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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. 12,516 (Mar. 16, 2026)**

Dear Secretary Kirkpatrick:

The Tulalip Tribes (the "Tribe") respectfully submits these comments in response to the Commodity Futures Trading Commission's ("CFTC") Advance Notice of Proposed Rulemaking ("ANPRM") concerning event contract derivatives traded on prediction markets. The Tribe is a federally recognized Indian tribe within the meaning of the Indian Gaming Regulatory Act ("IGRA").[1] The Tribe exercises sovereignty over its lands and Tribal members and retains jurisdiction to conduct and regulate gaming activities on its Indian lands.[2] The CFTC should fulfill its regulatory obligations under the Commodity Exchange Act (the "CEA"), 7 U.S.C. §§ 1–27(f), by preventing prediction markets from engaging in unlawful gaming activity, including so-called "sports-related event contracts," within the Tribe's jurisdiction. Such activity infringes on Tribal sovereignty and violates federal law, including IGRA. By soliciting comments on the regulation of these sports-related event contracts, the CFTC appears to assume that such contracts are lawful; they are not.

The Tulalip Tribes are a federally recognized, treaty Tribe located in Washington State and are successors in interest to the signatories of the 1855 Treaty of Point Elliott. As a sovereign government, the Tribe exercises jurisdiction over its lands and its Tribal members, including the authority to regulate gaming activities pursuant to a Tribal–State compact under the Indian Gaming Regulatory Act. Through this authority, the Tulalip Tribes operate three Class III gaming facilities—Tulalip Resort Casino, Quil Ceda Creek Casino, and Tulalip Bingo & Slots—which serve as a cornerstone of the Tribal government's economic stability. Revenue generated from these operations funds essential governmental services, including healthcare, education, housing, public safety, and infrastructure, while also supporting employment and economic opportunity both within the Tribal community and the surrounding region. These enterprises are not merely commercial ventures;

[1] *See* 25 U.S.C. §2703(5).
[2] See 25 U.S.C. §§ 2710-11.



*The Tulalip Tribes is the federally recognized successor in interest to the Snohomish, Snoqualmie, Skykomish, and other allied tribes and bands signatory to the Treaty of Point Elliott.*

they are critical tools of self-determination that enable the Tribe to provide for the well-being of its Tribal community and reduce reliance on external funding sources

In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the United States Supreme Court held that Indian tribes possess the sovereign right to regulate gaming on their Indian lands. In 1988, Congress enacted 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."[3] 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."[4]

Under IGRA § 2710(d)(3)(A), Indian tribes negotiate with states to authorize and regulate "Class III" gaming, which includes various casino games, such as slot machines, banked card games, and importantly here—sports betting.[5] IGRA's compacting provisions strike a "delicate balance between the sovereignty of states and federally recognized Native American tribes."[6] Under IGRA, Indian tribes have negotiated with state governments and entered into Class III gaming compacts that include revenue sharing in exchange for Class III gaming exclusivity, including sports betting.

Indian gaming has been transformative for Indian tribes, uplifting tribal communities from poverty and funding critical services, including education, healthcare, public safety, infrastructure, and cultural preservation. Indian gaming is the most successful tribal economic development initiative in U.S. history, accomplishing a "key goal of the Federal Government [...] to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on federal funding."[7] Indian gaming is "not only 'a source of substantial revenue' for tribes, but the lifeblood on 'which many tribes have come to rely.'"[8]

Class III gaming has played a transformative role in strengthening the economic foundation of the Tulalip Tribes, helping lift the community out of poverty and enabling the Tribal government to become more self-sufficient. Revenue generated from gaming operations supports essential governmental functions, including healthcare, education, housing, public safety, infrastructure, and social services for Tribal members. These funds also allow the Tribe to invest in long-term economic development and job creation, benefiting both Tribal members and the surrounding region. At the same time, Tribal gaming reduces reliance on state and federal funding by allowing the Tribe to provide services that might otherwise fall to public systems, thereby easing financial pressure on state resources. Overall, Class III gaming has significantly improved quality of life within the community by expanding access to services, strengthening governance, and creating opportunities for future generations.

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[3] 25 U.S.C. § 2702(1).
[4] 25 U.S.C. § 2702(3).
[5] *See* 25 C.F.R. § 502.4(c).
[6] *Chicken Ranch Rancheria of Me-Muk Indians v. California*, 42 F.4th 1024, 1031 (9th Cir. 2022).
[7] *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring).
[8] *Chicken Ranch*, 42 F.4th at 1032 (quoting *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1097, 1099–1100 (9th Cir. 2003)).

Now, prediction markets seek to undermine the structure of gambling regulation in the United States by disregarding tribal sovereignty and wreaking havoc against the "traditional balance between state and federal regulation of gaming" by offering sports betting subject to the CFTC's exclusive jurisdiction.[9] This advances an erroneous interpretation of the CEA that "upends that regime with no expressed congressional intent to do so, with no federal gaming regulator to replace the states' regulatory infrastructures, and contrary to the expressed congressional intent that CFTC exchanges should not become sports gambling venues."[10]

In fact, the CEA's legislative history is clear that Congress never intended to legalize gaming under the CEA or to transform the CFTC into a gaming regulator. To the contrary, Sen. Blanche Lincoln, then-Chair of the Senate Committee on Agriculture, Nutrition, and Forestry and author of the Dodd-Frank amendments, clearly stated in a 2010 Colloquy with Sen. Diane Feinstein that the legislation was intended to empower the CFTC "to prevent the trading of futures and swaps markets that would allow citizens to profit from devastating events and also prevent gambling through futures markets."[11] Sen. Feinstein stated it was "very important to restore the CFTC's authority to prevent trading that is contrary to the public interest," because "derivatives traders have bet billions of dollars on derivatives contracts that served no commercial purpose at all and often threaten the public interest."[12] Sen. Feinstein asked Sen. Lincoln whether the intent of the legislation was to "define 'public interest' broadly so that the CFTC may consider the extent to which a proposed derivative contract would be used predominantly by speculators or participants not having a commercial or hedging interest."[13] Sen. Feinstein inquired further as to whether the CFTC would have "the power to determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to a hedging or economic use."[14] And Sen. Lincoln confirmed:

> That is our intent. The [CFTC] 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." It would be quite easy to construct an "event contract" around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling.

156 Cong. Rec. S5906-07 (daily ed. Jul. 15, 2010).

The U.S. District Court for the District of Maryland recently observed that, "[i]t is highly unlikely that Congress would have overridden state gambling laws without at least some indication in the text and legislative history that it intended to do so," further finding that "the weight of the evidence strongly confirms that

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[9] *KalshiEX LLC v. Hendrick*, No. 2:25-cv-575, 2025 WL 3286282, at *8 (D. Nev. Nov. 24, 2025) (citing *N. Am. Derivatives Exch., Inc. v. Nevada Gaming Control Bd. (Crypto.com)*, No. 2:25-CV-00978, 2025 WL 2916151, at *6 (D. Nev. Oct. 14, 2025)).
[10] *Hendrick*, 2025 WL 3286282, at *8.
[11] 156 Cong. Rec. S5906 (daily ed. Jul. 15, 2010).
[12] *Id.*
[13] *Id.*
[14] *Id.*

Congress did not intend for Dodd-Frank to constitute legislation not only legalizing sports betting nationwide, but displacing states' authority to regulate it."[15]

Indeed, the CFTC acknowledged in its 2024 Notice of Proposed Rulemaking that:

> The [CFTC] is not a gaming regulator. The CEA and [CFTC] regulations are focused on regulating financial instruments and markets, and do not include provisions aimed at protecting against gambling-specific risks and concerns, including customer protection concerns inherent to gambling. Permitting event contracts involving gaming, as proposed to be defined, to trade on CFTC-regulated markets would in effect permit instruments commonly understood as bets or wagers on contests or games to avoid these legal regimes and protections. Gambling is a rapidly evolving field, and the [CFTC] does not believe that it has the statutory mandate or specialized experience appropriate to oversee it, or that Congress intended for the [CFTC] to exercise its jurisdiction or expend its resources in this manner.

*Event Contracts*, 89 Fed. Reg. 48968, 48982–83 (Jun. 10, 2024).

The CFTC's own regulations expressly prohibit the listing of event contracts involving gaming in 17 C.F.R. § 40.11(a)(1), providing: "[a] registered entity shall not list for trading" any "contract" or "swap" that "involves, relates to, or references… gaming[] or an activity that is unlawful under any State or Federal law." Two federal district courts have recently expressly confirmed that Regulation 40.11(a) prohibits the listing of contracts involving gaming.[16] In *Hendrick*, the court noted that sports-related event contracts may be characterized in various ways, "but at bottom, they are sports wagers," and "everyone who sees them knows it."[17] In *Schuler*, the court held:

> This Court does not endeavor to explain why the CFTC has not exercised its authority under the Special Rule or § 40.11(a) with respect to the sports-event contracts. But the agency's inaction is not proof that the sports-event contracts are regulated by or permissible under the CEA—and the Court has concluded they are not.

*Schuler*, 2026 WL 657004, at *9.

Despite these legal precedents, prediction markets continue to operate online sports betting nationwide, including on the Tribe's sovereign Indian lands. The prediction markets are proliferating and generating billions of dollars from their unlawful gambling schemes, targeting underage consumers without ensuring responsible

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[15] *KalshiEX LLC v. Martin*, 793 F. Supp.3d 667, 684 (D. Md., Aug. 1, 2025).
[16] *See Hendrick*, 2025 WL 3286282, at *9 ("the CFTC has prohibited DCMs from listing contracts that involve gaming"); *see also KalshiEX, LLC v. Schuler*, No. 2:25-cv-1165, 2026 WL 657004, at *9 ("the CFTC prohibits DCMs from listing any event contract 'that involves, relates to, or references…gaming").
[17] *Hendrick*, 2025 WL 3286282, at *8.

gaming safeguards. The *Hendrick* court noted, "Whatever one's views are on gambling, there is no question that some segment of the population will suffer from problem gambling, but neither [designated contract markets ("DCMs")] nor the CFTC is equipped to address those issues the same way state gaming regulators and licensed entities are."[18]

Prediction markets pose an existential threat to Indian gaming, thus threatening the well-being of Indian tribes and their citizenry throughout the United States by: infringing on tribal sovereignty and illegally operating on tribal lands; undermining the Tulalip Tribes and other Indian Tribes' bargained-for exclusivity over Class III gaming (including sports betting) under their Tribal-State gaming compacts, and siphoning revenue from tribal gaming operations that fund vital programs for Tribal members and the Tribal community. In Washington State, federally recognized Tribes are the only entities authorized under state law to operate Class III gaming, including casino-style gaming, pursuant to Tribal–state compacts. While state law does not explicitly grant Tribe's perpetual exclusivity, the legal and regulatory framework has resulted in Tribes being the sole providers of these gaming activities. The only limited exception is the State itself, which operates the lottery and offers products such as scratch tickets, but does not conduct full-scale Class III gaming comparable to Tribal operations.

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

Because the focus of the Tribe's comments is on the unlawful sports betting and gaming activity currently taking place on prediction markets, the Tribe does not address every question published in the CFTC's ANPRM.

## A. Core Principles and Commission Regulations

*Question 1: What factors should the Commission consider in determining whether to provide guidance or amend its regulations regarding how the DCM Core Principles in CEA section 5(d) apply to prediction markets? Are there specific points on which the Commission should provide guidance or adopt rule amendments? Why or why not?*

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

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") directed the CFTC to adopt Core Principles in accordance with the CEA. The CFTC ultimately promulgated rules covering 23 DCM Core Principles.[19] Amending CFTC regulations concerning the application of the DCM Core

[18] *Id.* at *13.

[19] 17 C.F.R. Part 38 §§ 38.100, 38.150, 38.200, 38.250, 38.300, 38.350, 38.400, 38.450, 38.500, 38.550, 38.600, 38.650, 38.700, 38.750, 38.800, 38.850, 38.900, 38.950, 38.1000, 38.1050, 38.1100, 38.1150, and 38.1200.

Principles is unnecessary. The CFTC does not need additional rulemaking to address event contracts because existing law already prohibits them. Section 5c(c)(5)(C) CEA expressly bars 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 Regulation 40.11, which unequivocally provides that a registered entity "shall not list for trading or accept for clearing" any contract that "involves, relates to, or references" gaming.[20] These provisions clearly prohibit sports-related event contracts, because "at bottom, they are sports wagers," and "everyone who sees them knows it."[21]

The CFTC has already resolved the meaning of the operative statutory language. In prior proceedings, it has interpreted the term "involve" broadly to encompass contracts that "relate closely" to or have as an "essential feature or consequence" an enumerated activity such as gaming.[22] Under this settled interpretation, there can be no serious dispute that contracts tied to sports outcomes fall squarely within the scope of prohibited activity. Prediction market platforms do not present novel instruments; they are offering wagers on contingent events that the statute and regulations already forbid.

Prediction markets that list or facilitate trading in contracts that "involve" gaming are operating in violation of Regulation 40.11. The CFTC has both the authority and the obligation to investigate such activity and to bring enforcement actions where appropriate.[23] Failure to do so would not only undermine the integrity of the regulatory regime but also risk arbitrary and capricious agency action if the CFTC were perceived to depart from its own precedent without reasoned explanation.[24]

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.[25] What is required here is not clarification, but enforcement.

*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*

[20] 17 C.F.R. § 40.11(a)(1).
[21] *Hendrick*, 2025 WL 3286282, at *8.
[22] *In re KalshiEX LLC Congressional Control Contracts*, CFTC Order No. 8780-23 at 5–7 (Sep. 22, 2023).
[23] That the CFTC has failed to enforce its own regulations against gambling should not be understood to mean that sports-related event contracts are legal. *See KalshiEX, LLC v. Flaherty*, No. 25-1922, 2026 WL 924004, at *13 (3d Cir. Apr. 6, 2026) (Roth, J., dissenting) ("neither the CFTC's failure to enforce its own regulation nor nonexistent rules governing event contracts are sufficient to coat [prediction markets'] self-certified gaming contracts with a sheen of legality.").
[24] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).
[25] *SEC v. Chenery Corp.* (Chenery II), 332 U.S. 194, 202–03 (1947).

*potential barriers to impartial access that the Commission should consider? Are there particular risks of abusive trading?*

*Prohibiting Event Contracts Involving Gaming Is Consistent with Core Principle 2.*

Core Principle 2 requires DCMs to provide their "members, persons with privileges, and independent software vendors with impartial access to [their] markets and services." 17 C.F.R. § 38.151(b). This includes "[a]ccess criteria that are impartial, transparent, and applied in a non-discriminatory manner," as well as "comparable fee structures" for those accessing a DCM.[26] In the preamble to the final rule implementing Core Principle 2, the CFTC made clear that whether a DCM provides impartial access is based on *fees*, not geography.[27] The final rule further states that "the impartial access requirements of § 38.151(b) prevent DCMs from using discriminatory access fee requirements as a competitive tool against certain participants."[28]

Implementing geofencing to stop prediction markets from offering sports-related event contracts in jurisdictions where sports betting is illegal or subject to exclusive rights under a Class III gaming compact does not violate Core Principle 2. Core Principle 2 concerns fees or wealth-based criteria to access DCMs, not physical access to these markets.[29] Even if Core Principle 2 referred to geographic access, the CEA's Special Rule prohibiting contracts involving "an activity that is unlawful under any State or Federal law" trumps those concerns.[30]

Further, the CFTC has not taken any adverse actions against DCMs complying with court orders to cease operations in state jurisdictions, either temporarily (as in Nevada)[31] or permanently (as in Massachusetts).[32] Rather, "it appears the CFTC would not act against [DCMs] in these circumstances."[33]

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[26] 17 C.F.R. § 38.151(b)(1)–(2).

[27] *Core Principles and Other Requirements for Designated Contract Markets*; Final Rule, 77 Fed. Reg. 366612, 36625 (Jun. 19, 2012); *see also Schuler*, 2026 WL 657004, at *9–*10 ("In Kalshi's view, the CFTC's impartial-access rule is in direct conflict with Ohio's location-based requirements [for offering sports betting under a state license]. But Kalshi offers nothing but its own *ipse dixit* that the CFTC would view geographic restrictions predicated on compliance with state law as 'partial.' Kalshi [thus] fails to establish a likelihood of success on a conflict preemption theory.").

[28] *Core Principles and Other Requirements for Designated Contract Markets*; Final Rule, 77 Fed. Reg. 366612, 36673 (Jun. 19, 2012).

[29] *See Core Principles and Other Requirements for Designation Contract Markets*; Notice of Proposed Rulemaking, 45 Fed. Reg. 80572, 80579 n.51 (Dec. 22, 2010) ("The Commission believes that *the requirement to provide impartial access requires DCMs to avoid the creation of exclusive membership standards that focus on high net worth.* Therefore, any participant should be able to demonstrate financial soundness either by showing that it is a clearing member of a [Derivatives Clearing Organization] that clears products traded on that DCM or by showing that it has clearing arrangements in place with such a clearing member.") (citation modified).

[30] 17 C.F.R. 40.11(a)(1).

[31] *See Nevada v. KalshiEX, LLC*, No. 260000050-1B (1st Jud. Dist. Ct. Nev. Mar. 20, 2026).

[32] *See Massachusetts v. KalshiEX LLC*, No. 2584CV02525 (Mass. Sup. Ct. Jan. 20, 2026).

[33] *Hendrick*, 2025 WL 3286282, at *12.

Therefore, geofencing in jurisdictions where sports betting is illegal or otherwise restricted is consistent with the CFTC's Regulation 40.11(a)(1) and complies with Core Principle 2.[34]

> *Question 2(c): Core Principle 3 states that a DCM may list "only contracts that are not readily susceptible to manipulation." How should a determination of whether an event contract is "readily susceptible to manipulation" be made? What factors should be considered? Are there particular aspects of event contracts that make this determination different from the determination with respect to other listed contracts? Do any existing rules for other types of exchanges and platforms (i.e., not prediction markets) limit or mitigate the potential for manipulation? If so, how and to what extent are these rules appropriate as requirements for prediction markets?*
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> *Event Contracts Involving Gaming Violate Core Principle 3 Because They Are "Readily Susceptible to Manipulation."*

Core Principle 3 provides that a DCM may list "only contracts that are not readily susceptible to manipulation."[35] The CFTC has recognized that contracts involving gaming have "no underlying cash market with bona fide economic transactions to provide directly correlated price forming information," and the "lack of price forming information for contracts involving 'gaming,' or the availability of only opaque and unregulated sources of price forming information, may *increase the risk of manipulative activity* relating to the trading and pricing of such contracts, while decreasing the ability of the offering exchange, or the [CFTC], to detect such activity."[36]

Sports-related event contracts present acute and unmitigable risks to market integrity. As the CFTC has recognized, contracts tied to discrete, binary outcomes such as the result of a single game or an individual player's performance are uniquely vulnerable to manipulation, because the outcome can be influenced by a small number of actors, often at relatively low cost and with limited likelihood of detection. This susceptibility is a defining feature of such products.

The CFTC has acknowledged that sports-related event contracts are readily susceptible to manipulation, especially "those that resolve or settle based on injuries to individual sports participants, unsportsmanlike conduct, or physical altercations between sports participants, as well as contracts that resolve or settle based on the action of a single individual or a small group of individuals."[37] For example, the NBA player Terry Rozier was recently arrested by federal authorities for his participation in "an illegal sports betting scheme using insider NBA information."[38] In another recent case, MLB players Emmanuel Clase and Luis Ortiz were each charged by federal authorities in a scheme to rig pitches in a case involving sports betting on prediction

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[34] 7 U.S.C. § 7a-2(c)(5)(C)(i)(I); 17 C.F.R. § 40.11(a)(1).
[35] CEA § 5(d)(3), 7 U.S.C. § 7(d)(3); *see also* CEA § 5h(f)(3), 7 U.S.C. § 7b-3(f)(3); 17 C.F.R. § 38.200.
[36] *Event Contracts*, 89 Fed. Reg. 48968, 48992 (Jun. 10, 2024) (citation modified).
[37] Ltr. from CFTC Division of Market Oversight to Designated Contracts Markets (CFTC Letter No. 26-08) (Mar. 12, 2026), available at https://www.cftc.gov/csl/26-08/download [hereinafter CFTC Letter No. 26-08].
[38] David Purdum, *Chauncey Billups, Terry Rozier arrested in gambling inquiries*, ESPN (Oct. 23, 2025), available at https://www.espn.com/nba/story/_/id/46695228/sources-terry-rozier-arrested-part-gambling-inquiry.

markets.[39] These examples demonstrate that sports events are uniquely susceptible to manipulation and highlight the importance of strict gaming regulation. However, the CFTC lacks "the statutory mandate or specialized experience appropriate to oversee it," because "[t]he [CFTC] is not a gaming regulator."[40]

> *Question 4: Institutional traders (that is, parties that are eligible contract participants) may enter into event contracts on prediction markets registered as SEFs, which are subject to Core Principles in CEA section 5h(f). Are there aspects of prediction markets that the Commission should consider in applying these Core Principles? How is trading on prediction markets by institutional traders the same, or different from, retail trading on prediction markets? How would or does prediction market trading on DCMs and SEFs impact liquidity in both types of exchanges? What factors should the Commission consider in determining whether any public disclosure requirements should apply to prediction market trading on SEFs? For example, would public disclosure help to mitigate, or exacerbate, adverse selection? Are there specific points on which the Commission should provide guidance or adopt rule amendments? If so, why?*
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> *Gaming-Related Event Contracts Expose Vulnerable Retail Participants to Significant Risks of Addiction, Financial Harm, and Exploitation.*

The characteristics of market participants weigh decisively against permitting gaming-related event contracts. These products are designed for retail users and marketed as entertainment, emphasizing ease of participation and the prospect of rapid gains. Participation is driven not by hedging or commercial need, but by speculative and recreational motives indistinguishable from traditional gambling.

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. The CFTC has determined that:

> [P]ermitting such contracts to trade as financial instruments on financial markets 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. Among other things, it could improperly signal to certain retail investors that these contracts are instruments to be used for investment purposes—and it could signal to others that derivative markets are appropriate venues for retail market participants to trade for entertainment purposes, which could minimize, for those investors, unique characteristics and risks of trading, more generally, in derivative markets.

*Event Contracts*, 89 Fed. Reg. 48,968, 48,992 (Jun. 10, 2024).

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[39] Jeff Passan, *Guardians' Emmanuel Clase, Luis Ortiz indicted for pitch rigging*, ESPN (Nov. 9, 2025), available at https://www.espn.com/mlb/story/_/id/46906636/guardians-emmanuel-clase-luis-ortiz-indicted-pitch-rigging.

[40] *Event Contracts*, 89 Fed. Reg. 48968, 48982–83 (Jun. 10, 2024).

Unlike regulated gaming jurisdictions, these markets lack meaningful safeguards, enabling individuals who would otherwise be excluded from lawful sports betting due to age, licensing, or consumer protection restrictions to access gambling products on prediction markets. As the U.S. District Court for the District of Nevada recognized, "Whatever one's views are on gambling, there is no question that some segment of the population will suffer from problem gambling, but neither DCMs nor the CFTC is equipped to address those issues the same way state gaming regulators and licensed entities are."[41]

## 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.*

The CFTC has authority to determine that an event contract is "contrary to the public interest" if the contract involves (1) activity that is unlawful under any Federal or State law; (2) terrorism; (3) assassination; (4) war; (5) gaming; or (6) other similar activity determined by the CFTC, by rule or regulation, to be contrary to the public interest.[42] Under Regulation 40.11(a)(1), the CFTC has already determined that those five enumerated activities are contrary to the public interest and DCMs are prohibited from listing contracts involving them.[43]

The Special Rule in the CEA was intended to "assure that the [CFTC] has the power to [...] prevent gambling through futures markets."[44] Section 5c(c)(5)(C) provides that contracts involving "gaming," unlawful activity, or other enumerated categories "shall not" be listed or made available for trading.[45] The statute thus establishes a rule of decision: once a contract "involves" gaming, it is per se contrary to the public interest and barred from trading on a registered entity. This is a categorical prohibition, not a balancing test.

The only legally relevant inquiry is whether the contract "involves" gaming. If it does, the CFTC lacks authority to permit its listing. Sports-related event contracts clearly involve gaming because they are wagers on

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[41] *Hendrick*, 2025 WL 3286282, at *13.
[42] 7 U.S.C. § 7a-2(c)(5)(C)(i).
[43] *See, e.g., Provisions Common to Registered Entities*, 76 Fed. Reg. 44776, 44786 (Jul. 27, 2011) (explaining that the CFTC's prohibition of "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.'" (citation modified)).
[44] *See* 156 Cong. Rec. S5906 (daily ed. Jul. 15, 2010) (colloquy between Sens. Feinstein and Lincoln, in which Sen. Lincoln thanks Sen. Feinstein and Chairman Dodd, for whom the Act is named, for encouraging Sen. Lincoln to include this provision in the Act).
[45] 7 U.S.C. § 7a–2(c)(5)(C).

the outcome of sporting events. Federal law defines a "bet or wager" as staking something of value on the outcome of a contest or sporting event with the expectation of receiving value based on that outcome.[46] State laws are to the same effect, encompassing wagers on any aspect of a sporting event, including proposition and in-play betting.[47] No material distinction exists between these wagers and sports-related event contracts. These contracts therefore "involve" gaming within the meaning of Regulation 40.11 and are prohibited.

Any contrary interpretation would render the statutory prohibition a nullity. Courts do not construe statutes to produce such results.[48] Even if the statute did not impose a categorical bar, which it does, sports-related event contracts are clearly contrary to the public interest for several reasons.

First, they lack any bona fide economic purpose. The CEA is designed to regulate markets that facilitate hedging, risk transfer, and price discovery tied to commercial activity. Sports-related event contracts do none of these things. They 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.

Second, they present acute and unmanageable risks of manipulation. Unlike traditional derivatives markets, where manipulation concerns arise from trading conduct, these contracts are vulnerable at the level of the underlying event. Outcomes may be influenced by a limited number of actors—players, referees, or insiders—creating risks of match-fixing, point-shaving, and insider exploitation. These risks are inherent, not incidental, and fall outside the CFTC's institutional competence.

Third, they conflict with established federal and state law. Sports wagering is comprehensively regulated under state law and, on Indian lands, under IGRA. The CEA expressly identifies contracts involving unlawful activity as contrary to the public interest.[49] Authorizing nationwide sports wagering through derivatives markets directly conflicts with these regimes without congressional authorization.

Fourth, they are not analogous to legitimate financial instruments. They do not insure against risk, allocate capital, or facilitate commercial planning. They create risk for its own sake. Congress did not intend derivatives markets to serve as vehicles for recreational gambling.

Fifth, they pose substantial and foreseeable harms to consumers. These products are designed for retail participation and encourage gambling behavior indistinguishable from sports betting. They expose participants to addiction risks, financial loss, and target underage consumers. Allowing prediction markets "to continue offering sports-related event contracts to 18-year-olds, even though the CFTC issued a regulation that prohibits [prediction markets] from listing gaming contracts, is not in the public interest."[50]

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[46] *See* 31 U.S.C. § 5362(1)(A).
[47] *See, e.g.*, N.J.S.A. § 5:12A-10.
[48] *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (statutes must be interpreted to give effect to every "clause and word").
[49] *See* 7 U.S.C. § 7a–2(c)(5)(C).
[50] *Hendrick*, 2025 WL 3286282, at *13 (citing 17 C.F.R. § 40.11(a)).

Finally, these contracts undermine tribal sovereignty and conflict with the federal Indian policy promoting tribal economic development and self-sufficiency.[51] Sports-related event contracts pose an existential threat to Indian gaming by violating tribal gaming exclusivity, 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 involve gaming, including sports-related event contracts, are contrary to the public interest.

*Question 9: Under a past version of the CEA that was repealed in 2000, the Commission applied an "economic purpose" test as part of determining whether a DCM could list a contract for trading. Are there any elements of the former "economic purpose" test that should or should not be applied in the Commission's public interest determination under CEA section 5c(c)(5)(C)?*

*Event Contracts Involving Gaming Are Contrary to the Public Interest Under the "Economic Purpose Test."*

The CFTC's public interest determination under Section 5c(c)(5)(C) is informed and constrained by the "economic purpose" test, which distinguishes lawful derivatives from impermissible gambling. This principle is a foundational limitation embedded in the CEA that is recognized by courts and regulators as distinguishing legitimate market activity from gambling.

The Supreme Court has long held that derivatives markets are lawful only to the extent they serve bona fide commercial functions. In *Board of Trade v. Christie Grain & Stock Co.*, 198 U.S. 236 (1905), the Court upheld futures trading precisely because it was tethered to real economic activity and commercial hedging. By contrast, in *CFTC v. Co Petro Mktg. Group, Inc.*, 680 F.2d 573 (9th Cir. 1982), the Ninth Circuit held that transactions lacking any genuine commercial purpose and entered into solely for speculative gain fall outside the scope of lawful futures trading and constitute unlawful wagering. Together, these decisions establish a clear rule that where a contract lacks an underlying economic purpose, it is gambling.

Section 5c(c)(5)(C) codifies this principle by expressly authorizing the CFTC to prohibit contracts involving "gaming" as contrary to the public interest. The statute reflects a deliberate distinction between contracts that facilitate hedging, risk transfer, or price discovery, and those that exist solely to enable speculative betting on contingent events. Contracts in the latter category are presumptively contrary to the public interest.

The CFTC's own precedent confirms this understanding. In its *Concept Release on the Appropriate Regulatory Treatment of Event Contracts*, the CFTC emphasized that the absence of commercial utility, hedging function, or economic consequence is central to determining whether such contracts are permissible.[52] The CFTC has applied the same reasoning in practice. In *In re Derivabit, LLC*, the CFTC concluded that event

[51] *See* 25 U.S.C. § 2702(1); 25 U.S.C. § 5302(b); *Bay Mills*, 572 U.S. at 810 (Sotomayor, J., concurring).
[52] *See Concept Release on the Appropriate Regulatory Treatment of Event* Contracts, 73 Fed. Reg. 25669 (May 7, 2008).

contracts lacking commercial or hedging utility are contrary to the public interest and should not be listed.[53] The CFTC cannot now depart from this settled framework without providing a reasoned explanation consistent with the Administrative Procedure Act.[54]

Sports-related event contracts fail the economic purpose test. They do not hedge risk because participants have no underlying commercial exposure to offset. They do not facilitate price discovery tied to any commodity or economic variable. And they do not contribute to capital formation, resource allocation, or any other recognized function of derivatives markets. Their sole function is to enable participants to engage in sports betting.

A contract that exists solely to facilitate speculation on a contingent event, untethered to any underlying economic activity, falls squarely within the category of "gaming" that Congress directed the CFTC to prohibit. Accordingly, the CFTC should reaffirm and rigorously apply the economic purpose test as an integral component of its public interest analysis under Section 5c(c)(5)(C). Properly applied, that test compels the conclusion that event contracts tied to sports outcomes and similar contingencies lack any legitimate economic function and are therefore prohibited as contrary to the public interest.

> *Question 10: What role do event contracts play in "managing and assuming price risks, discovering prices, or disseminating pricing information" as contemplated by CEA section 3(a)? How are event contracts used in hedging, which is one aspect of managing price risks? How should the Commission incorporate considerations of hedging, price risk, price discovery, and price dissemination in its public interest determination under CEA section 5c(c)(5)(C)?*
>
> *Event Contracts Involving Gaming Do Not Serve the Core Statutory Functions of Risk Management, Hedging, or Price Discovery.*

Event contracts involving gaming do not advance the core statutory purposes identified in Section 3(a) of the CEA—"managing and assuming price risks, discovering prices, or disseminating pricing information"—but instead function as speculative wagers untethered to any bona fide economic activity. The CFTC's public interest analysis under Section 5c(c)(5)(C) reflects this fundamental limitation. Where a contract bears no connection to price risk, hedging, or economically meaningful price discovery, it strongly indicates that the contract "involves" gaming and is contrary to the public interest.

First, gaming-related event contracts do not manage or transfer "price risk" in any meaningful sense. Price risk arises from exposure to fluctuations in the value of commodities, financial instruments, or other economic variables, and traditional derivatives—such as futures, options, and swaps—serve to mitigate such risks by enabling commercial actors to hedge exposures tied to underlying economic activity.[55] By contrast, event contracts involving sports or similar contingencies are based on binary, non-price outcomes, such as

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[53] *See* CFTC No-Action Letter No. 15-29 (Nov. 20, 2015), available at https://www.cftc.gov/csl/15-29/download.

[54] *Motor Vehicle Mfrs.*, 463 U.S. at 42.

[55] *See Christie Grain & Stock Co.*, 198 U.S. at 250–251 (recognizing the legitimacy of futures trading grounded in real commercial transactions rather than wagering).

whether a team wins a game, and are not linked to any underlying economic exposure. The CFTC has recognized that such contracts lack "bona fide economic transactions" and do not rely on traditional price-forming mechanisms.[56]

Second, these contracts do not facilitate the CEA's core purposes of "discovering prices" and "disseminating pricing information" tied to underlying economic activity.[57] In legitimate derivatives markets, prices reflect supply and demand for underlying commodities or financial instruments and contribute to market efficiency and transparency.[58] In contrast, prices in gaming-related event contracts merely reflect aggregated beliefs or sentiments about uncertain outcomes. They are untethered to any underlying asset or economic variable and therefore do not serve the statutory function of informing markets or allocating resources.

Third, event contracts involving gaming lack any legitimate hedging function. Hedging requires a demonstrable link between the contract and a preexisting commercial risk exposure. No such link exists here. There is no cognizable "risk" arising from the outcome of a sporting event that a commercial actor can hedge through an event contract.

Taken together, these deficiencies confirm that gaming-related event contracts fall outside the core purposes of the CEA and instead function as instruments of wagering. Contracts that neither manage price risk, contribute to price discovery, nor facilitate hedging cannot be reconciled with the statutory framework governing derivatives markets. Such contracts "involve" gaming and are contrary to the public interest under Section 5c(c)(5)(C).

*Question 12: 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?*

*Event Contracts Involving Gaming Are Not Substitutes For Insurance Because They Do Not Mitigate Financial Risk.*

Congress did not intend for event contracts traded on DCMs to serve as insurance.[59] As Sen. Feinstein stated in the 2010 Colloquy that "[f]irms facing financial risk [] may take out insurance, but they should not buy a derivative."[60] Event contracts tied to sports outcomes cannot plausibly be characterized as insurance. Insurance functions to transfer or mitigate an existing, identifiable financial risk through risk pooling and indemnification. In contrast, sports-related event contracts do not protect against loss, do not indemnify against adverse outcomes, and do not correspond to any insurable interest. Participants are not seeking protection from risk; they are placing wagers on the occurrence of uncertain events. The CFTC should reject any characterization of gaming-related event contracts as insurance or insurance-like instruments. Properly

[56] *Event Contracts*, 89 Fed. Reg. 48968, 48992 (Jun. 10, 2024).
[57] *See* 7 U.S.C. § 5(a).
[58] *See Co Petro Mktg. Group, Inc.*, 680 F.2d at 581–82 (invalidating transactions lacking connection to a bona fide market for the underlying commodity).
[59] *See* 156 Cong. Rec. S5906 (daily ed. Jul. 15, 2010) (colloquy between Sens. Feinstein and Lincoln).
[60] *Id.*

understood, they are speculative wagers that neither mitigate financial risk nor serve any legitimate economic function, and thus are contrary to the public interest.

*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.*

The CFTC should not amend its regulations regarding public interest determinations, because the regulations already clearly provide that contracts involving gaming are prohibited. Commission Regulation 40.11 was promulgated pursuant to authority granted under the Special Rule. The Regulation prohibits the listing of certain "event contracts" that are deemed to be contrary to the public interest.[61] This includes contracts that involve: (1) "activity that is unlawful under any Federal or State law," (2) "terrorism," (3) "assassination," (4) "war," and (5) "gaming."[62]

While "gaming" is not defined, it clearly encompasses sports betting. In 2024, the CFTC proposed a rule which defined "gaming" as:

> the staking or risking by any person of something of value upon: (i) the outcome of a contest of others; (ii) the outcome of a game involving skill or chance; (iii) the performance of one or more competitors in one or more contests or games; or (iv) any other occurrence or non-occurrence in connection with one or more contests or games.

*Event Contracts*, 89 Fed. Reg. 48974 (Jun. 10, 2024).

Although this proposed rule was ultimately withdrawn on February 4, 2026 by CFTC Chairman Michael Selig, the proposed definition of "gaming" was clearly "grounded in a rational and coherent interpretation of the [CEA] that promotes responsible innovation [] in line with Congressional intent."[63] It also drew upon the definition of "bet or wager" used in the Unlawful Internet Gambling Enforcement Act ("UIGEA"), which defines "gaming" as:

> the staking or risking by any person of something of value on the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.

31 U.S.C. § 5362(1)(A).

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[61] CEA § 5c(c)(5)(C)(i); 7 U.S.C. 7a-2(c)(5)(C)(i).
[62] 7 U.S.C. § 7a-2(c)(5)(C)(i).
[63] Press Release, CFTC, CFTC Withdraws Event Contracts Rule Proposal and Staff Sports Event Contracts Advisory (Release Number 9179-26) (Feb. 4, 2026), https://www.cftc.gov/PressRoom/PressReleases/9179-26.

Whether the underlying definition is gaming, gambling, betting, or wagering, Congress's legislative intent is as clear to us today as it was to Sen. Lincoln in 2010: event contracts that simulate sports betting and other forms of gambling, such as those that involve wagering on events like the Super Bowl, the Kentucky Derby, and Masters Golf Tournament, are contrary to the public interest and have no place being listed or traded on DCMs.

The CFTC currently allows DCMs to list products for trading without prior approval by the CFTC by filing a written self-certification with the CFTC.[64] The CFTC should exercise its authority under § 40.11(c) to order the stay of self-certified gaming-related contracts before they are listed on a DCM. Alternatively, the CFTC could require the prior approval of contracts that potentially involve gaming, reducing the regulatory burden on the CFTC.

The CFTC should not undertake substantive amendments to its public interest regulations because the existing framework already fully implements Congress's directive. Regulation 40.11 clearly provides that event contracts that "involve, relate to, or reference… gaming" are contrary to the public interest and may not be listed or traded.[65] This provision was expressly designed to prevent "gambling through futures markets," and it resolves the question presented by prediction markets.

Instead of changing its regulations related to public interest determinations, the CFTC should issue guidance reaffirming that sports-related event contracts involve gaming and are categorically prohibited under Regulation 40.11. Additionally, it should exercise its authority under § 40.11(c) to suspend or review self-certified contracts that raise gaming concerns before listing. Furthermore, the CFTC should require prior approval, rather than self-certification, for categories of contracts that implicate gaming, including sports-related event contracts.

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

*Question 15: CEA section 5c(c)(5)(C) lists five activities, and provides that if an event contract involves any such activity, the Commission may determine that the event contract is contrary to the public interest. What factors should the Commission consider in determining the scope of these five listed activities? What aspects of these activities would be relevant to the Commission's public interest determination?*

*Event Contracts Involving the Activities Listed in § 5c(c)(5)(C) Are Contrary to the Public Interest.*

The CEA's "Special Rule" expressly authorizes the CFTC to prohibit event contracts that involve certain enumerated activities, including gaming, where such contracts are contrary to the public interest.[66] CEA section 5c(c)(5)(C)(i) provides that in connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency, the CFTC

[64] 17 C.F.R. § 40.2.
[65] 17 C.F.R. § 40.11(a)(1).
[66] *See* 7 U.S.C. § 7a-2(c)(5)(C).

may determine they are contrary to the public interest if they involve—(I) activity that is unlawful under any Federal or State law; (II) terrorism; (III) assassination; (IV) war; (V) gaming; or (VI) other similar activity determined by the CFTC, by rule or regulation, to be contrary to the public interest.[67]

In listing the five proscribed activities, Congress clearly communicated its intent to prevent event contracts from being used to conduct gaming.[68] Congress acknowledged that event contracts would be predominantly used to "enable gambling," and that "[i]t would be quite easy to construct an 'event contract' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament."[69] Further, these contracts "would not serve any real commercial purpose" and instead "would be used solely for gambling."[70] If a contract involves sports, that fact strongly indicates that the contract involves gaming.[71]

The CFTC has already promulgated regulations prohibiting event contracts involving gaming.[72] And it did so in compliance with the "Special Rule" amendment to the CEA in 2010.[73] Congress enacted the Special Rule authorizing the CFTC to "determine that such agreements, contracts, or transactions are contrary to the public interest" to disallow any "gaming" activity on DCMs at all.[74] The CFTC acted consistently with Congress's intent by promulgating its blanket prohibition of event contracts involving gaming.[75] And the CFTC explained 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] Thus, the CFTC has already recognized that the Special Rule reinforces Congress's existing policy *against* sports-related event contracts, and the prediction markets themselves have admitted this.[77] Therefore, the CFTC should enforce the law and provide guidance reaffirming that sports-related event contracts are categorically contrary to the public interest.

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[67] *See also* 7 U.S.C. § 7a-2(c)(5)(C)(i).
[68] *See* 156 Cong. Rec. S5906-07 (daily ed. Jul. 15, 2010) (colloquy between Sens. Feinstein and Lincoln, in which Sen. Lincoln agrees with Sen. Feinstein that the 2010 amendments to the CEA "will strengthen the government's ability to protect the public interest from gaming contracts and other events contracts.").
[69] *Id.*
[70] *Id.*
[71] *See KalshiEX LLC v. CFTC*, 2024 WL 4164694, at *10 (D.D.C. Sep. 12, 2024) ("the Court finds that "gaming," as used in the special rule, refers to playing games or playing games for stakes"); *see also Event Contracts*, 89 Fed. Reg. 48968, 48992 (Jun. 10, 2024).
[72] *See* 17 C.F.R. § 40.11(a).
[73] 7 U.S.C. § 7a-2(c)(5)(C)(i).
[74] *See* 7 U.S.C. § 7a-2(c)(5)(C)(i)–(ii).
[75] 17 C.F.R. § 40.11(a)(1); *see also* Flaherty, 2026 WL 924004, at *10, 12 (Roth, J., dissenting) (describing how both Kalshi and the Majority have ignored that the CFTC exercised its authority under the Special Rule to promulgate a blanket prohibition on contracts involving gaming in Commission Regulation 40.11(a)(1).
[76] *Provisions Common to Registered Entities*, 76 Fed. Reg. 44776, 44786 (Jul. 27, 2011) (citation modified).
[77] *See* Appellee's Br. at 41, *KalshiEX LLC v. CFTC*, No. 24-5205 (D.C. Cir. Nov. 15, 2024) ("An event or contract thus involves 'gaming' if it is contingent on a game or game-related event. The classic example is a contract on the outcome of a sporting event; as the legislative history directly confirms, ***Congress did not want sports betting to be conducted on derivatives markets***." (citation modified)).

*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 Regulation 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 conduct that sovereign governments have made unlawful. Where an event contract implicates unlawful activity, it is contrary to the public interest and must be prohibited.

Sports-related event contracts violate the laws of numerous states. The states' police powers are a fundamental aspect of their sovereignty preserved by the Tenth Amendment. Their authority to regulate matters of health, safety, welfare, and morals is a cornerstone of the federal system.[78] That principle applies with particular force to gambling, which the Supreme Court has long recognized as a paradigmatic subject of state police power.[79]

At least three categories of jurisdictions make clear why sports-related event contracts are unlawful. First, some states prohibit sports betting outright under state law, such as California, Georgia, and Utah. Second, some states permit sports betting only through licensed operators subject to comprehensive state regulatory oversight, including Arizona, Connecticut, Illinois, Iowa, Maryland, Massachusetts, Michigan, Nevada, New York, Ohio, and Tennessee. Third, some states have granted tribes exclusive rights to conduct sports betting pursuant to Tribal-State Class III gaming compacts, such as Florida, New Mexico, North Dakota, Washington, and Wisconsin. In each of these jurisdictions, prediction markets offering sports-related event contracts violate state laws and therefore fall within the prohibition of 17 C.F.R. § 40.11(a)(1).

The Supreme Court has instructed that where a proposed reading of federal law would "significantly alter the balance between federal and state power," only "exceedingly clear language" to that effect will

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[78] *See Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996).

[79] *Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905) ("[T]he suppression of gambling is concededly within the police powers of a state."); *see also United States v. Washington*, 879 F.2d 1400, 1401 (6th Cir. 1989) (The "enactment of gambling laws is clearly a proper exercise of the state's police power in an effect to promote the public welfare."); and *WV Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 302 (4th Cir. 2009) ("It is well recognized that regulating gambling is at the core of the state's residual powers as a sovereign in our constitutional scheme.")

suffice.[80] This rule is rooted in "essential principles of federalism," which "require[] that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of this Nation."[81] In this case, Congress has not silently reworked that established balance, and it certainly did not do so in a statute that never mentions sports wagering.[82]

The CEA clearly does not preempt state gambling laws. The Supreme Court has held that "courts must 'start with the assumption' that federal law does not preempt," and the inquiry turns on "whether the state law governs conduct that has historically been subject to state regulation."[83] In *Martin*, the U.S. District Court for the District of Maryland noted that, "The courts and Congress have long recognized states' authority to regulate gambling conducted within their borders," so "the presumption against preemption applies."[84] The court found that it is "highly unlikely that Congress would have overridden state gambling laws without at least some indication in the text and legislative history that it intended to do so."[85] The court held that "the express language of the Special Rule confirms that Congress did not clearly and manifestly intend to preempt state laws with respect to sports wagering."[86] Thus, "Congress did not intend for Dodd-Frank to constitute legislation not only legalizing sports betting nationwide, but displacing states' authority to regulate it."[87] In *KalshiEX, LLC v. Schuler*, the U.S. District Court for the Southern District of Ohio similarly concluded that, "History reveals no evidence that Congress attempted to preempt state sports gambling laws."[88]

Sports-related event contracts violate federal laws as well, including IGRA. Sports betting constitutes Class III gaming under IGRA, which is lawful on Indian lands only when it is authorized by tribal law, conducted in a state that permits the gaming activity, and carried out pursuant to a Class III Tribal-State gaming compact that is approved by the Secretary of the Interior.[89] Sports-related event contracts offered by prediction markets on Indian lands violate IGRA.[90]

Additionally, sports-related event contracts violate the federal Wire Act, which provides "[w]hoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate… commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest… shall be fined under this title or imprisoned not more than two years, or both."[91]

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[80] *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021).
[81] *Alden v. Maine*, 527 U.S. 706, 748 (1999).
[82] *See Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001) (Congress does not "hide elephants in mouseholes.").
[83] *Martin*, 793 F. Supp.3d at 676.
[84] *Id.* at 677.
[85] *Id.* at 682.
[86] *Id.* at 680.
[87] *Id.* at 684.
[88] *Schuler*, 2026 WL 657004, at *8.
[89] *See* 25 U.S.C. § 2710(d)(1), (d)(7)(B)(vii); *see also* 25 C.F.R. § 502.4(c).
[90] *See, e.g., Coeur d'Alene Tribe v. Idaho*, 842 F. Supp. 1268, 1282 (D. Idaho 1994) (holding that the state lottery could not operate on Indian lands absent compliance with IGRA).
[91] 18 U.S.C. § 1084(a).

The CEA clearly did not impliedly repeal IGRA or the Wire Act. The Supreme Court has made clear there is a "strong presumption that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute."[92] The CEA cannot be read to repeal any part of IGRA or the Wire Act "unless the intention of the legislature to replace is clear and manifest."[93] No such "clear and manifest" intent can be drawn from the 2010 Dodd-Frank Act, because that Act did not address sports betting or Indian gaming.[94]

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 must be prohibited.

*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.*

Regulation 40.11(a)(1) categorically prohibits DCMs from listing any contract that "involves, relates to, or references… gaming."[95] Courts have recognized this prohibition without qualification.[96]

Sports-related event contracts fall squarely within this prohibition. As courts have observed, such contracts "at bottom… are sports wagers," and "[t]hese are sports wagers and everyone who sees them knows it."[97] Labeling them as "event contracts" does not alter their economic substance. They involve risking money on the outcome of sporting events outside the participant's control and are therefore indistinguishable from traditional sports betting.

The legislative history of Section 5c(c)(5)(C) confirms that the provision was enacted to prevent derivatives markets from being used as vehicles for gambling. Sen. Lincoln explained that the statute was intended to ensure the CFTC could "prevent gambling through futures markets," including contracts structured

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[92] *Martin*, 793 F.Supp.3d at 684 (citing *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018)).
[93] *Shoshone-Bannock Tribes v. U.S. Dep't of Interior*, 153 F.4th 748, 759 (9th Cir. 2025).
[94] *See generally* Flaherty, 2026 WL 924004. The recent decision handed down by the Third Circuit also fails to address how recognizing the exclusive jurisdiction of the CFTC over sports betting on prediction markets would effectuate an implied replied of other federal gaming laws, such as IGRA, despite Congress not so much as suggesting its intent to repeal such gaming laws.
[95] 17 C.F.R. § 40.11(a)(1).
[96] *See Hendrick*, 2025 WL 3286282, at *9 ("the CFTC has prohibited DCMs from listing contracts that involve gaming").
[97] *Id.* at *8.

around sporting events such as the Super Bowl or the Kentucky Derby, which would "serve no real commercial purpose" and instead function solely as gambling instruments.[98]

The CFTC has reached the same conclusion. It has emphasized that it "is not a gaming regulator" and lacks both the statutory mandate and institutional expertise to oversee gambling-related activity. Permitting such contracts to trade on CFTC-regulated markets would allow "bets or wagers on contests or games" to evade established legal regimes and consumer protections governing gambling.[99]

These authorities point to a single conclusion: contracts that replicate wagering on contingent events—particularly sports outcomes—constitute "gaming" within the meaning of Section 5c(c)(5)(C) and Regulation 40.11. The CFTC has already made this determination by rule. It should not narrow that prohibition, but enforce it.

*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 Scope of Gaming Under § 5c(C)(5)(C) Must Be Interpreted Broadly to Include Sports Related Event Contracts.*

The term "gaming" under Section 5c(c)(5)(C) must be interpreted broadly, consistent with the statutory text, legislative history, and the CFTC's own precedent. Congress did not intend a narrow, formalistic definition limited to traditional casino games. Rather, it targeted at the economic function of wagering, which is risking something of value on uncertain events for speculative gain.

The proper inquiry is functional, not formal. A contract involves gaming where it operates as a wager on an uncertain outcome outside the participant's control, lacks a bona fide hedging or commercial purpose, and is entered into primarily for speculative or entertainment value. This substance-over-form approach is consistent with the CFTC's own interpretation that a contract must be evaluated "as a whole" to determine whether it involves gaming or a similar prohibited activity.

Across federal statutes, CFTC precedent, and state and tribal law, gambling is consistently defined as risking value on the outcome of a contingent event outside the participant's control. Sports-related event contracts satisfy each of these elements. They replicate the economic structure of wagers, lack any legitimate economic purpose, and directly conflict with established regulatory regimes governing sports betting, including state licensing systems and Tribal-State compacts under IGRA.

Accordingly, sports-related event contracts represent the paradigmatic case of gaming under Section 5c(c)(5)(C) and fall squarely within the prohibition.

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[98] 156 Cong. Rec. S5906–07 (daily ed. Jul. 15, 2010).
[99] *Event Contracts*, 89 Fed. Reg. 48968, 48982–83 (Jun. 10, 2024).

*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?*

*All Event Contracts Involving Gaming Are Contrary to the Public Interest.*

Although event contracts may vary in form, whether tied to sports, elections, or other contingencies, they share a common economic function, which is wagering on uncertain outcomes for speculative gain. That function, not the label attached to the contract, governs the analysis. The CFTC should apply a substance-over-form framework that evaluates whether a contract functions as a wager, whether participants lack control over the outcome, whether the contract serves any bona fide commercial purpose, and whether the activity is traditionally regulated as gambling. Where those factors are present, the contract "involves" gaming and is contrary to the public interest.

Sports-related event contracts present the clearest and most acute case. They are universally recognized as gambling, involve well-documented risks of manipulation and insider influence, and are subject to comprehensive regulatory systems designed to protect market integrity and consumers. Allowing economically identical products to trade on derivatives exchanges would create direct conflict with those regimes and undermine their effectiveness.

The CFTC lacks both the mandate and the institutional capacity to regulate these risks. As one court observed, "neither DCMs nor the CFTC is equipped to address" the harms associated with gambling in the manner of state gaming regulators.[100]

In sum, event contracts that function as wagers, including sports-related event contracts, are contrary to the public interest and must be categorically prohibited.

*Question 19(c): What aspects of event contracts involving gaming should the Commission consider in a public interest determination? For these event contracts, are there any challenges to the deterrence of manipulation and protection from abusive sales practices contemplated by CEA section 3(b)? If so, how could these challenges be mitigated? How are the responsible innovation and fair competition goals in CEA section 3(b) served by event contracts involving gaming?*

*Event Contracts Involving Gaming Present Severe and Inherent Risks of Market Manipulation that the CFTC Is Unequipped to Detect or Mitigate.*

Event contracts involving "gaming" present severe and inherent risks of market manipulation that the CFTC is functionally unequipped to properly detect or mitigate. Pursuant to the CFTC's own findings, the fundamental nature of these contracts, and the opaque markets underlying them, makes them uniquely susceptible to abuse.

[100] *Hendrick*, 2025 WL 3286282, at *9.

First, sports-related event contracts are highly vulnerable to insider trading and the intentional dissemination of misinformation. Individuals closely connected to sporting events or contests possess significant informational advantages and outsized influence. As the CFTC explicitly warned, "a professional athlete or coach may be economically impacted by their team's wins or losses, but may also have access to information—for example, about a team member's health or a potential injury—that could be used to trade ahead of the market in an event contract involving the team's performance."[101] Furthermore, because these figures are highly visible, "the athlete or coach would potentially have a platform—for example, access to media, combined with public perception as an authoritative source of information regarding the team—that could be used to disseminate misinformation that could artificially impact the market in the contract for additional financial gain."[102]

Second, the integrity of these contracts is easily compromised by third-party coercion and match-fixing. Banning insiders from trading on an exchange is an insufficient mitigant because participants remain prime targets for outside bad actors. The CFTC recognized that "even if the individual, or group of individuals, that can influence the outcome of the occurrence are prohibited, by the contract's terms, from trading in the contract, such individual or group of individuals may be vulnerable to pressure or persuasion by others who have taken a position in the contract and seek a particular outcome."[103]

Finally, the CFTC lacks the structural capacity to monitor or detect this manipulative activity due to the absence of reliable, transparent price-forming data. Unlike traditional agricultural or financial commodity derivatives, "most contracts falling within the proposed definition of 'gaming' would have no underlying cash market with bona fide economic transactions to provide directly correlated price forming information."[104] Instead, the data driving these markets is fundamentally deficient, as "price forming information is either nonexistent, or driven by informational sources that are unregulated, have opaque underlying processes and procedures, and may not follow scientifically reliable methodologies"[105] This absence of transparent, verifiable data severely cripples regulatory oversight, because "[t]he lack of price forming information for contracts involving 'gaming,' or the availability of only opaque and unregulated sources of price forming information, may increase the risk of manipulative activity relating to the trading and pricing of such contracts, while decreasing the ability of the offering exchange, or the CFTC, to detect such activity."[106]

Therefore, because gaming contracts lack transparent underlying cash markets and rely on unregulated informational sources inherently vulnerable to insider influence and third-party coercion, they are readily susceptible to manipulation that the CFTC is incapable of effectively mitigating.

*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*

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[101] *Event Contracts*, 89 Fed. Reg. 48968, 48982 (proposed Jun. 10, 2024).
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*

*these market participants tend to be younger than those trading other financial instruments, and if so, how should this inform the Commission's consideration?*

*Prediction Markets Offering Sports-Related Event Contracts Enable Underage Gambling.*

Allowing prediction markets to offer sports-related event contracts to 18-year-olds circumvents state consumer protections designed to shield vulnerable populations. States have specialized frameworks to protect young adults from gambling addiction, which prediction markets bypass. In *Schuler*, the Southern District of Ohio observed that the state determined 18- through 20-year-olds "were too young to participate in legal sports gambling," yet they are granted "unrestricted access to sports-event contracts on Kalshi's exchange."[107] The court emphasized that this demographic is "particularly vulnerable to problem gambling" and, when trading on Kalshi, is left entirely "unprotected by Ohio's responsible gaming laws."

Furthermore, the CFTC and DCMs are structurally unequipped to address the negative impacts associated with underage gambling. In *Hendrick*, the District of Nevada determined that "[w]hatever one's views are on gambling, there is no question that some segment of the population will suffer from problem gambling, but neither DCMs nor the CFTC is equipped to address those issues the same way state gaming regulators and licensed entities are."[108] The CFTC itself acknowledges in its 2024 proposed rules that it "is not a gaming regulator" and its regulations "do not include provisions aimed at protecting against gambling-specific risks and concerns, including customer protection concerns inherent to gambling."[109]

Consequently, permitting these platforms to operate outside of established state frameworks poses a severe threat to public welfare. As the *Hendrick* court decisively concluded, "[a]llowing Kalshi to continue offering sports-related event contracts to 18-year-olds, even though the CFTC issued a regulation that prohibits DCMs like Kalshi from listing gaming contracts, is not in the public interest."[110]

*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 Purview or Capacity.*

The essential need for responsible gaming safeguards, such as self-exclusion programs, strict 21-and-over age verification, and advertising controls, proves that sports-related event contracts are fundamentally gambling products. State and tribal regulators have meticulously developed these consumer protections over decades to mitigate the well-documented risks of addiction, financial harm, and exploitation.

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[107] *Schuler*, 2026 WL 657004, at *10 n9.
[108] *Hendrick*, 2025 WL 3286282, at *13.
[109] *Event Contracts*, 89 Fed. Reg. 48968–01, 48982–83 (Jun. 10, 2024).
[110] *Hendrick*, 2025 WL 3286282, at *13, (citing 17 C.F.R. § 40.11(a)).

The CFTC is structurally unequipped and statutorily unauthorized to act as a gaming regulator. The CFTC does not license gaming operators, administer responsible gaming programs, or regulate gambling marketing. Attempting to graft such requirements onto the derivatives regulatory regime would produce an ineffective system that exceeds the CFTC's mandate under the CEA. As the District of Nevada conclusively determined, "Whatever one's views are on gambling, there is no question that some segment of the population will suffer from problem gambling, but neither DCMs nor the CFTC is equipped to address those issues the same way state gaming regulators and licensed entities are."[111]

*Question 21: Why, or why not, would it be appropriate for the Commission to propose any changes to its regulations related to the activities listed in CEA section 5c(c)(5)(C)?*

*The CFTC Should Not Amend Its Regulations Implementing § 5c(C)(5)(C) Because Any Changes Would Impose Significant Costs With No Meaningful Benefits.*

The CFTC should not amend its regulations implementing § 5c(c)(5)(C) to accommodate event contracts involving gaming. The statute and the CFTC's existing regulations already establish a clear and binding prohibition: contracts that "involve" gaming are contrary to the public interest and may not be listed.[112] The current issue is not regulatory ambiguity, but attempts by market participants to repackage gambling products as financial instruments. The appropriate response is enforcement, not rulemaking.

If the CFTC considers any regulatory action, it should be limited to clarifying guidance that reinforces the scope of the existing prohibition, not narrowing it. Amending the regulations to permit or expand gaming-related event contracts would impose substantial and far-reaching costs. Such changes would introduce products that are inherently susceptible to manipulation, including through conduct beyond the CFTC's regulatory reach (*e.g.*, match-fixing or insider influence); expose retail participants to well-documented risks of financial harm and addiction; and create direct conflict with established federal, state, and tribal gaming regimes, including the compacting framework under IGRA.

The purported benefits of permitting such contracts are minimal. Claims that prediction markets enhance price discovery or provide informational value are insufficient to justify introducing products that lack any bona fide hedging or commercial purpose. Traditional derivatives markets already serve the CEA's core functions. Gaming-related event contracts do not enhance those functions and instead risk diluting market integrity. Any marginal informational benefits can be achieved through non-wagering mechanisms without introducing the harms associated with gambling.

Therefore, the CFTC should not amend its regulations to accommodate event contracts involving gaming, but instead should enforce the existing statutory and regulatory prohibition as written.

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[111] *Id.* at *13.

[112] *See* 7 U.S.C. § 7a–2(c)(5)(C); 17 C.F.R. § 40.11(a)(1).

## D. Procedural Aspects of CEA § 5c(c)(5)(C)

*Question 23: CEA section 5c(c)(5)(C)(i) provides that the Commission may make a public interest determination "[i]n connection with the listing" of event contracts by prediction markets. What aspects of the prediction market listing process are relevant to deciding at what point in the listing process the public interest determination could occur? What factors should inform the Commission's interpretation of what occurs "[i]n connection with the listing" by a prediction market of an event contract? For example, why would it be appropriate, or not, for the Commission to make a public interest determination when a listing application is reasonably expected, but not yet filed?*

*Question 24: What factors should inform the Commission's interpretation of whether CEA section 5c(c)(5)(C) contemplates that elements of a public interest determination could be made with respect to a category of event contracts, rather than a specific event contract? For example, what factors should the Commission consider in determining whether to provide guidance regarding how it expects to make any public interest determination? Would it be useful for the Commission to provide illustrative examples of event contracts that do, or do not, involve the listed activities? Why or why not?*

*Question 27: Why, or why not, would it be appropriate for the Commission to propose any changes to its regulations related to procedures under CEA section 5c(c)(5)(C)?*

*The CFTC Should Employ Proactive, Categorical, Pre-Listing Review and Not Weaken Existing Oversight. (Response to Questions 23–24, 27–28).*

Section 5c(c)(5)(C) requires the CFTC to prevent the listing of contracts that are contrary to the public interest, including those that "involve" gaming. Nothing in the statute confines the CFTC to reactive, contract-by-contract determinations after submission or listing. To the contrary, the statute's structure and purpose support proactive, and where appropriate, categorical determinations that prevent prohibited contracts from entering the market.

The current self-certification framework under Part 40 creates a material risk that impermissible contracts, particularly gaming-related event contracts, will be listed and traded before the CFTC can act. In fast-moving prediction markets, even brief periods of trading can produce consumer harm, market disruption, and regulatory conflict. A regime that allows such contracts to reach the market before review is inconsistent with the statute's protective purpose.

Accordingly, the CFTC should treat the pre-listing stage as the critical point for public interest review. Where an exchange signals its intent to offer a category of contracts such as sports-related event contracts, the CFTC should be able to act before formal submission where the risk of harm is foreseeable. This authority should be exercised categorically where a class of contracts shares defining characteristics that bring it within the statutory prohibition. Section 5c(c)(5)(C) focuses on "types" of contracts, and Regulation 40.11 implements

that directive by prohibiting any contract that "involves, relates to, or references... gaming."[113] Where a category such as sports-related event contracts functions as wagering and inherently involves gaming, individualized review is unnecessary. Categorical determinations are more faithful to the statute, more efficient, and provide clear guidance to market participants.

Procedural regulations should not be revised to weaken or delay this authority. The CFTC already possesses the necessary tools to review, suspend, and prohibit impermissible contracts; the issue is ensuring those tools are applied early, consistently, and effectively. Any procedural changes should therefore strengthen front-end oversight, not create additional pathways for gaming-related contracts to be listed.

If the CFTC elects to refine its procedures, appropriate measures would include requiring prior approval (rather than self-certification) for categories of contracts likely to involve gaming, establishing categorical presumptions subjecting such contracts to heightened review, and expanding pre-filing consultation requirements. These targeted improvements would ensure that public interest determinations occur before trading begins, prevent consumer harm, and conserve agency resources otherwise spent on repetitive post-submission review.

By contrast, weakening procedural safeguards or delaying review would impose substantial costs. It would allow unlawful or harmful products to enter the market, expose retail participants to immediate risk, and create conflict with established federal, state, and tribal gaming regimes. Less burdensome alternatives to broad rulemaking are readily available, including issuing interpretive guidance, initiating early review and suspension upon submission, and implementing internal screening protocols for high-risk contract categories such as sports-related event contracts. These approaches would achieve the CFTC's objectives efficiently while preserving the integrity of the existing statutory framework.

## E. Insider Trading

*Question 29: 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?*

*There Is No Public Interest Utility In Allowing Trading Based on Asymmetric Information as Such Conduct Constitutes Insider Trading.*

In the ANPRM, the CFTC asks if there is some public interest utility in allowing people with an "asymmetric information advantage" to participate in trading on prediction markets. However, an "asymmetric information advantage" is merely an overengineered way of describing insider trading, a practice that is

[113] 17 C.F.R. § 40.11(a)(1).

prohibited under the CEA and existing CFTC regulations.[114] 17 C.F.R. § 180.1 prohibits "trading on the basis of material nonpublic information ("MNPI") in breach of a pre-existing duty or on the basis of MNPI that was obtained by fraud or deception."[115] Insider trading is also a violation of Core Principle 12, which mandates protection from "abusive practices" and the promotion of "fair and equitable trading on the contract market."[116]

As the "U.S. regulator charged with ensuring the integrity of the futures & swaps markets," it is highly concerning for the CFTC to even entertain the idea that there may be "some public interest utility" in allowing those with insider information to trade on prediction markets.[117] Thankfully, this question does not reflect the actions of the CFTC. The agency recently acknowledged its "full authority to police illegal trading practices occurring on any DCM," citing the following examples of agency enforcement:[118]

- Misappropriation of confidential information in breach of a pre-existing duty of trust and confidence to the source of the information (commonly known as "insider trading") pursuant to Section 6(c)(1) of the Act, and Regulation 180.1(a)(1) and (3); *see, e.g., CFTC v. Clark,* Civil Action No. 4:22-cv-00365 (S.D. Tex., Jan. 29, 2026 consent order); *In re Webb, et al.*, CFTC Docket No. 21-09 (June 14, 2021 admin. order).
- Pre-arranged, noncompetitive trading and wash sales, under Section 4c(a)(1) and (2)(A) of the Act, and Regulation 1.38(a); *see, e.g., In re Khorrami, et al.*, CFTC Docket No. 20-15 (May 7, 2020 admin. order); *CFTC v. Singhal, et al.*, Civil Action No. 1:12-cv-00138 (N.D. Ill., Nov. 28, 2012 consent order).
- Other prohibited trading practices including disruptive trading pursuant to Section 4c(a)(5); *see, e.g., In re Mirae Asset Daewoo Co. Ltd.*, CFTC Docket No. 20-11 (Jan. 13, 2020 admin. order).
- Fraud and manipulation under various sections of the Act; *see, e.g., In re Dairy Farmers of America, Inc., et al.*, CFTC Docket No. 09-02 (Dec. 16, 2008 admin. order).

Given the CFTC's enforcement history, Core Principle 12, as well as the language of the CEA and existing CFTC regulations, there is zero public interest utility for allowing those with an "asymmetric information advantage," *i.e.*, insider knowledge, to be able to trade on prediction markets. However, the fact that the CFTC second guesses its historical approach to insider trading, and even goes so far as to suggest there is a legitimate question as to whether insider trading should be permitted, further reinforces its past position that the CFTC is ill suited to serve as a gaming regulator.[119]

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[114] CEA § 6(c)(1); 17 C.F.R. § 180.1.
[115] CFTC Whistleblower Office, CFTC Whistleblower Alert: Be on the Lookout for Insider Trading or Improper Use of Information (Jun. 2019), available at https://www.whistleblower.gov/whistleblower-alerts/Insider_Trading_WBO_Alert.htm.
[116] 17 C.F.R. § 38.650.
[117] *Id.*
[118] Press Release, CFTC Enforcement Division Issues Prediction Markets Advisory (Release Number 9185-26) (Feb. 25, 2026), available at https://www.cftc.gov/PressRoom/PressReleases/9185-26.
[119] *See Event Contracts*, 89 Fed. Reg. 48968–01, 48982–83.

## 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 Gaming Are Not Swaps.*

Sports-related event contracts do not satisfy the statutory definition of a "swap."

The CEA defines a "swap," in relevant part, as "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."[120] The definition imposes a meaningful limiting principle: the contingency must be inherently tied to an economic or commercial risk. Sports-related event contracts fail that test.

As multiple federal courts have now recognized, the outcome of a sporting event, such as "which team wins," is not "inherently associated" with a financial, commercial, or economic consequence within the meaning of the statute.[121] These contracts are not tied to economic variables such as prices, rates, or measurable risks. They are wagers on discrete, noneconomic outcomes.

The courts have rejected the argument that sports-related event contracts constitute swaps under the CEA. As *Hendrick* explains, such contracts do not depend on the "occurrence" of an event in the sense contemplated by the statute (*e.g.*, whether a hurricane occurs or a default happens), but rather on the *outcome* of an event (*e.g.*, who wins a game or what happens during play).[122] The *Hendrick* court further warned against the overbroad interpretation advanced by prediction markets, holding that:

> Congress did not define a swap as a contract on anything that happens or could happen. So interpreting the statutory terms to include everything anyone can

[120] 7 U.S.C. § 1a(47)(A).
[121] *Hendrick*, 2025 WL 3286282, at *4–9; *Schuler*, 2026 WL 657004, at *5–7.
[122] *Hendrick*, 2025 WL 3286282, at *3.

> conjure up as a subject to bet on … is not a reasonable interpretation of the statute.[123]

Indeed, expanding the definition of "swap" to include sports wagering would produce sweeping and untenable consequences. As the court explained, such an interpretation would "sweep nearly all sports wagering into the CFTC's exclusive jurisdiction," displacing the longstanding role of states in regulating gambling through their police powers and effectively requiring all sports betting to occur on federally regulated exchanges.[124] That "sea change in the regulatory landscape" finds no support in the CEA's text or legislative history, both of which confirm that Congress did not intend for CFTC-regulated markets to become markets for gambling.[125] The court underscored the absurdity of that result:

> It is absurd to think that Congress intended for DCMs to turn into nationwide gambling venues on every topic under the sun…with no comparable federal regulator…without ever mentioning that was the goal.[126]

The court therefore held unequivocally that "event contracts are based on the outcomes of sporting events … [and] are not swaps within the CEA's meaning."[127]

The U.S. District Court for the Southern District of Ohio reached the same conclusion in *Schuler*, likewise rejecting as "absurd" the contention that sports event contracts qualify as swaps.[128] The court explained that adopting such a definition would require that "all contracts for payment based on the outcome of a sporting event—all sports bets—be traded only on DCMs," effectively eliminating the entire regulated sports betting industry.[129] In the absence of any congressional intent to effect such a sea change, the court refused to construe the CEA to "produce an absurd result."[130] *Schuler* grounded its analysis in the core purposes of the CEA, holding:

> Congress enacted the CEA to serve the national interest in "managing and assuming price risks, discovering prices, or disseminating pricing information." 7 U.S.C. § 5. These objectives are advanced by transactions tied to economic variables—such as currency rates, weather, or energy prices—not by wagers on "the number of points scored in the Huskies-Bobcats game."

*Schuler*, 2026 WL 657004, at *12.

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[123] *Id.* at *6.
[124] *Id.* at *8.
[125] *Id.*
[126] *Id.* at *9.
[127] *Id.* at *6.
[128] *Schuler*, 2026 WL 657004, at *12.
[129] *Id.*
[130] *Id.* at *4 (quoting *United States v. Fitzgerald*, 906 F.3d 437, 442 (6th Cir. 2018)).

In short, 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. The statute does not permit their recharacterization as derivatives, and courts have correctly rejected efforts to do so.

## CONCLUSION

For the foregoing reasons, the CFTC should unequivocally reaffirm that sports-related event contracts are prohibited under the Commodity Exchange Act and existing CFTC regulations and should decline to pursue unnecessary or duplicative rulemaking that risks creating ambiguity. Instead, the agency should take decisive action by issuing clear, enforceable guidance and pursuing robust enforcement against prediction market operators to ensure full compliance with federal law.

Respectfully submitted,

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