April 30, 2026

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

Re: Prediction Markets, RIN 3038-AF65, 91 Fed. Reg. 12516 (Mar. 16, 2026)

Dear Mr. Kirkpatrick:

Better Markets[1] appreciates the opportunity to respond to the above-referenced Advanced Notice of Proposed Rulemaking (ANPR) and the accompanying request for comment regarding event contracts on prediction markets.[2] Event contracts on prediction markets have exploded in popularity.[3] Because in most cases the reason for this explosion in popularity is that prediction markets offer the ability to gamble without the regulations that normally accompany gambling, the CFTC must pass rules that differentiate event contracts that constitute legitimate financial instruments used for hedging risk from event contracts that are nothing more than gambling.

Prediction markets first became popular when platforms started offering event contracts on elections in 2024.[4] Their popularity exploded in 2025 after they began offering event contracts on sporting events.[5] And now prediction market platforms offer event contracts on everything from who will win an Oscar to who will win Top Chef to who will win Survivor.[6]

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 91 Fed. Reg. 12,516 (Mar. 16, 2026).

3 Marshall Cohen, *As prediction markets explode in popularity, the regulator that policies them has been shrinking*, CNN (Apr. 26, 2026), https://www.cnn.com/2026/04/26/politics/commodity-futures-trading-commission-shrinking-prediction-markets.

4 David Yaffe-Bellany, *All Bets Are On: The Rise of Prediction Markets*, N.Y. Times (Jan. 19, 2026), https://www.nytimes.com/2026/01/19/technology/polymarket-kalshi-prediction-markets.html.

5 Carlos Garcia, *Prediction markets have made betting easier than ever—and young men are paying the price*, Fortune (Apr. 10, 2026), https://fortune.com/2026/04/10/prediction-markets-gambling-addiction/.

6 John Jurgensen, *The New Way to Watch the Oscars: Turning Every Moment Into a Wager*, The Wall Street Journal (Mar. 12, 2026), https://www.wsj.com/arts-culture/film/oscars-betting-kalshi-polymarket-92d1909d; Nathan Bomey, *"Survivor 50" hasn't aired yet, but Kalshi, Polymarket have picked a winner*, Axios (Feb. 25, 2026), https://www.axios.com/2026/02/25/survivor-50-winner-kalshi-polymarket.

The problem is that event contracts on elections, sports, and pop culture are nothing more than gambling. Prediction market platforms also offer event contracts on geopolitical events such as military campaigns, and the ability to profit from these types of event contracts endangers national security. The CFTC must adopt strict rules that, at a minimum: (1) distinguish event contracts that are legitimate financial instruments from event contracts that constitute gambling; (2) prohibit event contracts on elections, sports, games, pop culture, and events that threaten national security; and (3) prevent the use of inside information to profit on prediction markets.

I. Event Contracts are not Necessarily Swaps

At the outset, the CFTC must recognize that not all event contracts are swaps within its jurisdiction. The CFTC says the definition of a swap in the Commodity Exchange Act (CEA)—the governing statute that defines its jurisdiction—is broad.[7] That may be, but it has limits.[8]

The ANPR says that "event contracts can fall within multiple subsections of the CEA's definition of a 'swap.'"[9] It recognizes that the CEA defines "swap" to include "any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery . . . that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency *associated with a potential financial, economic, or commercial consequence*."[10] The ANPR then asks what "potential financial, economic, or commercial consequences underlie event contracts,"[11] presumably because such consequences render an event contract a swap.

The requirement that a swap involve an event or contingency associated with a potential financial, economic, or commercial consequence means that not all event contracts are swaps. The event or contingency must itself have a bona fide financial, economic, or commercial consequence. An event contract on whether the Federal Reserve is going to raise interest rates would be a swap because that event has a real financial, economic or commercial consequence.

Many other events or contingencies, however, do not themselves have financial, economic, or commercial consequences. For example, event contracts on sporting events are not swaps. Whether or not the Lakers cover the spread in their game against the Knicks does not itself result in a financial, economic, or commercial consequence. Whether or not the Lakers and Knicks combine to score a certain number of points does not itself result in a financial, economic, or commercial consequence. And whether or not LeBron James scores 20 points in

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7 Sander Lutz, *CFTC Chair Mike Selig Faces Bipartisan Pushback on Prediction Markets, Hyperliquid Perps*, Decrypt (Apr. 16, 2026), https://finance.yahoo.com/markets/options/articles/cftc-chair-mike-selig-faces-165752773.html.

8 *KalshiEX, LLC v. Hendrick*, --- F. Supp. 3d ---, 2025 WL 3286282, at *6 (D. Nev. Nov. 24, 2025) (finding that saying all event contracts are swaps "knows no limiting principle," because "Congress did not define a swap as a contract on anything that happens or could happen, and so "interpreting the statutory terms to include everything anyone can conjure up as a subject to bet on, or that might have some conceivable financial consequence if one is creative enough, is not a reasonable interpretation of the statute").

9 91 Fed. Reg. at 12,517.

10 *Id.* (second omission and emphasis added).

11 *Id*. at 12,523.

the game against the Knicks does not itself result in a financial, economic, or commercial consequence. These are not the type of events that underlie a legitimate financial swap.

It is, of course, possible to theorize that these events could somehow have eventual financial, economic, or commercial consequences. But that is insufficient. It is not enough to find someone "who might have some conceivable financial consequence if one is creative enough."[12] There must be a direct, and not attenuated, nexus between the event itself and the financial, economic, or commercial consequence.[13] Other than the ability to win or lose money on the wagers, there are no direct financial, economic, or commercial consequences to these bets.[14]

Prediction market platforms have recognized this fact. In arguing that event contracts on elections do not constitute "gaming," Kalshi told the District Court for the District of Columbia that elections are not "remotely analogous" to "sporting events" and that "elections—again, *unlike games*—have extrinsic effects outside the contest itself, and indeed carry significant economic consequences in the real world."[15] Although the prediction market platforms now disavow this statement, the fact that sporting events do not carry the economic consequences that would render a sporting event contract a swap was true when they said it and it is true today.

Event contracts on pop culture are also not swaps.[16] For example, who will attend the wedding of Taylor Swift and Travis Kelce does not have a real financial, economic, or commercial consequence. Who will be Taylor Swift's bridesmaids does not have a real financial, economic, or commercial consequence. Who will be Travis Kelce's groomsmen does not have a real financial, economic, or commercial consequence. The outcome of these events and contingencies does not have any financial, economic, or commercial consequences for those using the contracts to wager on the outcome, so event contracts on these questions are not swaps.

Event contracts on whether someone will say specific words are also not swaps.[17] Whether the announcers will say the words "Extra Inning" or "MVP" during a baseball game does not have a real financial, economic, or commercial consequence. Whether Jeff Probst will say during a Survivor episode the words "Immunity Idol" or "Hunger" does not have a real financial, economic, or commercial consequence. And whether MrBeast will say the words "Speed" or "Feastable" does not have a real financial, economic, or commercial consequence. The outcome of these events and contingencies do not have any real financial, economic, or

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12 *KalshiEX, LLC v. Hendrick*, --- F. Supp. 3d ---, 2025 WL 3286282, at *6.

13 *Id.* (concluding that "the phrase 'associated with a potential financial, economic, or commercial consequence' means that the event or contingency is itself inherently joined or connected with a potential financial, economic, or commercial consequence," such that "the event or contingency itself has some potential financial, economic, or commercial consequence without looking at externalities like potential downstream financial consequences such as parties extrinsic to the event betting on it").

14 *See* https://kalshi.com/category/sports/all-sports.

15 Memorandum of Law in Support of Plaintiff's Motion for Summary Judgement, *KalshiEX LLC v. CFTC*, No. 23-03257 (D.D.C.) (emphasis added), https://storage.courtlistener.com/recap/gov.uscourts.dcd.261465/gov.uscourts.dcd.261465.17.1.pdf, at 27/

16 *See* https://kalshi.com/category/culture.

17 *See* https://kalshi.com/category/mentions.

commercial consequences, potentially or actually, for those using the contracts to wager on the outcome of the events and contingencies, so event contracts on these questions are not swaps.

This is because a swap is really a hedging instrument whereby two counterparties transfer (or swap) risk from a particular economic activity, like the possibility that a third party defaults on a loan.[18] Individuals can use an event contract on whether the Federal Reserve is going to raise interest rates to hedge their economic risk. Individuals cannot use whether LeBron James is going to score 20 points in a game, whether Taylor Swift and Travis Kelce are going to get married this year, or whether Jeff Probst is going to say the word "Hunger" as a hedge.

The fact that proponents of prediction market platforms who want all event contracts to be swaps may attempt to identify someone who can use any event contract as a hedge does not change the analysis. For example, some say athletes could use a contract on whether they will score 20 points in a game as a hedge against a clause in their contract that entitles them to a bonus if they reached the 20-point mark.[19] But professional sports leagues prevent their players from wagering on the outcome of their own games.[20] And, regardless, that "you could find one person in the universe who may be able to make some plausible hedging or risk transfer argument doesn't mean it's a hedging and risk transfer market."[21] The fact that there is no real financial, economic, or commercial consequence to the outcome of the event or contingency for everyone else in the world means the event contract does not fall within the definition of a swap.

The other problem with arguing that event contracts on sporting events are swaps because someone could use such contracts as a hedge is that it proves too much. If someone could use an event contract on whether the Lakers will beat the Knicks as a hedge, that person could just as easily use the ability to bet that the Lakers will beat the Knicks on a traditional sportsbook as a hedge. Aside from the difficulty of identifying any financial risk that a person could hedge by betting on the Lakers to beat the Knicks, there is no difference between attempting to win money by betting on the Lakers to win on a prediction market, to offset some hypothetical financial risk from the Lakers losing, and attempting to win money by betting on the Lakers to win on a traditional sportsbook, to offset some hypothetical financial risk from the Lakers losing. This means that, under this theory, traditional sportsbooks are really offering swaps. This cannot be.[22]

The CFTC must adopt rules that clarify the difference between event contracts on an event or contingency associated with a financial, economic, or commercial purpose that may be

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[18] See, e.g., Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y., 375 F.3d 168, 172 (2d Cir. 2004).

[19] Shaun Ledgerwood et al., *The Challenges of Detecting Event Contract Manipulation*, Law360 (Feb. 23, 2026), https://www.law360.com/articles/2441479/the-challenges-of-detecting-event-contract-manipulation.

[20] *See, e.g.*, Nick Ashbourne, *Can NBA Players Bet on Themselves? The Rules and Risks of Self-Betting in the League*, RG (Aug. 19, 2025), https://rg.org/guides/basketball/player-betting.

[21] Declan Harty, *Politico Pro Q&A: Cboe CEO Craig Donohue*, Politico (Apr. 6, 2026), https://subscriber.politicopro.com/article/2026/04/politico-pro-q-a-cboe-ceo-craig-donohue-00860708.

[22] *KalshiEX, LLC v. Hendrick*, --- F. Supp. 3d ---, 2025 WL 3286282, at *6 (finding that a swap "does not include consumer transactions that have not historically been known to be swaps, such as sports wagers").

used as a legitimate financial instrument for hedging risk and event contracts that serve no purpose other than to facilitate gambling and that have nothing to do with the CFTC.

II. The CFTC Must Prohibit Event Contracts That Serve No Purpose Other than Gambling

The CEA provides the CFTC with the basis to distinguish between event contracts that it should allow and that should be subject to its jurisdiction and event contracts that it should prohibit and that should be subject to other regulatory regimes. It must follow Congress's intent.

The ANPR recognizes that the CEA authorizes the Commission to prohibit event contracts that involve war, terrorism, assassination, gaming, or activity that is unlawful under federal or state law, where the Commission determines that such contracts are contrary to the public interest.[23] The Commission may also prohibit event contracts that involve similar activity, where the Commission determines that such contracts are contrary to the public interest.[24] The CFTC has invoked this authority to adopt a rule that in fact prohibits event contracts that involve these categories of events. The rule also allows the CFTC to prohibit event contracts involving similar activities that the Commission determines to be contrary to the public interest. This public interest provision further distinguishes event contracts that are properly regulated as swaps from event contracts that are not legitimate hedging instruments but rather gambling.

According to the ANPR itself, the "public interests underlying the CEA are described in CEA section 3(a), which states that '[t]he transactions subject to the [CEA] . . . are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.'"[25] Event contracts on sporting events are not affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair, and financially secure markets. Neither are event contracts on pop culture. Nor are event contracts on other events that lack a financial, economic, or commercial consequence for the people wagering via the contracts. That is why event contracts on these events or contingencies are contrary to the public interest.

The CFTC should invoke its authority under the CEA to prohibit these event contracts. CFTC Rule 40.11 already prohibits event contracts that involve, relate to, or reference terrorism, assassination, war, gaming, or an activity that is unlawful under any state or federal law, as well as event contracts that involve, relate to, or reference similar activity and that the Commission determines to be contrary to the public interest.[26] To the extent CFTC Rule 40.11 already prohibits event contracts that are contrary to the public interest, the CFTC needs to do a better job of enforcing the prohibitions in this rule. To the extent CFTC Rule 40.11 is insufficient for prohibiting event contracts that are contrary to the public interest, the CFTC needs to clarify that

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23 91 Fed. Reg. at 12,518.

24 *Id.*

25 *Id.* at 12,520 (quoting 7 U.S.C. 5(a)).

26 https://www.govinfo.gov/content/pkg/CFR-2012-title17-vol1/xml/CFR-2012-title17-vol1-sec40-11.xml.

event contracts on events such as elections, sporting events, and pop culture are nothing more than gambling and are outside the CFTC's jurisdiction to regulate event contracts as swaps.

1. The CFTC must prohibit, and enforce a prohibition on, event contracts on geopolitical events.

The ANPR asks whether the meaning of terrorism and assassination are self-evident, whether there are ambiguities the Commission should consider, and what public interest factors the Commission should consider for event contracts involving terrorism or assassination.[27] The meaning of terrorism and assassination are self-evident, and the rule's prohibition on event contracts that *involve* terrorism or assassination means the CFTC should prevent prediction markets from offering event contracts that touch on terrorism or assassination in any way. For example, offering an event contract on whether an 86-year-old theocratic leader will be "out as Supreme Leader" by a certain date is an event contract on assassination by proxy, because it is implausible that such a leader would leave of his own volition; indeed, people taking the bet thought it was a death contract.[28] There is no legitimate reason to offer the ability to bet on death, terrorism, or assassination through event contracts. Event contracts under the CFTC's purview as swaps are supposed to be legitimate financial instruments. Event contracts that involve terrorism or assassination simply allow people to attempt to profit from life-or-death events.

Similarly, the ANPR asks whether the prohibition on event contracts that involve war encompasses all military actions or whether there are military actions that do not constitute war.[29] The fact that the prohibition extends to event contracts that *involve* war suggests the intention is to prohibit event contracts that involve all military actions, regardless of if they meet the formal or legal definition of a war. Again, there is no legitimate reason to allow people to bet on military actions in any form. The morality of allowing such betting is questionable at best, and the consequences of encouraging potential conflict and violence would be irreversible and dire. The purpose of CFTC-regulated event contracts is to offer a legitimate financial instrument. A bet on whether there will be a war or other military campaign is not such an instrument.

Rule 40.11 already prohibits listing such contracts on the derivatives markets. But, to the extent that the CFTC believes Rule 40.11 is insufficient to prohibit event contracts on geopolitical events such as war, terrorism, or assassination, it should clarify or amend the rule. That would be consistent with congressional intent, as reflected in a colloquy between Senator Diane Feinstein and Senator Blanche Lincoln when debating the provision that gave the CFTC jurisdiction to regulate event contracts and prohibit event contracts against the public interest. Senator Feinstein asked Senator Lincoln, as the author of the provision, whether the intent was to empower the CFTC to prohibit event contracts that could "threaten the public good by allowing some to profit from events that threaten our national security."[30] Senator Lincoln said that

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27 91 Fed. Reg. at 12,521.

28 Drew Harwell, *Bettors wagered $54 million on Khamenei's death. Now they're not getting paid*, Washington Post (Mar. 4, 2026), https://www.washingtonpost.com/technology/2026/03/04/kalshi-khamenei-bet-controversy/.

29 *Id.*

30 https://www.congress.gov/111/crec/2010/07/15/CREC-2010-07-15-senate.pdf, at S5907.

allowing event contracts on events such as war, terrorism or assassination would "involve betting on the likelihood of events that threaten our national security," which "would be contrary to the public interest."[31] So the CFTC should prohibit event contracts on all types of events that involve national security concerns, regardless of whether they themselves constitute war, terrorism, or assassination, because allowing such event contracts would be contrary to the public interest.

2. The CFTC must prohibit event contracts on sports, pop culture, and elections.

The ANPR asks what factors the Commission should consider in determining the scope and public interest implications of the prohibition against event contracts that involve gaming, whether gaming is synonymous with the scope of activities covered by state and federal gambling statutes, and whether the Commission should distinguish between sports competitions, award competitions, and other competitions.[32] The Commission should interpret gaming broadly. Again, this is consistent with the colloquy between Senator Feinstein and Senator Lincoln.

Senator Feinstein asked Senator Lincoln whether, in authorizing the CFTC to prohibit event contracts that involve gaming, the intent was to prohibit event contracts that "would be used predominantly by speculators or participants not having a commercial or hedging interest" and that would instead be used as "a gaming contract."[33] Senator Lincoln said:

> That is our intent. The Commission needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed 'event contracts.' 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.[34]

This discussion shows that Congress wanted to, and wanted the CFTC to, distinguish event contracts with a real commercial and hedging purpose from gambling. It also shows that Congress considered gaming and gambling to be synonymous. And it shows further that Congress considered event contracts on sporting events to be the type of gaming contracts that should be prohibited as contrary to the public interest and regulated as gambling.

This understanding of the difference between event contracts with a real commercial and hedging purpose and event contracts that are nothing more than gambling comports with the views of the public. One recent survey found that 81% of the public views event contracts on sporting events as gambling and not a financial instrument.[35] Another recent survey put the

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31 *Id.*

32 91 Fed. Reg. at 12,521.

33 https://www.congress.gov/111/crec/2010/07/15/CREC-2010-07-15-senate.pdf, at S5906.

34 *Id.* at S5906-S5907.

35 *Most Americans Say Prediction Markets Sports Betting Could Increase Harm*, Gambling Is Not Investing, https://www.gamblingisnotinvesting.com/morning-consult-poll-reveals-americans-concerns-with-prediction-markets/.

number at 85%.[36] Regardless, it is clear that the public overwhelmingly views event contracts on sporting events as gambling that should be subject to the same rules that govern traditional sportsbooks. The CFTC must recognize that it has no role to play in regulating sports betting.

The public's views also comport with how prediction market platforms advertise themselves. Prediction market platforms have themselves called event contracts on sporting events gambling, and they have said they offer the ability to bet on sports nationwide, even in states that have not legalized sports betting.[37] They have gone so far as to say that event contracts on sporting events allows them to reach people "where sports betting is still illegal."[38] Although prediction markets have now changed their advertising in an effort to avoid the regulations that govern traditional sportsbooks,[39] the CFTC should see through these transparent attempts to avoid gambling regulations. The language prediction markets now use defies reality. Prediction markets now say they offer the ability, not to bet on anything, but to "trade on anything." This is ridiculous. Nobody "trades" on sporting events. People bet on sporting events.[40] That is what prediction market platforms offer through event contracts on sporting events, and the CFTC must treat event contracts on sporting events as the gambling devices that they are.

The need to distinguish event contracts with a real commercial and hedging purpose from gambling also shows that the Commission should not distinguish between sports competitions and award competitions. Event contracts on who will win an Oscar, who will win American Idol, and who will win Survivor are no less gambling contracts than event contracts on sporting events. These event contracts serve no commercial or hedging purpose but rather are used solely for gambling; as a result, the Commission should prohibit them as contrary to the public interest.

Even proponents of using event contracts on the outcome of bona fide financial events to hedge risk have concerns about event contracts on sporting events masquerading as legitimate financial instruments subject to the CFTC's jurisdiction. Craig Donohue, the CEO of Cboe Global Markets, which has announced plans to launch a prediction market product tied to financial data, recently said Cboe is about "hedging actual risks" and "is in the business of risk management, investing and portfolio optimization—not whether the Chicago Cubs will beat the Tampa Bay Rays or who takes home Best Actor at the Oscars."[41] Thus:

> Pop culture and sports could be interesting to people, but not in the financial market sense. We're in the business of helping people either manage risks or manage investing or optimizing portfolio performance. I don't see pop culture and sports outcomes as related to anything we do, and in fact, I have concerns

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36 *Sports Event Contracts: Public Opinion Landscape*, American Gaming Association (Sept. 10, 2025), https://www.americangaming.org/resources/sports-events-contracts-public-opinion-landscape/.

37 Benjamin Schiffrin, *Betting on the Masters is Gambling, Not Trading a Financial Derivative*, Better Markets (Apr. 15, 2026), https://bettermarkets.org/analysis/betting-on-the-masters-is-gambling-not-trading-a-financial-derivative/.

38 https://x.com/MarshallCohen/status/2044065733844578373?s=20.

39 Schiffrin, *supra* note 37.

40 *Id.*

41 Harty, *supra* note 21.

> about our industry getting involved in those things. . . . So I have a lot of heartburn around trying to regulate sports betting and pop culture events as something called a swap on a CFTC-designed contract market. Because I don't think that was ever what Congress intended for a federal agency to do.[42]

So, Donohue concluded, the "interest in prediction markets that revolve around sports and pop culture risks upending decades of work to delineate the difference between investing and gambling."[43]

The need to distinguish between investing, which is regulated by federal financial regulators such as the CFTC and the Securities and Exchange Commission, and gambling, which has long been regulated by the states, also means the Commission should prohibit event contracts on elections. Event contracts on elections are also gambling.[44] They are not used as a financial hedging tool.[45] Rather, they allow people to bet on who they think will win. That is gambling. Indeed, the states have long prohibited betting on elections as against the public interest.[46]

The ability to bet on elections is especially pernicious because it threatens our democracy.[47] The potential for financial gain involved in betting on elections could incentivize unethical behavior, such as the spread of disinformation and election interference. AI, deepfakes, and other nefarious activities to attack candidates can easily impact betting activity and odds, as well as the outcome of elections. Users could profit from spreading misinformation and betting on the electoral outcome they themselves manipulated. Users could also place bets to give the false impression that a candidate has increasing (or decreasing) support, which could move the odds significantly, especially in a race without much betting activity. The use of event contracts on elections to gamble, and the potential for event contracts on elections to undermine our democracy, means the CFTC should prohibit such contracts as contrary to the public interest.[48]

Although the CFTC's existing rule prohibiting event contracts that involve gaming should be sufficient to prohibit event contracts on sporting events, pop culture, and elections, in

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42 *Id.*

43 *Id.*

44 Benjamin Schiffrin, *Sports Betting Scandals Show the Perils of Prediction Markets*, Better Markets (Nov. 20, 2025), https://bettermarkets.org/analysis/sports-betting-scandals-show-the-perils-of-prediction-markets/.

45 Cantrell Dumas, *Gambling on Elections & Event Contracts*, Better Markets (Sept. 10, 2024), https://bettermarkets.org/wp-content/uploads/2024/09/Better_Markets_Events_Contracts_Fact_Sheet-9.10.24.pdf.

46 *See* Brief Amicus Curiae, By Consent, of Better Markets, Inc., in Support of Appellant and Reversal, *KalshiEX LLC v. CFTC*, No. 24-5205 (D.C. Cir.), at 14-16, https://bettermarkets.org/wp-content/uploads/2024/10/Kalshiex-LLC-v.-CFTC-Better-Markets-amicus-brief-as-filed-on-10-23-24.pdf.

47 Benjamin Schiffrin, *Predictably, "Prediction Markets" are Just Casinos*, Better Markets (Jan. 26, 2026), https://bettermarkets.org/analysis/predictably-prediction-markets-are-just-casinos/.

48 *See, e.g.*, Bobby Allyn, *Election betting on prediction markets apps is set to boom ahead of midterms*, NPR (Dec. 23, 2025), https://www.npr.org/2025/12/23/nx-s1-5647749/rise-of-prediction-markets (warning that prediction markets "can be hijacked by foreign actors bent on lifting or sinking a particular candidate").

2024 the CFTC proposed a rule that would have made these prohibitions crystal clear.[49] The CFTC proposed to set forth a non-exclusive list of examples of activities that constitute "gaming."[50] These examples would have included event contracts on the outcome of elections, sporting events, and award contests.[51] The CFTC also proposed to define gaming as the staking or risking of something of value upon (i) the outcome of a contest; (ii) the outcome of a game involving skill or chance; and (iii) the performance of one or more competitors in one or more contests or games.[52] The purpose of this rulemaking was to clarify event contracts that are contrary to the public interest.[53] The CFTC withdrew this proposed rulemaking earlier this year with scant explanation;[54] it should act consistently with the public interest and re-propose it now.

III. The CFTC Must Prohibit the Use of Inside Information to Profit on Prediction Markets

Although the CFTC must prohibit event contracts that are contrary to the public interest, it is equally important for it to prohibit the use of inside information to profit on all event contracts. The ANPR asks if there is "some public interest utility if people with an asymmetric information advantage on a particular event contract are able to trade on prediction markets."[55] The answer is no.

The use of inside information to profit on prediction market platforms is fundamentally unfair. The CFTC must recognize that for every person using an event contract to bet that an event will happen, there is another person on the other side of the bet betting that the event will not happen. For example, if someone is betting that a candidate will drop out of a race by a certain date, then someone else is betting that the candidate will not drop out of the race by that date. Each bettor thinks they have a fair shot at winning the bet. But if the bettor betting that the candidate will drop out of the race knows the candidate is going to drop out of the race, they can profit at the expense of the bettor who is betting that the candidate will not drop out of the race. The CFTC must prevent insiders from using inside information to profit on prediction markets.

The CFTC's existing rules may be sufficient to regulate some insider betting on prediction markets, but they are likely insufficient to regulate all insider betting. Director of Enforcement David Miller recently gave a speech in which he noted that the CFTC's rules only allow it to prosecute the use of misappropriated inside information.[56] The CFTC's rules allow

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49 *See CFTC Issues Proposal on Event Contracts*, Release No. 8907-24 (May 10, 2024), https://www.cftc.gov/PressRoom/PressReleases/8907-24.

50 *Event Contracts*, 89 Fed. Reg. 48,968, 48,975 (June 10, 2024).

51 *Id.*

52 *Id.* at 48,974.

53 *Id.* at 48,968.

54 https://www.cftc.gov/PressRoom/PressReleases/9179-26.

55 91 Fed. Reg. 12,522.

56 Director of Enforcement David I. Miller, Remarks at NYU Law School – CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC (Mar. 31, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/opamiller1.

individuals to use their own material nonpublic information.[57] That means the CFTC's rules would not necessarily extend to a candidate who used the fact that they knew they were going to drop out of a race to profit on an event contract on their race. It means the CFTC's rules would not necessarily extend to an athlete who used the fact that they knew they were not going to play in a game to profit from an event contract on their game. It means the CFTC's rules would not necessarily extend to a contestant who used the fact that they knew whether they won or lost Survivor to profit on an event contract on Survivor.[58] There may be other rules to prevent these individuals from placing these bets, but the CFTC's rules governing the use of inside information would not apply, and rules preventing people from betting on events in which they are involved would not address situations where individuals tip others about their own inside information so that others may use it to profit. The CFTC needs to adopt rules that ban the use of inside information to profit from prediction markets at the expense of those without the information.

The CFTC itself seems to recognize the need for more explicit prohibitions. It recently highlighted two examples of insiders using information to profit on prediction markets.[59] But it said only that the insiders "potentially" violated its rule against profiting from misappropriated inside information.[60] And it did not charge them with any violations.[61] The CFTC needs rules that do more than "potentially" make insider betting on prediction markets illegal.

The ability to use inside information to profit on prediction markets also begs the question of why the CFTC would allow event contracts that do not serve a legitimate hedging function. What societal benefit do these event contracts offer that justify the risk of someone using inside information to profit on prediction markets? In the case of the stock market, there is always a risk of insider trading, but the stock market allows people to invest in companies so they can save for a house, pay for college, or enjoy their retirement. In the case of the derivatives market, there is also always a risk of insider trading, but the derivatives market allows people to hedge their legitimate financial risks. In the case of event contracts on elections, sports, games, pop culture, and geopolitical events, there is no similar social utility that justifies the risk that individuals with inside information will be able to use that information to profit.

Not only is there no societal benefit to these event contracts, but there are huge societal costs. This is especially so with the ability to use inside information to profit on event contracts on geopolitical events. If adversaries see a spike in the odds of a military event in their country, they may infer that the spike is a result of betting by insiders. They may take preemptive measures as a result. This could endanger military personnel involved in the event. There is no

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57 *Id*.

58 Ben Blatt, *People Are Making Money Betting on Pretaped 'Survivor' Episodes*, N.Y. Times (Mar. 18, 2026), https://www.nytimes.com/2026/03/18/upshot/survivor-prediction-markets-betting-insiders.html.

59 https://www.cftc.gov/PressRoom/PressReleases/9185-26.

60 *Id.*

61 *Id*: *see also* https://news.kalshi.com/p/kalshi-political-insider-trading-enforcement-update (noting that three cases involving candidates betting on their own elections were not referred to the CFTC for enforcement).

societal benefit that outweighs this cost that justifies event contracts on these geopolitical events, given the incentive for insiders to use their inside information to profit on these event contracts.[62]

Conclusion

The CFTC has an incredibly important mission: regulating the $500 trillion commodities and derivatives markets.[63] Well-regulated commodities and derivatives markets ensure that prices reflect supply and demand and that Americans can rely on fair and stable prices for their essential goods, from gas to groceries.[64] The CFTC is already underfunded and understaffed,[65] but at least it has the knowledge and experience to regulate these markets. That is why it is the Commodity Futures Trading Commission. It is not the Nationwide Betting Commission. The CFTC is not a gambling regulator, and it must adopt a rule that limits event contracts on CFTC-registered entities to legitimate financial instruments that may be used as a hedge and not for gambling. Such a rule will ensure the CFTC fulfills its core mission.

We hope these comments are helpful as the Commission considers this matter.

Sincerely,

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62 *See, e.g.*, Samuel Henry Lazarus, *The Ultimate Price of Prediction Markets*, Council on Foreign Relations (Apr. 26, 2026), https://www.cfr.org/articles/the-ultimate-price-of-prediction-markets.

63 Lydia Beyoud et al., *Staff Cuts and Turmoil Hit the CFTC While the Crypto It Oversees Booms*, Bloomberg (Aug. 21, 2025), https://www.bloomberg.com/news/features/2025-08-21/as-crypto-duties-loom-cftc-is-hit-by-staff-cuts-and-turmoil?sref=mQvUqJZj.

64 *Frequently Asked Questions: Kalshi's Attempt to get the CFTC to Unleash Gambling on U.S. Elections via Prediction Markets*, Better Markets (Mar. 21, 2024), https://bettermarkets.org/wp-content/uploads/2024/03/FactSheet_Kalshi-FAQ-3.21.24.pdf.

65 *Id.*