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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 Choctaw Nation of Oklahoma (the "Nation" or the "Tribe") respectfully provides 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 federally recognized as an Indian tribe within the meaning of the Indian Gaming Regulatory Act ("IGRA").[1] The Tribe possesses and exercises sovereignty over its lands and citizens and retains jurisdiction to conduct and regulate gaming activities on its Indian lands. The CFTC must uphold its regulatory responsibilities under the Commodity Exchange Act (the "CEA"), 7 U.S.C. §§ 1–27(f), and prevent prediction markets from engaging in unlawful gaming, including so-called "sports-related event contracts," within the Tribe's jurisdiction. Such gaming activity infringes upon the Tribe's sovereignty and violates other federal laws, including IGRA. By soliciting public comment on the regulation of these sports-related event contracts, the CFTC implicitly assumes that such contracts are legal. That assumption is incorrect.

In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the United States Supreme Court held that Indian tribes hold a sovereign right to regulate gaming on their Indian lands. In 1988, Congress enacted IGRA in order "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."[2] Through IGRA, Congress established the National Indian Gaming Commission ("NIGC") as an independent federal regulatory authority "to protect such gaming as a means of generating tribal revenue."[3]

[1] *See* 25 U.S.C. § 2703(5).
[2] 25 U.S.C. § 2702(1).
[3] 25 U.S.C. § 2702(3).

Under IGRA § 2710(d)(3)(A), Indian tribes engage in negotiations with states to authorize and regulate "Class III" gaming, which includes various casino games, such as slot machines, banked card games, and most relevant here—sports betting.[4] IGRA's compacting provisions strike a "delicate balance between the sovereignty of states and federally recognized Native American tribes."[5] Under IGRA, Indian tribes have negotiated with state governments and entered into Class III gaming compacts that that provide for revenue sharing in exchange for Class III gaming exclusivity, including sports betting.

Indian gaming has played a transformative role for Indian tribes, lifting tribal communities from poverty and supporting essential services, including education, healthcare, public safety, infrastructure, and cultural preservation. Indian gaming represents 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."[6] Indian gaming is "not only 'a source of substantial revenue' for tribes, but the lifeblood on 'which many tribes have come to rely.'"[7]

Indian gaming has been a central driver of economic growth and self-determination for the Choctaw Nation of Oklahoma, generating substantial revenue that supports both tribal government operations and member services. Gaming enterprises—most prominently the Choctaw Casinos & Resorts—anchor a broader economic portfolio that in 2023 produced more than $4.1 billion in statewide economic impact and supported nearly 27,000 jobs in Oklahoma, many of them held by tribal citizens. Revenues from gaming provide a stable funding base that allows the Nation to reinvest in infrastructure, diversify into non-gaming businesses, and maintain sovereignty over essential governmental functions.

For Choctaw citizens, the benefits of Indian gaming are most visible in expanded access to education, healthcare, housing, and social services. Gaming revenues help fund scholarships, career training, Head Start and childcare programs, and higher education assistance for thousands of tribal members each year. The Nation also directs gaming-derived income toward healthcare delivery—operating hospitals, clinics, and prescription programs—and toward housing initiatives that include home construction, rental assistance, and storm shelters across the reservation. Together, these investments demonstrate how Indian gaming has enabled the Choctaw Nation not only to grow economically, but also to improve quality of life and long-term opportunity for its citizens.

These benefits do not serve members alone. Of the eight health clinics operated by the Choctaw Nation, three of which are community clinics that also serve non-tribal citizens. Through efforts like the Choctaw Community Partnership Fund and Choctaw Development Fund, the Choctaw Nation has provided $3,632,608 in contributions and community grants to cities, towns and counties to support economic development, infrastructure and sustainability, including $5.2 million invested in Oklahoma highways and roads.

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[4] *See* 25 C.F.R. § 502.4(c).
[5] *Chicken Ranch Rancheria of Me-Muk Indians v. California*, 42 F.4th 1024, 1031 (9th Cir. 2022).
[6] *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring).
[7] *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.[8] 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."[9]

In fact, the CEA's legislative history makes clear that Congress never intended to legalize gaming under the CEA or to convert the CFTC into a gaming regulator. Rather, 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."[10] Sen. Feinstein emphasized that 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."[11] 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."[12] 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."[13] Sen. Lincoln answered in the affirmative:

> 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 noted that, "[i]t is highly unlikely that Congress would have overridden state gambling laws without at least some

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[8] *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)).
[9] *Hendrick*, 2025 WL 3286282, at *8.
[10] 156 Cong. Rec. S5906 (daily ed. Jul. 15, 2010).
[11] *Id.*
[12] *Id.*
[13] *Id.*

indication in the text and legislative history that it intended to do so," and further concluded that "the weight of the evidence strongly confirms that Congress did not intend for Dodd-Frank to serve as legislation not only legalizing sports betting nationwide, but displacing states' authority to regulate it."[14]

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." Notably, two federal district courts have recently and expressly confirmed that Regulation 40.11(a) prohibits the listing of contracts involving gaming.[15] In *Hendrick*, the court observed 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."[16] 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.

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[14] *KalshiEX LLC v. Martin*, 793 F. Supp.3d 667, 684 (D. Md., Aug. 1, 2025).
[15] *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").
[16] *Hendrick*, 2025 WL 3286282, at *8.

Despite these legal precedents, prediction markets continue to operate online sports betting nationwide, including on the Tribe's sovereign Indian lands. These prediction markets are rapidly expanding and generating billions of dollars from unlawful gambling operations, while targeting underage consumers and failing to implement responsible 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 in the same manner as state gaming regulators and licensed entities are."[17]

Prediction markets present an existential threat to Indian gaming, thereby endangering the well-being of Indian tribes and their citizens throughout the United States by: encroaching upon tribal sovereignty and unlawfully operating on tribal lands; eroding our Tribe's bargained-for exclusivity over Class III gaming (including sports betting) under our gaming compact; and diverting revenue from tribal gaming operations that support essential programs for tribal citizens. The CFTC should not engage in rulemaking that would implicitly confer legitimacy on this unlawful activity. Instead, the CFTC must carry out its statutory responsibilities and vigorously enforce its existing regulations against event contracts involving gaming. At a minimum, the CFTC should promptly issue guidance reaffirming that sports-related event contracts are categorically prohibited as contrary to the public interest, and should undertake swift and decisive enforcement action against prediction markets that continue to 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 subsequently promulgated rules covering twenty-three DCM Core Principles.[18] Further amendments to CFTC regulations concerning the application of the DCM Core Principles are unnecessary. The CFTC does not need additional rulemaking to address event contracts because existing law already prohibits such contracts.. Section 5c(c)(5)(C) CEA expressly bars the

[17] *Id.* at *13.
[18] 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.

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.[19] These provisions clearly prohibit sports-related event contracts, because "at bottom, they are sports wagers," and "everyone who sees them knows it."[20]

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.[21] 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 are not introducing new or innovative products; they are offering wagers on contingent events that existing statutes and regulations already prohibit.

Prediction markets that list or otherwise facilitate trading in contracts that "involve" gaming are acting in violation of Regulation 40.11. The CFTC possesses both the authority and the duty to investigate such conduct and to initiate enforcement actions where appropriate.[22] A failure to act would not only erode the integrity of the regulatory regime, but also create a risk of arbitrary and capricious agency action if the CFTC were viewed as departing from its own precedent without a reasoned explanation.[23]

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.[24] 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*

[19] 17 C.F.R. § 40.11(a)(1).
[20] *Hendrick*, 2025 WL 3286282, at *8.
[21] *In re KalshiEX LLC Congressional Control Contracts*, CFTC Order No. 8780-23 at 5–7 (Sep. 22, 2023).
[22] 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.").
[23] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).
[24] *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.[25] As explained in the preamble to the final rule implementing Core Principle 2, the CFTC clarified that whether a DCM provides impartial access is based on *fees*, not geography.[26] The final rule further explains that "the impartial access requirements of § 38.151(b) prevent DCMs from using discriminatory access fee requirements as a competitive tool against certain participants."[27]

The use of 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.[28] Moreover, even if Core Principle 2 were interpreted to encompass geographic access, the CEA's Special Rule prohibiting contracts involving "an activity that is unlawful under any State or Federal law" would supersede any such concern..[29]

Further, the CFTC has not taken any adverse actions against DCMs complying with court orders to cease operations in state jurisdictions, whether on a temporary basis (as in Nevada)[30] or on a permanent basis (as in Massachusetts).[31] Rather, "it appears the CFTC would not act against [DCMs] in these circumstances."[32] Accordingly, 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.[33]

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[25] 17 C.F.R. § 38.151(b)(1)–(2).
[26] *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.").
[27] *Core Principles and Other Requirements for Designated Contract Markets*; Final Rule, 77 Fed. Reg. 366612, 36673 (Jun. 19, 2012).
[28] *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).
[29] 17 C.F.R. 40.11(a)(1).
[30] *See Nevada v. KalshiEX, LLC*, No. 260000050-1B (1st Jud. Dist. Ct. Nev. Mar. 20, 2026).
[31] *See Massachusetts v. KalshiEX LLC*, No. 2584CV02525 (Mass. Sup. Ct. Jan. 20, 2026).
[32] *Hendrick*, 2025 WL 3286282, at *12.
[33] 7 U.S.C. § 7a-2(c)(5)(C)(i)(I); 17 C.F.R. § 40.11(a)(1).

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?

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."[34] 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 reliance on 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."[35]

Sports-related event contracts pose 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 especially susceptible to manipulation, because the outcome can be influenced by a small number of actors, often at minimal cost and with a reduced likelihood of detection. This vulnerability is inherent in, and 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."[36] Recent enforcement matters underscore this risk. 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."[37] 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 markets.[38] These examples demonstrate that sports events are uniquely susceptible to manipulation and highlight the importance of strict

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[34] 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.
[35] *Event Contracts*, 89 Fed. Reg. 48968, 48992 (Jun. 10, 2024) (citation modified).
[36] 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].
[37] 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.
[38] 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.

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."[39]

> *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?*

Gaming-Related Event Contracts Expose Vulnerable Retail Participants to Significant Risks of Addiction, Financial Harm, and Exploitation.

The characteristics of market participants strongly counsel against permitting gaming-related event contracts. These products are expressly designed for retail users and promoted as entertainment, emphasizing ease of participation and the potential for rapid gains. Participation is motivated not by hedging or commercial need, but by speculative and recreational interests 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).

Unlike regulated gaming jurisdictions, these markets lack meaningful safeguards, enabling individuals who would otherwise be excluded from lawful sports betting due to age-based, licensing, or other consumer-protection restrictions to gain access to gambling

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

products through prediction markets. As the U.S. District Court for the District of Nevada has 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."[40]

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.[41] 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.[42]

The Special Rule in the CEA was intended to "assure that the [CFTC] has the power to […] prevent gambling through futures markets."[43] 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.[44] 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 sole legally relevant question is whether the contract "involves" gaming. If it does, the CFTC has no authority to permit its listing. Sports-related event contracts unquestionably involve gaming because they are wagers on 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.[45] State laws mirror this definition,

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[40] *Hendrick*, 2025 WL 3286282, at *13.
[41] 7 U.S.C. § 7a-2(c)(5)(C)(i).
[42] *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)).
[43] *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).
[44] 7 U.S.C. § 7a–2(c)(5)(C).
[45] *See* 31 U.S.C. § 5362(1)(A).

encompassing wagers on any component of a sporting event, including proposition and in-play betting.[46] 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 therefore prohibited.

Any alternative interpretation would effectively nullify the statutory prohibition. Courts do not construe statutes to produce such results.[47] Moreover, even if the statute did not establish a categorical bar—which it plainly does—sports-related event contracts are nevertheless clearly contrary to the public interest for multiple independent reasons.

First, they lack any bona fide economic purpose. The CEA is intended to regulate markets that facilitate hedging, risk transfer, and price discovery in connection with commercial activity. Sports-related event contracts perform none of these functions. They are not connected to any underlying economic exposure and do not function to mitigate risk; rather, they exist solely to facilitate speculative wagering. Financial instruments lacking economic utility fall outside the core purposes of the CEA and weigh strongly against the public interest.

Second, they present acute and unmanageable risks of manipulation. Unlike traditional derivatives markets, where manipulation risks generally stem from trading behavior, these contracts are susceptible to manipulation at the level of the underlying event itself. Outcomes may be influenced by a limited number of actors—players, referees, or insiders—creating risks of match-fixing, point-shaving, and insider exploitation. Such risks are intrinsic, not incidental, and extend beyond 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.[48] Authorizing nationwide sports wagering through derivatives markets would directly conflict with these regulatory regimes in the absence of congressional authorization.

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

Fifth, they pose substantial and foreseeable harms to consumers. These products are expressly designed for retail participation and promote gambling behavior indistinguishable from sports betting. They expose participants to heightened risks of addiction and financial loss and enable access by 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."[49]

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[46] *See, e.g.*, N.J.S.A. § 5:12A-10.
[47] *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (statutes must be interpreted to give effect to every "clause and word").
[48] *See* 7 U.S.C. § 7a–2(c)(5)(C).
[49] *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.[50] 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 constitutes a core limitation embedded in the CEA and has long been 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. Taken together, these decisions establish a clear rule: 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 draws a deliberate distinction between contracts that facilitate hedging, risk transfer, or price discovery, and those that exist solely to permit 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.[51] The CFTC has applied the same reasoning in practice. In *In re*

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

Derivabit, LLC, the CFTC concluded that event contracts lacking commercial or hedging utility are contrary to the public interest and should not be listed.[52] The CFTC cannot now depart from this settled framework without providing a reasoned explanation consistent with the Administrative Procedure Act.[53]

Sports-related event contracts fail the economic purpose test. They do not hedge risk because participants lack any 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). When properly applied, that test leads to the conclusion that event contracts tied to sports outcomes and similar contingencies serve no legitimate economic purpose 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 from any bona fide economic activity. The CFTC's public interest analysis under Section 5c(c)(5)(C) reflects this fundamental limitation. Where a contract lacks any connection to price risk, hedging, or economically meaningful price discovery, it strongly supports the conclusion that the contract "involves" gaming and is therefore 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.[54] By contrast, event contracts involving sports or similar contingencies are based on binary, non-price outcomes, such as whether a team wins a

[52] *See* CFTC No-Action Letter No. 15-29 (Nov. 20, 2015), available at https://www.cftc.gov/csl/15-29/download.
[53] *Motor Vehicle Mfrs.*, 463 U.S. at 42.
[54] *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).

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.[55]

Second, these contracts do not facilitate the CEA's core purposes of "discovering prices" and "disseminating pricing information" connected to underlying economic activity.[56] In legitimate derivatives markets, prices reflect supply and demand for underlying commodities or financial instruments and contribute to market efficiency and transparency.[57] By 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 perform the statutory function of informing markets or allocating resources.

Third, event contracts involving gaming lack any legitimate hedging purpose.. Hedging requires a demonstrable link between the contract and a preexisting commercial risk exposure. That connection is absent 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 demonstrate that gaming-related event contracts fall outside the core purposes of the CEA and instead function as instruments of wagering. Contracts that do not manage price risk, do not contribute to price discovery, and do not facilitate hedging are incompatible 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.[58] 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."[59] Event contracts tied to sports outcomes cannot reasonably be characterized as insurance. Insurance functions to transfer or mitigate an existing, identifiable financial risk through risk pooling and indemnification. By contrast, sports-related event contracts do not insure against loss, do not indemnify against adverse outcomes, and do not reflect any insurable interest. Participants are not seeking risk protection; they are engaging in wagers on the occurrence of uncertain events. The CFTC should reject any characterization of gaming-related event contracts as insurance or insurance-like instruments.

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[55] *Event Contracts*, 89 Fed. Reg. 48968, 48992 (Jun. 10, 2024).
[56] *See* 7 U.S.C. § 5(a).
[57] *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).
[58] *See* 156 Cong. Rec. S5906 (daily ed. Jul. 15, 2010) (colloquy between Sens. Feinstein and Lincoln).
[59] *Id.*

Properly understood, they are speculative wagers that neither mitigate financial risk nor serve any legitimate economic function, and are 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 refrain from amending its regulations governing public-interest determinations, because those regulations already unambiguously establish 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.[60] 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."[61]

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."[62] The proposal also relied on 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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[60] CEA § 5c(c)(5)(C)(i); 7 U.S.C. 7a-2(c)(5)(C)(i).
[61] 7 U.S.C. § 7a-2(c)(5)(C)(i).
[62] 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 do not belong on DCMs as listed or traded products.

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.[63] 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 prior approval of contracts that may involve gaming, thereby reducing the regulatory burden on the CFTC.

The CFTC should not pursue substantive amendments to its public interest regulations because the current regulatory 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.[64] This provision was expressly designed to prevent "gambling through futures markets," and it resolves the question presented by prediction markets.

Rather than amending 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 empowers the CFTC to prohibit event contracts that involve specified enumerated activities, including gaming, when such contracts are contrary to the public interest.[65] Specifically, 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 may determine

[63] 17 C.F.R. § 40.2.
[64] 17 C.F.R. § 40.11(a)(1).
[65] *See* 7 U.S.C. § 7a-2(c)(5)(C).

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.[66]

In enumerating the five prohibited activities, Congress plainly expressed its intent to prevent event contracts from being used as vehicles for gaming..[67] 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."[68] Further, these contracts "would not serve any real commercial purpose" and instead "would be used solely for gambling."[69] Accordingly, where a contract involves sports, that characteristic strongly indicates that the contract involves gaming.[70]

The CFTC has already promulgated regulations prohibiting event contracts involving gaming.[71] And it did so in compliance with the "Special Rule" amendment to the CEA in 2010.[72] Congress enacted the Special Rule in order to authorize 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.[73] The CFTC acted consistently with Congress's intent by promulgating its blanket prohibition of event contracts involving gaming.[74] In doing so, 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.'" [75] Accordingly, the CFTC has already acknowledged that the Special Rule reinforces Congress's longstanding policy against sports-related event contracts, a point that prediction markets themselves have conceded. [76] 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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[66] *See also* 7 U.S.C. § 7a-2(c)(5)(C)(i).
[67] *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.").
[68] *Id.*
[69] *Id.*
[70] *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).
[71] *See* 17 C.F.R. § 40.11(a).
[72] 7 U.S.C. § 7a-2(c)(5)(C)(i).
[73] *See* 7 U.S.C. § 7a-2(c)(5)(C)(i)–(ii).
[74] 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).
[75] *Provisions Common to Registered Entities*, 76 Fed. Reg. 44776, 44786 (Jul. 27, 2011) (citation modified).
[76] *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) correspondingly prohibits 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. Accordingly, where an event contract implicates unlawful activity, it is necessarily contrary to the public interest and must be prohibited.

Sports-related event contracts violate the laws of numerous states. States' police powers are a core component of their sovereignty reserved to them under the Tenth Amendment. Their authority to regulate matters affecting public health, safety, welfare, and morals is a central pillar of the federal system. [77] That principle applies with particular force to gambling, which the Supreme Court has long recognized as a paradigmatic subject of state police power.[78]

At least three categories of jurisdictions illustrate 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 all 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

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

[78] *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.")

language" to that effect will suffice.[79] This rule is rooted in "essential principles of federalism," which "require[d] that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of this Nation."[80] Here, Congress has not silently reworked that established balance, and it certainly did not do so in a statute that never mentions sports wagering.[81]

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."[82] 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," and therefore concluded that "the presumption against preemption applies."[83] 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."[84] 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."[85] Thus, "Congress did not intend for Dodd-Frank to constitute legislation not only legalizing sports betting nationwide, but displacing states' authority to regulate it."[86] Similarly, in *KalshiEX, LLC v. Schuler*, the U.S. District Court for the Southern District of Ohio reached the same conclusion, finding that, "History reveals no evidence that Congress attempted to preempt state sports gambling laws."[87]

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.[88] Accordingly, sports-related event contracts offered by prediction markets on Indian lands are unlawful and violate IGRA.[89]

Additionally, sports-related event contracts also 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."[90]

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[79] *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021).
[80] *Alden v. Maine*, 527 U.S. 706, 748 (1999).
[81] *See Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001) (Congress does not "hide elephants in mouseholes.").
[82] *Martin*, 793 F. Supp.3d at 676.
[83] *Id.* at 677.
[84] *Id.* at 682.
[85] *Id.* at 680.
[86] *Id.* at 684.
[87] *Schuler*, 2026 WL 657004, at *8.
[88] *See* 25 U.S.C. § 2710(d)(1), (d)(7)(B)(vii); *see also* 25 C.F.R. § 502.4(c).
[89] *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).
[90] 18 U.S.C. § 1084(a).

The CEA clearly did not imply the repeal of IGRA or the Wire Act. The Supreme Court has emphasized 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."[91] The CEA therefore cannot be construed to repeal any portion of IGRA or the Wire Act absent a showing that " the intention of the legislature to replace is clear and manifest."[92] 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.[93]

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."[94] Courts have recognized this prohibition without qualification.[95]

Sports-related event contracts fall squarely within this prohibition. As courts have repeatedly noted, such contracts "at bottom… are sports wagers," and "[t]hese are sports wagers and everyone who sees them knows it."[96] Rebranding 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 functionally 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 around sporting events such as the Super Bowl or the

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[91] *Martin*, 793 F.Supp.3d at 684 (citing *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018)).
[92] *Shoshone-Bannock Tribes v. U.S. Dep't of Interior*, 153 F.4th 748, 759 (9th Cir. 2025).
[93] *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.
[94] 17 C.F.R. § 40.11(a)(1).
[95] *See Hendrick*, 2025 WL 3286282, at *9 ("the CFTC has prohibited DCMs from listing contracts that involve gaming").
[96] *Id.* at *8.

Kentucky Derby, which would "serve no real commercial purpose" and instead function solely as gambling instruments.[97]

The CFTC has reached the same conclusion. It has emphasized that it "is not a gaming regulator" and lacks both the statutory authority 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 circumvent established legal regimes and consumer protections governing gambling.[98]

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 reached this determination through rulemaking. It should not narrow that prohibition, but instead enforce it vigorously.

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 envision a narrow, formalistic definition limited to traditional casino games. Instead, it focused on the economic reality of wagering—namely, risking something of value on uncertain events for speculative gain.

The proper inquiry is functional, not formal. A contract constitutes gaming when it functions 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 uniformly understood as risking value on the outcome of a contingent event that lies outside the participant's control. Sports-related event contracts meet each of these criteria. They mirror the economic structure of wagers, lack any bona fide economic purpose, and directly undermine established regulatory regimes governing sports betting, including state licensing frameworks and Tribal-State gaming compacts under IGRA. Accordingly, sports-related event contracts

[97] 156 Cong. Rec. S5906–07 (daily ed. Jul. 15, 2010).
[98] *Event Contracts*, 89 Fed. Reg. 48968, 48982–83 (Jun. 10, 2024).

represent the paradigmatic case of gaming under Section 5c(c)(5)(C) and fall squarely within the prohibition.

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 differ in form, whether tied to sports, elections, or other contingencies, they share a single economic function: wagering on uncertain outcomes for speculative gain. That economic function—not the contractual label—controls the analysis. The CFTC should apply a substance-over-form approach that examines whether a contract operates as a wager, whether participants exercise any control over the outcome, whether the contract serves a bona fide commercial or hedging purpose, and whether the activity has traditionally been regulated as gambling. When these factors are present, the contract "involves" gaming and is therefore contrary to the public interest. Sports-related event contracts present the clearest and most acute case. They are widely recognized as gambling, carry well-established risks of manipulation and insider influence, and are already governed by comprehensive regulatory systems designed to safeguard market integrity and consumers. Permitting economically indistinguishable products to trade on derivatives exchanges would create direct conflicts with those regimes and significantly 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.[99]

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. As the CFTC itself has recognized, the fundamental structure of these contracts, combined with the opacity of the underlying markets, renders them uniquely vulnerable to manipulation and abuse.

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

First, sports-related event contracts are particularly susceptible to insider trading and the deliberate spread 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."[100] 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."[101]

Second, the integrity of these contracts is easily compromised by third-party coercion and match-fixing. Simply prohibiting insiders from trading on an exchange is an inadequate safeguard, because such participants remain attractive 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."[102]

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."[103] Instead, the data driving these markets is inherently 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"[104] This lack of transparent and verifiable data materially impairs regulatory oversight, as "[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."[105]

Accordingly, because gaming contracts lack transparent underlying cash markets and depend on unregulated informational inputs that are inherently vulnerable to insider influence and third-party coercion, they are particularly susceptible to manipulation that the CFTC is not institutionally equipped to effectively prevent or mitigate.

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

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 demonstrated necessity for responsible gaming safeguards—such as self-exclusion programs, rigorous 21-and-over age-verification requirements, and restrictions on advertising—confirms that sports-related event contracts are inherently gambling products. State and tribal regulators have carefully and deliberately developed these consumer-protection regimes over decades to address the well-established risks of addiction, financial harm, and exploitation. The CFTC is institutionally ill-equipped and lacks statutory authority to function as a gaming regulator. The CFTC neither licenses gaming operators, nor administers responsible-gaming programs, nor oversees the marketing of gambling products. Attempting to impose such requirements within the derivatives regulatory framework would result in an ineffective system and would exceed 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."[106]

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 regulatory framework already impose a clear and binding prohibition: contracts that "involve" gaming are contrary to the public interest and are prohibited from being listed. [107] The present issue does not stem from regulatory uncertainty, but from efforts by market participants to recast 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 allow or broaden gaming-related event contracts would impose significant and far-reaching costs. Such amendments would introduce products that are inherently vulnerable to manipulation, including through conduct outside the CFTC's regulatory reach (such as match-fixing or insider influence); would expose retail participants to well-documented risks of financial harm and addiction; and would create direct conflict with established federal, state, and tribal gaming regimes, including the compacting framework under IGRA.

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[106] *Id.* at *13.
[107] *See* 7 U.S.C. § 7a–2(c)(5)(C); 17 C.F.R. § 40.11(a)(1).

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 limited informational value can be achieved through non-wagering alternatives without importing the well-recognized 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.

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. Rather, the statute's structure and purpose contemplate proactive enforcement, including categorical determinations where warranted, to prevent prohibited contracts from entering the marketplace at all.

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."[108] 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. Accordingly, any procedural changes should enhance front-end oversight, not create new avenues 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 are made before trading commences, help prevent consumer harm, and preserve agency resources that would otherwise be expended on repetitive post-submission reviews.

By contrast, weakening procedural safeguards or delaying review would impose substantial costs. It would permit unlawful or harmful products to enter the market, expose retail participants to immediate harm, and generate conflicts with established federal, state, and tribal gaming regimes. More tailored and less burdensome alternatives to sweeping rulemaking are readily available, including issuing interpretive guidance, conducting early review and suspension at the time of submission, and implementing internal screening mechanisms 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 prohibited under the CEA and existing CFTC regulations.[109] 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."[110] 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."[111]

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.[112] 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:[113]

- 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).

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[109] CEA § 6(c)(1); 17 C.F.R. § 180.1.
[110] 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.
[111] 17 C.F.R. § 38.650.
[112] *Id.*
[113] 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.

- 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 longstanding enforcement record, Core Principle 12, and the plain text of the CEA and existing CFTC regulations, there is no conceivable public-interest justification for permitting those with an "asymmetric information advantage"—that is, insider knowledge—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.[114]

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."[115] This definition incorporates an important limiting principle: the contingency must be inherently connected to an economic or commercial risk. Sports-related event contracts do not satisfy this requirement.

[114] *See Event Contracts*, 89 Fed. Reg. 48968–01, 48982–83.
[115] 7 U.S.C. § 1a(47)(A).

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.[116] 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).[117] The Hendrick court also cautioned against the expansive interpretation promoted 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 conjure up as a subject to bet on … is not a reasonable interpretation of the statute.[118]

Indeed, broadening the definition of "swap" to encompass sports wagering would lead to far-reaching and untenable consequences. As the court observed, such a construction would "sweep nearly all sports wagering into the CFTC's exclusive jurisdiction," thereby displacing the longstanding role of states in regulating gambling pursuant to their police powers and effectively mandating that all sports betting occur on federally regulated exchanges.[119] 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.[120] 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.[121]

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."[122]

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.[123] 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

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[116] *Hendrick*, 2025 WL 3286282, at *4–9; *Schuler*, 2026 WL 657004, at *5–7.
[117] *Hendrick*, 2025 WL 3286282, at *3.
[118] *Id.* at *6.
[119] *Id.* at *8.
[120] *Id.*
[121] *Id.* at *9.
[122] *Id.* at *6.
[123] *Schuler*, 2026 WL 657004, at *12.

DCMs," effectively eliminating the entire regulated sports betting industry.[124] Absent any indication that Congress intended such a dramatic shift, the court declined to interpret the CEA in a manner that would "produce an absurd result."[125] *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."

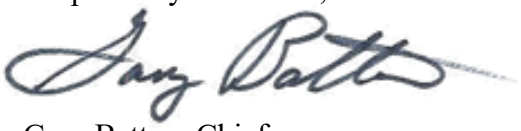
Schuler, 2026 WL 657004, at *12.

In short, sports-related event contracts are not swaps because they lack any connection to economic risk, price discovery, or commercial activity. They function solely as wagers on contingent outcomes. Neither the statutory text nor its purposes allow these products to be recharacterized as derivatives, and courts have properly rejected attempts to do so.

CONCLUSION

For the foregoing reasons, the CFTC should reaffirm that sports-related event contracts are prohibited under the CEA and existing CFTC regulations, decline to engage in unnecessary or duplicative rulemaking, and instead provide clear guidance and pursue enforcement actions against prediction markets to ensure full compliance with the law.

Respectfully submitted,



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[124] *Id.*
[125] *Id.* at *4 (quoting *United States v. Fitzgerald*, 906 F.3d 437, 442 (6th Cir. 2018)).