THE LAW OFFICES OF
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A PROFESSIONAL CORPORATION

August 24, 2026

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
rule-comments@sec.gov ref File Number S7–2026–21

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Joint Request for Comment on Further Definition of 'Swap' and 'Security-Based Swap' and on Alternative Compliance, 91 Fed. Reg. 37873 (Jun. 24, 2026) RIN 3038–AF71; RIN 3235–AN79

Dear Commissions:

Were the Commissions to change the definition of "swap" with a goal of advancing sports gambling jurisdiction for the CFTC, they would be acting only for the short term. Such a change would not remediate the CFTC's losing streak in its sports gambling prediction markets lawsuits against a dozen states,[1] as it would transparently reverse the Commissions' prior position.[2] It would look like "unitary executive" Commissions, each operating with unprecedented Commissioner shortfalls and straying far from their core missions,[3] issuing regulations that coincidentally enrich a President's family invested in companies selling these products.[4] And it would be reversed in the

[1] E.g., Law360 reports: *Kalshi Loses Bid To Block Conn. Enforcement*, Aug, 17, 2026; *Kalshi Must Suspend Most Wash. Offerings, Install Geofencing*, Aug. 13, 2026; *CFTC Moves To Shield Kalshi From NY Lawsuit*, Aug. 11, 2026; *Kalshi Wants Utah Gambling Law Blocked Pending Appeal*, Aug. 7, 2026; *Utah Can Enforce Gambling Laws Against Kalshi, Judge Says*, Aug. 5, 2026; *2nd Circ. Judge Denies Kalshi Shield From NY Action, For Now*, Jul. 30, 2026; *Kalshi Sports Offerings Appear On Shaky Ground At 6th Circ.*, Jul. 30, 2026; *CFTC Can't Halt Wis. Sports Contracts Crackdown*, Jul. 29, 2026; *Kalshi's Contracts 'Sound Like A Bet,' 9th Circ. Judge Says*, Jul. 10, 2026; *Kalshi Loses Bid To Block NY Gambling Law Enforcement*, Jul. 7, 2026.

[2] See below.

[3] Letter of former CFTC Chairman Timothy Massad in Prediction Markets; Public Interest Determinations (RIN 3038-AF65); and Joint Request for Comment on Further Definition of "Swap" and "Security Based Swap" and on Alternative Compliance (RIN 3038-AF71).

[4] *Trump Jr.'s Investment Firm Posts 200% Returns, Helped by Polymarket's Meteoric Rise*, Yahoo Finance, Jul. 26, 2026; *Trump Jr.'s investment fund backed Polymarket at $300M. After a federal license, it's now worth $15B*, Moneywise, Jul. 22, 2026; *Trump's social media company to launch prediction betting marketplace*, ABC News, Oct. 28, 2025; *Polymarket Receives Strategic Investment from 1789 Capital and Welcomes Donald Trump Jr. to Advisory Board*, PR Newswire, Aug. 26, 2025.

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next administration: opposition is strong and bipartisan.[5]

The Joint Request's question 1 is:

> … What characteristics do event contracts share or not share with other products that may be classified as swaps … or products excluded from the "swap" definition? Taking into account the rules and interpretations the Commissions adopted in the Product Definitions Adopting Release, should the Commissions issue new or revised rules or interpretations to address these innovations?

Event contracts on sports gambling have the characteristics that exclude them from the "swap" definition. Question 37 in the CFTC's *Prediction Markets, Advance Notice of Proposed Rulemaking*, 91 Fed. Reg. 12516 (Mar. 16, 2026) noted:

> In the 2012 joint rulemaking to further define the term "swap," the CFTC and the SEC adopted an interpretation which, in part, listed certain types of … transactions that "will not be considered swaps … when entered into by consumers (natural persons) … primarily for personal, family, or household purposes." In doing so, the CFTC and SEC stated that they "do not believe that Congress intended to include these types of customary consumer and commercial … transactions in the swap … definition, to limit the types of persons that can enter into or engage in them, or to otherwise to subject these … transactions to the regulatory scheme for swaps … ."

In the Products Definition Adopting Release, the SEC and CFTC crafted a "customary consumer/commercial arrangements" exemption from the term "swap":

> With respect to consumers, … the types of … transactions that ***will not be considered swaps*** … when entered into by consumers (natural persons) as principals … primarily for personal, family, or household purposes, include:
>
> • Agreements … to acquire or lease real or personal property, to obtain a mortgage, to provide personal services …;
>
> • … purchase products or services for … household purposes … including … home heating fuel … where the consumer takes delivery of and uses the fuel;
>
> • … an interest rate cap or lock on a consumer loan or mortgage …;
>
> • … consumer product warranties, … purchased with major appliances …;
>
> • … options to … purchase rugs …;
>
> • ***Consumer … transactions where, by law or regulation, the consumer may cancel the transaction without legal cause;***[438] {[438] ***Examples … include*** consumer transactions that may be cancelled pursuant to … Regulation Z… and

[5] *44 states are aligned on one thing in their fight against prediction markets. It's about sports wagering*, CNBC, Jul. 28, 2026 ("Attorneys general from 44 states sent a letter to the [CFTC] arguing the agency doesn't have authority to regulate sports-related event contract"); Amicus Brief of 37 states supporting Massachusetts in *Mass. v. Kalshi*, filed Apr. 24, 2026, http://bit.ly/4u8FKOi; *CFTC Must 'Start Afresh' On Prediction Market Regs, States Say*, Law360, Jul. 29, 2026 ("The CFTC did not respond to a request for comment."); *Senators Urge CFTC Rule Slowdown Over Tribal Concerns*, Law360, Jul. 28, 2026.

other ***consumer transactions that have cancellations rights conferred by statute or regulation.***} … .[6]

Many states have statutes voiding gambling contracts,[7] and in those states consumers may by law cancel a sports gambling transaction without legal cause. In such states, sports gambling transactions are therefore within the exception noted in the bold-faced language above, and the Commissions previously stated that they did not think Congress intended to regulate them as swaps. Although Congress intended that swaps are not illegal gambling contracts under state laws, it did not intend to regulate illegal sports gambling contracts as swaps.[8]

Sports gambling contracts are not "commonly known to the trade" to be "swaps" within the meaning of Commodity Exchange Act §1a47(A)(iv). "Commonly known to the trade" does not mean "currently claimed by this CFTC in its lawsuits against states," since complaints and amicus briefs by a federal government agency against U.S. states are not how "the trade" comes to "know" things.

Were sports gambling transactions "swaps," gamblers would be at risk of enforcement actions for not reporting them if not cleared, entering into them if not eligible contract participants, or for "willfully structur[ing] to evade" them being swaps.[9]

These comments are solely my own and are not necessarily the opinions of any client I represent or industry group in which I participate.

Yours truly,



Jeremy D. Weinstein

cc: Congressman Mark Desaulnier

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[6] CFTC & SEC, *Joint Final Rule*, 77 Fed. Reg. 48208 at 48246-48 (Aug. 13, 2012) (emphasis supplied).
[7] See, e.g., *TAK Chun Gaming Promotion Co. v. Long*, 96 Cal.App.5th 1027, 314 Cal.Rptr.3d 890 (Cal. App. 2023); *Dream, Inc. d/b/a Frontier Bingo v. Samuels*, 392 So.3d 462 (Ala. 2023); *Macon Cty. Greyhound Park v. Hoffman*, 226 So.3d 152, 168 (Ala. 2016); *The Casanova Club v. Bisharat*, 189 Conn. 591 (1983); *Gulf Collateral. v. Morgan*, 415 F. Supp. 319 (S.D. Ga. 1976); *In re Hionas*, 361 B.R. 269 (Bankr. S.D. Fla. 2006); Va. Code, §11-14; Ga. Code §13-8-3; cf. S.C. Code §32-1-40; I. Nelson Rose, *Gambling and the Law - Update 1993*, 15 Hastings Comm. & Ent. L.J. 93, 109-110 (1992).
[8] E.g., Dodd-Frank Act §745 (CEA §5c(c)(5)(C)); Professional and Amateur Sports Protection Act of 1992 (PASPA); see Jeremy Weinstein, *Football Gambling Futures Contracts*, 41 Futures and Derivatives Law Report (Aug. 2021), fn. 64, fn. 67, Attachment 2 to Appendix 1 in https://www.cftc.gov/media/11886/JeremyDWeinsteinLawCorporation022125/download.
[9] 17 C.F.R. 1.3 "swap" def. 6(i). See Jeremy Weinstein, *Quicksand in the Hedges*, 31 Futures and Derivatives Law Report (Nov. 2011), http://docsjweinsteinlaw.com/pdfs/Weinstein-Quicksand%20in%20the%20Hedges.pdf.