Re: *Advance Notice of Proposed Rulemaking on Prediction Markets, RIN 3038-AF65, 91 Fed. Reg. 12,516 (Mar. 16, 2026): Comment in Support of Player-Performance Event Contracts*

Summary. *This comment urges the Commission to confirm that event contracts on objectively measurable, league-published athlete-performance statistics may be self-certified under Part 40. The submission proceeds in five parts: the commercial value chain anchored to player performance; the price-discovery function of a DCM relative to the existing fragmented sportsbook market; the doctrinal fit with longstanding CFTC precedent; integrity and surveillance; and a concrete recommendation for the regulatory framework that should govern these contracts.*

Player-performance event contracts (binary derivatives that resolve on objectively measurable, league-published statistics such as points scored, rushing yards, strikeouts, three-pointers made or receptions) are derivatives on the most commercially consequential variables in a multi-hundred-billion-dollar global sports economy. The professional and collegiate athlete-performance value chain (encompassing apparel and endorsement businesses, encompassing daily fantasy operators, sportsbooks, regional sports networks, sponsors, and more) generates verifiable, dollar-denominated risk that today has no centralized hedging venue and no transparent price-discovery mechanism. CFTC-regulated player-performance contracts traded on a designated contract market (DCM) and cleared by a derivatives clearing organization (DCO) would fill that gap.

At the same time, the conventional wisdom that player props are uniquely susceptible to manipulation gets the analysis backward. The empirical record shows that suspicious activity on player-level markets is detected when it occurs, and it is being detected precisely because exchanges, sportsbooks and integrity monitors observe coordinated, anomalous order flow on transparent venues. A CFTC-regulated DCM would replicate and *exceed* the surveillance posture of the most sophisticated state-licensed sportsbook by adding: a single consolidated order book; mandatory Core Principle 4, 5, 12 and 13 surveillance and disciplinary obligations; CFTC large-trader reporting; CEA Section 6(c)(1) and Rule 180.1 anti-manipulation jurisdiction; CEA Section 9(a)(2) anti-manipulation criminal liability; and federal law-enforcement channels. The choice presented to the Commission is not whether Americans will speculate on player-level outcomes; they already do, in volumes that dwarf prediction markets, on 30+ fragmented state platforms, in offshore venues. The choice is whether that activity will continue to occur on opaque, jurisdictionally-balkanized platforms or on a centralized, federally-regulated, all-to-all exchange operating under the CEA.

The Commission should confirm that player-performance event contracts may be self-certified under Part 40 and traded on registered DCMs, subject to the existing core-principles framework supplemented by tailored surveillance and information-sharing requirements described below.

The Commercial Value Chain Anchored to Player Performance

Critics of player-performance event contracts typically assert that these contracts have "no economic purpose" because no commercial counterparty has dollar-denominated exposure to whether a particular player records, say, 65 receiving yards on a Sunday. That assertion is empirically false. Individual player-performance metrics are the single most commercially-leveraged variable in the modern sports economy. They directly determine cash flows in a number of distinct multi-billion-dollar industries.

Endorsement and sponsorship economics.

Forbes-tracked endorsement income for the top fifty athletes alone exceeds $1 billion annually, and the broader market (encompassing apparel, footwear, beverages, watches, automotive, financial services, telecom, QSR, consumer electronics and digital-platform brands) runs into the tens of billions in committed annual spend. Several structural features of these arrangements create dollar-denominated player-performance exposure for the brand counterparty.

- Performance-conditioned compensation, reduction clauses and renewal options. Endorsement contracts routinely tie compensation to objective athletic performance (All-Star selection, scoring records, world rankings, major-championship wins) through a combination of upside bonuses and downside "reduction clauses." Federal court filings in Nike USA, Inc. v. Berian (D. Or. 2016) disclosed Nike's standard track-and-field contract reductions of 20% if the athlete failed to rank top-10 worldwide, 25% for failing to compete in a major outdoor championship and 50% for competing in fewer than six sanctioned events; Nike represented in those filings that such reductions are "standard in track and field endorsement contracts." Performance- and rankings-bonus structures are documented in golf endorsement contracts (see Goosen v. Commissioner, 136 T.C. 547 (2011)) and in tennis (Serena Williams' Nike contract). Multi-year deals frequently include brand-side renewal options whose exercise turns on these same statistical and ranking outcomes. Whether structured as upside bonus, downside reduction or option-renewal, the brand has effectively written a performance-contingent claim that it cannot diversify across the rest of its endorsement portfolio.
- Signature product lines tied to on-field output. Nike's signature-shoe portfolio (LeBron James, Kevin Durant, Giannis Antetokounmpo, Ja Morant), Adidas' signature lines (Anthony Edwards, Damian Lillard, Trae Young), Under Armour (Stephen Curry), Puma (LaMelo Ball) and Jordan Brand (Luka Dončić, Zion Williamson, Jayson Tatum) concentrate forward inventory commitments and marketing spend on the on-court production of named athletes. Jersey-sale rankings, signature-shoe restocks and new-colorway releases are calibrated against expected performance and team success; Fanatics' jersey and on-field-merchandise operations face the same exposure on a broader athlete roster.
- Broader sponsor portfolios. Gatorade, Beats by Dre, Pepsi, Bose, AT&T, T-Mobile, State Farm, Allstate, American Express, Rolex, Audemars Piguet, Richard Mille, McDonald's, Subway, Mountain Dew, Hennessy, Apple, Google, Robinhood and a long tail of national and regional brands carry concentrated marketing-ROI exposure to specific athletes whose campaigns they have committed to fund. A diminished season reduces effective campaign yield and renewal economics even when no contractual escalator is triggered, because the brand-equity uplift the sponsor was paying for is itself a function of on-field performance.

Forward inventory commitments, multi-year campaign budgets, signature-product launches and licensed-product royalty obligations across these categories aggregate to a substantial pool of non-diversifiable player-performance risk that today is borne entirely by the brand and unhedgeable except through the imprecise and ex post mechanism of contract negotiation. A liquid CFTC-regulated player-performance market would, for the first time, give brand-counterparty risk managers a transparent reference price and a cleared instrument for laying off concentrated single-athlete exposure.

Daily fantasy sports operators: concentrated player risk without a hedge.

The North American fantasy-sports industry was valued at roughly $14–25 billion in 2024. DraftKings reported $4.76 billion in 2024 revenue and FanDuel reported $5.78 billion in 2024 revenue; the two firms together control roughly two-thirds of the U.S. legal-sports-wagering market and an even higher share of DFS. Underdog Fantasy was valued at $1.2 billion in its 2024 Series C, and PrizePicks crossed one million app downloads with offerings across fifteen sports.

The DFS book-exposure problem is structural and well-known to industry participants. Pick-em and lineup contests cause an operator's liability to concentrate sharply on the same handful of “chalk” players, typically the small set of stars whose projected outputs sit closest to the line. When a Patrick Mahomes, Shai Gilgeous-Alexander or Aaron Judge has an outsized performance, contests become significantly negative-EV to the house, and operators absorb that loss with no offset. Today these operators have no

centralized venue at which to lay off that risk. A liquid CFTC-regulated player-performance market would let a DFS operator with a known seven-figure exposure to, e.g., LeBron James points-scored entries hedge that exposure with a single transparent, cleared transaction, rather than (i) absorbing the loss, (ii) attempting to lay off bilaterally with offshore counterparties, or (iii) restricting customer entries; all of which produce inferior outcomes for the firm and for consumers.

Sportsbook operators: hedging via refusal is the status quo.

Legal U.S. sportsbooks generated approximately $14 billion in gross revenue in 2024 on roughly $150 billion of handle. Player props represent the fastest-growing slice of that handle. As industry participants and trade press readily concede, sportsbooks today manage prop risk principally through three crude tools: (i) lower posted limits ($250–$2,000 per ticket on player props versus $10,000+ on game sides and totals), (ii) account restrictions or outright bans on customers who win consistently, and (iii) line movement designed to balance one-sided action. Each tool degrades price discovery and consumer welfare. None of them is a hedge in any meaningful financial sense.

A CFTC-regulated DCM provides sportsbooks with a true hedge. A book that has accepted asymmetric over-action on a particular player's rushing yards could buy yes-rushing-yards-over contracts on the DCM, neutralizing its book risk. The CFTC itself recognized this hedging utility in its February 17, 2026 amicus brief in *North American Derivatives Exchange, Inc. v. State of Nevada*, citing evidence that "sportsbooks use DCM-listed event contracts for hedging purposes."

Sports media rights, regional sports networks and advertisers.

Regional and national broadcast rights, advertising rate cards and over-the-top streaming subscription growth correlate to star-driven viewership. The viewership delta produced by Caitlin Clark, Patrick Mahomes, Shohei Ohtani or Victor Wembanyama is not a marketing slogan; it is a measurable, dollar-denominated pricing variable for upfront ad sales and affiliate-fee renegotiations. Networks that have committed multi-year rights fees against expected star-driven inventory carry direct exposure to those athletes' health-adjusted performance.

Synthesis.

These commercial counterparties (DFS operators with concentrated chalk exposure; sportsbooks who today "hedge" only by refusing customers; apparel and merchandise firms; regional and national broadcasters; and more) share a structural feature: they all hold non-diversifiable, dollar-denominated exposure to the same small set of measurable, league-published player statistics, and they have no centralized, transparent venue at which to lay off that risk. By any reasonable application of the bona-fide-hedging concept embodied in CFTC Regulation 1.3 and the position-limits framework, this is precisely the use case the federal derivatives regime was designed to serve.

Why DCMs Outperform the Status Quo on Price Discovery

The information that determines whether Justin Jefferson exceeds 75.5 receiving yards on a Sunday is genuinely dispersed: defensive-coordinator scheme tendencies, biomechanics and snap-count usage data, weather, opposing-defensive-back availability, late-week practice participation and game-script projections that vary by total and spread. No single forecasting agent has access to all of these inputs; market prices that aggregate them produce a forecast that is, by construction, more accurate than any individual analyst's projection.

A central-limit-order-book DCM produces price-discovery outputs that the bookmaker model cannot replicate, by design:

Dimension	DCM (CFTC-Regulated)	State-Licensed Sportsbook
Price formation	All-to-all, central limit order book	Proprietary, posted by house
Quote transparency	Real-time best bid/offer publicly disseminated	Single posted line; undisclosed margin
Effective spread	Determined by competing liquidity providers; often <2%	Embedded vig of 4–10%+ on player props
Position size	Disclosed position limits and accountability levels	Undisclosed, customer-specific limits, often $250–$2,000 caps
Treatment of skilled customers	Equal access regardless of historical P&L (Core Principle 2)	Account restriction or termination of consistent winners
Settlement	DCO-cleared; mutualized risk; guaranteed performance	Counterparty-credit risk to operator
Audit trail	Full tick-level; retained per CFTC recordkeeping rules	Internal; non-uniform across operators
Cross-venue surveillance	Single consolidated tape	30+ fragmented state systems

The result is that the DCM produces a *price* (a continuously updated, mid-market, executable signal), while sportsbook produces a *quote*, designed not for information aggregation but for revenue extraction. The DCM-generated price is exactly the kind of public information good that the CEA's price-discovery objective in Section 3 contemplates.

The fact that fantasy-content, media and analytics consumers already cite player-prop lines as forecast inputs proves that demand for centralized player-performance pricing exists today; it is simply being met by a fragmented, vig-distorted, restriction-laden product. Migrating that demand to a transparent DCM does not create new informational hazards; it eliminates the existing ones.

Doctrinal Fit With Approved Contract Categories

The CEA's "Commodity" Definition Is Already Broad Enough

The CEA defines "commodity" to include enumerated agricultural goods *and* "all other goods and articles, … and all services, rights, and interests … in which contracts for future delivery are presently or in the future dealt in." 7 U.S.C. § 1a(9). The Commission has interpreted this definition to encompass, among other things: weather variables (HDD, CDD, hurricane indices); domestic box-office receipts; macroeconomic data releases (CPI, NFP, unemployment); digital-asset spot prices; and now even election outcomes. The "swap" definition under CEA Section 1a(47)(A) is broader still, expressly capturing "the occurrence … of an event or contingency associated with a potential financial, economic, or commercial consequence." Player-statistic outcomes, given the commercial value chain documented in Part I above, plainly fall within this language. The CFTC's February 2026 amicus brief in the Ninth Circuit *NADEX v. Nevada* litigation marshals this same analysis: it argues that "[e]xcluding event contracts from the

definition of swap would leave no principled boundary preventing any other event-based derivatives … from falling outside the CEA," and it cites the commercial-consequences prong as squarely capturing sports outcomes.

There will be speculation in these markets. The role of the speculator in providing the liquidity that enables hedgers to lay off risk is among the oldest and most rigorously developed propositions in commodity-market economics: a futures market in which only hedgers participate cannot clear, because hedgers' net exposures do not naturally offset one another at any given moment. Speculators provide the inter-temporal and cross-sectional liquidity that allows commercial participants to enter and exit positions without large transaction costs. The Commission has applied this logic to grain, oil, currency, interest-rate, equity, weather and crypto markets; there is no principled basis on which to depart from it for player-performance contracts.

The DFS industry alone is a multi-billion-dollar commercial enterprise with documented, structural hedging needs that no current venue serves. Sportsbooks have hedging needs that they currently meet only through restriction and refusal: outcomes that the CFTC's price-discovery and risk-management mandates would treat as failures of market design. Sponsors, broadcasters, and others round out a hedger universe that is wider and more economically substantial than the underlier of many existing CFTC-approved contracts.

Integrity and Surveillance

Critics frame player props as inherently susceptible to manipulation because individual players can, in principle, control whether they record a particular stat. The empirical record is more nuanced and, on close inspection, supports the case for centralized regulation rather than against it. Regulated, surveilled, centralized markets *catch* manipulation; unregulated and offshore venues do not. Sportradar's Universal Fraud Detection System reports detecting 1,212 suspicious matches in 2022 alone across more than 850,000 globally monitored matches, generating evidence that has been admitted in seven Court of Arbitration for Sport proceedings. IBIA's operator network monitors more than $300 billion in annual betting turnover across 1.5 million sporting events. The infrastructure exists; what differs across jurisdictions is whether it is mandated and enforceable.

A CFTC-Regulated DCM exceeds sportsbooks' surveillance structures. The DCM core-principles framework already requires precisely the surveillance, monitoring and enforcement infrastructure needed to police player-performance contracts:

- **Core Principle 2** (Compliance with Rules): impartial access; abuse-prevention.
- **Core Principle 3** (Contracts Not Readily Susceptible to Manipulation): the Commission's threshold inquiry, which DMO's March 12, 2026 Advisory specifically identified as central to sports-related event contracts.
- **Core Principle 4** (Prevention of Market Disruption): real-time monitoring; investigation of anomalous activity; coordinated action with integrity organizations.
- **Core Principle 5** (Position Limits or Accountability): including aggregation across similar contracts; the ANPRM expressly solicits comment on this issue.
- **Core Principle 12** (Protection of Markets and Market Participants): surveillance comparable to FINRA/SEC in equities markets.
- **Core Principle 13** (Disciplinary Procedures): full enforcement authority, including expulsion and fines.

Layered on top of these obligations are: CFTC large-trader reporting; CEA Section 6(c)(1) and Rule 180.1 anti-manipulation, anti-fraud and misappropriation-based insider-trading prohibitions (which DMO's February 25 and March 12, 2026 advisories explicitly applied to event-contract markets); CEA Section 9(a)(2) criminal anti-manipulation provisions; mandatory Bank Secrecy Act / FinCEN AML and SAR reporting; OFAC compliance; and FCM-level KYC and customer-identification obligations. No state-licensed sportsbook is subject to any of this federal apparatus, and the DCM apparatus is materially stronger than what state gaming control boards bring to bear.

If there are concerns about integrity/surveillance, the right move is to impose obligations on SROs or establish new norms, not block new markets wholesale. Building on existing prediction-market practice and the DMO Advisory's stated expectations, a CFTC-regulated player-performance DCM could deploy the following stack:

1. **Post-trade surveillance.** Automated unusual-activity detection (volume spikes, late-arrival flow, basis-trading patterns); wash-trading detection across linked accounts; cross-account beneficial-ownership linkage tooling drawing on CFTC-mandated KYC data.
2. **Information-sharing agreements with leagues and integrity bodies.**
3. **Integration with established integrity monitors.** Sportradar Integrity Services (Universal Fraud Detection System; Sportradar Integrity Exchange), IC360 / U.S. Integrity, IBIA's operator-network feed, and Genius Sports integrity products are existing third-party surveillance utilities with global coverage.
4. **Suspicious-activity reporting protocols.** Standing reporting obligations to (i) the relevant league integrity office, (ii) Sportradar / IC360 / IBIA, (iii) the CFTC Division of Enforcement, and any other relevant entities.

Recommendation

The question presented to the Commission is not whether the underlying activity (Americans expressing views on the statistical performance of professional and collegiate athletes) will occur. It already occurs, in volumes that dwarf the entire prediction-market industry, on platforms that range in regulatory rigor from okay (FanDuel, DraftKings) to the genuinely lawless (offshore markets). The question is whether the federal derivatives regulator, uniquely possessed of the statutory authority, surveillance technology, anti-manipulation law and FCM/DCO infrastructure necessary to police this activity at national scale, will exercise the jurisdiction Congress conferred on it.

Player-performance event contracts satisfy the CEA's commodity and swap definitions; they reference variables to which a documented multi-billion-dollar commercial value chain has direct, non-diversifiable exposure; they would produce price-discovery outputs strictly superior to anything the existing fragmented sportsbook market can generate; and they would be *less* susceptible to manipulation than alternatives, not more. The Commission should embrace its jurisdiction, articulate clear rules of the road and let the regulated derivatives industry build the surveillance and risk-management infrastructure that will define the next decade of event-contract markets.

Sincerely,

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