ADDITIONAL COMMENTS FROM NRA MEMBERS

I. Executive Summary

The Proposed Rule is an exercise in regulatory make-believe. For more than fifty years after Congress established the Commodity Futures Trading Commission ("CFTC") in 1974, the Nation's derivatives markets operated without offering a single sports wager. That remained true for nearly fifteen years after Congress added the statute's "swaps" provisions through the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.

At no point has Congress enacted legislation authorizing nationwide sports betting via derivatives markets, or designating the CFTC as a gaming regulator. Indeed, the Commission has candidly—and correctly—acknowledged that it "is not a gaming regulator" and lacks "the statutory mandate" and "specialized experience appropriate to oversee" betting markets. *Event Contracts*, 89 Fed. Reg. 48,968, 48,982–83 (June 10, 2024). The Supreme Court likewise has explained that federal law has long "respect[ed] the policy choices of the people of each State on the controversial issue of gambling." *Murphy v. NCAA*, 584 U.S. 453, 484 (2018).

The Proposed Rule casually brushes that settled understanding aside, seeking to replace it with a new scheme designed to legitimize prediction markets' recent and unprecedented foray into casino gaming. It suggests that sports bets offered by prediction markets are financial tools that facilitate "price discovery" and allow users to "hedge" their "exposure to a wide array of" risks—assertions that a federal judge recently described as "sophistry to the nth degree."[1] The contracts offered by prediction markets are not swaps, futures, investments, or anything else of the sort; they "are sports wagers and everyone who sees them knows it."[2]

The Commission's proposal is illegal for all the reasons given in the accompanying cover letter, as well as the additional grounds outlined below. In particular, this Addendum demonstrates that the Proposed Rule:

- Exceeds the Commission's statutory jurisdiction, because the sports bets prediction markets offer are not "swaps" or "excluded commodities" under the Commodity Exchange Act ("CEA")—a conclusion confirmed by the statutory text, prediction markets' own marketing and product design, and the CEA's history, context, and structure;

- Would remain unlawful even if these bets qualified as swaps, because the CEA does not preempt state gaming law under any preemption doctrine—express, field, or conflict—and Congress has never clearly manifested an intent to displace the states' historic police power over gambling;

- Undermines and effectively dismantles the Special Rule that Congress enacted to keep gaming contracts off derivatives markets, replacing the Commission's longstanding categorical prohibition on contracts involving gaming, terrorism,

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[1] Oral Argument at 8:31, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 25-7187 (9th Cir. Apr. 16, 2026), https://youtu.be/JOCrxsSR-OU?si=tVEGQA5J7ZuJzP8e&t=511.

[2] *KalshiEX, LLC v. Hendrick*, 817 F. Supp. 3d 1014, 1029 (D. Nev. 2025).

assassination, and war with a permissive default that lets such contracts trade unless the Commission objects within an unrealistically short ten-day window;

- Reverses the fifteen-year-old categorical prohibition on gaming contracts in 17 C.F.R. § 40.11(a) without acknowledging the change, providing good reasons for it, or accounting for the reliance interests it upsets, in violation of the Administrative Procedure Act ("APA") and Supreme Court precedent;

- Adopts artificially narrow, unsupported definitions of "involves" and "gaming" that depart from the Commission's own past practice and from how those terms are used across federal and state gambling statutes, thereby unreasonably excluding large swaths of sports wagering products from public-interest review;

- Relies on a "price discovery" rationale that has no limiting principle—because any liquid market on any uncertain outcome, including a coin flip, would satisfy it—and fails to identify even a single commercial actor that uses these contract prices to hedge a pre-existing economic risk;

- Imposes an arbitrary and statutorily baseless ten-day window for commencing public-interest review that the Commission's own data show cannot accommodate the scale of the market—daily listings on a single platform grew from roughly 1,600 to 162,000 in a single year—and fails to address how widespread template-based self-certifications could allow entire categories of contracts to evade review altogether; and

- Reflects an inconsistent, incomplete cost-benefit analysis that ignores the costs of state and tribal regulatory displacement and the need for consumer protections, omits any minimum-age or responsible-gaming safeguards, and fails to weigh the ways in which the Proposed Rule would distort the competitive environment in the gaming market.

Courts across the country have repeatedly rejected the legal arguments underlying the Proposed Rule. If the Commission presses ahead with this misguided proceeding, the Proposed Rule will meet the same fate.

II. The Commission Lacks Jurisdiction to Regulate Prediction Markets' Sports Bets.

The Proposed Rule is unlawful because the Commission lacks statutory authority to regulate sports betting and other forms of casino gaming. Although the Proposed Rule asserts that the Commission has "exclusive jurisdiction" over these forms of entertainment, that assertion rests on several erroneous premises. *First*, the Proposed Rule incorrectly assumes that the sports bets offered by prediction markets are "swaps" within the meaning of CEA Section 1a(47). 7 U.S.C. § 1a(47). *Second*, the Proposed Rule fails to recognize that wagering offered by prediction markets is subject to state and tribal regulation, and that the laws underlying those longstanding regulatory frameworks are not displaced by the CEA. *Third*, the Proposed Rule does not acknowledge that the sporting occurrences underlying prediction markets' sports bets do not constitute "excluded commodities" under CEA Section 1a(19)(iv). 7 U.S.C. § 1a(19)(iv).

A. Sports Event Contracts Are Sports Bets, Not Swaps.

Prediction markets offer a broad range of sports wagers, and the Proposed Rule argues that all of them are governed by the Commission, rather than state and tribal regulators. For that audacious claim to be true, the Commission must show that *all* of the wagers offered by prediction markets meet the CEA's "swap" definition. The Commission does not come close to carrying that heavy burden.

1. The Statutory Text Forecloses the Commission's Reading.

Starting with the text, the Commission's arguments falter because a "swap" must be based on the "occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." 7 U.S.C. § 1a(47)(A)(ii). That does not describe prediction markets' sports bets. *See QCX LLC v. Nessel*, 2026 WL 1895958, at *8 (W.D. Mich. June 17, 2026) (prediction market's "sports-related products do not fall within the statutory definition of 'swap'").

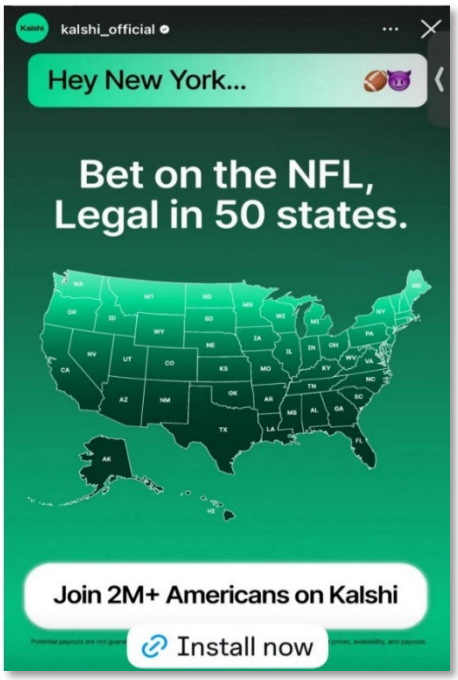
The phrase "associated with" demands a nexus between the "event or contingency" and the "consequence." Thus, the consequence must flow from the event itself, not merely from the parties' decision to wager on it. If wagers on synthetic risks of this kind—*i.e.*, risks that would not exist but for the wager being offered—qualified as swaps, then every outcome (however minute or insignificant, even a coin flip), would qualify, stripping the statutory requirement of any meaning. *See, e.g.*, *Corley v. United States*, 556 U.S. 303, 314 (2009) ("[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant."). The word "potential" does not modify the "associated with" requirement; instead, the statute requires an *actual* association with one or more potential consequences. *See QCX*, 2026 WL 1895958, at *6 (the "appropriate limit on the chains of association is that the potential economic consequences be 'inherently joined or connected with' the events underlying the contract" rather than "downstream, and theoretically infinite, chains of potential consequence").

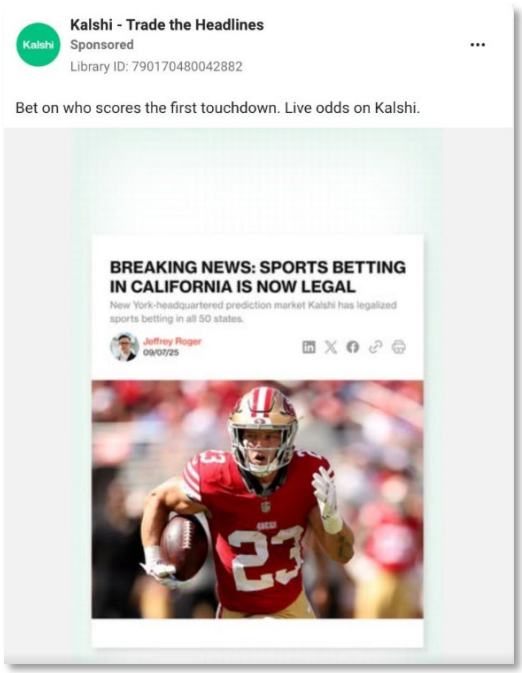
Even if the bets prediction markets offer on the *winner* of a sporting event like the Super Bowl created an outcome that satisfied the CEA's test for "potential financial, economic, or commercial consequence[s]"—and they do not—the Commission has not shown that the bets on the *point spread* or the *over-under* meet that test, much less the parlays and proposition bets that now dominate prediction market volume. There is, for example, no credible argument that real-world economic risk turns on the number of corner kicks in a soccer game. *See also QCX*, 2026 WL 1895958, at *3–4, *6.

2. Prediction Markets Offer Standard Sportsbook Products, as Their Marketing Confirms.

Prediction markets know they are offering sports bets, not financial instruments. They have conceded the point in several courts. *See Massachusetts v. KalshiEX, LLC*, 2026 WL 188019, at *3 (Mass. Super. Ct. Jan. 20, 2026) ("Kalshi does not argue that its sports-related event contracts do not meet the definition of sports wagering in the Commonwealth."); *KalshiEX, LLC v. Martin*, 793 F. Supp. 3d 667, 674 (D. Md. 2025) ("Kalshi does not dispute that it does not comply with … state [gaming] laws"); *Ho-Chunk Nation v. Kalshi, Inc.*, 2026 WL 1284077, at *4 (W.D. Wis. May 11, 2026) ("Kalshi does not appear to dispute that … its sports events contracts qualify as 'class III gaming.'").

The prediction markets also embrace the comparison to sports bets in their marketing, including by aggressively advertising that they offer "legal sports betting in all 50 states." *Hendrick*, 817 F. Supp. 3d at 1029 (citation omitted).[3]





See also KalshiEX, LLC v. Flaherty, 172 F.4th 223, 235 (3d Cir. 2026) (Roth, J., dissenting) (additional advertisements); *Massachusetts*, 2026 WL 188019, at *2 ("Kalshi referred to itself in advertisements as 'the first nationwide legal sports betting platform,' and its CEO has referred to its offerings as 'bets'"). Kalshi has also represented to the U.S. Patent & Trademark Office that its services are associated with "Bookmaking services, namely, providing of information related to sports betting; organizing, arranging, conducting sports betting and gambling tournaments, competitions and contests."[4] The Proposed Rule does not address any of these materials, and thus "entirely fail[s] to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The platforms operated by prediction market companies confirm the point. They allow users to view their offerings in "[s]ports fan mode,"[5] which displays markets in a manner that "mirrors" garden-variety sports bets. *Massachusetts*, 2026 WL 188019, at *2. The graphic below—published in a news article regarding Kalshi's sports betting expansion—illustrates this

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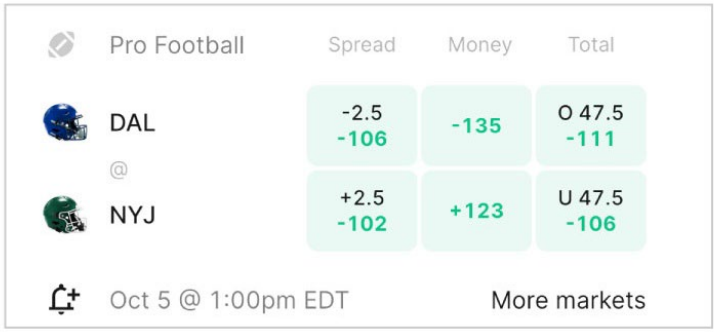
[3] Dustin Gouker, *Kalshi Is Advertising That 'Sports Betting' Is Legal in California, Texas*, Event Horizon (Sep. 17, 2025), https://perma.cc/8NJ4-HFUR; Dustin Gouker, *Yes, Kalshi Is Still Marketing Itself as a Betting Platform*, Event Horizon (Aug. 27, 2025), https://perma.cc/QEH6-YA3L.

[4] U.S. Trademark Application Serial No. 99488100 (filed Nov. 10, 2025), https://tsdr.uspto.gov/documentviewer?caseId=sn99488100&docId=APP20251110143106#docIndex=3&page=1.

[5] Virginia Gandolfo, *How to Display Sportsbook Odds at Kalshi: View American Odds*, RotoGrinders (2026), https://perma.cc/Y99F-GTZG.

approach.[6] The first image shows betting options for an NFL game on a state-regulated online sportsbook; the second shows betting options on Kalshi for the same game. Both use the same format, offer bets on the same point spread, and offer bets on the same over/under for the number of points scored.

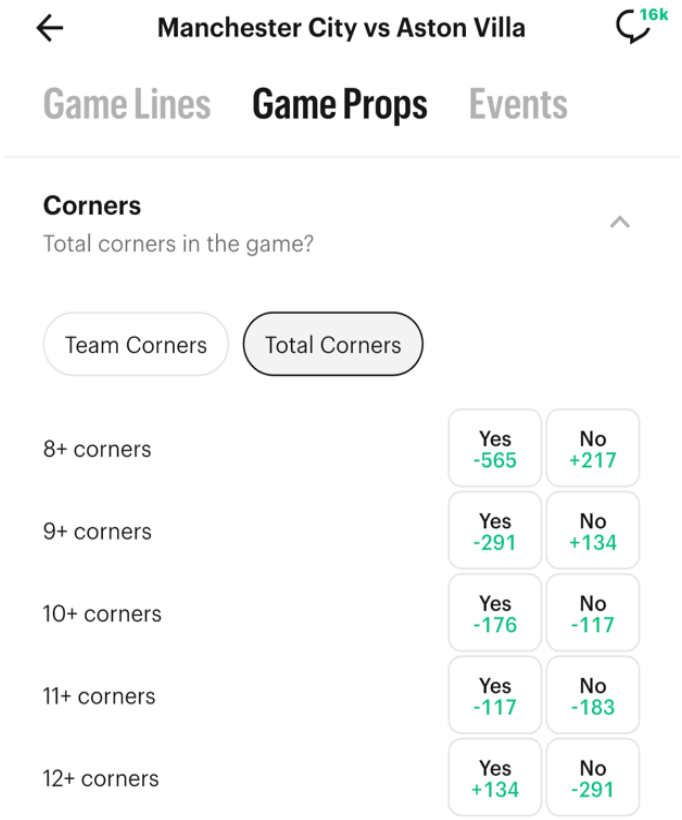




Prediction markets offer bets that have long been standard sportsbook fare, such as proposition bets and parlays. Proposition bets are wagers on statistics and other in-game outcomes. For example, Kalshi offers bets on the total number of corner kicks in an English Premier League soccer match between Manchester City and Aston Villa[7]:

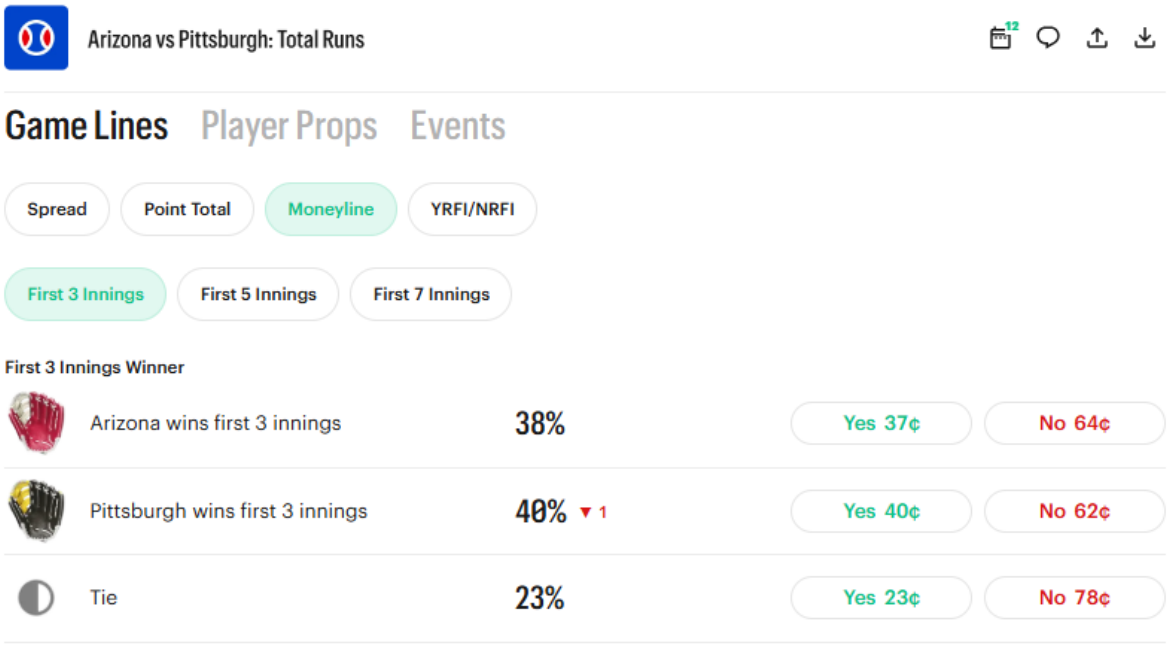
[6] Ben Blatt & Amy Fan, *Is Sports Betting Illegal in Your State? Not If You Call It a 'Prediction Market.'*, N.Y. Times (Oct. 5, 2025), https://perma.cc/JZ9K-7HX8.

[7] Amicus Br. of Am. Gaming Ass'n, *KalshiEX, LLC v. Schuler*, 26-3196 (6th Cir. June 11, 2026), Dkt. 54 at 16. Kalshi likewise offers bets on the speed of the fastest serve in a tennis match. *See* Letter from Xavier Sottile, Head of Markets, KalshiEX, LLC, to CFTC, *Notification Regarding the Initial Listing of the "Will the fastest serve in <tennis match> be <above/below/exactly/at least/between><count><speed>?" Contract* (Jan. 16, 2026), https://perma.cc/SGE5-NT5N.

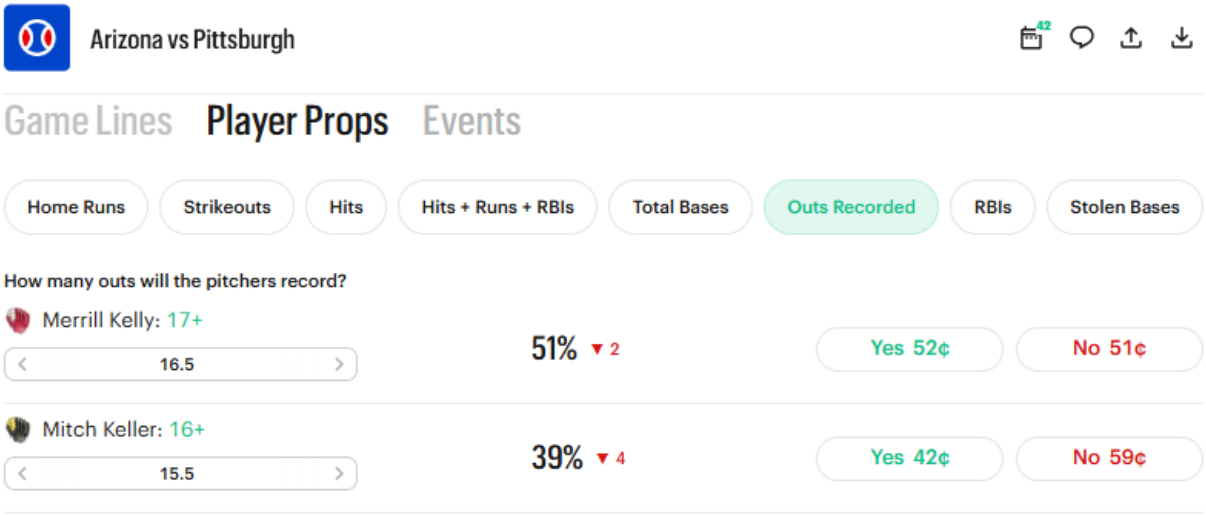


Kalshi also offers bets on which team will be leading in a baseball game after three innings, five innings, or seven innings, as illustrated by the following offerings for a Major League Baseball game between the Arizona Diamondbacks and Pittsburgh Pirates[8]:

[8] This screenshot was taken on Kalshi's web application at 8:42 AM PT on July 27, 2026.



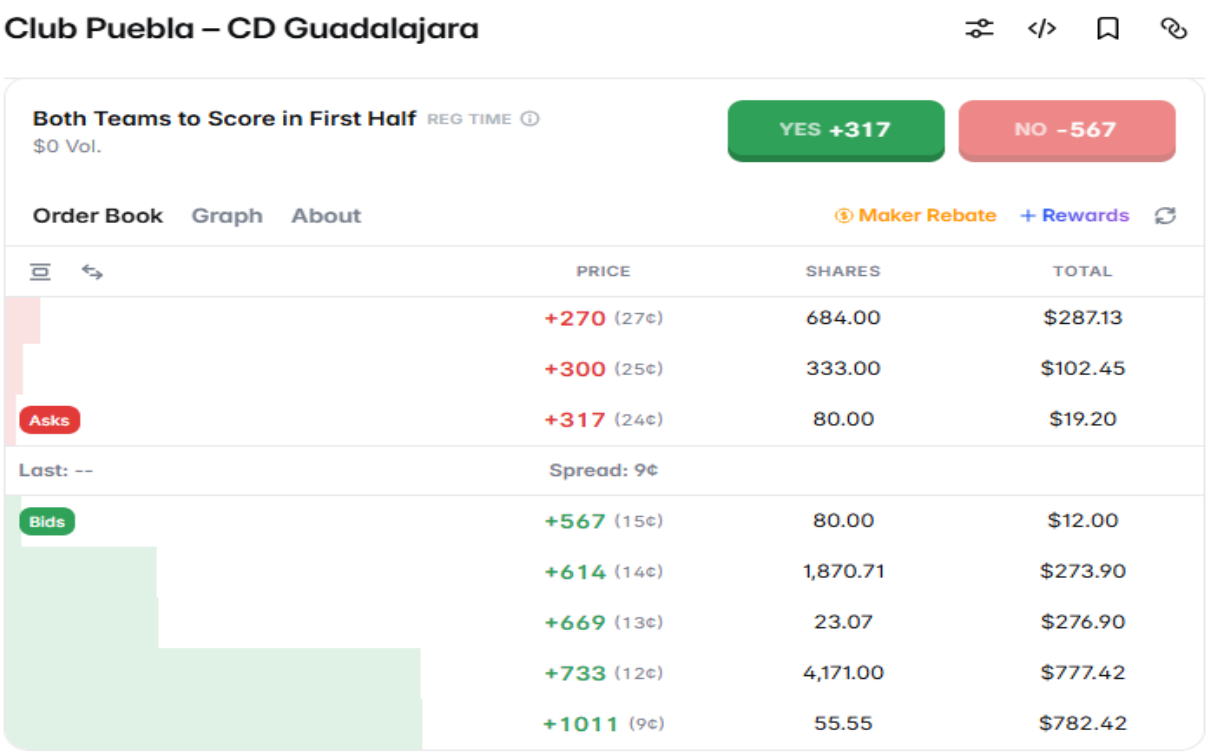
Similarly, Kalshi offers proposition bets regarding whether each team's starting pitcher will record a certain number of outs[9]:



Bettors on Polymarket can wager on whether both teams will score in the first half of a soccer game, as illustrated by the following wagers concerning a Liga MX soccer match between Club Puebla and CD Guadalajara[10]:

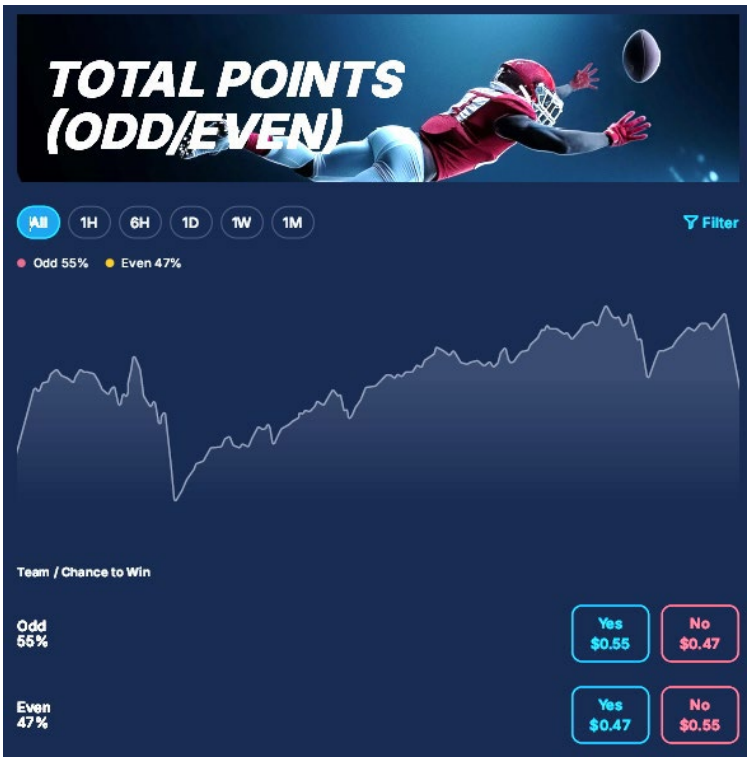
[9] This screenshot was taken on Kalshi's web application at 8:44 AM PT on July 27, 2026.

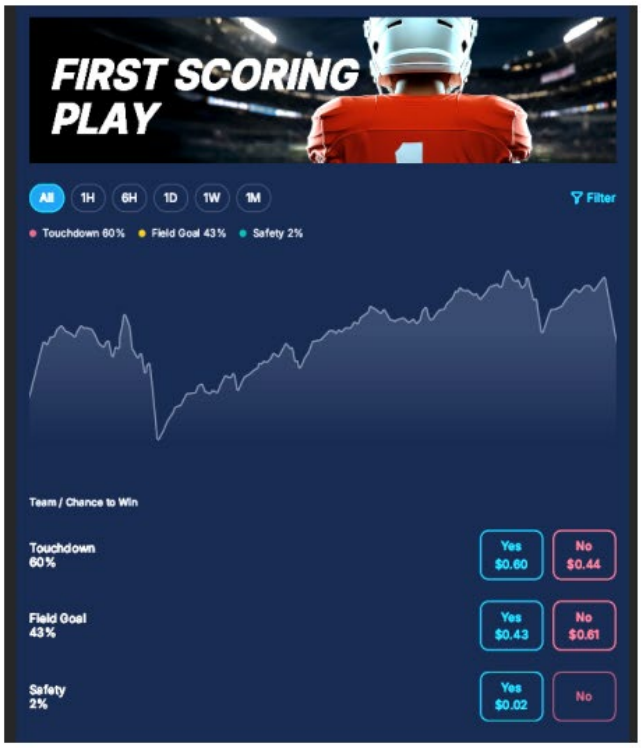
[10] This screenshot was taken on Polymarket's web application at 8:40 AM PT on July 27, 2026.

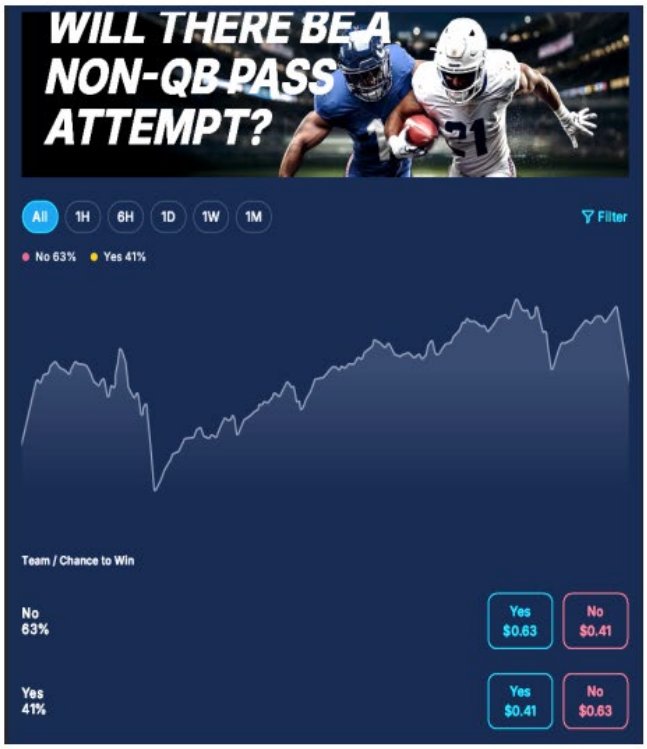


And earlier this year, Crypto.com offered bets on (1) whether the total number of points scored would be odd or even, (2) whether the first scoring play would be a touchdown, field goal, or safety, and (3) whether there would be a non-quarterback passing attempt in the Super Bowl matchup between the New England Patriots and the Seattle Seahawks[11]:

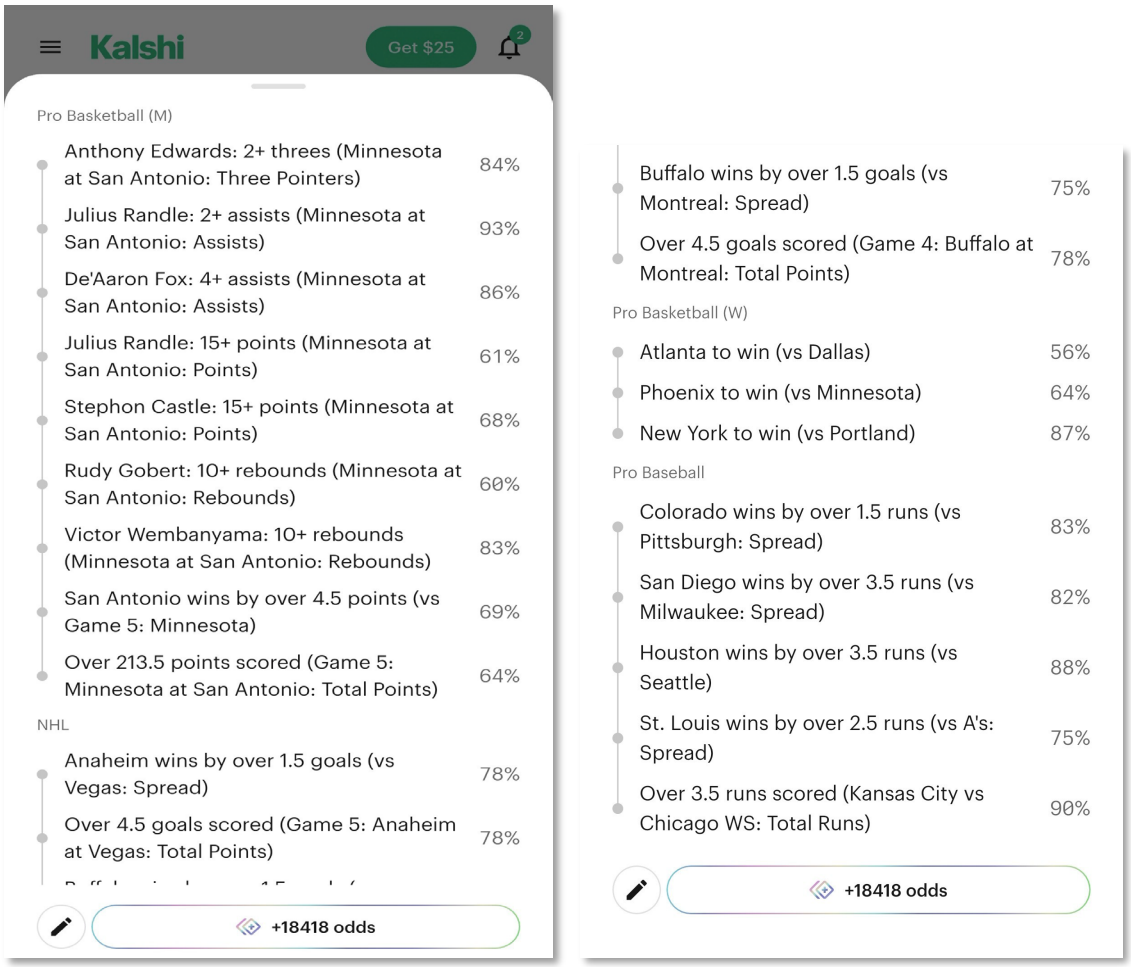
[11] Answering Br. of Nev. Resort Ass'n, *N. Am. Deriv. Exch., Inc. v. Nevada*, 25-7187 (9th Cir. Mar. 3, 2026), Dkt. 62.1 at 13, 28.


TOTAL POINTS (ODD/EVEN)
All
1H
6H
1D
1W
1M
Filter
Odd 55%
Even 47%
Team / Chance to Win
Odd
55%
Yes
$0.55
No
$0.47
Even
47%
Yes
$0.47
No
$0.55


FIRST SCORING PLAY
All
1H
6H
1D
1W
1M
Filter
Touchdown 60%
Field Goal 43%
Safety 2%
Team / Chance to Win
Touchdown
60%
Yes
$0.60
No
$0.44
Field Goal
43%
Yes
$0.43
No
$0.61
Safety
2%
Yes
$0.02
No


WILL THERE BE A NON-QB PASS ATTEMPT?
All
1H
6H
1D
1W
1M
Filter
No 63%
Yes 41%
Team / Chance to Win
No
63%
Yes
$0.63
No
$0.41
Yes
41%
Yes
$0.41
No
$0.63

Prediction markets also allow users to create custom parlays, which are bets that combine several different wagers and pay off only if *all* the listed outcomes occur. Prediction markets do not restrict these parlay bets to a single game, or even to matchups within a single sport. For instance, Kalshi promotes parlays that rely on 30 different outcomes across multiple games within a single sport,[12] and 21-leg parlays that rely on outcomes in separate games across multiple sports in multiple cities[13]:



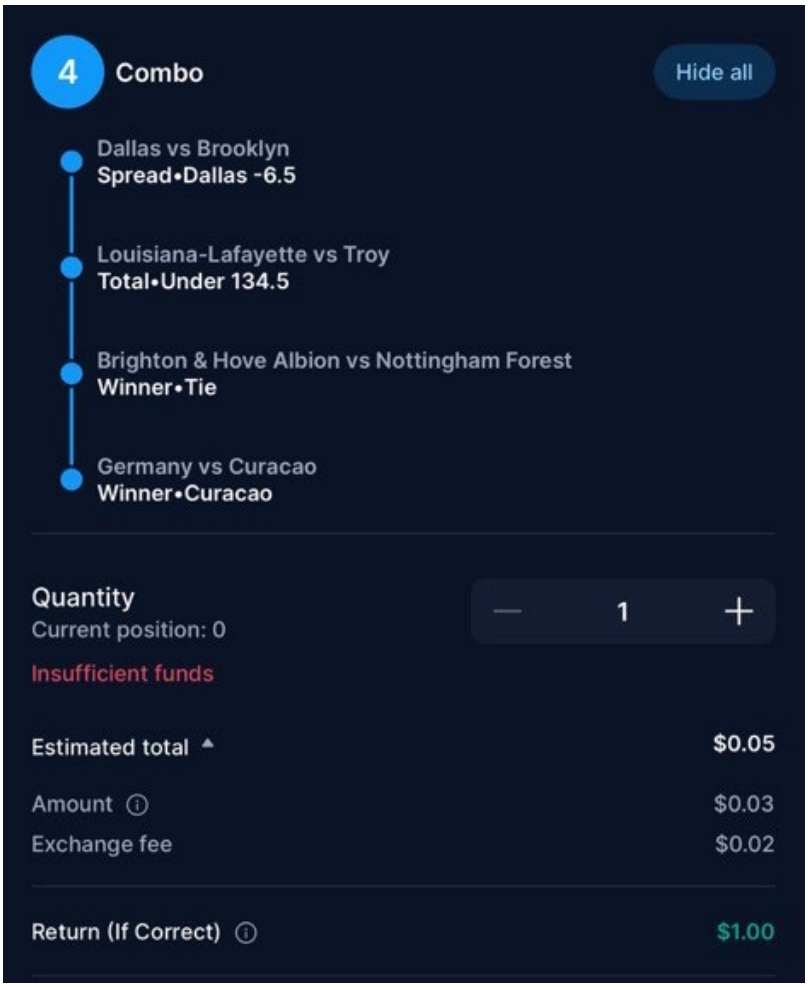
These platforms also allow users to create their own cross-sport parlays. For example, on Crypto.com, earlier this year, users could create a bet that (1) the Dallas Mavericks would defeat the Brooklyn Nets by seven points or more in an NBA game, *and* (2) the University of Louisiana-Lafayette's Ragin' Cajuns and the Troy University Trojans would combine for fewer than 134

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[12] Dustin Gouker, *Kalshi Was Promoting a 30-Leg Parlay to Users on Tuesday*, Event Horizon (Apr. 1, 2026), https://perma.cc/V34F-4WAU.

[13] Amicus Br. of Am. Gaming Ass'n, *KalshiEX, LLC v. Schuler*, 26-3196 (6th Cir. June 11, 2026), Dkt. 54 at 18. For additional examples of parlay and other wagers offered by prediction market platforms, see Answering Br. of Nev. Resort Ass'n, *Robinhood Derivatives, LLC v. Dreitzer*, 25-7831 (9th Cir. Feb. 6, 2026), Dkt. 27.1 at 13–14, 30–33.

points in a college basketball game, *and* (3) Brighton & Hove Albion F.C. and Nottingham Forest F.C. would tie in a soccer match, *and* (4) Curaçao would defeat Germany in the FIFA World Cup:[14]



These bets—and many others offered on prediction markets' platforms—do not meet the statutory definition of a "swap": *No one* faces potential economic consequences from the outcome of a 21- or 30-leg parlay based on outcomes, point spreads, and player performances in a hodgepodge of different sporting events played in different cities. These bets are "surging" on prediction markets[15] and represent "a growing share of [their] volume."[16] They are forms of entertainment that synthetically *create* economic risk, rather than offering a means to hedge risk that already exists in the marketplace. In other words, the sports bets offered by prediction markets do not, as the Commission contends, facilitate "price discovery." *See infra* Section II.A.5.

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[14] Br. of Nev. Resort Ass'n, *N. Am. Deriv. Exch., Inc. v. Nevada*, 25-7187 (9th Cir. Mar. 3, 2026), Dkt. 62.1 at 14.

[15] Sam McQuillan, *Kalshi Parlay Volume Surges, But Sports Prediction Economics Still Lag Sportsbooks*, Legal Sports Report (Mar. 24, 2026), https://perma.cc/XF4N-RGRZ.

[16] Dan Bernstein & Lev Akabas, *Kalshi Retail Bettors Have Lost $100M+ on Parlays this Year*, Sportico (May 13, 2026), https://perma.cc/Y7HK-ZC5N.

The data confirm what the marketing makes clear: on Kalshi alone, sports betting accounts for "more than 90 percent" of the volume.[17] That volume is growing at a staggering pace, with annualized volume now $178 billion and more than $14.8 billion in April 2026 alone.[18] On a single day in April, Kalshi "eclipsed $700 million in trading volume" of which "[m]ore than 92%" came from sports and parlays, and parlays alone represented $189 million of volume.[19]

3. The "Market-Based Pricing" Distinction Is Illusory.

Prediction markets claim that their sports bets differ from traditional sports bets because the prices are determined by market forces, rather than "the house." That is a distinction without a difference. As an initial matter, the fact that odds on prediction markets are not directly set by a "house" is immaterial to the fact that they are wagers. Parimutuel betting likewise has no fixed odds, yet federal law expressly describes parimutuel transactions as "wagers,"[20] and the states that permit parimutuel wagering regulate it as gambling.[21]

Retail users of prediction markets also face "house-like" economics, with market makers taking the place of a traditional house. Market makers are overwhelmingly professional trading firms that run algorithmic strategies to execute hundreds of millions of dollars' worth of trades each week. Kalshi itself operates one of these firms (Kalshi Trading), and at least one market maker "owns a small stake in Kalshi in exchange for providing liquidity on its event contracts."[22] Other prediction markets deploy similar tactics. Crypto.com, for instance, works closely with "market makers,"[23] and has sought to hire employees to work on a team that "trade[s] against customers" in much the same way as sportsbooks "set the odds."[24] DraftKings and FanDuel have similarly launched market making operations, meaning that in many cases a sportsbook is, quite

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[17] Jacob Stern, *You've Never Seen Super Bowl Betting Like This Before*, The Atlantic (Feb. 5, 2026), https://perma.cc/T3GJ-QKYA.

[18] Michael J. de la Merced, *Kalshi, the Prediction Market, Is Now Valued at $22 Billion*, N.Y. Times (May 7, 2026), https://perma.cc/8B83-983L; Dustin Gouker, *Most of Kalshi's Recent Volume Growth Comes from Parlays*, Event Horizon (May 6, 2026), https://perma.cc/4D3W-3H26.

[19] Dustin Gouker, *Kalshi Posts Second-Biggest Day Ever: $700M In Volume*, Event Horizon (Apr. 27, 2026), https://perma.cc/3GZU-CRJS.

[20] 15 U.S.C. § 3002(1) (defining "parimutuel" as "any system whereby wagers with respect to the outcome of a horserace are placed with, or in, a wagering pool"); *id.* § 3002(3) (defining "interstate off-track wager" as "a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State," including "pari-mutuel wagers").

[21] *See, e.g.*, Cal. Bus. & Prof. Code § 9590 (West) ("Parimutuel wagering shall be conducted only by a person or persons licensed under this chapter …"); N.Y. Rac. Pari-Mut. Wag. & Breed. Law § 104 (McKinney) (vesting the state gaming commission with general jurisdiction over racing and pari-mutuel wagering activities).

[22] Emily Nicolle & Bernard Goyder, *Kalshi Completes First Block Trade, Backed by Jump Trading*, Bloomberg (Apr. 28, 2026), https://perma.cc/M7CM-FQAB.

[23] *Market Maker Program*, Crypto.com, https://perma.cc/9JH3-SU4H.

[24] Emily Nicolle, *Crypto.com Hiring Sports Market Maker to Trade Against Customers*, Bloomberg (Dec. 23, 2025), https://perma.cc/2NZ7-NLKW. Like traditional sportsbooks, this in-house organization will focus on "maximiz[ing] profits while carefully managing risks." *Id.*

literally, on the other side of prediction market sports wagers.[25] This dynamic should be unsurprising, because market makers in sports prediction markets serve the same role as the house in a sportsbook. In a conventional derivatives market, market makers operate as neutral intermediaries, earning a profit on the spread between bids and asks and avoiding exposure to price movements in the underlying. But retail demand for sports event contracts, like sports bets writ large, is directional. Accordingly, market makers on prediction markets price events and carry exposure to the contracts through settlement.[26] Another commenter observes that liquidity provision in prediction markets "structurally resembles underwriting rather than classical inventory-neutral intermediation."[27] Put another way, market makers serve the same role as the house in a traditional sportsbook.[28] And in parlays, where users are pure price takers, the house-like role of market makers is even clearer. For retail users, prediction markets do not just look like sportsbooks—the economics are the same, too.

4. The Statutory History, Context, and Structure Make Clear That Prediction Markets' Sports Bets Are Not Swaps.

The proper approach is to interpret the CEA "by reviewing [its] text in context," *Pulsifer v. United States*, 601 U.S. 124, 133 (2024), and in a way that "fit[s] … all parts" of the statute "into an harmonious whole," *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted); *see also Dubin v. United States*, 599 U.S. 110, 120 (2023) (courts should not interpret statutory phrases "in isolation" or based "on the broadest imaginable definitions of [their] component words" (citation omitted)). Here, every contextual indicator shows that Congress sought to regulate quintessential financial-market transactions when it enacted Dodd-Frank. *See KalshiEX, LLC v. Schuler*, 2026 WL 657004, at *6 (S.D. Ohio Mar. 9, 2026) (*Schuler I*). For example, the CEA's definition of swaps refers to "option[s] … for the purchase or sale" of "currencies, commodities, securities" and the like, "interest rate swap[s]," instruments to hedge "financial risk," and "foreign exchange swap[s]." 7 U.S.C. § 1a(47)(A); *see* Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). Those traditional financial instruments bear no resemblance to a 30-leg parlay or a wager on the number of corner kicks in a soccer game. As one court put it, "[t]he markets with which Congress was concerned were dominated by large financial institutions and did not involve individuals staking relatively small amounts of money on the outcome of a football game." *QCX*, 2026 WL 1895958, at *4. As the Commission itself explained in 2012, expanding the statute's reach beyond contracts that have historically been considered swaps would "not serve the statutory purposes of" guarding against risks presented by unregulated derivatives that helped cause the financial crisis. *See Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 Fed. Reg. 48,208, 48,211 (Aug. 13, 2012) (the "Product Definitions Release").

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[25] Ben Horney, *DraftKings, FanDuel Push Further Into Prediction Markets*, Front Office Sports (May 8, 2026), https://perma.cc/6L2Y-BKJR.

[26] Unlike in conventional derivatives markets, there also is no underlying asset or other tool that a market maker can use to hedge, because sports event contracts bear no relation to any pre-existing economic interest.

[27] Nicholas Palumbo, Comment Letter on *Prediction Markets; Public Interest Determinations*, RIN 3038-AF65, at 8 (Mar. 1, 2026).

[28] Neil Mehta, Katherine Long & Caitlin Ostroff, *Why Almost Everyone Loses—Except a Few Sharks—on Prediction Markets*, Wall St. J. (May 3, 2026), https://perma.cc/S676-47AL.

Read in light of the context and structure of the CEA, an event contract has the requisite "financial, economic, or commercial consequence[s]" if it has the same kinds of effects as the other types of financial transactions described in CEA Section 1a(47)(A)—*i.e.*, if the underlying event itself has real-world economic effects and presents a bona fide means to hedge risk exposure, which the swap provides. *See, e.g.*, *Fischer v. United States*, 603 U.S. 480, 488, 492 (2024) (explaining that "a general phrase can be given a more focused meaning by the terms linked to it" and concluding that "[i]t would be peculiar to conclude" that a provision geared at addressing Enron-like scandals in fact "reaches far beyond the document shredding and similar scenarios that prompted the legislation in the first place"); *Zimmer Radio of Mid-Mo., Inc. v. FCC*, 145 F.4th 828, 860 (8th Cir. 2025) (adopting a "narrower definition of 'modify' [as] more appropriate" based on the "statute's context" and the meaning of a "nearby word" (citation omitted)); *Salazar v. Paramount Glob.*, 133 F.4th 642, 650–51 (6th Cir. 2025) (declining to construe statute in an "atomisti[c]" manner based on "the pure definitional meaning of words in isolation," and instead relying on "context" and "common sense" to discern its meaning (citation omitted)).

In addition, in 2010, Congress amended the CEA to include a "Special [R]ule" that allows the Commission to prohibit contracts that involve "gaming" or any "activity that is unlawful under any Federal or State law." 7 U.S.C. § 7a-2(c)(5)(C). The following year, the Commission exercised that authority by adopting a regulation commanding that designated contract markets ("DCMs") "shall not list for trading" any contract that "involves" the activities enumerated in the Special Rule—including "gaming" and "activity that is unlawful under any State or Federal law." 17 C.F.R. § 40.11(a)(1). Because the Special Rule encompasses "agreements, contracts, transactions, *or* swaps," 7 U.S.C. § 7a-2(c)(5)(C)(i) (emphasis added), the reference to "gaming" does not prove that Congress envisioned gaming-based swaps. *See QCX*, 2026 WL 1895958, at *7 ("[I]t is not clear that this provision would represent Congress's judgment that contracts involving war, terrorism, and gaming could actually be 'swaps' as opposed to a failsafe against attempts to portray them as such.").

Several courts have correctly applied these principles. In *QCX*, for example, the court explained that the term "swap" "emerged from a particular context," and "[i]f that context is ignored, the definition … becomes so broad that it sweeps in any agreement or transaction dependent on anything happening that could conceivably result in any degree of financial consequence." 2026 WL 1895958, at *6. Because the opposite reading "allow[s] the chains of association to extend to infinity," it "'effectively reads the limiting language out of the statute,'" and thus "violat[es] 'basic principles of statutory interpretation.'" *Id.* (citation omitted). Similarly, in *Schuler I*, the court concluded that the CEA's purpose is "better achieved when a 'swap' is understood as a transaction involving financial instruments and measures that traditionally and directly *affect commodity prices*" like "[c]urrency exchange rates, the weather, and energy costs,"—not "the number of points scored in the Huskies-Bobcats game." 2026 WL 657004, at *6. And in *Hendrick*, the court observed that Kalshi's interpretation "has no limiting principle" and that Congress did not design the CEA to "enabl[e] nationwide gambling on CFTC-designated exchanges." 817 F. Supp. 3d at 1031.

Those conclusions accord with history and experience. When Congress enacted Dodd-Frank to "brin[g] risky financial products out of the shadows," no one had *ever* offered a sports bet on a Commission-registered exchange. *Hendrick*, 817 F. Supp. 3d at 1031. That includes the 15-year period from Dodd-Frank's enactment in 2010 until prediction market operators began to offer Super Bowl wagers in early 2025. This absence of sports betting makes sense: As the Commission previously observed when implementing Dodd-Frank, Congress did not intend every type of agreement, contract, or transaction that *could* fall within the broadest reaches of the swaps

definition to be subject to Commission regulation. *See* Product Definitions Release, 77 Fed. Reg. at 48,211 ("agreements, contracts, and transactions that previously have not been considered swaps" should not "be regulated as swaps" under Dodd-Frank); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) ("the longstanding practice of the government … can inform a court's determination of what the law is" (cleaned up)).

We note also that the Commission, in connection with the Securities and Exchange Commission ("SEC"), has additionally published a Joint Request for Comment on, among other things, the definition of "swap." 91 Fed. Reg. 37,873 (June 24, 2026) ("Joint Request for Comment").

Congress, in enacting the Dodd-Frank Act, recognized that regulators are not omniscient. It adopted detailed procedures to guide the SEC and the Commission in evaluating new and innovative products over time. The Product Definitions Release reflects the exercise by the Commission and the SEC of their obligation pursuant to the Dodd-Frank Act to address the scope of regulatory action authorized by Title VII of that Act. *See* Product Definitions Release, 77 Fed. Reg. at 48,208 (Aug. 13, 2012) ("Section 712(d)(1) of the Dodd-Frank Act provides that the Commissions, in consultation with the Board, shall jointly further define the terms 'swap,' 'security-based swap,' and 'security- based swap agreement.'"). The Commission and the SEC now note that "[m]arket participants have sought clarity from the Commissions regarding the regulatory lines for agency oversight of innovative products and structures," and suggest that "objective criteria could further clarify" existing definitions. Joint Request for Comment at 37,875.

We express no opinion as to the treatment of truly novel products or structures. However, sports event contracts, which the Commission incorrectly claims are swaps, are not truly novel, and are in fact disguised sports wagers. As discussed in this Section A, these contracts are not swaps at all, a fact that is evident from the structure of the CEA and Congressional intent. And even if such contracts were swaps, state gaming authority over them is not preempted. We oppose any attempt by the Commission to implement guidance on the definition of swap that attempts to override the intent of Congress, the structure of the CEA, and the well-settled authority of the states in gaming regulation.

5. The Proposed Rule's "Price Discovery" Rationale Does Not Satisfy the Statutory Text.

The Proposed Rule suggests that prediction markets' wagers are "swaps" because these bets "may serve price discovery functions and provide meaningful information." But this rationale collapses the statutory inquiry. The underlying occurrence—e.g., the number of corner kicks in a soccer game or the speed of a tennis serve—does not involve "potential" "economic consequences" merely because someone has bet on it. Otherwise, every occurrence in the universe (including coin flips) would qualify, rendering CEA section 1a(47)(A)(ii)'s requirements meaningless. *See Hendrick*, 817 F. Supp. 3d at 1028, 1030–31 & n.3. And the Commission's reading of "swap" in CEA section 1a(47)(A)(ii) would swallow the separate (and differently worded) "swap" definitions in sections 1a(47)(A)(i) and (iii), rendering them superfluous. *City of Chicago v. Fulton*, 592 U.S. 154, 159 (2021) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). The Court "should not lightly conclude that Congress enacted a self-defeating statute." *Quarles v. United States*, 587 U.S. 645, 654 (2019).

The practical problems with the Proposed Rule are particularly clear regarding proposition and parlay bets. Proposition bets can include an almost infinite number of possible

outcomes—for example, whether the first score of a football game will be a touchdown, a field goal, or a safety, and whether a football player other than the quarterback will attempt a pass. Meanwhile, parlays allow bettors to add two or more picks to a single prediction, creating a situation in which the odds of winning are lower than a single-pick prediction and the potential payout is higher. A parlay could involve whether the Seattle Mariners, Nashville Predators, and Novak Djokovic all win particular matchups by more than a specified margin—despite playing different sports, in different cities, on different dates. Sportsbooks offer these multi-leg wagers to increase potential prizes at the cost of longer odds. But as noted above, *no one* needs to hedge economic risk on whether all those results occur.[29] The Commission cannot show that these wagers, which make up a significant proportion of prediction market offerings, meet the statutory test.[30]

6. The Commission's Interpretation Produces Unexpected and Absurd Results.

The implications of the Commission's position are extreme. Congress has never enacted a law providing that all sports bets, including those offered by brick-and-mortar sportsbooks, must be traded on DCMs. Moreover, multiple lines of precedent (including the Major Questions Doctrine) foreclose any argument that the commodities laws mandate such a significant change in market structure. Nevertheless, the Proposed Rule relies on an interpretation of the word "swap" that logically extends to "on-DCM" and "off-DCM" sports wagers alike.

If the Commission were correct that sports wagers qualify as "swaps," the CEA would require *all* sports bets—including those placed on the Las Vegas Strip—to be traded on DCMs. This is so because the CEA makes it "unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of" a DCM. 7 U.S.C. § 2(e). Fortunately, the CFTC's argument is baseless. There is no statutory basis for the gerrymandered approach of applying section 2(e) to sports bets *on* DCMs and permitting the States to regulate sports bets that occur *off of* DCMs. *Hendrick*, 817 F. Supp. 3d at 1030 (describing prediction market's argument as "self-fulfilling, circular, and inconsistent with the statutory text"). The CEA's "swap" definition does not turn on whether a contract is listed on a DCM. *See* 7 U.S.C. § 1a(47)(A)(ii).

There is, in short, no plausible statutory ground to distinguish retail sports bets from identical wagers placed on prediction markets—if the former are not swaps, the latter must not be

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[29] *See* Letter from Xavier Sottile, Head of Markets, Kalshi, to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Comm'n, Comment of KalshiEX, LLC in Support of Combination Event Contracts, RIN 3038-AF65 (Mar. 16, 2026) (claiming that "[c]ombination event contracts serve the Commodity Exchange Act's enumerated economic purposes, risk transfer and price discovery, in ways that single-leg contracts cannot …"). Kalshi's assertion is baseless. Combination event contracts (i.e., multi-leg parlays) are, as discussed above, even more attenuated from any plausible economic relevance under the CEA, and serve no additional price discovery or hedging purpose.

[30] For example, Kalshi's "combo bets" "ma[de] more money in fees" in one day "than non-sports events have ever made in a single day." Daniel O'Boyle, *Kalshi Parlays Break Records, Make More Money Than Non-Sports Markets, After Robinhood Launch*, Yahoo Finance (Jan. 30, 2026), https://perma.cc/5NPT-HY6F.

as well.[31] In other words, the unavoidable consequence of the Commission's misguided argument is that Congress made the Commission the Nation's sole sports betting regulator when it enacted Dodd-Frank. "Because the definition of swap cannot turn on whether the transaction occurred on a designated market, the definition either produces the absurd result of forcing broad swaths of ordinary transactions onto designated markets through § 2(e), or it does not," and the Commission's theory "falls apart because excluding those other ordinary transactions excludes [prediction markets'] sports betting products as well." *QCX*, 2026 WL 1895958, at *8.

Accepting the Commission's interpretation and its lack of any limiting principle would also mean that the Commission—which previously considered "certain consumer and commercial contracts" as outside the definition of "swaps"—could at any time determine that mortgages, consumer loans, life insurance policies, employment contracts, or retirement benefit arrangements are swaps subject to the agency's exclusive jurisdiction. Product Definitions Release, 77 Fed. Reg. at 48,211. After all, the "swap" definition includes "any agreement, contract, or transaction" that "provides for any purchase, sale, payment, or delivery" associated with a potential economic consequence. 7 U.S.C. § 1a(47)(A)(ii).

The Commission's interpretation also runs headlong into the major-questions doctrine. Courts are "skeptic[al]" "[w]hen an agency claims to discover in a long-extant statute an unheralded power" over questions of vast economic and political significance. *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014). That is precisely what the Commission seeks to do here by reinterpreting the CEA to give itself authority to regulate the $17 billion, 35-state commercial sports betting market.[32] As the Supreme Court has recognized, the "legalization of sports gambling" has long been "a controversial subject" that involves "important policy choice[s]." *Murphy*, 584 U.S. at 486. Under the Commission's view, however, *Murphy* was unnecessary because Congress silently empowered the Commission to authorize nationwide sports betting in 2010. The "lack of historical precedent" for federally authorized sports betting, "coupled with the breadth of authority that the [Commission] now claims, is a 'telling indication' that the [newfound policy] extends beyond the agency's legitimate reach." *NFIB v. OSHA*, 595 U.S. 109, 119–20 (2022) (citation omitted); *see also Learning Resources, Inc. v. Trump*, 607 U.S. 229, 245 (2026) (opinion of Roberts, C.J.) ("It is also telling that in IEEPA's half century of existence, no President has invoked the statute to impose *any* tariffs."). The absence of sports betting in Commission-regulated markets from the agency's inception in 1974 through 2025 is in itself powerful evidence against the Proposed Rule's approach.

B. The CEA Does Not Preempt State Gaming Laws.

Even if prediction markets' sports bets qualified as "swaps" under the CEA, they would remain subject to state gaming laws. Courts presume that Congress does not displace "the historic police powers of the States," especially when it legislates in a field the States have traditionally occupied, absent a clear statement. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (cleaned up). Gambling regulation lies "at the heart of a state's police powers," *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 737 (9th Cir. 2003), and the traditional federal approach is to "respect the policy choices of the people of each State" on gambling, *Murphy*, 584 U.S. at 484.

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[31] For avoidance of doubt, NRA opposes the CFTC's misguided reading of the word "swap." A regulatory framework based on the ordinary, correct meaning of that term would not result in the absurd consequences described in this subsection.

[32] Am. Gaming Ass'n, *State of the States 2026: The AGA Analysis of the Commercial Casino Industry*, 10 (May 2026), https://perma.cc/E9RR-XPDN.

The Commission therefore must show that preemption was Congress's "clear and manifest purpose." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (citation omitted). It cannot do so under any preemption doctrine.

The CEA does not expressly preempt state gaming laws. Section 2(a)(1)(A) grants the Commission "exclusive jurisdiction" over swaps and futures transactions traded on designated contract markets, but it says nothing about preemption or state law. 7 U.S.C. § 2(a)(1)(A). The Supreme Court has explained that this language was intended "only to consolidate federal regulation of commodity futures trading" in the Commission and to separate its functions from those of the SEC and other federal agencies. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 386–87 (1982); *see also KalshiEX, LLC v. Martin*, 793 F. Supp. 3d 667, 678 (D. Md. 2025); *QCX*, 2026 WL 1895958, at *10. Moreover, elsewhere, the CEA expressly preempts state gaming law in circumstances that do not apply here, and uses clear preemption language to do so. 7 U.S.C. § 16(e)(2) ("This chapter shall *supersede and preempt*" application of state or local prohibitions on bucket shops (emphasis added)); *id.* § 16(h)(2) (stating that swaps "may not be regulated as insurance contract[s]" under state law). That statutory contrast is decisive. These targeted provisions confirm that Congress did not silently enact general gaming-law preemption in Section 2(a). *KalshiEX, LLC v. Schuler*, 2026 WL 1295806, at *4, *6 (6th Cir. Apr. 24, 2026) (*Schuler II*).[33]

Field preemption fares no better. It arises only in the "rare cases" where Congress has regulated so comprehensively that it left no room for supplementary state law. *Kansas v. Garcia*, 589 U.S. 191, 208 (2020) (citation omitted). The CEA's savings clause preserves state regulatory authority, and the Act separately permits state antifraud enforcement. 7 U.S.C. §§ 2(a)(1)(A), 13a-2(7). Such provisions negate any inference of complete federal regulation. *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987); *Schuler II*, 2026 WL 1295806, at *5; *KalshiEX, LLC v. Williams*, 2026 WL 2017466, at *7 (S.D.N.Y. July 13, 2026). More fundamentally, the state laws at issue regulate gaming—a traditional state concern—not derivatives as such. The CEA's Special Rule confirms the complementary regime by directing special scrutiny to contracts involving "gaming" or activity unlawful under state law. 7 U.S.C. § 7a-2(c)(5)(C); *Martin*, 793 F. Supp. 3d at 682–84.

Nor do state gaming laws conflict with the CEA. Compliance with both regimes is possible: a prediction market may obtain the required state license or refrain from offering products prohibited by state law. *Williams*, 2026 WL 2017466, at *8. State law also poses no obstacle to Congress's objectives because the CEA preserves state authority and expressly makes compliance with state law relevant under the Special Rule. The contrary uniformity and "impartial access"

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[33] The canon of constitutional avoidance also counsels against finding "exclusive jurisdiction" to mean express preemption, as doing so would raise serious questions under the private nondelegation doctrine. *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) (noting courts will avoid interpretations that raise serious constitutional issues absent clear congressional intent). The CFTC claims complete jurisdiction over contracts listed on a designated contract market. Under that theory, a private party triggers preemption by self-certifying that a contract is a swap, leaving the force of state law to turn entirely on that private party's statutory interpretation and actions. The private nondelegation doctrine forbids nongovernmental entities from exercising governmental power unless they serve only in an advisory role and the agency retains decision-making authority. *See FCC v. Consumers' Research*, 606 U.S. 656, 693, 697 (2025). By leaving private parties to decide whether a contract is a swap, the Proposed Rule abdicates the Commission's decision-making responsibility and violates that doctrine.

arguments would erase that statutory integration of state law. The impartial-access rule does not require designated contract markets to offer the same contracts nationwide, and courts have rejected that theory. *QCX*, 2026 WL 1895958, at *11–12; *Williams*, 2026 WL 2017466, at *8; *Schuler II*, 2026 WL 1295806, at *5. State gaming laws therefore supplement rather than frustrate the CEA, and remain enforceable.

C. Prediction Markets' Sports Bets Involve Occurrences That Are Not Excluded Commodities.

Even if the Commission could establish that some prediction market sports bets are "swaps," the Commission must also demonstrate that the underlying sporting occurrences constitute "excluded commodities" under section 1a(19)(iv)—a showing it has not made. The Special Rule—and thus the existing and proposed Section 40.11—applies only to "agreements, contracts, transactions or swaps *in excluded commodities*." (Emphasis added.) An "[e]xcluded commodity" is defined in relevant part as an "occurrence, extent of an occurrence, or contingency … that is – (I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence." 7 U.S.C. § 1a(19).

This definition imposes a requirement independent of and in addition to the "swap" definition: the sporting occurrence must itself—apart from any contract traded on it—be "associated with a financial, commercial, or economic consequence." The "consequence" in subclause (II) must be inherent to the sporting occurrence itself, independent of any contract that is traded regarding the sporting occurrence. As described above, many of the sports bets on prediction markets—such as proposition bets and parlays—lack any such inherent economic consequence. The number of corner kicks in a soccer match or a 30-leg parlay spanning games across multiple sports in multiple cities carries no "financial, commercial, or economic consequence" of its own. *See supra* Section II.A.2.

III. The Proposed Rule Undermines the Special Rule.

The Proposed Rule would undermine the regulatory scheme that Congress prescribed (and that the Commission previously adopted) to implement the Special Rule. Rather than retain the categorical prohibition on event contracts involving unlawful activities, terrorism, assassination, war, gaming, or other similar activity determined by the Commission to be contrary to the public interest, 17 C.F.R. § 40.11(a), the Proposed Rule would adopt a permissive default rule. Under that rule, contracts Congress identified as particularly problematic would be allowed to be traded unless the Commission affirmatively initiates review within an unrealistically short ten-day window. 91 Fed. Reg. at 35,839–40. And even when the Commission does so, prediction markets could continue to offer the contracts for trading until the review is complete—and would continue trading permanently if the Commission does not make a final determination that they are contrary to the public interest at the end of the 90-day review period. *Id*. at 35,842.

The result of this change would be a rule that directly undermines the CEA's purpose of establishing "a system of effective self-regulation … under the oversight of the Commission." 7 U.S.C. § 5(b). This is not implementation of the Special Rule—it is the effective dismantlement of the Special Rule's protective function. The framework the Commission proposes is arbitrary and capricious because it creates a regulatory architecture that the Commission's own record demonstrates will collapse under the scale of the market it purports to govern. The result will be de facto approval of gaming contracts without any affirmative public-interest review, thereby

facilitating an unregulated nationwide sports-wagering market contrary to the intent of Congress.[34]

A. The Special Rule Authorizes Categorical Public-Interest Determinations that Underpin the Commission's Longstanding Prior Approach, Consistent with Congress's Skepticism Regarding the Enumerated Contract Categories.

The "best" reading of the Special Rule is that it serves as a backstop and confirms what the rest of the statute provides—that the CEA does not authorize nationwide sports betting. Specifically, the Special Rule permits the Commission to categorically determine that the enumerated categories of contracts (*e.g.*, gaming contracts) do not serve the public interest and should be prohibited. *See Loper Bright*, 603 U.S. at 400. Textually, the statute does not limit the agency to the post-hoc adjudication of certified and listed contracts. Instead, it gives the Commission authority to "determine that such agreements"—*i.e.*, event contracts—are contrary to the public interest if they "involve" certain enumerated categories of events or others determined by rulemaking. 7 U.S.C. § 7a-2(c)(5)(C)(i). By drafting this provision to focus on *categories* of contracts contrary to the public interest, the simplest and most straightforward interpretation is that Congress empowered the Commission to prospectively determine that certain *categories* of contracts are contrary to the public interest.

The Special Rule's next provision confirms this conclusion. If the Commission first determines that certain categories of contracts are "contrary to the public interest under clause (i)," then such contracts cannot "be listed" or otherwise be made available for trading. *Id.* § 7a-2(c)(5)(C)(ii). In other words, the statute contemplates an *ex ante* regulatory regime in which the Commission establishes proactive gating categories that then determine whether a contract can "be listed" or made available *before* that listing or offering occurs. *Id.* While this authority leaves open the Commission's authority to review contracts for compliance after they have been listed, the plain text shows that the agency has authority to categorically prohibit certain classes of contracts as contrary to the public interest before they are listed. Indeed, if the agency lacks the authority to make prospective public interest determinations through rulemaking (as the Proposed Rule suggests), then certain public interest factors in the Proposed Rule stand on shaky statutory ground because they would establish, on a prospective basis, that contracts involving player injuries, officiating outcomes, discrete actions involving specific participants, physical altercations, or pre-collegiate sports are likely "contrary to the public interest." 91 Fed. Reg. at 35,836–38. In this respect, the Proposed Rule is internally inconsistent, and therefore arbitrary and capricious. *See ANR Storage Co. v. FERC*, 904 F.3d 1020, 1028 (D.C. Cir. 2018).

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[34] The CFTC and the SEC jointly discussed the consultation process called for by Section 718 of the Dodd-Frank Act in the Product Definitions Release. A commenter suggested that a requesting party be permitted to trade under its own good-faith characterization of an instrument while awaiting the Commissions' joint determination. The Commissions rejected that approach, concluding that "it is essential that the characterization of an instrument be established prior to any party engaging in the transactions so that the appropriate regulatory schemes apply." Product Definitions Release, 77 Fed. Reg. at 48,297. The same principle applies here: just as the Commissions would not let a novel instrument trade while its status remained unsettled, the Commission's consumer protection mandate requires that event contracts should not list and trade while their classification under the Special Rule remains unresolved. The Commission's failure to address this precedent renders the Proposed Rule arbitrary and capricious.

Further, the Commission's general rulemaking authority under 7 U.S.C. § 12a(5)—one of the stated bases for Section 40.11 itself, Provisions Common to Registered Entities, 76 Fed. Reg. 44,776, 44,786 n.37 (July 27, 2011)—provides further support for that understanding, as it independently authorizes rules "reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes" of the Act, language materially identical to that under which the Supreme Court sustained a prophylactic, categorical rule in *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 369–73 (1973).

This is precisely the interpretation of the Special Rule that the Commission adopted in Section 40.11, promulgated shortly after Dodd-Frank was enacted. *See* Provisions Common to Registered Entities, 76 Fed. Reg. at 44,785 (providing that the Commission had "determined to prohibit contracts based upon the activities enumerated in Section 745 of the Dodd-Frank Act"). Section 40.11(a)(1) of the existing rule provides, in mandatory terms, that a registered entity "shall not list for trading or accept for clearing" any event contract based on an excluded commodity that "involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law." 17 C.F.R. § 40.11(a)(1). That provision reflects the Commission's categorical determination that all contracts involving these enumerated categories were against the public interest, and thus that DCMs should be prohibited from listing them. The Commission's 2011 adopting release confirmed that design expressly, explaining that the Commission had "*determined to prohibit* contracts based upon the activities enumerated in Section 745 of the Dodd-Frank Act and to consider individual product submissions on a case-by-case basis under § 40.2 or § 40.3." Provisions Common to Registered Entities, 76 Fed. Reg. at 44,785 (emphasis added). The operative structure was clear: The Commission determined categorically to *prohibit* contracts involving the activities enumerated in the Special Rule and then, through the submission process under § 40.2 or § 40.3, would determine whether particular contracts fell within the categorically prohibited categories.

The case-by-case assessment under the existing Section 40.11 has been classificatory—the Commission has determined whether a contract involves, for example, gaming, rather than exercising discretion as to whether individual gaming contracts are permitted. As former Chairman Gensler, who chaired the Commission during Dodd-Frank's enactment and implementation and who provided technical assistance on the Special Rule, has explained, "40.11(a) prohibits listing 'any' contract involving gaming. The purpose of CFTC review of an event contract under Rule 40.11(c) is simply to determine whether a particular contract involves a prohibited category, i.e., whether it involves gaming, war, terrorism, assassination, or unlawful activity. No contract-specific 'public interest' determination is required because the CFTC already concluded in 2011 that all event contracts within these categories are not in the public interest." Br. of Former CFTC Chairman Gary Gensler as Amicus Curiae at 27, *KalshiEX, LLC v. Schuler*, No. 26-3196 (6th Cir. June 11, 2026) (citation omitted). The NPRM's recharacterization of this architecture as merely a "discretionary review framework," *see* 91 Fed. Reg. at 35,815, inverts the structure adopted by the 2011 release and is a revisionist recharacterization unsupported by the administrative record.

The legal premise underlying the NPRM's reversal is likewise incompatible with background principles of administrative law. The Commission asserts that categorical public-interest determinations are incompatible with the Special Rule, but agencies routinely exercise discretionary statutory authority through generally applicable rules. The Supreme Court has repeatedly recognized that, absent a clear congressional directive to the contrary, an agency may rely on rulemaking to resolve issues of broad applicability rather than repeating the same determination in individual proceedings. *Heckler v. Campbell*, 461 U.S. 458, 467 (1983); *Am. Hosp. Ass'n v. NLRB*, 499 U.S. 606, 612 (1991). Where Congress confers discretionary authority

using permissive language such as "may," agencies remain free to implement that authority categorically through rulemaking. *Lopez v. Davis*, 531 U.S. 230, 243–44 (2001).

The legislative record provides further evidence that the Commission's original interpretation is consistent with Congress's clear intent. That record reveals that the Special Rule was intended to prevent gambling products from migrating into federal derivatives markets. During Senate consideration of Dodd-Frank, Senator Lincoln explained that the Special Rule was intended to "prevent gambling through futures markets" and stated that the Commission "should[] prevent" contracts that exist "predominantly to enable gambling through supposed 'event contracts.'" 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010). She specifically identified contracts tied to the Super Bowl, Kentucky Derby, and Masters Golf Tournament as examples of contracts that "would not serve any real commercial purpose" and instead "would be used solely for gambling." *Id.* This contemporaneous explanation cannot reasonably be reconciled with the Proposed Rule's conclusion that Congress intended the Special Rule to facilitate the nationwide trading of sports-wagering contracts through federally regulated exchanges.

There is also serious internal tension in the Commission's reasoning. The Proposed Rule asserts that categorical public-interest determinations are incompatible with the Special Rule. Yet the Proposed Rule continues to identify categories of contracts warranting heightened scrutiny and establishes categorical criteria intended to guide public-interest determinations. For example, the Commission notes that it is "highly likely" that contracts involving games whose outcomes depend on random chance (which it notes are "by definition, devoid of informational content") would be found to be contrary to the public interest. 91 Fed. Reg. at 35,835. Even setting aside the fact that such contracts lack any association with independent financial, economic, or commercial consequence and thus would not be swaps within the Commission's jurisdiction, such a statement functions as a categorical prohibition of exactly the form the Commission claims it cannot make. The same is true for "all event contracts involving terrorism, assassination, and war." 91 Fed. Reg. at 35,834. It is only where a quasi-categorical prohibition would impair the business of the Commission's favored market participants that it stops short. The Commission never explains why categorical treatment is impermissible as part of Section 40.11's existing framework but permissible when incorporated into the Proposed Rule's revised framework. The APA requires a reasoned explanation for such distinctions, *see State Farm*, 463 U.S. at 43, which the Proposed Rule fails to provide.

B. The Commission's Proposed Departure from Its Longstanding Categorical Approach Undermines Congress's Intent in Enacting the Special Rule and Is Arbitrary and Capricious.

As demonstrated above, the Commission's longstanding categorical approach to the Special Rule is not merely permissible—it reflects the best reading of the statute and is consistent with Congress's evident skepticism that contracts involving gaming and the other enumerated activities serve the public interest. Congress did not simply grant the Commission open-ended discretion; it singled out specific categories of contracts—those involving terrorism, assassination, war, gaming, and unlawful activity—because it viewed these categories as posing distinct threats to the public interest that warranted differential regulatory treatment. The Commission's decision to abandon that categorical framework for a permissive default is arbitrary and capricious for two independent reasons.

First, the Commission's sole stated rationale for departing from the categorical approach is its conclusion that such determinations are "not permissible" under the Special Rule. 91 Fed. Reg. at 35,841. But as shown above, that conclusion is incorrect—the statute's text, structure, and history all support the Commission's authority to make categorical public-interest determinations, and the Commission itself exercised that authority for fifteen years without challenge. Because the Commission's only articulated reason for abandoning the prior approach rests on a flawed legal premise, the Proposed Rule lacks any adequate justification for the change. An agency rule premised on the erroneous belief that the agency lacks authority to maintain its prior policy cannot survive arbitrary-and-capricious review, because the agency has "failed to consider" the full scope of its statutory discretion. *Cf. Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 26, 28 (2020) (agency action is arbitrary and capricious where agency fails to appreciate the "full scope" of its discretion and decision rests on erroneous legal conclusion).

Second, even setting aside the Commission's erroneous legal conclusion, the practical operation of the Proposed Rule is fundamentally inconsistent with Congress's intent in enacting the Special Rule. Congress identified contracts involving gaming and the other enumerated activities as warranting heightened regulatory scrutiny precisely because it was skeptical that such contracts serve the public interest. The Commission's new framework inverts that congressional judgment: Rather than presuming these contracts are contrary to the public interest unless affirmatively approved, the Proposed Rule presumes they are lawful unless the Commission affirmatively intervenes within a ten-day window. *See* 91 Fed. Reg. at 35,839–40. Given the scale at which prediction markets now operate—with daily average listings growing from 1,600 to 162,000 in a single year, *id.* at 35,844 n.298—the Commission's own record demonstrates that meaningful review within ten days will be impossible in the vast majority of cases. The inevitable result is that contracts Congress identified as particularly problematic will be listed for trading by default, without any affirmative public-interest review—precisely the outcome the Special Rule was designed to prevent. A rule whose foreseeable practical operation defeats the purpose of the statute it purports to implement is the hallmark of arbitrary and capricious agency action. *See State Farm*, 463 U.S. at 43.

The Proposed Rule fails to explain how the Commission's revised interpretation of the CEA is consistent with the functions that Congress has identified for regulated derivatives markets. Congress found that transactions subject to the Act serve public interests by facilitating risk management, price discovery, and financially sound markets. 7 U.S.C. § 5. The Proposed Rule proposes to replace a prohibition on contracts involving the activities enumerated in the Special Rule with a framework under which those contracts are listed by default absent rapid Commission intervention, yet it does not explain why Congress would have enacted the Special Rule—and thereby singled out contracts involving gaming and the other statutorily enumerated categories for differential treatment—if it intended gaming contracts to receive the same regulatory treatment as contracts serving traditional hedging and price-discovery functions. That omission further undermines the Commission's newfound interpretation.

These errors are particularly significant because market participants reasonably relied on the Commission's longstanding interpretation. For fifteen years, registered entities and market participants reasonably could, and did, structure their conduct around the mandatory text of the existing Section 40.11. Prior to 2025, no sports event was successfully listed for trading on a DCM. Moreover, for decades, the states, tribes, and licensed operators (including NRA's members) have structured their businesses around the long-accepted understanding that gambling regulation is the domain of the states, investing in state-licensed operations on the understanding that sports wagering would not be offered through federal derivatives markets.

The Proposed Rule repeatedly invokes the regulatory history of event contracts—a handful of instances in which academics obtained Commission relief to permit them to run very small event contract platforms as part of their academic research. But that history does not come close to suggesting that in enacting Dodd-Frank, Congress intended to shift nationwide retail sports wagering to derivatives markets, or that the Commission has meaningful experience in regulating prediction markets. These markets (including Iowa Electronic Markets and PredictIt, *see* 91 Fed. Reg. at 35,813) operated outside ordinary Commission regulation by virtue of conditional enforcement relief. Their creators did not conduct large-scale sports wagering operations by means of the derivatives markets, and limited academic markets do not pose the same consumer-protection or state gaming implications as sports-based event contracts. They do not demonstrate that Congress understood or intended retail sports contracts to be regulated swaps or futures available nationwide on DCMs.[35]

The other pre-Dodd-Frank example discussed in the Proposed Rule is equally remote. The Commission approved movie-box-office event contracts in 2010 after finding a direct relationship between box-office receipts and industry profits and losses. But Congress then adopted legislation excluding motion-picture-box-office receipts from the CEA's commodity definition, and the contracts never traded. 91 Fed. Reg. at 35,814. That example cannot establish congressional acquiescence in retail sports contracts.

The Commission likewise fails to identify any sports event contracts traded on a DCM after Dodd-Frank. When ErisX self-certified NFL contracts in 2020, it proposed restricting participation to eligible contract participants with commercial connections to NFL games and asserted specific hedging uses for licensed sportsbooks, stadium owners, and vendors. *Id.* at 35,816. But the Commission commenced a Section 40.11 review, and ErisX withdrew the certification one day before the review period expired; a Commissioner later stated that staff had prepared a draft order that would have prohibited the contracts as gaming and contrary to the public interest. *Id.*

IV. The Proposed Rule Reverses the Commission's Categorical Ban on Gaming Contracts Without Adequately Explaining Its Change in Position.

When an agency changes positions, it must "display awareness that it *is* changing position," "show that there are good reasons for the new policy," and "provide a more detailed justification" when the "prior position has engendered serious reliance interests." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009). The Proposed Rule flunks this standard as it reverses the Commission's prior interpretation of the Special Rule without acknowledging that reversal, providing reasoned justifications for that departure from past practice, or evaluating reliance interests.

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[35] Letter from David Rothschild to Commodity Futures Trading Comm'n, Comment on CFTC ANPRM on Prediction Markets, CFTC RIN 3038-AF65 (April 30, 2026) (discussing a structural asymmetry wherein "[c]ommercial markets receive clarity and scalability" while "[n]onprofit markets remain uncertain and administratively constrained"); Letter from David Rothschild to Commodity Futures Trading Comm'n, Comment on Notice of Proposed Rulemaking, Prediction Markets; Public Interest Determinations, CFTC RIN 3038-AF65 (July 22, 2026) (describing how the Proposed Rule by contrast leaves nonprofit and smaller information-oriented markets "dependent on discretionary relief: uncertain, non-scalable, and administratively constrained.").

For more than a decade, the Commission's interpretation of the Special Rule has been the same: Congress authorized the agency to categorically prohibit certain types of event contracts as contrary to the public interest. As described above, the Commission adopted in 2011 such a categorical approach in what is currently Section 40.11. For nearly fifteen years the categorical text stood unamended. No court held that it was beyond the Commission's authority. And when the Commission last construed the Special Rule in 2024, it stated the categorical interpretation unambiguously authorized "*categorical public interest determinations* if the Commission determines that contracts involving an Enumerated Activity or prescribed similar activity are, as a category, contrary to the public interest." *Event Contracts*, 89 Fed. Reg. at 48,978 (emphasis added). During this period, companies also established reliance interests around the settled understanding that sports betting regulation was the exclusive domain of states, for example by choosing to go through onerous state licensing processes post-*Murphy* rather than listing contracts with the Commission.

The Proposed Rule departs from this established interpretation of the Special Rule. It explains that the Commission "considered whether the proposed rule should authorize categorical determinations—that is, determinations applying prospectively to a defined class of agreements, contracts, transactions, or swaps not yet certified or submitted to the Commission"—and concluded that "such categorical determinations are *not permissible* under … the text of the Special Rule, the structure of section 5c, and the APA." 91 Fed. Reg. at 35,841 (emphasis added). While the Commission noted that it was considering this issue, it failed to "display awareness" that it was *reconsidering* and departing from its past interpretation. *Fox Television*, 556 U.S. at 515. Nor is there any discussion in the Proposed Rule grappling with the reliance interests that the agency's years-long interpretation engendered, nor how the proposed shift will affect those interests. *See id.*

What is more, the Proposed Rule does not provide "good reasons" for its new interpretation of the Special Rule. *Id.* The Proposed Rule gives just two justifications supporting the conclusion that the Commission lacks authority to make categorical public interest determinations: (1) the Special Rule limits public interest determinations to "specific" contracts *after* they are certified, thus prohibiting the agency from "issu[ing] *prospective* declarations applying to agreements, contracts, transactions, or swaps that have not been certified or submitted and that may not yet exist"; and (2) "categorical determinations would function as rulemaking without APA compliance." 91 Fed. Reg. at 35,841 (emphasis added). Both justifications are unfounded.

As to the first justification: as earlier explained, the "best" reading of the Special Rule is the one the Commission adopted contemporaneously with the Dodd-Frank Act, and which it has maintained on the books ever since—that the Special Rule permits categorical public-interest determinations. *See Loper Bright*, 603 U.S. at 400; *supra* Section III. The Proposed Rule does not adequately address the substantial evidence supporting that longstanding interpretation or the reliance interests built on it. Instead, the proposal recharacterizes history by asserting that the Commission "has consistently applied § 40.11 to operate a discretionary review framework rather than a self-executing per se prohibition." 91 Fed. Reg. at 35,815. Such revisionist history is not reasoned decisionmaking. In short, the Proposed Rule's justification for departing from the agency's past categorical approach is arbitrary and capricious and cannot withstand scrutiny. *See Fox Television*, 556 U.S. at 515.

The Proposed Rule's second justification—concerns about APA noncompliance—is equally unfounded. As discussed, the APA poses no barrier to making prospective determinations

through rules here. *See supra* Section III; *see also Campbell*, 461 U.S. at 467; *Am. Hosp. Ass'n*, 499 U.S. at 612. The Commission would simply need to go through notice-and-comment rulemaking—just as it did in 2011 when promulgating prospective determinations through the original Section 40.11 rulemaking, just as it proposed to do in 2024 when affirming its categorical approach, and just as it is doing here in attempting to abandon that approach.

V. The Commission's Proposed Definitions of "Involves" and "Gaming" Lack Statutory Basis and Artificially Narrow the Special Rule.

The Commission proposes defining "gaming" under the Special Rule as "any activity that: (i) one or more participants typically engage in for purposes of recreation or to entertain others, (ii) is governed by rules; and (iii) includes measurable occurrences or outcomes that depend on the participants' luck, skill, or athletic ability during the activity." 91 Fed. Reg. at 35,825. It further proposes to limit the Special Rule's application only to those contracts that settle based on events that occur as part of an activity that falls within this proposed definition of "gaming." *See id.* at 35,826; *see also id.* at 35,821–22 (proposing to interpret "the term 'involve' in the Special Rule to require that the settlement of the event contracts be determined by an occurrence, the extent of an occurrence, or a contingency in one of the Enumerated Activities"). This interpretation both fails to capture the "best" reading of the statute, *see Loper Bright*, 603 U.S. at 400, and is an arbitrary and capricious departure from past practice, *Fox Television*, 556 U.S. at 515–16.

A. The Proposed Rule's Interpretation of "Involves" Is Artificially Constrained and Departs from Past Practice.

The Commission proposes to analyze whether event contracts are contrary to the public interest only if the contract "involves" gaming, and it interprets "involves" to mean that the underlying event on which the contract settles is based on gaming. *See* Proposed Rule, 91 Fed. Reg. at 35,821–22, 35,826. The effect of this interpretation is that if a contract itself qualifies as "gaming," but the underlying event does not, it is not subject to any public-interest scrutiny. But that interpretation is far from the "best" one, *see Loper Bright*, 603 U.S. at 400, because it artificially narrows the Special Rule.

Start with the plain text of the Special Rule. It refers separately to contracts "based upon the occurrence, extent of an occurrence, or contingency" and "agreements" that "involve" one of the enumerated activities such as "gaming." 7 U.S.C. § 7a-2(c)(5)(C)(i). The Proposed Rule conflates the Special Rule's use of "involve" with its earlier "based upon" clause, but that interpretation ignores the "cardinal rule of statutory interpretation" that "differences in language … convey differences in meaning." *Bowe v. United States*, 607 U.S. 13, 36–37 (2026) (cleaned up). Moreover, the plain meaning of "involves" is not so limited as the Commission suggests. It can mean "to contain or include" *or* "to comprise." *Involve*, Oxford English Dictionary (Online ed.). Thus, an "agreement" "involve[s]" an enumerated activity either when it contains or includes events related to gaming *or* when the contract itself comprises gaming. 7 U.S.C. § 7a-2(c)(5)(C)(i).

This broader interpretation comports with the Commission's longstanding interpretation of the Special Rule as evidenced by Section 40.11, banning event contracts that are themselves "gaming." *See* 17 C.F.R. § 40.11(a)(1); *Loper Bright*, 603 U.S. at 394 (consistent interpretations issued contemporaneously with the statute are "especially useful in determining the statute's meaning"). It also aligns with the Commission's Nadex Order interpreting contracts to fall within

the Special Rule if the contracts themselves involved "gaming" (*i.e.*, gambling).[36] The Commission's 2024 rulemaking similarly proposed to reaffirm this broader interpretation of "involves." *See Event Contracts*, 89 Fed. Reg. at 48,973–74. And the legislative history confirms this reading as well. *See id.* at 48,974 (noting Senator Lincoln's remarks that the Special Rule was "intended to 'prevent gambling through futures markets'" by stopping contracts themselves that have the "overall characteristics" of gambling).

Although the Proposed Rule acknowledges its departure from some aspects of this consistent prior interpretation, *see, e.g.*, 91 Fed. Reg. at 35,821–22, 35,824–28, it does not adequately address its clear departure from the reasoning of these reiterated policy stances. *See Fox Television*, 556 U.S. at 515–16. Its reasoning is also unsupported by the statute for the reasons given above, and the Proposed Rule does not attempt to address the significant reliance interests that the gaming industry and other related actors developed on the understanding that event contracts themselves can constitute "gaming" and thus fall within the scope of the Special Rule. *See infra* Section XI.

B. The Proposed Rule's New Definitions Are Misguided and Unreasonably Depart from Past Practice.

Although the Proposed Rule would re-define key terms, those changes are arbitrary, capricious, and contrary to law in numerous ways. The Proposed Rule compounds that overarching error by failing to adequately acknowledge its departure from past agency practice and ignoring the reliance interests that its new interpretation will adversely affect.

The Commission proposes to define "gaming" as "any activity that: (i) one or more participants typically engage in for purposes of recreation or to entertain others; (ii) is governed by rules; and (iii) includes measurable occurrences or outcomes that depend on the participants' luck, skill, or athletic ability during the activity." 91 Fed. Reg. at 35,861. Only those contracts that settle on an event that arises out of a "game" as defined above will fall within Section 40.11 and be subject to a public-interest determination.

The Commission acknowledges that the proposed definition of "gaming" would include "all games of chance," 91 Fed. Reg. at 35,826, even though such contracts are "devoid of informational content." *Id.* at 35,835. But under the Proposed Rule, such contracts would not be categorically prohibited. In fact, and although the Commission claims that it is "highly likely that event contracts involving games that depend entirely on random chance would be found to be contrary to the public interest," *id.*, the Commission's arbitrary ten-day window to initiate public interest review means that a roulette or other random-chance contract that evaded this initial review could trade freely, immunized from public-interest review. This cannot be, and as discussed in Section III.A, the Commission in fact does have the right to categorically prohibit these contracts but chooses not to for no apparent reason. The absurdity of the conclusion also reveals the weakness of the Commission's jurisdictional analysis: despite the Commission's recognition that contracts that settle based on random events "cannot be used to understand market sentiment about any potential economic, financial, or commercial consequence," *id.* at 35,866, the Proposed Rule does not draw the immediate and obvious conclusion, which is that these contracts are not within the Commission's jurisdiction to begin with and accordingly cannot be listed by a regulated entity. But because the Commission fails to adequately analyze the

[36] *See Order Prohibiting the Listing or Trading of Political Event Contracts* (Apr. 2, 2012), https://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf.

jurisdictional predicates of the Proposed Rule, as discussed in Section II, *supra*, it fails to reach this point. The Commission's refusal to conduct the necessary jurisdictional analysis also creates confusion and invites gamesmanship by prediction market operators, such as by recharacterizing or restructuring contracts that are purely chance-based to involve a *de minimis* level of skill.

The Proposed Rule's "involve" analysis also contains an anti-evasion asymmetry that the Commission neither acknowledges nor attempts to justify—resulting in similar enumerated activities being treated dissimilarly. *See Grayscale Inv., LLC v. SEC*, 82 F.4th 1239, 1242 (D.C. Cir. 2023) ("'dissimilar treatment of evidently identical cases' is 'the quintessence of arbitrariness and caprice'" (citation omitted)). For terrorism, assassination, and war, the Proposed Rule adopts an expressly prophylactic framework: a facially neutral contract "involves" one of those activities if the activity is among the pathways by which its settlement condition may be satisfied, even if other pathways exist—a contract on whether a foreign head of state is "out of office" by a given date involves assassination, notwithstanding that resignation, electoral defeat, or natural death could equally produce settlement, unless the contract's terms exclude the prohibited pathway. *See* Proposed Rule, 91 Fed. Reg. at 35,824. The Commission adopts that rule because it recognizes that, without it, market participants could draft around many enumerated categories in the Special Rule. But for gaming, the Proposal adopts no analogous principle; instead, its treatment of gaming-adjacent occurrences runs in precisely the opposite direction: Contracts settling on occurrences "in connection with or around" games are deemed *not* to involve gaming at all, and contracts on award and honor outcomes—*e.g.*, most-valuable-player selections, championship recognitions—are classified as "contests" categorically outside the gaming definition and thus outside the Special Rule entirely. *Id.* at 35,826–28.

The result is that identical drafting techniques receive opposite treatment depending on the enumerated activity implicated: the Commission casts a broad net to capture contracts that might settle through assassination, while a settlement condition that functions as a pure derivative of game outcomes—an award that is functionally determined by athletic performance, or any occurrence whose realization is inseparable from underlying sporting events—is treated as outside the Commission's review. The asymmetry cannot be explained by differential evasion risk because there is a natural commercial incentive to engineer sports-outcome exposure into forms that avoid even the minimal review the Proposed Rule provides, while contracts involving terrorism, war, assassination, or gaming are comparatively sparse. A framework that erects prophylactic armor where evasion is hypothetical and dismantles it where evasion is commercially inevitable is not the product of reasoned decisionmaking. *See State Farm*, 463 U.S. at 43. And the Commission cannot have it both ways: either anti-evasion analysis is structural to the "involve" inquiry—in which case a contract involves gaming when its settlement condition is satisfiable through, or functions as a derivative of, occurrences in a game, and proposed Section 40.11(a)(4) should be revised to say so—or the Commission tolerates artful drafting of contracts around the enumerated categories, in which case it must explain why that tolerance does not extend to contracts drafted around terrorism, assassination, and war.

VI. The Commission's Public Interest Analysis Is Insufficient.

CEA section 3(a) provides that transactions subject to the Act serve the national public interest by "providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information" through regulated trading facilities. 7 U.S.C. § 5(a). The Commission invokes this provision in support of its conclusion that sports event contracts are not contrary to the public interest. 91 Fed. Reg. at 35,830. That conclusion is baseless. The Proposed

Rule's price-discovery rationale lacks any limiting principle and, for that reason, cannot support a reasoned public interest determination.

The Commission's initial regulatory purview was over contracts for future delivery of agricultural commodities such as corn and soybeans. While the Commission's authority has expanded to capture non-agricultural physical commodities and, subsequently, to intangible commodities, in each case the contracts traded on regulated markets have borne an immediately apparent connection to pre-existing economic risks. *See supra* Section II. The Proposed Rule, by contrast, reasons that sports event contracts serve the price-discovery interests set forth in the CEA because "so long as there is a sufficient volume" of such contracts, their prices reveal "what the market or the general public thinks" about the underlying event. 91 Fed. Reg. at 35,830. But that formulation proves far too much and thus fails to articulate a "rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43. *Any* contract on *any* uncertain event, traded in sufficient volume, will generate a market-implied probability and reveal the price at which participants are willing to buy and sell the relevant exposure. A liquid market on a coin toss, the number of corner kicks in a soccer match, the speed of a tennis serve, or a multi-leg parlay would do as much. Yet the CEA, of course, does not grant the Commission authority over every liquid market, and so a price-discovery theory that would reach all liquid markets cannot be the price-discovery function Congress placed within the Act. *See supra* Section II. The Commission's reliance on that theory is therefore arbitrary and capricious.

Instead, as this comment has explained, the price-discovery concept must be read in light of the CEA's structure and, in particular, the requirements that an excluded commodity be "associated with a financial, commercial, or economic consequence," 7 U.S.C. § 1a(19)(iv)(II), and that swaps dependent on the occurrence, nonoccurrence, or extent of an occurrence be "associated with a potential financial, economic, or commercial consequence," 7 U.S.C. § 1a(47)(A)(ii). For the reasons set out in Section II, sports event contracts and the events underlying them do not satisfy that requirement because the only "consequence" associated with the underlying sporting occurrence is the payout created by the contract itself—a consequence that is endogenous to the wager. To treat *any* price discovery, no matter how divorced from any such consequence, as falling within the CEA's public-interest provisions would read the "consequence" element out of the statute.

The Proposed Rule's fallback theory—that the price of a sports-event contract may be useful as an input to "commercial forecasting or audience-demand analysis" and to the modeling of "market sentiment," 91 Fed. Reg. at 35,830—fares no better. That theory has no limiting principle either, for trading in any contingent contract reveals participant beliefs as to the probability of an outcome. Legal and illegal sportsbooks, office pools, and fantasy contests all generate that signal. It is therefore not sufficient to observe that a sports event contract reveals "sentiment"; the Commission must explain why the sentiment being priced is price discovery of the kind Congress placed under the Commission's purview. We are not aware of any evidence of a commercial actor with an antecedent economic exposure to the outcome of an individual regular-season game who relies on the live contract price to make a decision. *See* Robert Walker, Comment Letter on *Prediction Markets; Public Interest Determinations*, RIN 3038-AF65, at 2 (June 12, 2026). The Proposed Rule identifies no such actor, and the record contains none.

Moreover, even as to those contracts for which the Commission initiates public interest review, the Proposed Rule does not require the Commission to request the contracts be stayed until review is complete. The Proposed Rule itself concedes that "unless the prediction market agrees to suspend trading of the event contracts while they are under review, it is possible that event contracts that are later found to be contrary to the public interest would be traded for the time permitted for the Commission's review." 91 Fed. Reg. at 35,838. This represents a marked

departure from the existing Section 40.11(c) review process, under which the Commission must request the registered entity halt trading of a contract under review pending the outcome of the proceeding. *See* 17 C.F.R. § 40.11(c)(1). This structure—in which a contract may trade freely while under public interest review—frustrates the Commission's core oversight mandate. 7 U.S.C. § 5(b) (directing a "system of effective self-regulation … under the oversight of the Commission"). Permitting contracts that may violate Section 40.11 to trade openly while the Commission deliberates is in direct tension with the CEA's mandate that the Commission maintain effective self-regulation under the oversight of the Commission. 7 U.S.C. § 5(b). The Proposed Rule thus "entirely fail[s] to consider an important aspect of the problem," in violation of the APA. *State Farm*, 463 U.S. at 43.

The Commission's own prior analysis marks the line the Proposed Rule now crosses—and the Proposed Rule quotes that analysis selectively. In its public interest discussion, the Proposed Rule invokes the 2008 Concept Release for the proposition that "innovative event markets have the capacity to facilitate the discovery of information, and thereby provide potential benefits to the public." 91 Fed. Reg. at 35,830–31 & n.233 (quoting Concept Release on the Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25,669, 25,672 (May 7, 2008)). But three features of the quoted sentence, each omitted from the Proposed Rule's use of it, narrow its meaning. First, in the original, the sentence opens "[a]s demonstrated by the IEM"—the Iowa Electronic Markets, a not-for-profit academic facility operated for research and teaching purposes, with participation capped in the low thousands and individual risk capped at $500. 73 Fed. Reg. at 25,672 & n.5. Second, the sentence appears in the Release's discussion of the Commission's exemptive authority under CEA section 4(c), 7 U.S.C. § 6(c)—the framework for relieving instruments from ordinary regulatory treatment—not in any analysis finding that event contracts serve the purposes of CEA section 3. *See* 73 Fed. Reg. at 25,672–73. Third, the Release defined the category it was describing by the absence of the Act's core functions: its first question for comment asked what "public interests are served by event contracts that are designed and will principally be traded for information aggregation purposes and not for commercial risk management or pricing purposes," and its second asked "[h]ow are these interests consistent with the public interest goals embodied in the Act." *Id.* at 25,673 (Questions 1–2). The Commission never answered those questions. *See* 91 Fed. Reg. at 35,814 & n.99.

Moreover, the same Release the Proposed Rule quotes contains the Commission's published account of how the consequence element had been construed in practice. Surveying the non-price-based contracts listed on Commission-regulated exchanges since 1992—contracts on insured property losses, bankruptcy counts, temperature, mergers, and credit events—the Release explained that the interests underlying those contracts "have been viewed by Commission staff as having generally-accepted and predictable financial, commercial or economic consequences," because "unlike the interests that event contracts cover," they "reasonably could be expected to correlate to market prices or other broad-based commercial or economic measures or activities." *Id.* at 25,671 (construing CEA section 1a(13), now section 1a(19)). The Proposed Rule assumes the opposite answer, quoting the Release's favorable sentence in its public interest analysis while addressing neither the same Release's construction of the consequence element nor its unresolved public interest questions. Again, an agency changing course must "display awareness that it is changing position" and "show that there are good reasons for the new policy." *Fox Television*, 556 U.S. at 515. The Proposed Rule fails to do so.

The Proposed Rule's selective engagement with the Commission's prior analyses extends to a more recent and more direct reversal. In 2024, the Commission proposed rules that reached materially different conclusions on the very questions the current Proposed Rule now resolves in prediction markets' favor. The 2024 proposal stated that "the most useful source of price-forming

information with respect to contracts involving "gaming" … would likely be prices of similar wagers in gambling and sports-betting facilities," and it questioned whether permitting such contracts on derivatives markets would conflate "gambling and financial instruments in a manner that could particularly create confusion and risk for retail market participants." *Event Contracts*, 89 Fed. Reg. at 48,982–83 n.120. The 2024 proposal also adopted a wagering-centered definition of "gaming" grounded in federal and state statutory definitions and found, as a general matter, that gaming contracts had limited hedging and price-basing utility. *Id.* at 48,975–76, 48,981–82. The current Proposed Rule reaches substantially opposite conclusions: it rejects a wagering-centered definition, declares that hedging utility is not necessary to avoid an adverse public interest finding, and treats broad categories of aggregate sports contracts as unlikely to be contrary to the public interest. 91 Fed. Reg. at 35,824–27, 35,830, 35,835–36. Yet the Commission does not systematically identify those reversals, address the factual findings supporting its 2024 analysis, or explain why the state consumer-protection regimes it emphasized in 2024 no longer materially affect its judgment. The Commission withdrew the 2024 proposal "to reconsider [it] in light of various forms of state regulatory actions and litigation," Event Contracts; Withdrawal of Proposed Regulatory Action, 91 Fed. Reg. 5,386, 5,387 (Feb. 6, 2026), but that withdrawal notice identified subjects for reconsideration—it did not resolve them and did not explain why the Commission's prior legal and factual conclusions were unsound. The present Proposed Rule therefore must supply the reasoned explanation that the withdrawal notice did not. Because the 2024 proposal constitutes a "considered prior position" for purposes of *Fox Television*, the Commission's failure to "display awareness that it is changing position" and to "show that there are good reasons for the new policy," 556 U.S. at 515, independently renders its price-discovery analysis arbitrary and capricious.

Even indulging the price-discovery rationale on its own terms, it cannot bear the weight the Proposed Rule places on it, because the "utility" the Commission identifies is the efficient pricing of a wager and has no bearing on pre-existing economic risk. That places the Commission on the horns of a dilemma of its own making. Either the signal these contracts produce is not the "discovering [of] prices" and "disseminating [of] pricing information" that section 3(a) protects (because it lacks the necessary connection to "financial, commercial, or economic" activity external to the wager), in which case the price-discovery factor supports no favorable finding. Or it *is* such price discovery, in which case the Commission has identified the public benefit of these contracts as the accurate, liquid pricing of sports bets, which is the precise function that state and tribal law regulate as gambling. The Commission cannot have it both ways: it cannot simultaneously claim that sports event contracts serve a price-discovery function that is distinct from wagering *and* decline to explain what distinguishes the "price discovery" these contracts provide from the odds-setting function performed by every licensed sportsbook in every regulated jurisdiction. A market whose liquidity is supplied by a dominant professional intermediary that warehouses directional outcome risk and profits from managing rather than offsetting it is, in economic substance, a book, whatever the trading-venue form. Palumbo, *supra*, at 5–6; Walker, *supra*, at 1–2. The Commission's price-discovery theory therefore is simply a recharacterization of sports wagering in the vocabulary of section 3(a).

Finally, the Proposed Rule credits the asserted price-discovery benefit in gross and never nets it against its costs. Proposed Section 40.11(a)(5) directs the Commission to weigh a contract's informational utility, its manipulation and settlement risks, and the registered entity's capacity to administer it, but it requires no inquiry into who supplies the informational signal, who consumes it, or at whose expense it is produced. The Commission should not find that a contract serves the public interest by producing information without determining, on the record, what that information costs to produce and who bears that cost. And as a later section of this letter explains, *see infra* Section VIII.B, the Commission's failure to net the price-discovery benefit against its

costs reflects a broader refusal to engage with the consumer-protection dimension of the public interest inquiry that the Commission's own findings demand.

VII. The Ten-Day Review Window Is Arbitrary and Without Statutory Basis.

The CEA mandates that the Commission maintain "a system of effective self-regulation … under the oversight of the Commission." 7 U.S.C. § 5(b). As explained above, *see supra* Section III, the Proposed Rule's ten-day review window—which requires the Commission to commence its review "within 10 days of the date of the event contract's listing," 91 Fed. Reg. at 35,819—produces a regulatory review scheme fundamentally incompatible with that mandate, because it ensures that the vast majority of event contracts that Congress identified as deserving of additional scrutiny will be listed for trading without any meaningful Commission oversight. Particularly given that stark consequence, the Commission has failed to justify—or even ground in the statute—its choice of a ten-day window.

The proposed ten-day window for initiating Commission-level review has no statutory basis and undermines the CEA's regulatory and enforcement goals. The NPRM itself acknowledges that the CEA does not impose a specific time limit on when the Commission may commence a public interest review. *See id.* at 35,838 (noting that the CEA "does not include a specific time limit" for when a review must commence). Rather, CEA § 5c(c)(5)(C)(iv), 7 U.S.C. § 7a-2(c)(5)(C)(iv), provides a 90-day completion deadline, which has a well-defined origin in the Special Rule and the Commodity Futures Modernization Act, but leaves the Commission with discretion to initiate proceedings based upon agency resources and enforcement priorities. *See* 91 Fed. Reg. at 35,838 ("The Special Rule provides that the Commission must make a final public interest determination 'not later than 90 days from the commencement of its review unless the party seeking to offer the [relevant event contract] agrees to an extension of this time limitation.'" (quoting CEA sec. 5c(c)(5)(C)(iv), 7 U.S.C. § 7a-2(c)(5)(C)(iv))). The existing Section 40.11(c) review process does not provide an explicit outer bound for initiating review. The Commission is therefore proposing to impose on itself a constraint that Congress did not require and that the existing regulation does not contain, thereby voluntarily limiting its own enforcement authority without statutory warrant. And given the Commission's limited resources, this extremely tight 10-day window will result in a lack of enforcement that undermines the goals of the CEA and the review scheme Congress enacted.

An agency rule that restricts the agency's own statutory authority beyond what Congress mandated is precisely the kind of action that cannot survive APA review. *See State Farm*, 463 U.S. at 43 (an agency rule is arbitrary and capricious where the agency entirely failed to consider an important aspect of the problem or offered an explanation for its decision that runs counter to the evidence before the agency). Where, as here, an agency selects a specific numerical parameter without record support, the choice cannot stand. *See Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–51 (D.C. Cir. 2011) (vacating SEC rule where the agency failed to support its chosen threshold with adequate data or reasoned analysis). Here, the Commission has not explained why a ten-day initiation window—rather than, for example, a 30-day, 45-day, or 90-day window—is the correct outer bound, nor has it identified any factual record, prior precedent, or statutory requirement supporting that specific number.

Taken together, the Commission's own statements reveal a fundamental internal contradiction. On the one hand, the Commission acknowledges that the purpose of the proposed framework is to ensure that prohibition determinations rest on a record sufficient to support them and on the considered judgment of the Commission as a body. *See* 91 Fed. Reg. at 35,840 (explaining that the proposed framework "establishes a structured 90-day review process" with

"defined limits on the Commission's authority to act on a thin record or without considered Commission-level engagement"). On the other hand, the Commission has acknowledged that "[d]ue to the high volume of event contract submissions and the wide potential scope of the public interest review, the Commission has attempted to propose factors that are clear and direct" in the hope that "prediction markets will be guided by the factors … in understanding the boundaries around which event contracts may be listed for trading and thereby limit the number of public interest reviews." 91 Fed. Reg. at 35,818 n.158. The Commission thus recognizes that the volume and scope of submissions may overwhelm its capacity for individualized review. That problem, moreover, is magnified by the fact that review may be commenced "only by a written determination," *id.* at 35,840, and that responsibility for initiating review lies with the Commission alone—not Commission staff, *see id.* at 35,861—meaning that Commissioners (and currently, there is only one) must personally act within the ten-day window. The Commission cannot simultaneously claim that its framework is designed to produce careful, Commission-level deliberation and then adopt a review trigger mechanism so compressed that the Commission's own record suggests it will be unable to deliberate at all or will deliberate only upon the few contracts it has resources to review. The disconnect between the Commission's stated goal of maintaining effective oversight and its adoption of a window it acknowledges may be insufficient to accomplish that goal is itself a form of arbitrary action. *See Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998) (holding that an agency acts arbitrarily when there is a disconnect between its announced standard and its actual application of that standard).

Moreover, even as to those contracts for which the Commission initiates public interest review, the Proposed Rule does not require the Commission to request the contracts be stayed until review is complete. The Proposed Rule itself concedes that "unless the prediction market agrees to suspend trading of the event contracts while they are under review, it is possible that event contracts that are later found to be contrary to the public interest would be traded for the time permitted for the Commission's review." 91 Fed. Reg. at 35,838. This represents a marked departure from the existing Section 40.11(c) review process, under which the Commission must request the registered entity halt trading of a contract under review pending the outcome of the proceeding. *See* 17 C.F.R. § 40.11(c)(1). This structure—in which a contract may trade freely while under public interest review—frustrates the Commission's core oversight mandate. 7 U.S.C. § 5(b) (directing a "system of effective self-regulation … under the oversight of the Commission"). Permitting contracts that may violate Section 40.11 to trade openly while the Commission deliberates is in direct tension with the CEA's mandate that the Commission maintain effective self-regulation under the oversight of the Commission. 7 U.S.C. § 5(b). The Proposed Rule thus "entirely fail[s] to consider an important aspect of the problem," in violation of the APA. *State Farm*, 463 U.S. at 43.

The Proposed Rule further states that this provision is designed to ensure that the rule is only enforced "through a Commission-level commitment" rather than "staff-level processes." 91 Fed. Reg. at 35,840. But given the Commission's own acknowledgment that daily average event contract listings on a single prediction market grew from approximately 1,600 in April 2025 to 162,000 in April 2026, *see* 91 Fed. Reg. at 35,844 n.298, the Commission will plainly be unable to conduct meaningful initial evaluation of more than a small fraction of listed contracts within the ten-day window. No matter how it approaches the task, then, the Commission cannot possibly identify, and delist, all (or even many) contracts inconsistent with the public interest. Yet it proceeds with the ten-day window anyway.

That choice is classic arbitrary and capricious agency action. The Supreme Court has rejected agency action that produces administrative burdens the agency itself admits are infeasible. *See Util. Air Regul. Grp.*, 573 U.S. at 321–22 (rejecting EPA interpretation that would

produce enormous and transformative permitting burdens the agency conceded would be unworkable). Likewise, when an agency imposes a hard constraint on its own review authority, it must grapple with whether that constraint is operationally feasible in light of known demand. *See Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1113 (D.C. Cir. 2019) (finding agency acted arbitrarily by imposing a budget cap without adequately considering whether the cap was achievable given program demand). The Commission has done neither. Nor has it even explained how, given its scarce review resources, it plans to prioritize among contracts under review, or how it will staff the required Commission-level determinations. Failing to engage with these internal inconsistencies renders the Proposed Rule arbitrary. *See State Farm*, 463 U.S. at 43.

The ten-day window also compels absurd results: contracts that pass that tightly compressed window, in which the Commission can only hope to review but a tiny subset of potentially problematic contracts, become effectively unreviewable, as are contracts that are self-certified and settle before review begins. The Proposed Rule provides no mechanism for the Commission to initiate public interest review after the ten-day window has passed. *See* 91 Fed. Reg. at 35,819 (review must commence "within 10 days of the date of the event contract's listing"). Nor is there any provision for re-review upon changed circumstances or new information, or any provision addressing contracts listed before the rule's effective date. This means that if the Commission fails to review a contract that it would likely find to be contrary to the public interest—a near-certainty, given the Commission's inability to evaluate more than a small fraction of the approximately 162,000 contracts listed daily—the Commission has no process to address it. The Proposed Rule would also appear to immunize any contract listed more than ten days prior to the effective date of the final rule from any public interest rule whatsoever. 91 Fed. Reg. at 35,861. The Commission does not provide any plan to address this issue, or even appear aware of this possibility, despite the fact that the Commission is provided with the authority to determine that contracts comply with the CEA "initially or on a continuing basis." 17 C.F.R. § 40.2(b). Courts have long recognized that an agency rule producing absurd or self-defeating consequences that the agency fails to acknowledge or address is the hallmark of arbitrary-and-capricious action. *See Judulang v. Holder*, 565 U.S. 42, 55 (2011) (invalidating agency policy that bears no sensible relation to the purposes of the statute). And again, the Commission has considered none of this. *See State Farm*, 463 U.S. at 43 (agency cannot entirely fail to consider important aspects of problem).

A related problem results from the class-review mechanism under proposed Section 40.11(c)(4), which permits the Commission to consolidate review of multiple submissions that involve the same underlying event or a substantially similar set of underlying events. *See* 91 Fed. Reg. at 35,841. If functionally identical contracts are listed at different times, those that have aged out of the ten-day window cannot be swept into a class review of their counterparts, producing non-uniform treatment based solely on listing date and timing for the Commission's exercise of its review. Such arbitrary distinctions among materially identical contracts—distinctions that bear no relationship to any statutory purpose—epitomize the kind of irrational line-drawing the APA prohibits. *See Fox Television*, 556 U.S. at 515 (agency's action is arbitrary where it produces results that are not a reasoned response to the relevant considerations).

The Commission fails to offer a reasoned explanation for these changes because there is none. Where an agency's stated rationale for a procedural mechanism runs counter to the record evidence of that mechanism's likely operational failure, the rule cannot stand. *See State Farm*, 463 U.S. at 43. The Proposed Rule itself acknowledges the "high volume of event contract submissions and the wide potential scope of the public interest review" but responds only by "attempt[ing] to propose factors that are clear and direct" in the hope that prediction markets will self-regulate and "limit the number of public interest reviews." 91 Fed. Reg. at 35,818 n.158.

Reliance on regulated entities to voluntarily limit the volume of potentially permissible contracts is not a substitute for the Commission's own oversight authority—and it certainly does not justify imposing a ten-day window that forecloses the Commission's ability to act when self-regulation predictably fails. It is arbitrary for an agency to adopt an interpretation that frustrates the very purposes of the statute the agency is charged with administering. *See Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1068 (D.C. Cir. 1998). Because the Commission has not explained why a ten-day window is the right outer bound, has not reconciled that window with its own acknowledgement of the volume of likely submissions, and has not provided a reasoned basis for treating otherwise identical contracts differently based solely on their listing date, the entire ten-day mechanism is arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) and should be withdrawn. *See Regents*, 591 U.S. at 16 (agency must grapple with the relevant complications before adopting a rule).

VIII. Cost-Benefit Analysis

A. The 15(a) Analysis Inconsistently and Opportunistically Frames Costs and Benefits.

The CEA requires the Commission to "consider the costs and benefits" of a new rule by assessing five statutory factors: (1) protection of market participants and the public, (2) efficiency, competitiveness, and financial integrity of futures markets, (3) price discovery, (4) sound risk management practices, and (5) other public interest considerations. 7 U.S.C. § 19(a)(1)–(2). This requirement is not merely procedural. Under the APA, an agency must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43 (internal citation omitted). A rule is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem," *id.*, or if it "inconsistently and opportunistically framed the costs and benefits" of its action, *Bus. Roundtable*, 647 F.3d at 1148–49; *see also, e.g.*, *Michigan v. EPA*, 576 U.S. 743, 752–53 (2015) ("Agencies have long treated cost as a centrally relevant factor when deciding whether to regulate. Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions.").

The Commission's selective analysis founders on both counts. It quantifies a small selection of compliance costs for registered entities while leaving unquantified, and in several respects unmentioned, entire relevant categories of costs, including the costs of state and tribal regulatory displacement, the costs of contracts escaping meaningful review because of resource constraints, and consumer harms from inadequate protections. Further, the Commission fails to estimate ongoing expenditures for surveillance, staffing, legal review, training, contract redesign, and coordination with sports-governing bodies. Broader market costs are likewise omitted: the Commission does not adequately consider delays, foregone revenue, contract wind-down costs, or the loss of market-participant positions that may result from a post-listing prohibition. 91 Fed. Reg. at 35,838, 35,850–55.

Foremost among the omitted categories are the reliance interests of states, tribes, and licensed commercial gaming operators. As discussed in Section XI, *infra*, licensed operators have built state-specific compliance systems at substantial cost and in reliance on settled regulatory frameworks, including the Commission's own prior Section 40.11 framework. The Proposed Rule would create a parallel channel for nationwide sports wagering not subject to any of those frameworks, undermining the longstanding investments licensed operators have made. When an agency changes course, it must "assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Regents*,

591 U.S. at 30–33. Licensed operators built those systems in reliance on the settled premise that wagering products may reach consumers only through state-licensed channels. The Proposed Rule fails to even acknowledge, much less quantify or otherwise address, that reliance.

The Commission also fails to estimate the agency resources necessary to administer its proposed review process, or to even explain how it will do so in a market of the scale and variety the Proposed Rule describes. The Commission finds $25 billion in event-contract volume in March 2026, but does not disclose the number of distinct submissions that could trigger review; their frequency; the staff resources available to process them; or, most importantly, the costs of that processing. 91 Fed. Reg. at 35,845 n.308.[37] The Proposed Rule's statement that prediction markets represent about 0.08 percent of the $31 trillion futures market answers a different question: notional volume measures neither the number nor the complexity of submissions requiring time-sensitive legal and factual review nor the cost of such review. *Id.* at 35,845 n.308.

These omissions are not for want of ability to make reasonable estimates of these costs. The Proposed Rule, after all, is shot through with similar estimates. For example, the Commission estimates that documenting product designs, updating internal review workflows, and evidencing settlement triggers to reflect the proposed "gaming" definition will require 40 to 100 staff hours per prediction market, at a fully loaded hourly rate of $160, for a one-time cost of approximately $6,400 to $16,000 per entity. *Id.* at 35,847. It further estimates that approximately fourteen percent of self-certified event contracts required additional Commission staff review in the past year, and that responding to such review may require an additional 5 to 15 staff hours, or $800 to $2,400, per affected contract. *Id.* at 35,849 n.310. These estimates confirm that quantification is feasible for the Commission when the Commission attempts it.

Indeed, confirming that point, the Commission has previously estimated the very costs it now omits. In its 2024 Event Contract Proposal, the Commission stated that a Section 40.11(c) review is "resource-intensive and consumes hundreds of hours of staff time," and estimated that each such review takes on average approximately 625 hours of Commission staff time, at a cost of approximately $220,012. *Event Contracts*, 89 Fed. Reg. at 48,969, 48,988. The current Proposed Rule repeats the "resource-intensive" characterization and confirms that the Commission has conducted only three Section 40.11(c) reviews in the fifteen years since the rule was adopted in 2011. 91 Fed. Reg. at 35,844 n.302. The Proposed Rule fails to consider that the Commission's prior categorical approach likely limited the number of potentially problematic contracts the Commission needed to review. By replacing that approach with contract-specific determinations, the Proposed Rule will create significantly increased demands on agency staff and resources. The Commission admits that this system may not be possible to administer, yet identifies no solution. *See id.* at 35,841 ("The Commission acknowledges that the volume of event contracts certified under §§ 40.2 and 40.3 may make individualized review burdensome, particularly during periods of high submission activity. The Commission preliminarily believes, however, that this burden follows from the structure Congress established."). Despite acknowledging this burden, the Proposed Rule omits the Commission's own prior estimate and provides no replacement estimate for the more elaborate process now proposed. Having quantified industry-side costs now and agency-side review costs in the past, the Commission cannot credibly treat the considerable

[37] Since March 2026, event contract volume has continued to increase. *See* Davis Giangiulio, *The World Cup Sends Prediction Market Volumes Soaring to Record Highs*, CNBC (July 4, 2026), https://perma.cc/V9WT-52DZ ("Kalshi saw more than $31 billion in notional volume during [June], a more than 70% increase from May's total ….").

resources this Proposed Rule will demand (not to mention the reliance interests it will upset) as unquantifiable and thereby paint an artificially rosy picture of the proposal's net costs.

B. The Commission Identifies Retail-Protection Risks but Declines to Analyze Them.

The CEA directs the Commission to weigh the "protection of market participants and the public." 7 U.S.C. § 19(a)(2)(A). In the Proposed Rule, the Commission expressly identifies "the protection of retail participants" as a public-interest dimension "implicated by event contract markets," 91 Fed. Reg. at 35,857, and then describes, in specific terms, the harms it anticipates. It acknowledges that prediction-market trading characteristics—"outcomes occurring at unpredictable intervals, perception of skill-based decision making, near miss experiences, and potential for loss chasing behavior"—"are generally associated with addictive potential," and that "low minimum position sizes, continuous market availability, and notification systems that facilitate frequent engagement could further contribute to this potential." *Id.* It further observes that "[t]hese factors can lead to financial harm as users accumulate losses through high frequency trading, allocate disproportionate resources to trading activity, and have trouble disengaging voluntarily," and that event contracts "can concentrate losses among retail segments with lower financial literacy or higher susceptibility to salience and longshot bias." *Id.* And it even identifies the mechanism: the "systematic overpricing of very low-probability outcomes and underpricing of near-certain ones can draw traders into positions with negative expected values." *Id.*

Having raised these risks, however, the Commission fails to analyze them. It does not estimate the incidence or magnitude of retail losses, the number of participants exposed, the share of volume attributable to loss-chasing or negative-expected-value positions, or the effect on any of these measures of the increase in listings that the Commission itself forecasts as a consequence of the Proposed Rule. *Id.* It instead simply defers the question, "invit[ing] comment on which metrics and processes could be implemented to monitor these concerns," and offering possible future steps such as "retail-outcomes dashboards (education completion, complaint rates, cohort loss distributions)." *Id.* at 35,858. Soliciting comment on how a harm might someday be measured is not a substitute for considering that harm in the cost-benefit analysis the CEA requires the Commission to perform now. *See State Farm*, 463 U.S. at 43 (agency may not "entirely fail[] to consider an important aspect of the problem").

The omission also cannot be squared with the Commission's bottom line. On the same pages on which it describes the risks of retail addiction, financial harm, and the concentration of losses among less-sophisticated participants, the Commission concludes that the Proposed Rule imposes "no more than de minimis net costs." 91 Fed. Reg. at 35,858. A record that acknowledges these harms and simultaneously denies any more-than-de-minimis cost does not reflect the reasoned weighing the CEA demands.

The Commission's own proposed methods for mitigating these risks underscore what the Proposed Rule leaves unaddressed. The Commission suggests that "position limits, cooling off periods, notification restrictions, or self-exclusion mechanisms might preserve legitimate market functions while mitigating harm to retail traders." *Id.* at 35,857. Of course, those are the very consumer-protection tools that state-licensed operators are already required to deploy. *See infra* Section X. Yet the Proposed Rule would generate a parallel, federally overseen channel subject to none of them, without even considering the cost of that misguided approach.

C. The Analysis Is Internally Inconsistent.

In several places, the Commission credits a conclusion in one part of the Proposed Rule that it undercuts in another. These internal inconsistencies cannot be squared with the requirements of reasoned decisionmaking.

Economic Significance. The Office of Management and Budget ("OMB") determined that the Proposed Rule is an economically significant regulatory action under Section 3(f)(1) of Executive Order 12866. 91 Fed. Reg. at 35,858. The Commission nevertheless states that the Proposed Rule is not expected to constitute an Executive Order 14192 regulatory action because it imposes "no more than de minimis net costs." *Id.* Those characterizations are not necessarily mutually exclusive: economic significance may reflect benefits, transfers, effects on a market sector, public-health consequences, or impacts on state and tribal governments rather than direct compliance costs alone. But each of those reconciling pathways runs through precisely the effects the Commission's Section 15(a) analysis fails to quantify. The Commission neither identifies the basis for OMB's economically significant designation, nor explains how it arrived at de minimis net costs after declining to aggregate direct costs and omitting the reliance, competitive, administrative, and consumer costs described above. The Commission must explain both conclusions and provide the analysis supporting each. Having secured OMB's economic-significance determination, and given that the rule's effects on the state-licensed wagering sector, tribal gaming, and state and local governments will certainly be well in excess of $100 million, the Commission must acknowledge that any final rule will be a major rule and comply with the Congressional Review Act procedures applicable to such rules. *See* 5 U.S.C. § 801.

Template-based certification. The claimed benefits assume that event contracts presenting public interest concerns will enter the new review process. The Proposed Rule itself casts doubt on that assumption. It acknowledges that "many event contracts are certified using a template submission, which is then used for listing many specific event contracts," and that such templates often contain only a general description of the contemplated products. *Id.* at 35,847. It further acknowledges that generalized descriptions may be insufficient under Section 40.2(a)(3)(v)–which requires prediction markets to submit a concise explanation and analysis of the product's compliance with the CEA—but proposes only that staff request supplemental information. *Id.*

The Commission does not explain whether contracts listed under preexisting templates will require new self-certifications, whether supplemental requests will toll the ten-day initiation period, or how the Commission will identify new contract permutations that do not produce new submissions. As explained in Section VII, those omissions may prevent the proposed review mechanism from being triggered for large categories of contracts. The cost-benefit analysis nevertheless assumes that the new framework will improve oversight, reduce uncertainty, and prevent problematic listings without evaluating the possibility that existing certification practices will allow regulated activity that fails to comply with Commission regulations to bypass the framework altogether. *Id.* at 35,846–47.

No safe harbor. The Commission states that aggregate-outcome sports contracts with objective settlement data, appropriate surveillance, trading restrictions, and coordination with governing bodies are "unlikely to be found to be contrary to the public interest." *Id.* at 35,836. It immediately disclaims, however, that this conclusion creates any safe harbor or replaces contract-specific, factor-by-factor review, *id.*, and Proposed Appendix F repeats that disclaimer, *id.* at 35,870. If conformity with the Commission's stated criteria provides no meaningful assurance against an adverse determination, the associated certainty benefits are overstated. If, on the other hand, the guidance is reliable enough to provide "certainty to market participants" (as asserted by

the CFTC Chairman) and the compliance and investment benefits that are claimed to follow from such certainty, then the "no safe harbor" disclaimer understates its practical effect, and the Commission has effectively made the categorical public interest determination it elsewhere insists is impermissible under CEA section 5c. 91 Fed. Reg. at 35,841.[38] The Commission must reconcile these positions and revise its benefits estimate accordingly.

Certainty from inaction. A similar problem affects the deemed-conclusion mechanism. The Commission characterizes the ability to continue trading when no order issues as a benefit that reduces uncertainty. *Id.* at 35,854–55. But that "benefit" may often reflect agency inaction rather than an affirmative finding that a contract satisfies the public-interest standard. The analysis counts the certainty created by a deadline while ignoring the costs of mistaken non-review, including inappropriate trading of products unsuited to public markets, inadequate records, and the inability to revisit a contract once the Commission has either declined to commence review within the ten-day window or allowed the ninety-day review to lapse without an order.

D. The Claimed Offshore-Migration Benefit Is Unsupported.

The Commission treats the possibility that restriction of sports-based prediction markets will drive activity offshore as a factor favoring domestic listing. It states that "excessive prohibitions of event contracts could shift demand to unregulated or offshore platforms, fragment liquidity, and reduce access to consumer protections." *Id.* at 35,857–58. Yet the Commission provides no estimate of migration rates, affected volume, or comparative consumer harm, and identifies monitoring offshore traffic only as a possible future step. *Id.* at 35,858. The Commission thus counts prevention of migration as a benefit favoring adoption of the Proposed Rule without adequately exploring the magnitude (if any) of that benefit.

This supposed benefit also lacks a limiting principle. The Commission's logic suggests that the stronger the demand for an event contract, the greater the asserted migration risk and thus the stronger the case for permitting it. But on that logic, the proposed regulatory framework should be most permissive for those contracts that are the most popular, even if those contracts are clearly contrary to the public interest, such as contracts on war, terrorism, and assassination.[39] That approach is directly at odds with the CEA's Special Rule and the Dodd-Frank Act's legislative history, both of which show that Congress sought to prohibit these contracts. The Proposed Rule's backwards result suggests that this supposed "onshoring" benefit should not enter the Commission's calculus at all. *See State Farm*, 463 U.S. at 43 (agency action is arbitrary and capricious where the agency "relied on factors which Congress has not intended it to consider"). We note that, despite the significant U.S. presence of at least one major offshore participant in

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[38] Chairman Michael S. Selig, Remarks on The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance (Jan. 29, 2026) ("For too long, the CFTC's existing framework has proven difficult to apply and has failed our market participants. That is something I intend to fix by establishing clear standards for event contracts that provide certainty to market participants.").

[39] *See e.g.*, Aisha Down, *'Abhorrent': the Inside Story of the Polymarket Gamblers Betting Millions on War*, The Guardian (April 11, 2026), https://perma.cc/A9Z4-US52 ("In a thriving online economy, thousands of people are discussing how to profit from war. They are betting on Ukraine. They were betting on the US-Iran ceasefire – $280m in play."); Avantika Chilkoti, *Anyone's Guess,* The Economist, 1843, July 25, 2026, at 7 (describing a contract on whether Israel would invade Lebanon).

these markets, the CFTC has not claimed that it lacks statutory authority to regulate the participant's on-shore activities. That is because the CEA clearly provides such authority to the CFTC. The question remains whether the CFTC will in fact exercise that authority.

IX. The Proposed Rule Fails to Address Template-Based Contracts.

The Commission's proposed amendments to Section 40.11, and the procedural framework they establish for public interest review of event contracts involving Enumerated Activities, rest on a critical but unexamined premise: that the listing of event contracts will generate individualized self-certification submissions under Section 40.2 that will, in turn, trigger the Commission's review authority. The Proposed Rule fails to analyze—and in key respects entirely ignores—the interaction between its proposed review framework and the widespread industry practice of listing event contracts pursuant to broad, template-based self-certifications. This omission is a structural deficiency that threatens to render the proposed framework inoperative for the very category of contracts most warranting public interest scrutiny.

The Proposed Rule recognizes the prevalence of template-based self-certification. The Commission states that "many event contracts are certified using a template submission, which is then used for listing many specific event contracts," and that "[t]hese templates often provide only a general description of [the] type of event contracts that will be listed." 91 Fed. Reg. at 35,847. The Commission further acknowledges that "for event contracts that potentially involve an Enumerated Activity, this general description would be insufficient for the Commission's review under § 40.11 and would not comply with the § 40.2(a)(3)(v) requirement that the prediction market explain why the event contracts comply with the CEA." *Id.*

Despite this acknowledgment, the Commission's sole proposed remedy is that "the staff would request that the DCM supplement the template with additional information, sufficient for the Commission's review under § 40.11, demonstrating that the event contracts meet the requirements of the CEA and regulations thereunder, as required by § 40.2(b)." *Id.* This response is inadequate for several reasons.

First, a staff request for supplemental information is discretionary, not mandatory. The Proposed Rule does not require that staff review every template submission for sufficiency, nor does it impose any obligation on the Commission to identify template-based listings that may involve Enumerated Activities. The Commission therefore has not articulated a "rational connection between the facts found and the choice made," *State Farm*, 463 U.S. at 43: it has identified a problem (template insufficiency), identified a remedy (staff supplemental requests), but has not explained under what circumstances that discretionary mechanism will be triggered, and does not consider the potential frequency or scale of requests necessary to address the problem the Commission itself has documented. This is difficult to reconcile with the Commission's acknowledgment elsewhere that "the volume of event contracts certified under §§ 40.2 and 40.3 may make individualized review burdensome, particularly during periods of high submission activity," but that "this burden follows from the structure Congress established." 91 Fed. Reg. at 35,841; *see infra* Section VII. Having recognized that the statutory structure itself imposes a review burden the Commission must bear, the Commission cannot simultaneously treat the analogous burden of reviewing template submissions for sufficiency as one it may address through unstructured staff discretion rather than a defined regulatory mechanism.

Second, the Proposed Rule does not specify whether or how such a supplemental request interacts with the proposed ten-day initiation window for commencing a Section 40.11 review. If a template submission is facially insufficient but the ten-day clock runs from the date of listing, the Commission may lose its authority to initiate review before it has obtained the information

necessary to evaluate whether review is warranted. The Commission's silence on this interaction is a failure to "examine the relevant data and articulate a satisfactory explanation for its action," *id.*, because the Commission was aware of both the ten-day limitation (which it proposed) and the template insufficiency problem (which it acknowledged, 91 Fed. Reg. at 35,847), yet did not address their interaction.

Third, the Proposed Rule imposes no consequence for a prediction market's failure to respond to a supplemental request, nor does it toll any review period pending such response. The Commission does not explain why it declined to adopt obvious alternatives—including tolling the ten-day initiation period pending receipt of a complete submission, deeming non-response a basis for initiating review, or treating non-response as a failure to comply with Section 40.2(b)'s information requirements. Under *State Farm*, the Commission must "cogently explain why it has exercised its discretion in a given manner," 463 U.S. at 48, and this obligation extends to the consideration of "obvious alternative[s]" that would address the identified deficiency. *Id.* at 43, 48. The Commission's silence instead reflects an unstated and unexplained assumption that prediction markets' voluntary cooperation—rather than the Commission's own statutory review authority—will resolve the compliance gap that template-based listing creates. An agency acts arbitrarily when it rests its decision on "factors which Congress has not intended it to consider," *State Farm*, 463 U.S. at 43, and Congress did not authorize the Commission to substitute voluntary industry cooperation for the "system of effective self-regulation … under the oversight of the Commission" that the CEA requires. 7 U.S.C. § 5(b).

This gap is compounded by the volume-and-resource problem described in Section VII, *infra*. The Commission's ten-day initiation window is, on its own terms, incapable of accommodating the volume of listings reflected in the Commission's own data: daily average listings on a single prediction market grew from approximately 1,600 in April 2025 to 162,000 in April 2026. 91 Fed. Reg. at 35,844 n.298; *see infra* Section VII. Layering an undefined, staff-initiated discretionary request for supplemental information on top of an already-overwhelmed review structure will, in practice, foreclose meaningful scrutiny of template-based submissions except in the rare case in which Commission staff happens to flag a particular template before the ten-day window has run.

The interaction between these deficiencies compounds the problem further. If Commission staff exercises its discretion to request supplemental information regarding a template submission, but the registered entity does not respond before the ten-day initiation window closes, the underlying contract will already have become effectively unreviewable under proposed Section 40.11(c)(1). *See supra* Section VII (discussing the consequences of the ten-day window's expiration). At that point, the registered entity has little practical incentive to respond to the staff request at all, because the contract it certified is no longer subject to a public interest determination regardless of the adequacy of its response. The Proposed Rule does not address, or even acknowledge, this combined consequence of its own procedural choices.

To be sure, the Commission retains the blunt option of denying a template submission that fails to provide the "concise explanation and analysis" that Section 40.2(a)(3)(v) requires. But the Commission has not explained why it declined to consider more calibrated alternatives—such as tolling the review period pending a corrected submission, requiring a compliant individualized certification before listing may proceed, or treating an inadequate template as never having triggered self-certification in the first place. The Commission's failure to consider these obvious alternatives, *see State Farm*, 463 U.S. at 43, 48, is not an isolated omission; it reflects a broader pattern, evident throughout the Proposed Rule's revisions to the Section 40.11 review process, of adopting new procedural mechanisms without the reasoned, alternatives-based analysis the APA requires. The template certifications also create a structural gap that bypasses

the proposed review framework. The proposed Section 40.11(c)(1) provides that the Commission may commence a review "no later than 10 days after the date of the listing of an agreement, contract, transaction, or swap under review." 91 Fed. Reg. at 35,861. The entire procedural architecture of the Proposed Rule—the ten-day initiation window, the 90-day review period, the statement of concerns, the staff recommendation, and the final Commission order—presupposes that a new filing will bring the contract to the Commission's attention within a time frame that permits action. *See* 91 Fed. Reg. at 35,840–42 (describing the proposed review framework and its milestones).

Template self-certifications undermine this premise. Where a prediction market has previously filed a template self-certification broad enough to encompass future event contracts involving Enumerated Activities, the listing of a specific contract under that template may not require any new filing under Section 40.2. If no new submission is made, no new "listing" triggers the ten-day clock under proposed Section 40.11(c)(1). The Commission thus never receives the individualized submission falling under the broad template that the Commission's new review structure requires. The contract would be listed, traded, and settled without having been subject to the heightened scrutiny that the Special Rule contemplates. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i); 91 Fed. Reg. at 35,840.

The Commission's own data illustrates the magnitude of this problem. On a single prediction market, daily average event contract listings grew from approximately 1,600 in April 2025 to 162,000 in April 2026. 91 Fed. Reg. at 35,844 n.298. More than 8,000 distinct event contracts were trading as of May 2026, across twenty-five designated contract markets. 91 Fed. Reg. at 35,844 n.303.[40] This explosive growth was accomplished substantially through broad template submissions that permit a single filing to cover an indeterminate number of future contracts sharing generalized structural characteristics. *See* 91 Fed. Reg. at 35,847 (acknowledging prevalence of template submissions). For example, one prediction market submitted a template that is simply: "Will <challenge> be completed by <person>?"[41] The Commission was therefore in possession of data demonstrating that the market had grown by two orders of magnitude in a single year—growth accomplished substantially through the template-submission mechanism the Commission identifies as insufficient—yet proposed no regulatory response to the structural gap that mechanism creates.

The Commission's own advisory recognizes the problem but does not solve it. CFTC Letter No. 26-08 observes that "overly broad or general contract specifications may affect a DCM's ability to analyze the compliance of the contract's various permutations with the CEA and Commission regulations, including the contract's susceptibility to manipulation," and further notes that "[w]here multiple permutations of a contract may be listed, with different underlying events, there may be different manipulation risks that would need to be analyzed." CFTC Letter No. 26-08, at 5 (Mar. 12, 2026). These observations recognize the problem but do not solve it, because the advisory is non-binding and imposes no requirement that platforms file new certifications for individual contracts listed under preexisting templates.[42] The Proposed Rule

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[40]The Commission does not explain how these figures relate to one another. *See supra* Section VIII.A.

[41] Letter from KalshiEX, LLC to Secretary of the Commission (Aug. 12, 2025), https://www.cftc.gov/sites/default/files/filings/ptc/25/08/ptc08122528477.pdf.

[42] Nor does CFTC Letter No. 26-22 (July 24, 2026), https://www.cftc.gov/PressRoom/PressReleases/9273-26. This Staff Letter, issued by the Commission on the business

does not explain why the Commission has declined to incorporate the advisory's observations into binding regulatory requirements, nor does it address whether the advisory's warnings about template-based inadequacy apply with particular force to contracts involving Enumerated Activities subject to the Special Rule.

This is not merely a documentation problem; rather, it is a structural issue that permits registered entities to self-certify contracts one or more levels of abstraction above the contracts consumers actually interact with. The Commission has not proposed to require prediction markets to file new self-certifications for contracts listed under pre-existing templates. It has not proposed to treat the listing of a specific contract under a template as a new "submission" that triggers the ten-day initiation window. It has not proposed transition rules addressing the thousands of contracts already listed under broad template certifications. And it has not explained why the absence of these provisions is consistent with the Proposed Rule's stated objectives of providing "clarity," "predictability," and effective Commission oversight. *See* 91 Fed. Reg. at 35,846–47 (identifying clarity and predictability as principal benefits of the Proposed Rule).

The Commission's economic analysis under Section 15(a) of the CEA assigns substantial benefits to the proposed framework, including improved regulatory certainty, reduced frequency of problematic submissions, and enhanced efficiency of Commission resources. 91 Fed. Reg. at 35,846–55. These benefits rest on the assumption that event contracts presenting public interest concerns will enter the new review process. As demonstrated above, template-based self-certification may prevent the already hamstrung new review process from being triggered for large categories of contracts—the very contracts that the framework is designed to address. 91 Fed. Reg. at 35,847 (acknowledging template insufficiency).

The Commission has not evaluated the costs of contracts escaping meaningful review because of the template gap, including the costs of manipulation, insider trading, settlement disputes, retail losses, and displacement of state and tribal protections that may result from unreviewed contracts continuing to trade without any public interest determination. *See* 91 Fed. Reg. at 35,846–55 (cost-benefit analysis omitting these costs); *supra* Section VIII. Nor has the Commission evaluated the alternative of requiring individualized submissions for contracts currently listed under broad templates—an alternative that directly addresses a deficiency the Proposed Rule itself identifies. 91 Fed. Reg. at 35,847. This omission renders the economic analysis incomplete and arbitrary. *See State Farm*, 463 U.S. at 43. For the foregoing reasons, the Proposed Rule is unlawful because it does not address the template self-certification gap.

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day preceding the due date for comment letters on the Proposed Rule, states that self-certifications of broad, template event contracts do not comply with the Commission's rules. While this new Staff Letter does state that the Commission may "at any time" determine that individual re-certification of previous template self-certifications may be necessary (at page 3), there is no indication that the Commission in fact intends to exercise this authority with respect to previously executed inappropriate template self-certifications. And, as noted above, Staff Letters are not Commission action and may be rescinded or revised at any time (see page 5 of the new Staff Letter). We do note, however, that the statement that the Commission may mandate recertification of improperly self-certified contracts at any time contradicts the Commission's claim in the Proposed Rule that a self-certification may only be challenged if the Commission notifies the registrant within 10 days of self-certification, and acts within 90 days thereafter. This element of the Staff Letter likewise conflicts with the Proposed Rule's assertions regarding regulatory certainty.

X. The Commission Fails to Consider Consumer Protection, Responsible Gaming, and Retail Harm Deficiencies.

As explained above, the Proposed Rule acknowledges a host of serious consumer protection and retail harm risks, yet proposes no measures to address or mitigate them and does not explain why they need not be addressed or mitigated. *See supra* Section VIII.B. That is not reasoned decisionmaking. The specific deficiencies include the following.

Under *State Farm*, an agency acts arbitrarily and capriciously when it "entirely fail[s] to consider an important aspect of the problem." 463 U.S. at 43. Section 15(a) of the CEA requires the Commission to consider "protection of market participants and the public" as the first factor in its cost-benefit analysis. 7 U.S.C. § 19(a)(2)(A). The Proposed Rule's preamble identifies a specific, documented category of retail harm—concentrated losses among vulnerable participants driven by behavioral biases and product features that are "generally associated with addictive potential." 91 Fed. Reg. at 35,857. Yet the Proposed Rule's operative provisions contain no factor addressed to these harms, no requirement that prediction markets mitigate them, and no mechanism by which the Commission would weigh them in the public interest determination under proposed Section 40.11(a)(5). Rather than address the harms borne by retail participants in these markets, the Proposed Rule's proposed public interest factors instead address manipulation susceptibility, settlement integrity, and information leakage. *See* proposed § 40.11(a)(5)–(6), 91 Fed. Reg. at 35,831–35. An agency that documents a harm but proposes no regulatory response or explanation for why one is not necessary or feasible, and includes no mechanism to address the problem, has failed to consider an important aspect of the problem. *See State Farm*, 463 U.S. at 43.

The Commission's failure is compounded by the scale of the documented harm. The Commission's own preamble reports that daily average event contract listings on a single prediction market grew from approximately 1,600 in April 2025 to 162,000 in April 2026. 91 Fed. Reg. at 35,844 n.298. More than 8,000 distinct event contracts were trading as of May 2026. *Id.* at 35,844 n.303. Prediction market volume reached $25 billion in March 2026, *Id.* at 35,845 n.308, and volume on Kalshi alone for June exceeded $31 billion in notional volume.[43] The Commission acknowledges that this growth has occurred in a market exhibiting characteristics associated with potential consumer harms, yet it proposes no consumer protection measure responsive to the market's rapid expansion.[44]

The Commission does not merely fail to consider retail harm—it identifies specific safeguards and then declines to adopt any of them without explanation. The Proposed Rule states that "[p]rotective measures, such as position limits, cooling off periods, notification restrictions, or self-exclusion mechanisms might preserve legitimate market functions while mitigating harm to retail traders." 91 Fed. Reg. at 35,857. It further suggests that "prediction markets could monitor calibration and cohort outcomes and document when remediation, such as product redesign or targeted education, reduces these adverse consequences." *Id.*

These are not abstract possibilities—they are measures the Commission itself has identified as responsive to the specific harms it has documented. Yet the Proposed Rule adopts none of them. It does not explain why the costs of position limits, cooling-off periods, or self-

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[43] Giangiulio, *supra* note 37.

[44] *See* Bernstein & Akabas, *supra* note 16 (documenting losses experienced by users on "Kalshi's retail app and website").

exclusion mechanisms would outweigh their benefits. It does not explain why consumer protections are not a necessary component of a regulatory framework that permits nationwide trading in sports event contracts.

The Commission's treatment of evidentiary uncertainty is difficult to reconcile across the Proposed Rule. As discussed in Section VI, *supra*, the record does not establish that sports event contracts serve a genuine price-discovery function. Yet the Commission nevertheless preliminarily concludes that broad categories of such contracts are unlikely to be contrary to the public interest. *See* 91 Fed. Reg. at 35,836. By contrast, when confronted with uncertainty regarding the potential consumer harms associated with those same contracts, the Commission declines to adopt concrete safeguards and instead seeks additional information regarding possible monitoring metrics and interventions. The Proposed Rule does not explain why uncertainty regarding the asserted *benefits* of sports event contracts supports a favorable preliminary finding, while uncertainty regarding their potential *harms* warrants regulatory restraint. That omission is significant. Under *State Farm*, an agency must "cogently explain why it has exercised its discretion in a given manner." 463 U.S. at 48. Here, the Commission identifies a consumer-protection concern, recognizes potential mechanisms for addressing it, and yet declines to adopt those measures or any alternative approach, while simultaneously reaching affirmative conclusions elsewhere in the Proposed Rule despite comparable evidentiary limitations. The Proposed Rule offers no reasoned basis for these differing treatments of uncertainty. Without further explanation, it is difficult to discern the rational connection between the facts found and the regulatory choices made that the APA requires. *See id.* at 43, 48.

In the 2024 Proposal, the Commission reached materially different conclusions regarding the relevance of consumer protection to the public interest determination. The 2024 Proposal specifically recognized that state gaming regulators possess "particular expertise" in addressing the consumer risks associated with wagering products—an area in which the Commission acknowledged it lacked "specialized experience"—and identified concrete protections supplied by state law, including problem-gambling notices, employee training, advertising disclosures, integrity monitoring, and reporting of suspicious wagering activity. *Event Contracts*, 89 Fed. Reg. at 48,982–83 & nn.117, 121–23. The 2024 Proposal further stated that permitting event contracts that replicate sports wagers on derivatives markets could conflate "gambling and financial instruments in a manner that could particularly create confusion and risk for retail market participants." *Id.* at 48,982.

The Proposed Rule acknowledges the same category of retail risk but does not explain why the protections the Commission previously viewed as relevant are now absent from both the rule and its economic analysis. It does not address why state regulators' "particular expertise" in managing gambling-related consumer harm is no longer material to the Commission's public interest determination. It does not confront the 2024 Proposal's finding that these products could confuse retail participants, nor does it explain what has changed to eliminate that concern.

Under *Fox Television*, an agency changing course must "display awareness that it is changing position" and provide "good reasons for the new policy." 556 U.S. at 515. Where the new policy "rests upon factual findings that contradict those which underlay its prior policy" or where "its prior policy has engendered serious reliance interests," the agency may need a "more detailed justification." *Id.* The Commission's prior conclusion that state-administered consumer protection measures are relevant to the public interest determination generated reliance interests among states, tribal gaming operations, and licensed operators who built businesses around the existing state-regulated framework. The Commission's abandonment of that position—without acknowledgment, explanation, or any substitute protection—independently renders its analysis arbitrary and capricious.

The problems do not stop there. State sports-wagering regimes uniformly impose minimum-age requirements, most commonly age 21, together with identity-verification protocols to enforce those requirements. *See, e.g.*, Nev. Rev. Stat. § 463.350(1) (age 21); Tenn. Comp. R. & Regs. 1350-01-.02(4) (age 21); Ohio Rev. Code § 3775.99(A)(2) (age 21). These requirements reflect considered state-level judgments about the vulnerability of younger individuals. The Proposed Rule, however, does not adopt a minimum age for trading sports event contracts on prediction markets, nor does it evaluate the consequences of allowing persons as young as 18—who may be prohibited from placing a sports wager at a state-regulated sportsbook—to obtain identical exposure through a prediction market. The Proposed Rule discusses risks associated with contracts involving pre-collegiate athletes, including the "commercial use of information related to minors." 91 Fed. Reg. at 35,837. But it does not address the separate and more immediate question of who may trade these contracts—a question with direct consumer-protection implications.

The Commission's silence on minimum-age requirements constitutes yet another failure to consider an important aspect of the problem under *State Farm*, 463 U.S. at 43. If the Commission believes that sports event contracts are functionally distinct from sports wagers such that age-21 requirements are unnecessary, it must explain that distinction. If it believes that the CEA does not authorize age restrictions, it must identify the statutory limitation. And if it believes that the costs of age verification outweigh the benefits of protecting younger persons from documented harms associated with addictive-potential products, it must provide the cost-benefit analysis that section 15(a) requires. The Commission has done none of these things.

Under *State Farm*, the Commission must consider "obvious alternative[s]" to its proposed course of action. 463 U.S. at 43, 48. One obvious alternative—which the Commission's own 2024 analysis identified—is to require that prediction markets listing sports event contracts adopt consumer protections equivalent to those required of state-licensed sports-wagering operators. These protections are well-established, operational, and specifically designed to address the identical risks the Commission has documented in its preamble. They include:

(1) Self-exclusion programs that allow individuals to opt out of all licensed gaming operations and advertising. *See, e.g.*, Ohio Rev. Code § 3772.031; Tenn. Comp. R. & Regs. 1350-01-.06(8). State self-exclusion programs are interconnected—an individual who self-excludes in one state is typically barred from all licensed operators in that state. Prediction markets do not participate in these programs, meaning that a self-excluded individual can obtain equivalent wagering exposure through a DCM without triggering the protections the state system provides.

(2) Responsible-gaming advertising requirements that prohibit targeting minors, require prominent display of responsible-gaming resources, and restrict solicitation of self-excluded individuals. *See, e.g.*, Ohio Admin. Code 3775-16-08.

(3) Affirmative monitoring for indicators of problem gaming, including requirements that operators contact users exhibiting signs of irresponsible use. *See, e.g.*, Tenn. Comp. R. & Regs. 1350-01-.06(8).

(4) Geofencing requirements that confine wagering to authorized jurisdictions and ensure that operators comply with each state's specific requirements regarding permissible bet types, advertising, and age verification. *See, e.g.*, Ohio Admin. Code 3775-17-01, 3775-9-03; Tenn. Comp. R. & Regs. 1350-01-.03, 1350-01-.06(7).

(5) Position limits and deposit limits that allow users to set voluntary constraints on their own trading activity. *See, e.g.*, Nev. Gaming Reg. § 5.225(18)(a)-(b).

The Commission does not explain why it declined to require any of these protections—or any equivalent—as a condition of listing sports event contracts. It does not evaluate the costs and benefits of imposing state-equivalent protections on prediction markets. It does not address whether the absence of such protections creates an unlevel competitive environment that advantages unregulated prediction markets over state-licensed operators who bear the full cost of compliance. And it does not consider whether the displacement of state protections by unregulated prediction market activity constitutes a cost that should be counted against the Proposed Rule's benefits. This failure to consider an obvious alternative—one that the Commission itself previously identified as relevant—violates the requirement that the agency "cogently explain why it has exercised its discretion in a given manner." *State Farm*, 463 U.S. at 48.

The Commission's section 15(a) analysis assigns substantial benefits to the Proposed Rule, including regulatory certainty, responsible innovation, and enhanced price discovery. 91 Fed. Reg. at 35,846–55. It does not quantify—or even qualitatively assess—the costs that will result from allowing nationwide trading in sports event contracts without the consumer protections that state-regulated sportsbooks must provide. It does not include, for example, that licensed gaming operators have invested substantial sums to comply with state consumer-protection requirements—including advertising guidelines, self-exclusion programs, employee training, age verification, and geofencing. The Proposed Rule would permit prediction markets to offer identical products nationwide without bearing any of those compliance costs, creating a competitive asymmetry that disadvantages licensed operators and erodes the viability of the regulated framework.

The Commission's failure to evaluate these costs renders its section 15(a) analysis incomplete. An agency cannot claim benefits from regulatory certainty while ignoring the costs that regulatory permissiveness imposes on the systems it displaces. *See State Farm*, 463 U.S. at 43 (agency must "examine the relevant data and articulate a satisfactory explanation for its action"). For the foregoing reasons, the Proposed Rule is unlawful because it fails to address the consumer protection, responsible gaming, and retail harm deficiencies identified above.

XI. The Commission Fails to Consider Reliance Interests.

The Commission must consider the reliance interests of licensed operators like NRA's members who built businesses around a longstanding state-level gaming regulatory framework. *See Fox Television*, 556 U.S. at 515. Sports betting operators have dedicated significant resources to complying with state regulations and paying state gaming taxes, and they have structured their businesses around the post-*Murphy* framework of state-regulated sports betting. NRA's members "have significantly protectable interests in their Nevada gaming licenses," *Hendrick*, 2025 WL 1901399, at *1, and have "invested millions of dollars to comply with state regulations" under the assumption that market participants will all play by the same rules. *Hendrick*, 817 F. Supp. 3d at 1036. Indeed, following *Murphy*, NRA's members spent substantial sums to obtain gaming licenses under states' comprehensive gaming regimes.

But if prediction markets are now permitted to offer sports bets, NRA's members would be forced to operate "at a considerable competitive disadvantage" to prediction markets, *Hendrick*, 2025 WL 1901399, at *1, which would entirely avoid "hav[ing] to comply with Nevada's comprehensive gaming laws." *Hendrick*, 817 F. Supp. 3d at 1036. "NRA members benefit from the well-regulated market of betting in Nevada," and the Commission's efforts to take control of

sports betting nationwide would "erode that market and the regulations that make it fair for the public and profitable for licensees." *Hendrick*, 2025 WL 1901399, at *1. The Proposed Rule fails to address, much less weigh, the reliance interests of NRA's members and similarly situated companies.

The monetary harm to licensed gaming operators under the Proposed Rule is direct and quantifiable. In 2025, commercial gaming generated a record $78.62 billion in gross gaming revenue, supporting a $261 billion industry and 1.8 million jobs—all placed at risk by a rule that would formalize, rather than curtail, prediction markets' unlicensed encroachment on that framework.[45]

The Proposed Rule also threatens investments that licensed gaming operators have made in consumer protection and responsible gaming infrastructure, such as age-verification systems to ensure that consumers meet states' age requirements and self-exclusion tools to assist consumers who no longer wish to engage in gaming. Licensed sportsbooks have also invested in technology to detect suspicious activity that could affect the integrity of sports events. All of these investments would lose significant value under the Proposed Rule's regime where prediction markets are able to offer sports bets with impunity.

The Proposed Rule also fails to account for states' reliance on tax revenue from commercial gaming operators. In 2025, gaming operators paid $17.86 billion in direct taxes to state and local governments and other beneficiaries.[46] Under the Proposed Rule, states would stand to lose significant portions of that revenue, as consumers may decide to place sports bets on prediction markets—which are not licensed gaming operators and thus do not pay state gaming taxes—instead of with licensed operators. Once again, the Proposed Rule fails to consider these interests or its impact on states.

Similarly, the Proposed Rule fails to consider the effects on licensed operators' employees and workforce. The commercial gaming industry supports 1.8 million jobs nationwide, and in Nevada gaming accounts for 22% of total wages and salaries and 28% of total employees. Operators have made long-term staffing, training, and collective-bargaining commitments in reliance on a stable, protected regulatory market; erosion of that market by unlicensed competition places this employment base at risk.

The Proposed Rule would also negatively affect Nevada's tourism industry. Nevada's broader hospitality economy—hotels, restaurants, conventions—depends on visitation driven by the state's regulated gaming ecosystem, with roughly 38.5 million visits to Las Vegas in 2025.[47] Diversion of sports bettors to platforms accessible from anywhere removes an incentive for travel to licensed gaming jurisdictions, harming this ancillary reliance interest as well.

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[45] AGA State of the States, at 1, 5.

[46] *Id.* at 8.

[47] *Id.* at 92.