling as derivatives or swaps. Multiple federal courts agree.

[12] See also Wall Street Journal, Andy Kessler "Gambling by Another Name" (April 26, 2026) ("If you pay 20 cents to get $1 potentially, that's 4-to-1 odds (you win 80 cents). So isn't that betting? It sure is. It turns out that on Kalshi about 90% of wagers are on sports. There's also a built-in fee, like a bookmaker's vigorish or a poker rake.") online at https://www.wsj.com/opinion/gambling-by-another-name-4c562389?mod=itp_wsj&mod=djemITP_h



[13] Daily Citizen, Kalshi, *Prediction Markets Make it Easy for Kids to Gamble Online* (Feb. 10, 2026) https://dailycitizen.focusonthefamily.com/kalshi-prediction-markets-kids-gamble-online/

[14] 7 U.S.C. § 1a(47)(A).

The U.S. District Court for the District of Nevada held that the word "event" in § 1a(47)(A) means "a happening of some significance that took place or will take place, in a certain location, during a particular interval of time, such as a particular sporting event or an organized activity or celebration for the public or a particular group,' and does not mean an outcome."[15] Likewise, the term "contingency" means a contingent event. Event contracts based on the results of sporting events or on things that happen during a sporting event are based on "outcomes", and thus, they are not swaps within the meaning of the CEA.[16]

**The Hendrick court went on to find that** the phrase "**associated with a potential financial, economic, or commercial consequence" "**means that the event or contingency must be inherently associated with a potential financial consequence, not just that the event or contingency may have some potential downstream financial consequence."[17]

The court rejected the DCM's overbroad reading of the statutory and regulatory definitions of the term swap, reasoning that "if everything a person can conceive of happening is an event or contingency, and if every downstream economic consequence someone can conjure up makes that event or contingency associated with a potential financial, commercial, or economic consequence, the words lose all meaning or render superfluous the rest of the swap definition."[18] Hendrick noted that, through Dodd-Frank, Congress sought to limit risky financial products that threatened the entire U.S. financial sector and caused the financial crisis of 2007-2008. "Congress was not enabling nationwide gambling on CFTC-designated exchanges."[19] The court concluded:

> It is absurd to think that Congress intended for DCMs to turn into nationwide gambling venues on every topic under the sun to the exclusion of state regulation and with no comparable federal regulator without ever mentioning that was the goal when Congress added swaps to the CEA in 2010.[20]

The U.S. District Court for the Southern District of Ohio reached the same conclusion in KalshiEx v. *Schuler*.[21] In Schuler, Kalshi sued to enjoin the Ohio Casino Control Commission and the Ohio Attorney General from regulating its sports-related contracts. In considering Kalshi's argument that the CEA preempts Ohio's gambling laws, the court held that Kalshi's contracts on sporting events do not constitute swaps within the meaning of the CEA, and thus the CEA does not apply. The court reasoned that Congress, through the CEA, sought to manage price risks by establishing a system to ensure financial integrity, avoid systemic risk, and promote responsible innovation. "These goals are better achieved when a 'swap' is understood as a transaction involving financial instruments and measures that traditionally and directly affect commodity prices. Currency exchange rates, the weather, and energy costs all do that; the number of points scored in the Huskies-Bobcats game does not."[22]

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[15] *KalshiEX v. Hendrick*, at 11 (Nevada District Court, Nov. 24, 2025) (emphasis added) opinion online at https://www.documentcloud.org/documents/26301404-kalshi-v-hendrick-order-11252025/
[16] *Id*.
[17] *Id*. at 14 (citing *Yates v. United States*, 574 U.S. 528, 543 (2015)).
[18] *Id.* at 19.
[19] *Id.*
[20] *Id*. at 20.
[21] Online at https://law.justia.com/cases/federal/district-courts/ohio/ohsdce/2:2025cv01165/306374/69/
[22] *Id.* at 11-12 (quoting the congressional debate

Sports-related event contracts clearly do not satisfy the statutory definition of the term “swap”, and the agency should not distort its regulations to permit DCMs to convert sports gambling into a swap.

