Supplemental comment in support of, and submitted as an attachment to, the principal comment of KalshiEX LLC dated [DATE].

The Commission has asked, in Question 10 of the Advance Notice of Proposed Rulemaking, what role event contracts play in *"managing and assuming price risks, discovering prices, or disseminating pricing information"* as contemplated by CEA section 3(a), and *"how [event] contracts are used in hedging."* This supplemental comment addresses that question with respect to event contracts referencing sporting outcomes. It also responds to Question 12 (the relationship between event contracts and insurance) and bears on the broader public interest inquiry framed by Questions 7 through 11.

Sports event contracts reference economic events that produce real, measurable, and frequently catastrophic financial exposures for a wide range of commercial participants. Until the listing of these contracts on a CFTC-regulated designated contract market, those exposures could not be hedged in any regulated venue. The principal categories of commercial actors with such exposures are: (i) sportsbooks, whose business model leaves them structurally long the outcome of certain outcomes; (ii) merchandisers and licensees, whose pre-produced inventory turns on the identity of the champion; (iii) broadcasters, advertisers, and sponsors, whose ad revenue is a function of series length and the market profile of competing teams; and (iv) hospitality operators and local-market businesses in the home cities of contending teams.

These are precisely the kinds of economic risks of the type CEA section 3(a) was enacted to address. The exposures arise from occurrences beyond the parties' control, with financial, commercial, or economic consequences—a description that tracks the statutory definition of an excluded commodity in CEA section 1a(19)(iv) and the definition of a swap in CEA section 1a(47)(A)(ii). They are not insurable, in the main, on terms that meaningfully transfer the risk. A regulated, transparent, fully-collateralized, federally-supervised exchange offering these contracts therefore advances the precise public interests Congress identified in section 3(a): managing price risks, discovering prices, and disseminating pricing information through liquid, fair, and financially secure trading facilities.

1. The Underlying Economic Exposures

A. Sportsbook Risk

Licensed sportsbooks operate on a long position in event outcomes. While the ideal book runs a balanced position—equal money on either side of a market, with profit drawn from the vigorish—the realities of the U.S. sportsbook market produce two recurring and material risks that the operator cannot manage internally:

- Long-shot exposure on futures markets. Futures bets on championships are placed months in advance, when sportsbooks are least able to project their ultimate exposure. If a long-shot team advances late, no amount of in-season odds compression can offset early tickets locked in at long prices.
- Concentrated home-team exposure. Because state-by-state legalization has produced a fragmented domestic sportsbook market in which an operator's customer base is heavily concentrated in a single state, the book may be unable to diversify away exposure to a particular team. A sportsbook serving Philadelphia bettors, for instance, will receive an outsized share of action on the Eagles, with limited offsetting positions on other teams.

These exposures have been realized at scale within recent memory. When Leicester City won the 2015–16 English Premier League at preseason 5,000-to-1 odds, global sportsbook losses on outright futures were estimated at over $25 million, and several books offered early buyouts to reduce exposure as the run progressed. When the 2011 St. Louis Cardinals won the World Series after appearing in the 999-to-1 range during a late-season slump, individual books faced six-figure payouts on single tickets. These are textbook cases of unhedgeable concentration risk in a regulated commercial activity—and they are the type of risk that a liquid, exchange-traded event contract is designed to transfer.

B. Merchandiser and Licensee Risk

Championship apparel and licensed product manufacturers face a structural overproduction problem. To meet immediate post-victory demand—which crests within hours of the final whistle—merchandisers pre-produce title gear for *both* finalists. The losing team's stock is unsellable. In the NFL Super Bowl, roughly half of all pre-produced championship merchandise must be discarded, donated, or repurposed.[1] The trade-off is deliberate: the cost of producing the loser's stock is the price of having the winner's stock on shelves Monday morning.[2]

The cost of getting the call wrong is documented and material. Sports Authority pre-printed 15,000 “Chicago Bears Super Bowl Champions” shirts ahead of Super Bowl XLI based on strong NFC title-game sales; when the Indianapolis Colts won, the entire run was written off. Ahead of Super Bowl XLII, merchandisers and the Patriots themselves prepared “19-0 Perfect Season” apparel and trademarks in anticipation of an undefeated finish;[3] when the Giants won, the inventory was donated to children in Nicaragua.[4] Demand on the upside is no easier to forecast: Leicester City's 2016 title produced kit demand that retailers could not meet, leaving an estimated $1.5 million in foregone sales,[5] and the Cleveland Cavaliers' 2016 NBA title produced a 24-hour sales record on the NBA's online store.[6] The Chicago Cubs' 2016 World Series win moved more merchandise in less than 24 hours than MLB had sold in any prior full month.[7]

What links each example is the same economic structure: a producer is structurally long one outcome and short the other, with binary exposure to a contingent event over which it has no control. That is, in substance, the position of any commercial actor whose costs and revenues turn on a discrete identifiable outcome.

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[1] Mental Floss, What Happens to the Losing Team's Championship Shirts?, https://www.mentalfloss.com/article/29884/what-happens-losing-teams-championship-shirts.
[2] Sports Destinations, When a Team Loses the Super Bowl, What Happens to the Pre-Made Merchandise?, https://www.sportsdestinations.com/management/marketing-sponsorships/when-team-loses-super-bowl-what-happens-pre-made-31726.
[3] Fox Sports, Patriots Awarded '19-0' Trademark 9 Years After Losing Super Bowl XLII, https://www.foxsports.com/stories/nfl/patriots-awarded-19-0-trademark-9-years-after-losing-super-bowl-xlii.
[4] Houston Chronicle, 19-0 Patriots Gear Donated to Nicaraguan Children, https://www.chron.com/sports/texans/article/19-0-patriots-gear-donated-to-nicaraguan-children-1773906.php.
[5] Print & Promo Marketing, Leicester City Can't Make Enough Shirts, Jerseys for Its Growing Fan Base, https://printandpromomarketing.com/article/leicester-city-cant-make-enough-shirts-jerseys-for-its-growing-fan-base/
[6] CTV News Toronto, Raptors Championship Win Leads to Record-Breaking Merchandise Sales at NBA Store, https://www.ctvnews.ca/toronto/article/raptors-championship-win-leads-to-record-breaking-merchandise-sales-at-nba-store/.
[7] ABC 7 Chicago, World Series 2016: Cubs Chicago Merchandise, https://abc7chicago.com/world-series-2016-cubs-chicago-merchandise/1587437/.

C. Broadcaster and Advertiser Risk

Broadcasters, advertisers, and sponsors carry two distinct exposures to championship outcomes that are quantifiable, recurring, and measured in tens of millions of dollars per event: series-length risk and market-size risk.

Series-Length Risk

Best-of-seven championship series produce ad inventory and viewership that crescendo as the series extends. A short series leaves real money on the table. Industry analysis of the 2015 World Series, which ended in five games, estimated approximately $115.8 million in foregone advertising revenue from the unplayed Games 6 and 7—implying $50–60 million per uncontested late-series game. The 2015 NBA Finals, which went six games, generated approximately $223.9 million in ad sales for ABC, with analysts estimating an additional $45 million had a Game 7 been played. The pattern is consistent across leagues and seasons: each additional late-series game produces substantial incremental ad revenue, and Game 7 audiences are reliably the largest of the series, supporting premium ad rates.

A network, a major advertiser that has booked a finals package, or a sponsor whose impressions are tied to series exposure has a real, marked-to-outcome exposure to series length. The exposure cannot be fully diversified at the contract or programming level. It can, however, be hedged using event contracts referencing series length or championship outcomes—which is how event contracts perform the section 3(a) function of "managing…price risks."

Market-Size Risk

The identity of the teams in a championship has a first-order effect on viewership and, derivatively, on ad revenue. A small-market NBA Finals can draw roughly half the viewership of a marquee matchup: the 2007 Spurs–Cavaliers Finals averaged about 9.3 million viewers; the 2010 Lakers–Celtics Finals averaged approximately 18.1 million. The 2024 World Series (Dodgers–Yankees) averaged 15.2 million viewers, a 67% increase over the 2023 World Series (Rangers–Diamondbacks), which averaged approximately 9.1 million—the lowest on record. Networks routinely make adjustments, including ratings make-goods, when delivered audiences fall below guarantees on advertising contracts. That make-good obligation is, in substance, a short option on viewership tied to which teams advance.

An NBA Finals broadcaster, for example, that has sold inventory at rates assuming a marquee market, faces real downside if a small-market matchup materializes. That risk is currently borne entirely by the broadcaster, with no available hedge. Event contracts allow it to be transferred to a counterparty willing to assume it.

D. Hospitality and Local-Market Risk

Cities with contending teams experience significant short-term swings in hotel occupancy, food and beverage sales, transit and rideshare revenue, retail sales, and tax receipts. The magnitudes are not trivial: during the Philadelphia Eagles' Super Bowl run and parade, Center City hotels reached 90% occupancy in mid-winter, with approximately 11,000 incremental room nights and an estimated $4.3 million in additional hospitality revenue. The Phillies' 2022 World Series run was estimated to produce a $78 million economic impact, including approximately 35,000

incremental room nights.[8] A single Detroit Lions divisional-round home game in January 2024 was estimated by Visit Detroit to generate $52.2 million in economic activity, of which approximately $31.6 million was direct spending.[9] The St. Louis Blues' 2019 Stanley Cup Finals were estimated to generate roughly $50 million in regional impact.[10]

These windfalls are contingent on outcomes the local operators do not control. A downtown hotel operator, a restaurant group, a parking concession, or a municipal hotel-tax authority cannot hedge the contingent revenue stream associated with whether the home team advances. The revenue stream is real, recurring (at a probability that varies by season), and material in the aggregate. It is, in substance, a long position in the home team's playoff progression. Event contracts referencing that progression provide the only practical hedging instrument for these exposures.

E. Sponsor risk

The exposures described in Part 2.C above—series-length and market-size effects on broadcast advertising revenue—are transactional in nature: ad inventory is sold game-by-game or series-by-series. Sponsors, by contrast, hold multi-year, brand-association exposures that are priced on assumptions about a team's, league's, or athlete's future performance distribution. The economic structure is different, the dollar scale is large, and the hedging case is, if anything, more direct.

A sponsorship is, in economic substance, a forward purchase of impressions and brand association tied to a sporting property. The value of the deal to the sponsor is a function of the impressions and association the property generates over the life of the contract—which is, in turn, almost entirely a function of the sporting outcomes the property produces. A sponsor of a contender that makes deep, repeated playoff runs receives a multiple of the impressions of a sponsor of a team that exits in the first round. A sponsor of a star player who wins a championship enjoys a step-change in the brand value of the association. None of these outcomes is within the sponsor's control. They are, in other words, classic excluded-commodity exposures, with financial, commercial, and economic consequences for the sponsor at every renewal cycle and at every quarterly accounting of the value of the asset on the sponsor's books.

The categories below identify the principal types of sponsor exposure to sporting outcomes. In each case, the exposure (i) is contracted on multi-year terms; (ii) is priced ex ante on assumed performance distributions that realized outcomes routinely upend; (iii) is unhedgeable in any existing insurance or capital-markets product; and (iv) has natural counterparties on the other side of the trade.

Stadium and Arena Naming Rights

[8] 6 ABC Philadelphia, Philadelphia Phillies Arizona Diamondbacks World Series 2023 Economic Impact Local Business, https://6abc.com/philadelphia-phillies-arizona-dimaondbacks-world-series-2023-economic-impact-local-business/13971511/.

[9] New Pittsburgh Courier, Detroit Lions Playoff Run Spurs Economic Surge in the City, https://newpittsburghcourier.com/2024/01/21/detroit-lions-playoff-run-spurs-economic-surge-in-the-city/.

[10] U.S. Chamber of Commerce, National Sports Championships Provide Big Wins for Local Economies and Businesses, https://www.uschamber.com/travel/national-sports-championships-provide-big-wins-local-economies-businesses.

Naming rights agreements are the longest-dated and largest-scale sponsorship deals in sports, generally written for terms of 10 to 25 years with total contract values in the high-eight-figures-to-billions range. Within North America, the upper end of the market includes Crypto.com's $700 million, 20-year deal for the home of the Lakers, Clippers, and Kings (the largest U.S. venue naming-rights deal at the time of signing); SoFi's reported $30 million-plus annual deal over 20 years for the home of the Rams and Chargers; MetLife Stadium's 25-year, $400 million deal with the Giants and Jets; AT&T Stadium's 20-year, $400 million deal with the Cowboys; the Mets' 20-year, $400 million deal with Citigroup; the Warriors' 20-year, approximately $300 million Chase Center deal; and Allegiant Stadium's reported $20–25 million annual deal with the Raiders.[1] Aggregate active naming-rights commitments in North American major-league sports run to several billion dollars in unamortized contractual obligation at any given time.

The economic theory of every one of these deals is that the sponsor's name will be repeated in every broadcast mention of the venue, displayed in every televised game, and embedded in the day-to-day vocabulary of the team's fan base, the local sports media, and the national media that cover the team's postseason. Each such impression has a price, and the aggregate impression count over the life of the deal is overwhelmingly driven by how often the team's games are nationally televised—which is, in turn, a direct function of how the team performs. The downside scenario is well-documented: when the corporate sponsor of a venue collapses or its public image deteriorates (Enron Field, Adelphia Coliseum, FTX Arena), the deal is unwound at a loss to one or both sides; analogous, if less dramatic, value erosion occurs when the home team underperforms its expected playoff distribution over the life of the contract.

A sponsor that purchases naming rights to the home arena of a team that goes on to make repeated deep playoff runs receives a multiple of the impressions assumed in the deal's pricing. A sponsor that purchases naming rights to the home arena of a team that misses the playoffs for ten consecutive years receives a fraction of those impressions. The exposure is realized over a long horizon, but it is real, measurable, and entirely unhedged in any other regulated venue. Multi-year event contracts on championship and conference futures permit a naming-rights sponsor to lay off some portion of this exposure with rolling annual positions over the life of the underlying contract.

Jersey Patches and On-Uniform Sponsorships

Major North American leagues have, over the past decade, opened on-uniform inventory to commercial sponsors. The NBA introduced jersey patches in the 2017–18 season as a three-year pilot and indefinitely extended the program in April 2019 after early commercial success. By the 2021–22 season, the league-wide patch program produced an estimated $225 million in aggregate annual revenue, more than double the league's original projections, with average per-team values in the $7 million to $10 million range.[2] The top end of the market has consistently sat in the $20 million-per-year range: the Warriors' three-year, $60 million Rakuten deal was the highest-value patch sponsorship at launch; the Lakers subsequently signed a five-year, $100 million deal with CJ CheilJedang's Bibigo; the Cavaliers' Goodyear patch has been valued at approximately $10 million per year; and the Lakers' predecessor patch with Wish was reported in the $12–14 million range.[3] The NHL has launched analogous helmet decal and jersey advertising programs; MLS has long-standing front-of-shirt sponsorship programs

analogous to those in European football; MLB approved on-jersey advertising patches beginning in the 2023 season; and the NFL has steadily expanded helmet-decal and on-uniform commercial programs in recent seasons.

The exposure structure mirrors naming rights but on a shorter horizon and with a more direct broadcast linkage. A patch sponsor of a team that advances deep into the postseason captures broadcast minutes—on every shoulder of every player, in every televised camera angle, on the most-watched broadcasts of the year—at a rate that is a multiple of the regular-season impressions assumed in the deal's pricing. Third-party valuation firms have repeatedly quantified the postseason multiplier: GumGum's analysis of the first season of NBA patches estimated $350 million in social-media-equivalent value to sponsors before accounting for broadcast value, with the highest-performing patches concentrated on the league's deepest playoff teams.[4] The same patch on a team that fails to qualify for the postseason produces a fraction of that contracted impression value. There is no insurance product that transfers this risk. There is, however, a natural counterparty: the patch sponsor of every other contender in the league, and capital-markets participants taking the other side of any individual team's championship probability.

Team-Level "Official Partner" Sponsorships

A typical professional franchise has dozens of category-exclusive official sponsors—official airline, official credit card, official insurance carrier, official soft drink, official truck, official telecommunications partner, official hospital, and so on. Industry estimates of the aggregate North American sports sponsorship market range from approximately $7.66 billion in pro-team brand spend tracked by SponsorUnited for 2024, to $22.11 billion in total North American sports sponsorship spending across teams, leagues, athletes, venues, and events in the same year.[5] Aggregate sponsorship revenue at the franchise level is in the tens to low hundreds of millions of dollars per year for the largest properties, spread across these category partnerships. The value of each partnership to the sponsor is amplified by playoff success: deeper runs mean more in-stadium impressions over more home games, more regional and national media exposure, more social-media reach, and—critically—more brand-association with success rather than mediocrity. Sponsors do not pay to be associated with losing teams at the same rate that they pay to be associated with winning teams, and the renewal terms of every category partnership are negotiated against this fact.

This is the core sponsorship-risk profile that aligns most directly with hedging using event contracts. A team-level sponsor is, in substance, structurally short the team's underperformance and long its outperformance, on a recurring annual basis, across a portfolio of dozens of brands. The natural counterparties exist in the form of the rival team's sponsors, the next-round opponent's sponsors, or capital-markets participants taking the other side of the team's championship probability. The contracts to express that hedge—championship futures, conference futures, division futures, regular-season win-total contracts—are precisely the categories of event contracts now listed on regulated DCMs.

Player Endorsements

Athlete endorsement contracts sit on a similar economic structure, with the additional layer of personal performance and trajectory risk. Brands sign multi-year endorsement deals based on assumptions about future visibility, marketability, and championship trajectory. Many of these contracts include explicit performance-based bonuses—payments triggered by All-Star selections, MVP awards, scoring titles, or championship participation—but the more substantial economic exposure is implicit, in the option-like value of the contracted association.

A brand that signed a star player ahead of a championship run captures a step-change in association value if the player wins. A brand that signed a player whose team consistently fails to advance receives a fraction of the contracted association. The pattern is documented across decades: signature footwear and apparel sales spike in the playoffs, particularly when the associated player's team advances; off-court endorsement portfolios expand materially after Finals appearances; and the implied valuations of the underlying contracts are revised, ex post, against realized performance. Where insurance is available, it covers narrow risks (career-ending injury, on-field exclusion clauses, off-field morals provisions); it does not cover performance-driven brand-association risk.

League and Event-Level Sponsorships

National sponsors of league championships and showcase events—title sponsors of postseason bowl games, presenting sponsors of championship rounds, halftime-show sponsors of the Super Bowl, jersey-patch and signage sponsors of league-wide championships—pay for impressions tied to the matchups produced by the bracket. Title sponsorship of a marquee bowl game is generally valued in the eight-figure annual range: industry estimates have placed the Capital One Orange Bowl at approximately $25 million per year, the Allstate Sugar Bowl at approximately $18 million per year (and possibly higher under more recent extensions), and the BCS-era national championship sponsorship in the $15–20 million range.[6]

The exposure profile is closer in form to broadcaster series-length and market-size risk than to franchise-level sponsor risk, but the contractual structure is multi-year. A halftime-show sponsor of a Super Bowl with two large-market teams in compelling form receives a multiple of the impressions of a halftime-show sponsor of a low-rated finals matchup. Where the deal is multi-year, this exposure compounds across the contract.

These sponsors are also natural participants in event-contract markets referencing championship matchups. The contracts are the only available instrument that allows a multi-year league sponsor to manage the cross-year variance in matchup-driven impression value.

Performance-Based Contractual Exposures

Beyond the implicit exposures described above, many sponsorship and endorsement contracts include explicit performance-based payments: bonuses for championship participation, escalators tied to All-Star selections, kickers triggered by deep playoff runs, attendance-based or ratings-based adjustments. From the sponsor's side, these are short option positions on the team's or athlete's performance, with payoff dates that match the dates on which event contracts expire. The hedging analogy is exact, and the hedging market—until the listing of these contracts on a regulated DCM—did not exist.

2. These Exposures Fit Squarely Within the Commodity Exchange Act

The exposures described in Part 2 share four features that map directly onto the public interests articulated in CEA section 3(a) and the statutory definitions in section 1a:

A. They are economic, financial, or commercial in nature. Each exposure is a measurable monetary risk borne by a commercial enterprise in the ordinary course of business—written off as inventory loss, foregone advertising revenue, or unrealized hospitality receipts. This is the precise concept embedded in CEA section 1a(47)(A)(ii)'s reference to "financial, economic, or commercial consequence," and in the definition of an excluded commodity in CEA section 1a(19)(iv).

B. They arise from occurrences beyond the parties' control. No merchandiser, broadcaster, sportsbook, or hotel operator controls the outcome of a sporting event. The contingency is exogenous to the hedger. This is the structural feature that distinguishes a true hedging instrument from a speculative position, and it tracks the "beyond the control of the parties" requirement of CEA section 1a(19)(iv).

C. They are, in the main, not insurable. This bears directly on Question 12. With narrow exceptions—for instance, contingent prize-indemnity policies covering specific defined promotional outcomes—commercial insurance does not cover the exposures described above. A merchandiser cannot purchase insurance against the demand effect of a particular team's championship; a broadcaster cannot insure against a sweep; a downtown hotel operator cannot insure against a first-round elimination. Where bespoke products exist, they are limited in scope, expensive, and available only to the largest counterparties, and they do not produce a transparent, marked-to-market price signal. Event contracts close that gap and do so on a regulated, transparent venue.

D. They are non-fungible across the four categories. The exposure of a sportsbook to a long-shot futures payout is offset by the exposure of a merchandiser to demand for the same outcome's apparel; a broadcaster's series-length exposure is offset by a hotel operator's ouster exposure on a sweep. The presence of natural counterparties on opposite sides of these markets is precisely what makes them suitable for exchange trading and what supports liquidity, fair pricing, and the price discovery function described in section 3(a).

Taken together, these features describe a textbook case for the listing of event contracts on a designated contract market. The contracts perform the risk-transfer function of section 3(a); the resulting prices aggregate dispersed information about future outcomes—performing the price-discovery and price-dissemination functions of section 3(a); and they do so through a federally-regulated, fully-collateralized, transparent venue with rules and surveillance designed to prevent manipulation, enforce contract terms, and protect customer funds.

3. Sports Event Contracts Also Advance the Price-Discovery and Information-Dissemination Prongs of the Commodity Exchange Act

Section 3(a) identifies three coordinate public interests: managing price risks, discovering prices, and disseminating pricing information. The hedging case set out above addresses the first. The second and third are independently advanced by the public availability of full trade and market data, including volume and open interest, on a CFTC-regulated DCM—a feature unavailable on

any unregulated venue and unavailable on legalized state sportsbooks, whose order flow is siloed by jurisdiction and not publicly reported.

Comprehensive recordkeeping captures the timing, location, price, and quantity of every order and trade. That data is retained, made available to the Commission, and published. A unified national order book consolidates trading across all U.S. states into a single venue, eliminating the cross-jurisdictional fragmentation that characterizes traditional sports gambling and that has historically frustrated detection of manipulation schemes that span state lines. The result is a level of transparency in sports-related markets that is not available anywhere else in the United States, and that the public, journalists, academics, and regulators can use to identify suspicious trading patterns. This transparency is itself a public interest benefit independent of the hedging case, and it directly serves the price-discovery and information-dissemination functions Congress identified in section 3(a).

3. Sports Event Contracts Are Not "Gaming" Within the Meaning of CEA Section 5c(c)(5)(C)(i)(V)

The most likely objection to the foregoing analysis is that sports event contracts "involve gaming" within the meaning of CEA section 5c(c)(5)(C)(i)(V), and that the Commission therefore has authority—and perhaps an obligation—to determine that they are contrary to the public interest. However, (A) the statutory text is permissive, not mandatory, and applies only to contracts that "involve" gaming; (B) the Commission's own articulation of the public interest test under section 5c(c)(5)(C) requires an evaluation of hedging and price-basing utility, which Parts 2 and 3 above satisfy at length; (C) more than a century of Supreme Court doctrine, and the Commission's own settled treatment of structurally analogous categories of derivatives, draw a clear line between gambling and exchange-traded derivatives based on hedging utility, not subject matter; and (D) the academic and economic literature establishes that prediction markets perform an information-aggregation and price-discovery function distinct from gambling. Sports event contracts referencing real, hedgeable commercial exposures of the kind described earlier.

A. The Statutory Text Is Permissive and Requires "Involvement" of Gaming

CEA section 5c(c)(5)(C)(i) provides that the Commission "may determine" that an event contract is contrary to the public interest if it "involve[s]" any of five enumerated activities, the fifth of which is "gaming." 7 U.S.C. § 7a-2(c)(5)(C)(i)(V). Two textual features warrant emphasis.

First, the provision is permissive. The statute does not require the Commission to prohibit any contract involving the listed activities. As Commissioner Berkovitz observed in 2021, "the CEA gaming provision does not require the Commission to prohibit contracts involving gaming or to prohibit a contract simply because it involves gaming; it provides the Commission with the discretion to prohibit them."[8] The Commission therefore retains authority to permit a contract that touches on gaming subject matter where the public interest favors permission.

Second, the statute applies only where a contract "involve[s]" the listed activity. The verb is doing meaningful work. A contract that references a sporting outcome may "involve" the sport—the players, the venues, the league—without "involving" gaming, which is a separate activity defined by its purpose, structure, and participants. Many of the most significant categories of CFTC-regulated derivatives reference subjects on which gambling occurs in legal

or illegal channels. Currency futures reference exchange rates that are also the subject of speculative spread-betting in the United Kingdom; equity index futures reference indices that are the subject of contracts-for-difference markets globally. In none of these cases has the Commission concluded that the underlying subject matter "involves" gambling within the meaning of any CEA prohibition. The Commission has correctly looked instead to the structure, purpose, and economic function of the contract itself.

Third, "gaming" is not a defined term in the CEA, and the Commission's interpretive task is to identify what the term excludes as well as what it includes. Since Dodd-Frank, most U.S. states have legalized gambling, suggesting that such behavior is in the public interest and is not the same as ‘gaming’, games of chance at casino house tables.

B. The Commission's Own Public Interest Test Looks to Hedging and Price-Basing Utility, Not Subject Matter

The Commission has previously interpreted the public interest standard in section 5c(c)(5)(C) as restoring, in substance, the "economic purpose test" that the Commodity Futures Modernization Act of 2000 ("CFMA") removed from the CEA's general listing requirements. Under the economic purpose test, a contract was within the public interest if it could "be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis."[9] The Commission had expressly adopted this formulation in the event-contract context: in the 2024 proposed rulemaking that the Commission has now withdrawn, it stated that "the Commission recognizes the utility of a contract, or category of contracts, for purposes of hedging and price-basing to be relevant factors for consideration in evaluating whether the contract, or category of contracts, is contrary to the public interest pursuant to CEA section 5c(c)(5)(C)."[10]

Even assuming this test was the standard, several features of this test bear directly on the sports event contracts at issue:

First, the test does not require that all market participants have a hedging purpose. As Commissioner Berkovitz emphasized, "[t]he economic purpose test in the CEA gaming provision does not require that all market participants have an economic purpose in trading the contract—just that the contract 'can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis.' CFTC markets are composed of both hedgers and speculators. Once hedgers are permitted in a market, speculators must be permitted on equal terms" to provide the liquidity necessary for hedgers to lay off risk.[11] This is the same structural feature of regulated derivatives markets that has existed since the Grain Futures Act of 1922: hedgers and speculators are co-participants in a single market, and the presence of speculators is what enables hedgers to transfer risk efficiently.

Second, the test is satisfied at a categorical level. The Commission need not, and consistent with its own prior practice does not, require contract-by-contract proof that each individual event contract has been used for hedging. The question is whether the *category* of contracts—here, championship, conference, division, and win-total contracts referencing major North American team sports—can reasonably be expected to be, or has been, used for hedging on more than an occasional basis. Parts 2 and 3 above demonstrate, in detail, the categorical hedging utility of

these contracts across five distinct classes of commercial actor. The categorical answer to the economic purpose test is therefore plainly affirmative.

Third, the Commission's most senior leadership has recently and explicitly endorsed the hedging utility of event contracts. In February 2026, in the context of reaffirming the CFTC's exclusive jurisdiction over prediction markets, Chairman Selig stated that "[e]vent contracts allow businesses and individuals to hedge event-driven risks, enable investors to manage portfolio exposure, and provide the public with information about the outcome of future events. These products are commodity derivatives and squarely within the CFTC's regulatory remit."[12] The Chairman's articulation tracks the three coordinate public interests of CEA section 3(a)—risk transfer, portfolio management, and information dissemination—and applies them to event contracts as a category, including those referencing sporting outcomes.

C. More than a Century of Doctrine Distinguishes Hedgeable Derivatives from Gambling on the Basis of Structure and Function, Not Subject Matter

The proposition that exchange-traded derivatives are not gambling, even where the underlying contingency is also the subject of informal wagering, is among the most thoroughly settled propositions in American commercial law. It dates at least to Justice Holmes's 1905 opinion for the Supreme Court in *Board of Trade of City of Chicago v. Christie Grain & Stock Co.*, 198 U.S. 236 (1905), which rejected a state anti-gambling challenge to grain futures trading on the Chicago Board of Trade. Justice Holmes identified hedging utility as the dispositive distinction:

> "There is no doubt that a large part of those contracts are made for serious business purposes. Hedging, for instance, as it is called, is a means by which collectors and exporters of grain or other products … secure themselves against the price fluctuations between purchase and final sale."

Id. at 248–49. Holmes went on to observe that the presence of speculators alongside hedgers did not transform the market into gambling: speculators provide the liquidity that allows hedgers to transfer risk, and the resulting public price signal is itself a public good. *Id.* at 249. This is the foundational doctrinal architecture of every regulated derivatives market in the United States. It is the reason the CEA exists. And it is the reason the CFTC—not state gambling regulators—has exclusive jurisdiction over swaps and futures listed on a CFTC-registered DCM. *See* CEA § 2(a)(1)(A), 7 U.S.C. § 2(a)(1)(A).

The Commission's own settled treatment of structurally analogous categories of derivatives confirms the same line. Three categories warrant specific mention:

Weather derivatives. The CFTC has regulated, and registered DCMs have listed, weather futures and options for more than two decades. Weather derivatives reference exogenous, non-controllable meteorological events with commercial consequences for agricultural producers, energy companies, hospitality operators, ski resorts, event organizers, and a wide range of other commercial actors—a structurally identical exposure profile to the sports-event-contract hedgers identified in Parts 2 and 3 above. There is no underlying spot market in temperature, rainfall, or hurricane landfall. Informal wagering on weather has existed for as long as weather has existed. None of those features has caused the Commission to treat

weather derivatives as gambling. The reason is that weather derivatives perform a hedging function for commercial actors with real exposure.

Election contracts. The Commission has permitted election-outcome event contracts on CFTC-regulated and academic-research venues for more than three decades. The Iowa Electronic Markets has operated under successive CFTC no-action letters since 1992,[13] PredictIt operated under a 2014 CFTC staff letter,[14] and Kalshi has listed and cleared election contracts on its DCM following the District Court's 2024 ruling in *KalshiEX LLC v. CFTC*. Election outcomes are also the subject of widespread informal wagering in the United States and abroad, and—like sporting outcomes—are determined by participants whom the typical trader does not control. The Commission's treatment of election contracts as legitimately within the CEA framework, predicated on their information-aggregation and price-discovery utility, is directly analogous to the analysis appropriate to sports event contracts.

Other categorically referential event contracts. DCMs have listed event contracts referencing economic-data releases (CPI, jobless claims, FOMC decisions), corporate events (mergers, IPO timing), scientific events (FDA approvals, scientific milestones), and cultural events (awards outcomes), among many others. The number of certified event contracts grew from an average of approximately five per year in the 2006–2020 period to approximately 1,600 in 2025 alone, as the Commission notes in the ANPRM at 12517 n.9. Many of these contracts reference subject matter on which informal wagering occurs. None has been treated by the Commission as inherently gaming.

The doctrinal conclusion is straightforward: the line between regulated derivatives and gambling has, since *Christie Grain*, been drawn on the basis of economic function—hedging utility, price discovery, market structure—not on the basis of underlying subject matter. Sports event contracts of the kind at issue here sit on the derivatives side of that line on every one of the relevant criteria.

D. The Academic and Economic Literature Establishes Prediction Markets as Information-Aggregation Devices Distinct from Gambling

The economic literature on prediction markets is voluminous, well-developed, and unambiguous about the distinction between prediction markets and gambling. Two foundational contributions deserve specific mention.

In 2004, Justin Wolfers (then of Stanford GSB, later University of Pennsylvania) and Eric Zitzewitz (then of Stanford GSB, later Dartmouth) published "Prediction Markets" in the *Journal of Economic Perspectives*, the flagship survey journal of the American Economic Association.[15] Drawing on data from a range of prediction contexts—including the Iowa Electronic Markets, sports betting markets, and corporate internal prediction markets—the authors demonstrated that "market-generated forecasts are typically fairly accurate, and that they outperform most moderately sophisticated benchmarks."[16] The authors documented prediction-market accuracy in election forecasting (mean absolute error of 1.6 percentage points across thirteen U.S. presidential races from 1988–2004, compared to 1.9 percentage points for the Gallup Poll), economic-data forecasting (Goldman Sachs/Deutsche Bank Economic Derivatives markets outperforming consensus surveys), and sports outcomes (with prices that aggregate dispersed

information about team and player performance into single numerical probabilities). The paper has been cited more than 4,000 times in the academic literature.

In 2008, *Science* published "The Promise of Prediction Markets," authored by twenty-two leading economists including three Nobel laureates—Kenneth Arrow, Vernon Smith, and Thomas Schelling—along with Robert Shiller (subsequently Nobel laureate, 2013), Paul Milgrom (subsequently Nobel laureate, 2020), Cass Sunstein, Robin Hanson, John Ledyard, Hal Varian, Wolfers, Zitzewitz, and others.[17] The paper argued that prediction markets "could substantially improve decision making in the private and public sectors" by aggregating dispersed information into accurate probability estimates, and called on the CFTC and Congress to clarify the regulatory treatment of prediction markets so that the information-aggregation benefits could be realized in U.S. markets. The authors emphasized that the public interest favored permitting these markets, not prohibiting them.

The literature articulates a structural distinction between prediction markets and gambling that bears repetition. A gambling market is structured around the operator: the operator (sportsbook, casino, lottery) is a counterparty to every bet, sets prices to balance its book and extract a vigorish, and profits from the net loss of bettors. The information-aggregation function is incidental and weak; the prices are not designed to reveal probabilities. A prediction market is structured peer-to-peer: an exchange matches buyers and sellers without taking the other side, prices are set by aggregate supply and demand of all participants, and the resulting price is an unbiased—or, at minimum, informationally efficient—estimate of the probability of the underlying event. Wolfers and Zitzewitz documented arbitrage-linked pricing across contracts and minimal evidence of profitable manipulation strategies in prediction markets, consistent with information-efficient pricing.[18] These structural features are identical to those of CFTC-regulated DCMs and distinct from those of state-licensed sportsbooks.

E. The Structural Distinction Between a Sports Event Contract on a DCM and a Sports Bet at a Sportsbook

The structural distinction the Commission should hold in mind, in evaluating sports event contracts under section 5c(c)(5)(C)(i)(V), is the same distinction the academic literature articulates and the Commission has applied for decades to other categories of derivatives. Consider the side-by-side comparison of a Kalshi championship futures contract and a state-licensed sportsbook futures wager:

A Kalshi contract is matched peer-to-peer on a unified national order book; the sportsbook wager is taken by the operator, who sets the line and stands as counterparty to every bettor in its jurisdiction. The Kalshi contract is fully collateralized and transferable at a market-clearing price at any time prior to expiry; the sportsbook wager is non-transferable, and any "cash-out" offered by the operator is at a discount of the operator's choosing. The Kalshi contract's price is publicly observable, reported to the Commission, and aggregates information from every participant nationally; the sportsbook line is set unilaterally by the operator, varies across operators, and is not publicly aggregated. The Kalshi exchange is subject to CEA core principles—impartial access, position limits, surveillance, recordkeeping, anti-manipulation, financial-integrity, system-safeguards—that no state-licensed sportsbook is subject to. The Kalshi exchange has no

commercial interest in the outcome of any contract; the sportsbook profits from the net losses of its bettors.

These are not differences of degree; they are the structural features that distinguish a regulated derivatives market from a gambling enterprise, and they are precisely the features Justice Holmes identified in *Christie Grain* and that the CEA has codified for over a century. A sports event contract on Kalshi is, on every operative dimension, a derivative; it is not a wager on the meaning of section 5c(c)(5)(C)(i)(V).

F. The Public Interest Strongly Favors Permitting These Contracts

CEA section 3(b) directs the Commission to advance the purposes of the Act, which include "promot[ing] responsible innovation and fair competition among [DCMs], other markets and market participants." 7 U.S.C. § 5(b). Three considerations make clear that prohibition is the wrong outcome under that mandate:

First, the demand for hedging instruments referencing sports outcomes is real and large, as Parts 2 and 3 demonstrate at length. If that demand is not met by a federally-regulated, fully-collateralized, transparent DCM, it will be met elsewhere. The "elsewhere" is currently unregulated offshore venues with no CEA core-principle compliance, no surveillance, no public price discovery, no consumer protection, and no integration with U.S. anti-money-laundering and know-your-customer frameworks. The Commission's decision is not whether sports-related risk-transfer occurs; it is where, and under what regulatory framework, it occurs.

Second, the price-discovery and information-dissemination functions of these markets serve public interests far beyond the hedger population. Real-time, publicly observable championship probabilities are a public good. They inform commercial planning by every actor described earlier; they inform academic research; they discipline media commentary; they expose anomalies that may indicate manipulation in adjacent markets; and they do all of this on a venue whose data is reported to and supervised by the federal government.

Third, prohibition would produce arbitrary line-drawing inconsistent with the Commission's settled treatment of structurally identical categories. A regime in which weather derivatives, election contracts, and economic-data event contracts are permitted because they advance public interests in risk transfer and price discovery, while sports event contracts are prohibited despite advancing the same public interests for the same kinds of commercial actors, is not principled. It is subject-matter discrimination of the kind the CEA's economic-function test was designed to avoid.

The Commission's discretion under section 5c(c)(5)(C) is real, but it is not unbounded. Where, as here, a category of contracts (i) advances each of the three public interests articulated in CEA section 3(a); (ii) is supported by a developed academic literature establishing both information-aggregation utility and structural distinction from gambling; (iii) is structurally identical to other categories of event contracts the Commission has long permitted; and (iv) cannot be prohibited without diverting the underlying activity to less-regulated and less-transparent venues, the Commission should determine that the contracts are not contrary to the public interest.

4. Conclusion

Sports event contracts are not a marginal application of the CEA's framework; they are a paradigm case of its hedging, price-discovery, and information-dissemination functions. The underlying exposures are real, large, recurring, and unhedgeable elsewhere. The natural counterparties exist on both sides of the market. The trading venue is federally regulated, fully collateralized, transparent, and subject to comprehensive surveillance. In assessing the public interest under CEA section 5c(c)(5)(C), and in answering the questions framed in Part 2.B of the ANPRM, the Commission should give substantial weight to the conclusion that sports event contracts advance the public interests articulated in CEA section 3(a) more squarely, not less, than many longstanding categories of futures and swaps.

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