Opening Statement of U.S. Commodity Futures Trading Commission
Chairman Michael S. Selig
House Committee on Agriculture, April 16, 2026

Chairman Thompson, Ranking Member Craig, and Members of the Committee: thank you for the opportunity to testify here today.

Just over a hundred days ago, I was sworn in as the 16th Chairman of the Commodity Futures Trading Commission.

During my November confirmation hearing, I pledged to work tirelessly as Chairman to maintain the agency's status as a world-class financial markets regulator. I committed to protect and provide regulatory relief to our farmers, ranchers, and producers, roll back outdated rules and regulations, and modernize the agency to keep pace with the rapid speed of innovation.

I'm pleased to report I've made significant progress on these goals since rejoining the agency last December.

One of my first priorities upon taking charge of the agency was identifying regulations that prevent farmers, ranchers, and producers from accessing our derivatives markets. My staff have been working diligently to right-size cumbersome rules so that even our smallest producers can properly manage risk.

I've also revived the agency's annual agriculture convention, known as AgCon, to bring together leaders from government, business, and academia to discuss the most pressing issues in our agricultural markets. Most importantly, I'll be visiting farmers, ranchers, and producers across the country in the coming months to hear from them directly. The agriculture community is the backbone of this country, and it'll always have a seat at the table in this administration.

Another key priority is to lower the compliance burdens and energy costs for small businesses. Many of our rules and regulations discourage firms from servicing and trading with the businesses that are most in need of our markets.

The agency is finalizing regulatory relief for firms that transact with energy, agriculture, and critical minerals producers to provide access to more market intermediaries and contribute to lower commodity prices.

The agency has also taken a leading role in delivering on President Trump's mandate to make America the crypto capital of the world. Importantly, the CFTC joined an SEC interpretation to provide guidance that resolved significant ambiguity in the marketplace as to which types of crypto assets are commodities, and which are securities. We've also worked quickly to provide clarity concerning tokenized collateral, the capital treatment for payment stablecoins, and the obligations of software developers building in the United States.

I applaud the important work of this Committee to deliver bipartisan market structure legislation that will cement clear rules of the road for the millions of Americans who use crypto assets every day. I'm optimistic that Congress will soon send this landmark legislation to the President's desk.

The agency is also working to provide explicit guidelines and further strengthen investor protections for prediction markets, which offer trading in event contract derivatives that are regulated under the exclusive jurisdiction of the CFTC. Commission staff recently issued a prediction markets advisory and published a notice soliciting public input before considering new regulations for these markets.

Now, I'm sure I'll be getting questions about our enforcement efforts related to crypto, prediction markets, and the commodity derivatives markets more broadly. So, I want to be crystal clear: to anyone who engages in fraud, manipulation, or insider trading in any of our markets: we will find you, and you will face the full force of the law. Nothing is more important than protecting market integrity and that's why I've been diligently working to reinvigorate our enforcement division and upgrade our surveillance tools to meet the challenges of our growing markets.

None of these accomplishments would have been possible in such a short period of time without the agency's talented and experienced civil servants. I have also brought on new senior leadership who bring a wealth of experience to the agency.

As Chairman, I believe it's vital to break from the restrictive regulatory practices of the past and create derivatives markets that work for everyone. Under my leadership, the CFTC will administer fit-for-purpose regulation appropriately tailored to material risks, no more and no less, to ensure that the future of finance is made here, in America.

If the past is prologue, the next hundred days—and the years beyond—will build on this transformative foundation as the CFTC remains the gold standard for smart, effective oversight of our financial markets. Our work here is just getting started.

Thank you again, and I look forward to answering your questions.

Appendix A

CFTC Enforcement Priorities, Insider Trading in Prediction Markets, and Cooperation with the CFTC

CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC
Remarks by Director of Enforcement David I. Miller
Remarks Delivered at NYU Law
March 31, 2026
As prepared

Introduction

Good evening. As a proud NYU law alum, it gives me great pleasure to be here and to be speaking from this side of the lectern. Thank you to NYU Law School and the Program on Corporate Compliance and Enforcement for having me speak this evening. And a special thanks to Joe Facciponti and Jennifer Arlen for arranging this event.

I am honored to be here in my capacity as the new Director of Enforcement for the Commodity Futures Trading Commission ("CFTC"). I am incredibly fortunate to have the opportunity to return to public service. Since 2014, I have been in private practice as a litigation partner at two global law firms, Morgan Lewis and Greenberg Traurig. But before returning to private practice, I spent a decade in public service. In particular, I had the good fortune to be a federal prosecutor in multiple offices of the Department of Justice. I was most recently an Assistant U.S. Attorney in the Southern District of New York, where I spent over half my time as a member of the Securities and Commodities Fraud Task Force. I also served as a terrorism prosecutor with the Department of Justice in Washington, D.C., as a Special Assistant U.S. Attorney in the Eastern District of Virginia, and as an Assistant General Counsel for the Central Intelligence Agency. My approach to enforcement will draw heavily upon my experiences as a prosecutor and as a defense lawyer: focusing on the most serious cases and moving decisively, but also acting fairly, justly, and transparently.

This is a very exciting time for the CFTC. From our roots as an agricultural futures regulator, we now oversee derivatives markets in a wide variety of areas: agriculture, metals, energy products, financial products, and the over $400 trillion notional-value swaps markets. And we are at the forefront of regulating prediction markets and crypto assets—perhaps the two most dynamic markets in finance.

Our mission in the Division of Enforcement is to safeguard all these markets. But let me start off by saying this clear as can be: The era of regulation by enforcement is **over**. Under Chairman Selig's leadership, we will focus on the Division's core purpose of policing fraud, abuse, and manipulation rather than setting policy. And tonight, I am going to describe some of the key ways that we as a Division will be doing our job.

First, I am going to outline our enforcement priorities going forward. We will have five priority areas: (i) insider trading (including in the prediction markets); (ii) market manipulation (particularly in the energy markets); (iii) market abuse/disruptive trading; (iv) retail fraud (including Ponzi schemes); and (v) willful violations of Anti-Money Laundering ("AML") and Know-Your-Customer ("KYC") laws and rules.

Second, I'm going to discuss insider trading in the prediction markets. Unfortunately, there is a myth in the mainstream media and social media that insider trading law doesn't apply in the

prediction markets. That is wrong. As I will discuss, insider trading violates the Commodity Exchange Act (the "CEA") and our regulations' anti-fraud provisions. I have done a lot of work in insider trading matters both as a prosecutor and as a defense attorney, and I take insider trading extremely seriously. Insider trading in the prediction markets—where there is misappropriated information—is precisely the kind of serious violation that we are going after vigorously. We will aggressively detect, investigate, and, where appropriate, prosecute insider trading in the prediction markets.

Third, I am announcing that we will be issuing a new cooperation policy advisory soon. Tonight, I will detail key elements of that policy, including significant changes to our declination policy.

The CFTC's Enforcement Priorities: Fraud; Market Manipulation; and Other Serious Violations

Let me begin with our enforcement priorities. Under Chairman Selig's leadership, our enforcement program will relentlessly focus on serious violations, especially fraud and market manipulation. As I just previewed, we have five areas of focus.

First, we will focus closely on ***insider trading***. Insider trading is illegal under the CEA and our regulations in all our markets—including the prediction markets. It has serious consequences for market integrity and trust. It is not a victimless offense. As I will discuss later, our insider trading authority is about the misappropriation of material non-public information—and thus involves the use of information in violation of a duty owed to the source of that information.

Now, we are fully aware that our markets are price-discovery markets, not disclosure-based markets. Market participants are entitled to use their own knowledge and information to make trading decisions. For example, we want the farm cooperative that sees issues with a harvest to be able to hedge its position. To be clear, we will only be prosecuting cases against those who tip or trade with misappropriated information. I will discuss more about this in a minute.

Our second priority is ***market manipulation***. Fighting market manipulation is fundamental to a market regulator's mission. Properly functioning markets are efficient, create appropriate prices for essential goods, and provide accurate price signals. But market manipulation can drive up costs, distort price signals, erode trust, and impose costs on consumers. We will investigate market manipulation aggressively where we have good reason. And we will prosecute aggressively where we find such manipulation.

Market manipulation in the energy markets is particularly—and perhaps uniquely—harmful. Energy markets have, as an economist might say, inelastic demand and limited substitutability. Basically, people still have to buy gas when the price goes up—you can't drive a car on air. Thus, the cost of market manipulation can be felt by many consumers. Price increases in energy markets can also have broad inflationary effects because energy costs ripple through the economy, affecting many goods in both production and shipping. And energy is more difficult than many other commodities to store—it is far easier to store copper than jet fuel. In sum, it is very challenging for energy markets to adapt to changing cost levels and we will not allow them to be manipulated.

Energy prices are, of course, influenced by geopolitical events, including recent ones. Futures markets are critical for managing price volatility and risk. But when volatility and high prices occur, they are tempting to would-be manipulators. Be advised: we continue to scrutinize these markets and remain focused here. We will prosecute wrongdoing in this area.

Importantly, we are not alone in this fight. The exchanges are a critical line of defense. As we emphasized in our recent staff advisories and our notice of proposed rulemaking on prediction markets, exchanges have important obligations under our core principles relevant to insider trading and market manipulation. These include obligations to have appropriate surveillance, compliance practices and procedures, promote fair and equitable trading, protect markets from abusive practices, and, importantly, to only list contracts that are not susceptible to manipulation.[1] The exchanges doing their job are an essential part of the fight against market manipulation and insider trading. And we expect the exchanges to do their part.

Exchanges are important partners. But they are not our only partners. We work closely with the SEC, self-regulatory organizations, and state regulators. We also work closely with federal criminal authorities at the Department of Justice and make criminal referrals as appropriate. As a former prosecutor, I know exactly how significant criminal authority engagement can be in our investigations.

The third priority area is ***fighting market abuse***, which can be a form of manipulation. This includes spoofing, disruptive trading during a closing period, and wash trading.[2] We fight these illegal practices for the same reason that we fight other market manipulation. Functioning markets provide price transparency and the fairest prices, and there are rules to make sure markets function. Breaking those rules reduces efficiency, distorts price signals, and can raise prices. We are watching and will take action when necessary.

Fourth, we will continue to fight ***retail fraud*** in its various forms, from Ponzi schemes to commodity pool frauds, pig-butchering, impersonation frauds, and "phishing" attacks directed at individuals. This area is especially important because retail fraud often targets at-risk populations—the elderly, those with limited financial literacy, and, frequently, the individuals who can least afford to lose their savings. We thus have a large task force dedicated to this priority. Now, I know that retail fraud is a persistent problem. Sadly, there are always fraudsters committing the same old frauds using new techniques and new tools. We have seen AI-created images and videos, targeted communications on social media platforms, and fake websites and phone applications that duplicate the websites and apps of major banks and crypto asset firms. We will continue to aggressively use technology and our specialized know-how to fight these evolving techniques. And we will litigate these cases hard, as we are currently doing in *Traders*

[1] *See* CEA § 5(d)(3), 7 U.S.C. § 7(d)(3) (designated contract markets' ("DCM") obligation to list for trading only derivative contracts that are not readily susceptible to manipulation); CEA § 5(d)(4), 7 U.S.C. § 7(d)(4) (prevention of manipulation, price distortion, and disruptions); CEA § 5(d)(12), 7 U.S.C. § 7(d)(12) (protection of markets from abusive practices).

[2] CEA § 4c(a)(2), 7 U.S.C. § 6c(a)(2) (prohibiting wash trading); CEA § 4c(a)(5)(B), 7 U.S.C.§ 6c(a)(5)(B) (prohibiting disruptive trading during the closing period); CEA § 4c(a)(5)(C), 7 U.S.C.§ 6c(a)(5)(C) (prohibiting spoofing).

Domain, which, according to our complaint, involves sixteen defendants in a $283 million Ponzi scheme run through bogus online platforms.[3]

The fifth priority is prosecuting ***willful failures to follow anti-money laundering and know-your-customer laws and rules***. These are crucial rules—key tools in fighting crime and protecting our markets. We are not prioritizing technical violations, but rather those who willfully decide to break these essential laws. AML and KYC laws are essential in combatting terrorism, narcotrafficking, fraud, and other serious illegal activity. And we will not tolerate any entity we regulate willfully violating those laws. As you might expect, we will also initiate criminal referrals here as appropriate.

There is one thing I would like to mention about other areas of enforcement I have not discussed today. Even within those areas, including compliance, if we have someone who repeatedly violates the CEA and our rules, and/or does so willfully, we are not going to sit idly by—we are going to do something about it. But as for our priorities that I have laid out, each of the five areas reflects our core mission: protecting market integrity by targeting fraud, abuse, and manipulation. We are committed to addressing these priority areas and we will be hiring additional staff in the Division of Enforcement to help address them.

Insider Trading in the Prediction Markets

Now, I would like to expand on insider trading, particularly as it applies to the prediction markets.

For those new to the prediction markets, a prediction market is an exchange in which participants buy or sell contracts based on the outcome of future events. For example, a contract pays out $1 if an event happens—say, one candidate wins the election—so a $0.60 cost means the market thinks there is roughly a sixty percent probability of the event happening. The CFTC has said that prediction markets "function as information aggregation vehicles" because the contract prices will reflect the market participants' aggregate beliefs regarding whether the events will occur.[4]

Unfortunately, a myth has spread that insider trading is permissible—even encouraged—in the prediction markets. Prominent individuals in finance, the media, and on social media have contended that insider trading law does not apply in these markets. Some have suggested that insider trading is inevitable or beneficial because it gives people with confidential information a financial incentive to trade on it, thus releasing the information to the public. These comments all suggest that insider trading is an important and acceptable part of the prediction markets ecosystem.

Not so. Insider trading in the commodity futures and swap markets is prohibited by the CEA and relevant CFTC regulations. And this is not some abstract theory; the prohibition on insider trading in commodity markets involves a straightforward application of the law.

---

[3] CFTC, Press Release No. 8997-24, *CFTC Charges Several Persons and Companies in a $280 Million Ponzi Scheme* (Oct. 15, 2024), https://www.cftc.gov/PressRoom/PressReleases/8997-24.

[4] Concept Release on Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25,669, 25,670 (May 7, 2008).

To walk through the analysis, Section 6(c)(1) and Rule 180.1 were created as part of the Dodd-Frank reforms as part of a deliberate effort to expand the CFTC's authority. They are explicitly modeled after Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.[5] Now, insider trading law is largely based on judicial interpretations of the anti-fraud provisions of Section 10(b) and Rule 10b-5. Specifically, courts have long held that insider trading is a type of fraud prohibited by those provisions. Section 6(c)(1) and Rule 180.1 thus incorporate the anti-fraud provisions, and insider trading, into the commodity, futures, and swap markets.

To delve deeper, insider trading is defined by two judicially created theories: the classical theory and the misappropriation theory. The classical theory prohibits corporate insiders from breaching a duty they owe to the company's shareholders by trading on material non-public information ("MNPI") opposite those shareholders. This is unlikely to apply under the CEA. But the misappropriation theory does apply. Under the misappropriation theory, liability attaches when an individual: (1) possesses material non-public information; (2) misappropriates that information by trading on or tipping in breach of a duty of trust and confidence ***owed to the source of the information***; and (3) does so with scienter.[6] In the CEA context, such trading must be in connection with a contract for sale or purchase of a commodity, future, or swap in interstate commerce.

We have applied insider trading law to our jurisdictional products consistent with what Congress intended us to do. This is not new. For example, in the recently concluded *Clark* matter, we prosecuted a futures trader at a Texas energy company who turned his employer's order book into a private tip sheet, feeding confidential trading information to an outside trader who traded against Clark's own employer and kicked profits back. DOJ charged Clark criminally for the same conduct.[7] Likewise, the *Ruggles* matter involved an individual who ran a major airline's fuel-hedging program. At the same time the individual was executing crude oil, heating oil, and gasoline trades for his employer, he was secretly running the same trades through personal

---

[5] Section 753 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended CEA § 6(c), 7 U.S.C. § 9(1), to prohibit the use of "any manipulative or deceptive device or contrivance" in connection with any swap or commodity transaction—language patterned directly on Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b). *See* Commodity Futures Trading Comm'n, Anti-Manipulation and Anti-Fraud Fact Sheet, https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/antimanipulation_factsheet.pdf ("The text of this new section prohibiting fraud based manipulation is patterned after section 10b of the Securities Exchange Act of 1934."). Pursuant to this authority, the CFTC promulgated Rule 180.1, 17 C.F.R. § 180.1, a "broad, catch-all provision" intentionally modeled on SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, which the CFTC interprets to prohibit, among other things, trading on the basis of material non-public information in breach of a pre-existing duty of trust and confidence. *See* Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41,398, 41,399, 41,403 (July 14, 2011).

[6] *United States v. O'Hagan*, 521 U.S. 642, 652–55 (1997); *see also Salman v. United States*, 580 U.S. 39, 41-42 (2016) (reaffirming the *O'Hagan* framework and confirming that in a tipping case a gift of confidential information to a trading relative satisfies the personal-benefit requirement); *United States v. Chow*, 993 F.3d 125, 134–39 (2d Cir. 2021) (holding that a non-disclosure agreement created a duty of trust and confidence sufficient to support insider trading liability under the misappropriation theory).

[7] *CFTC v. Clark*, No. 4:22-cv-00365 (S.D. Tex. filed Feb. 3, 2022; consent order Jan. 29, 2026), https://www.cftc.gov/media/13171/ENFClarkConsentOrder012926/download; *see also* indictment, *United States v. Clark*, No. 4:22-cr-00055 (S.D. Tex. filed Feb. 3, 2022). On March 15, 2024, Matthew Clark pleaded guilty to conspiracy to commit honest services wire fraud, in violation of 18 U.S.C. §§ 1343 and 1346, prohibited commodities transactions, in violation of 7 U.S.C. §§ 6c(a)(2), 13(a)(2), and insider trading, in violation of 7 U.S.C. §§ 9(a)(1), 13(a)(5), and 17 C.F.R. § 180.1 *See* Plea Agreement, *United States v. Clark*, No. 4:22-cr-00055 (S.D. Tex. filed Mar. 15, 2024).

accounts in his wife's name, pocketing $3.5 million.[8] And *Motazedi*, the first CFTC insider trading case, involved a gasoline trader at a large public company in Chicago who knew every trade his employer planned to make—and used that knowledge to front-run those trades and place opposite-side orders against his own employer.[9] Each of these cases resulted in substantial monetary penalties, disgorgement, and permanent trading bans.

Now, moving to prediction markets, the only question is whether certain recent event contracts are derivatives subject to our anti-fraud provisions. And while there is ongoing litigation with regard to these event contracts, the clear statutory reading and the Agency's view, as recently stated publicly in a proposed rulemaking and a staff advisory on prediction markets, is that these and other event contracts ***are swaps*** under the broad statutory definition of a swap.[10] The CEA's anti-fraud provisions apply with full force to swaps. Thus, Section 6(c)(1) and Rule 180.1 prohibit insider trading in the prediction markets.[11]

Insider trading is potentially happening in prediction markets. Consider a recent example from Kalshi, a regulated Designated Contract Market or DCM. Last summer, an individual traded a contract related to a YouTube channel while having an employment relationship with the subject of the contract. The trader appeared to have access to material non-public information related to his trades—in violation of exchange rules.[12]

And there are other areas of potential concern. One such area concerns contracts based on the actions or status of a person or small group of people.[13] Injury contracts, for example, present both manipulation and insider trading risk. On the manipulation side, a player could injure another player to collect on a contract. On the insider trading side, those with advance, non-public knowledge of an injury—say a trainer—could use that information to trade. That trading could be in violation of a duty of confidentiality.

This is a perfect area to highlight the role of exchanges—our first lines of defense—in stopping insider trading and manipulation. Our recent advisory on prediction markets suggests some of the steps prediction markets can take regarding these contracts. For example, the advisory asks exchanges to consider whether such contracts have a heightened risk of manipulation or price distortion before listing. And it encourages exchanges to look at steps relevant to fighting manipulation and insider trading such as reviewing league-maintained lists of individuals who should be barred from trading sports-related event contracts, establishing information-sharing arrangements with the leagues and integrity monitoring organizations, and cooperating with

---

[8] *In re Jon P. Ruggles*, CFTC Docket No. 16-34 (Sept. 29, 2016) (violations of CEA §§ 4b(a), 4c(a), 6(c)(1) and 17 C.F.R. §§ 1.38(a), 33.10(a) and (c), and 180.1).

[9] *In re Arya Motazedi*, CFTC Docket No. 16-02 (Dec. 2, 2015) (violations of CEA §§ 4b(a), 4c(a), 6(c)(1) and 17 C.F.R. §§ 1.38(a), 180.1).

[10] Prediction Markets, 91 Fed. Reg. 12,516, 12517 (Mar. 16, 2026) (advance notice of proposed rulemaking, noting that "event contracts can fall within multiple subsections of the CEA's definition of 'swap.'"); CFTC, Div. of Mkt. Oversight, Staff Letter No. 26-08, Prediction Markets Advisory, at 2 (Mar. 12, 2026), https://www.cftc.gov/csl/26-08/download.

[11] CEA § 6(c)(1), 7 U.S.C. § 9(1).

[12] CFTC, Press Release No. 9158-26, *CFTC Enforcement Division Issues Prediction Markets Advisory* (Feb. 25, 2026), https://www.cftc.gov/PressRoom/PressReleases/9158-26 (advisory issued following two enforcement cases on KalshiEX, a Designated Contract Market, involving misuse of non-public information in event contract trading).

[13] *See* CFTC Staff Letter No. 26-08, supra note 10, at 4.

league-run investigations into manipulation or insider trading.[14] At the CFTC we are taking similar steps to protect the integrity of event contracts. For example, we recently announced a Memorandum of Understanding with Major League Baseball ("MLB"), providing a mechanism for the CFTC and MLB to exchange information and protect event contracts relating to professional baseball from fraud, manipulation, and other abuses.[15] So we will be active in this area, but the exchanges, who certify the contracts and have other statutory and regulatory obligations, need to do their jobs as well.

The concerns are not limited to injury contracts; there are many other contracts that can be subject to abuse. We are aware of the speculation about insider trading that you see in the media, in chatrooms, and elsewhere. We are watching.

I would mention another potential area of prosecution: the illegal use of government information to trade. This has been an area pursued over the years by other regulators and prosecutors, like the U.S. Attorney's Office for the Southern District of New York. As a general matter, many government employees, including members of Congress and a great many executive branch employees, are subject to the STOCK Act and forbidden from using and trading on MNPI gained through their position. We will be policing the illegal use of government information in the prediction markets, in violation of the anti-fraud provisions I referenced earlier.

But in addition to those anti-fraud provisions, when it comes to government information, the CFTC can also prosecute under Section 4c(a)(4) of the CEA—the so-called "Eddie Murphy Rule."[16] The rule is named for Murphy's role in *Trading Places* where his character, Billy Ray Valentine, made a fortune with a stolen government crop report. The rule prohibits government employees from trading based on MNPI relating to government action while having inside information.

These provisions and others like them subject a broad range of government employees to duties regarding MNPI—duties they might breach if they traded on that information. Again, it is the breach of duty that is key under insider trading laws.

And as I have noted, it is not just government information that is often protected by a legal duty. Information learned on the job and used in violation of the duty owed to an employer under a confidentiality agreement, NDA, or employment contract could be misappropriated if used for trading.[17] So, if an NBA team employee subject to a confidentiality agreement had non-public knowledge of a player's injury, the employee's trades on an event contract concerning that player's performance in the upcoming game could violate insider trading laws. So could trading based on the expected date of a highly anticipated product release.

Now, I have investigated, prosecuted, defended, and tried insider trading cases over my career. In my experience, those who hold MNPI are often subject to a web of legal and confidentiality obligations. With sports leagues or major corporations, chances are that trading on information

[14] *Id*. at 5-6.
[15] CFTC, Press Release No. 9199-26, *CFTC and MLB Sign Groundbreaking MOU* (Mar. 19, 2026), https://www.cftc.gov/PressRoom/PressReleases/9199-26.
[16] CEA § 4c(a)(4), 7 U.S.C. § 6c(a)(4).
[17] *Chow*, 993 F.3d at 134-39.

you learn from work is going to breach duties of trust and confidence and subject you to insider trading liability.

I would also like to emphasize a couple of other points here.

The first is that this is only about ***misappropriated*** information. As I said before, in our markets, you are absolutely entitled to trade on MNPI that you rightfully own. You are not breaching a duty to the source of the information. Derivatives markets are primarily designed for risk management. We want market participants to be able to use their own information to protect themselves from financial harm and hedge their risk as they deem appropriate.

Second, we will exercise our prosecutorial discretion and not dedicate our resources to trivial cases or cases where there is no clear breach of duty.

Third, I have not provided an exhaustive list of our insider trading authorities. For example, I referenced the "Eddie Murphy Rule," which prohibits anyone from knowingly trading on stolen government information.[18] But the CFTC also has longstanding authority—sections 9(d) and 9(e) of the CEA—prohibiting insider trading for the misuse of information by the CFTC's own employees or those of the exchanges and self-regulatory organizations we oversee.[19] This provision applies broadly to exchange personnel.

A last point on prediction markets. This has only been a discussion of insider trading. We also have authority to bring cases under other provisions of the CEA—including for market manipulation, market abuse, and other fraudulent trading practices.

Staff Advisory on Cooperation

Let me now turn to Cooperation. The Division will soon be issuing a new Staff Advisory on Cooperation and will be rescinding the current policy, issued in February 2025. We are changing our policies to further incentivize cooperation, to simplify our approach, and, hopefully, to be fairer to the parties with which we interact.

There are three areas where I would like to highlight differences from our past policies, all of which are designed to ensure the rapid disposition of matters while appropriately crediting parties for their cooperation.

First, we are changing our declination policy for those who cooperate. We are committed to being transparent about the benefits of coming in voluntarily. We want to reward parties who make the right choice. Under our new policy, if an eligible party (i) self-reports (as will be defined in a moment), (ii) cooperates fully, and (iii) remediates fully, including committing to ongoing reporting of violative conduct, and follows our guidelines on remediation and

[18] CEA § 4c(a)(4), 7 U.S.C. § 6c(a)(4).
[19] CEA § 9(d), 7 U.S.C. § 13(d) (prohibiting use of nonpublic information obtained at work for trading by "any Commissioner of the Commission or any employee or agent thereof"); CEA § 9(e), 7 U.S.C. § 13(e) (prohibiting the same for "an employee . . . of a board of trade, registered entity, swap data repository, or registered futures association").

disgorgement, then ***absent aggravating circumstances***, we will give that party a clear path to a declination. We will issue declinations upon completion of a party's cooperation.

There will be some aggravating circumstances under which we will not offer such declinations. For example, pervasive intentional or reckless conduct by ownership or senior-most management may preclude eligibility (but not necessarily so). Recidivist activity involving intentional or reckless conduct may also preclude eligibility.

Second, we are clarifying how we assess self-reporting. Parties will be eligible for the declination program if they self-report in a prompt, timely, and good-faith fashion—even where the party needs more time to investigate—regardless of whether the CFTC already knew about the issue confidentially. This is based on our view of fundamental fairness. If you do the right thing every step of the way, why should your penalty depend on whether the Division had independently learned about an issue or not? But self-reports will not be eligible where the information is public or the party knows or suspects that there is an imminent disclosure from another source. This includes situations where the party knows or suspects that there is a whistleblower, a government investigation by another agency, a Self-Regulatory Organization investigation, or a press report. We will, however, continue to recognize self-reports for information that parties may also have to include in the mandatory annual chief compliance officer reports required of many of our registrants.[20]

Third, we will simplify how we evaluate cooperation. Cooperation will be binary. Like jumping into a lake; you're either in a hundred percent or you're out. You can choose to cooperate—in which case we expect full cooperation. That cooperation will include disclosing all relevant non-privileged information, sharing internal investigation findings without breaching privilege or work-product protections, making personnel available for interviews, preserving all records including ephemeral messages, undertaking good-faith efforts to secure documents located overseas, and, under our policy, continuing to report. Or you can choose not to cooperate fully, in which case we will always treat parties fairly, but you will lose the path to a declination.

Fourth, a party must remediate fully and take steps to both compensate victims and address corporate deficiencies. A party will have to demonstrate that they have analyzed the conduct, identified root causes, and remediated root causes where appropriate. The party will also have to implement appropriate changes to their compliance program. Remediation also includes, where appropriate, disciplining relevant employees, including both those responsible for the conduct and those with supervisory authority. To receive declinations, parties will also have to provide full restitution to injured parties. And parties will have to disgorge their ill-gotten gains.

We expect to issue our Staff Advisory on these and other topics in the near term, and update our Enforcement Manual accordingly, with the final text of that Advisory and the Manual taking precedence over anything I include in this speech. I also note that these statements do not intend to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

[20] *See* 17 C.F.R. § 3.3(e), (f) (2026) (CCO annual report requirements for futures commission merchants, swap dealers, and major swap participants); 17 C.F.R. § 37.1501(d), (e) (2026) (CCO annual report requirements for swap execution facilities); 17 C.F.R. § 49.22(e), (f) (2026) (CCO annual report requirements for swap data repositories).

Concluding Thoughts

To conclude, I believe that all the policies and priorities we have discussed come from three fundamental principles, principles that I learned from well over two decades as a prosecutor and defense lawyer. First, the power of government should be used to fight serious violations—and for us that means focusing on the priorities I laid out, which at bottom are about fraud, abuse, and manipulation. The things the CFTC's Division of Enforcement should be focusing on. Not regulation by enforcement. Second, because government investigations by their nature impose hardships on parties, the government should move quickly, and we will do so. We will move efficiently, with a laser focus on serious violations and a willingness to reach declination decisions rapidly where eligible parties are willing to timely self-report and fully cooperate and remediate. And third, government needs to be fair. We will be fair and as transparent as we can be, making sure we treat every party before us the right way.

Under Chairman Selig's and my leadership, the Division of Enforcement will target the conduct that truly causes harm, pursue those cases with speed and toughness, and we will always, always do so with integrity.

Thank you and good night.

Appendix B

CFTC Reaffirms Exclusive Jurisdiction over Prediction Markets in U.S. Circuit Court Filing

No. 25-7187

In The United States Court of Appeals for the Ninth Circuit

NORTH AMERICAN DERIVATIVES EXCHANGE, INC.
D / B / A CRYPTO.COM | DERIVATIVES NORTH AMERICA,

Plaintiff-Appellant,

v.

THE STATE OF NEVADA, ET AL.,

Defendants-Appellees,

NEVADA RESORT ASSOCIATION,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court for the District of Nevada,
Case No. 2:25-cv-00978-APG-BNW

AMICUS BRIEF OF COMMODITY FUTURES TRADING COMMISSION, A FEDERAL GOVERNMENT AGENCY, IN SUPPORT OF APPELLANT AND IN SUPPORT OF REVERSAL

Tyler S. Badgley, *General Counsel*
Anne Stukes, *Acting Deputy General Counsel*
Carlin Metzger, *Assistant General Counsel*
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5127
Counsel for Amicus Curiae
Commodity Futures Trading Commission

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTEREST OF AMICUS CURIAE

The Commodity Futures Trading Commission ("CFTC" or "Commission") is the federal agency charged with administering and enforcing the Commodity Exchange Act ("CEA" or "Act"), 7 U.S.C. §§ 1-26. Congress created the CFTC in 1974 to establish a uniform national system for regulating futures trading after concluding that the existing patchwork of state-by-state regulation had critically impaired the development and functioning of national commodities markets. *See* H.R. Rep. No. 93-975, at 51 (1974); S. Rep. No. 93-1131, at 36 (1974), *reprinted in* 1974 U.S.C.C.A.N. 5843, 5885. "[T]ransactions subject to [the CEA] are entered into regularly in interstate and international commerce and are affected with a national public interest," including in "liquid, fair, and financially secure trading facilities." 7 U.S.C. § 5.

Congress vested the CFTC with "exclusive jurisdiction" to protect that national interest by overseeing the regulation of futures, options, and swaps traded on federally regulated exchanges. 7 U.S.C. § 2(a)(1)(A). The CFTC's jurisdiction "supersedes State as well as Federal agencies" because commodity derivatives markets require nationally uniform rules governing the listing, trading, clearing, settlement, surveillance, and enforcement of financial instruments traded in these markets to prevent the type of fragmented oversight at risk in this case. *See* S. Rep. No. 93-1131 (1974), *reprinted in* 1974 U.S.C.C.A.N. at 5848.

Appellees' views and the district court's decision, if accepted, present a fundamental threat to Congress's statutory design. As Justice Holmes presciently noted in 1905:

> People will endeavor to forecast the future, and to make agreements according to their prophecy. Speculation of this kind by competent men is the self-adjustment of society to the probable. Its value is well known as a means of avoiding or mitigating catastrophes, equalizing prices, and providing for periods of want. It is true that the success of the strong induces imitation by the weak, and that incompetent persons bring themselves to ruin by undertaking to speculate in their turn. But legislatures and courts generally have recognized that the natural evolutions of a complex society are to be touched only with a very cautious hand, and that such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are harmful and vain.

Bd. of Trade of Chi. v. Christie Grain & Stock Co., 198 U.S. 236, 247-48 (1905).

States cannot invade the CFTC's exclusive jurisdiction over CFTC-regulated designated contract markets ("DCMs") by re-characterizing swaps trading on DCMs as illegal gambling. The decision below is inconsistent with the text, structure, and history of the CEA and, if affirmed, would reintroduce precisely the regulatory fragmentation Congress deliberately displaced.

It is Appellees' theory of the case that presents a seismic shift in the longstanding status quo between CFTC and state authority. This court need only look at many of these same parties' temporary restraining order against Coinbase, where they requested, and received, an injunction barring the offering of "event-based contracts relating to sporting *and other events*." Ex Parte Temporary

Restraining Order at 2, 7 *Nevada, et al. v. Coinbase Financial Markets, Inc*., No. 26-OC-0030-1B (Nev. 1st Judic. Dist. Feb. 5, 2026) (emphasis added) (prohibiting Coinbase "from offering or facilitating the offering of event contract[s] in Nevada"). Unable to articulate any limiting principle to their theory, they have upended decades of well-settled and Congressionally-mandated exclusive jurisdiction across the full spectrum of event contracts.

While subsequent litigation may require resolution of complicated follow-on questions, this case presents two narrow, yet exceptionally important, questions: (1) are Appellant's CFTC exchange-traded event contracts swaps, and (2) may such swaps also be regulated, or prohibited, under state law, thereby displacing the CEA's express preemption of state and other federal laws or rules? The CFTC submits this brief to assist the Court in resolving these fundamental issues.

BACKGROUND

I. The Commodity Exchange Act Provides the Regulatory Framework for Commodity Derivatives Markets in the United States.

The CEA is a federal statute that provides the comprehensive federal framework governing transactions in United States commodity derivatives markets. A derivative is a financial instrument, the value of which depends on (*i.e.*, is derived from) the value of some underlying asset, index, or other measure. In general, market participants use derivatives to hedge risks or speculate on commodity price movements. The most common derivatives are "futures

contracts" and "swaps." While derivatives markets are distinct from "cash" or "physical" markets in which the assets themselves are bought and sold, the prices of those assets and derivatives are typically closely linked. If a price disparity arises, arbitrageurs will take advantage of the difference, and the gap disappears. In the ordinary course, these price movements contribute to "price discovery," the mechanism by which supply and demand set the price of a commodity.

A futures contract is a standardized agreement to purchase or sell a "commodity" at a future date for a price determined at the contract's inception. Although the CEA uses the term of art "contract[] of sale of a commodity for future delivery," most contracts are structured for financial settlement and are discharged by executing a contract that reverses the obligation to purchase or sell. *See, e.g.*, 7 U.S.C. § 2(a)(1)(A). Under the CEA, a futures contract must be traded on a DCM, the statutory term for a registered derivatives exchange. 7 U.S.C. § 6(a). A swap includes a broad array of financial instruments, such as "event contracts." Swap transactions are also traded on CFTC-registered DCMs.

Futures markets originated in the United States at transportation hubs for agricultural products like grain, butter, and eggs. Over time, exchanges began to offer contracts for other physical commodities like metals, oil, and gas, and later introduced cash-settled futures linked to less tangible measures like interest rates and price indices. While the range of underlying commodities has expanded (and

continues to do so) over time, the fundamental regulatory structure governing futures markets has remained consistent. Today there are 24 exchanges (DCMs) in the United States, including North American Derivatives Exchange d/b/a Crypto.com.[1]

II. The Development of Federal Regulation of U.S. Futures and Swaps Markets.

A. The Origins of Federal Oversight of Derivatives Regulation.

By the mid-nineteenth century, exchanges in major commodity trading hubs like New York and Chicago had organized trading to facilitate price discovery (information exchange), risk management (hedging), and speculation.[2] But there was tension between state regulation of gambling and the growth of futures markets. States and courts often failed to distinguish between futures trading and "gambling" or "wagering," with many states even prohibiting futures trading as a

---

[1] *See* CFTC, Designated Contracts Markets (DCMs), https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizations?Status=Designated&Date_From=&Date_To=&Show_All=1 (last visited February 8, 2026).

[2] *See* CFTC, History of the CFTC, https://www.cftc.gov/About/HistoryoftheCFTC/history_precftc.html (last visited February 8, 2026); *see also Regulating Transactions on Grain-Future Exchanges*, S. Rep. No. 67-871, at 3 (1922): "Transactions in grain futures are utilized by the public for speculation and by the grain trade for the purpose of eliminating or reducing, as far as practicable, the hazards in the merchandising of grain and its products and by-products due to price fluctuations. Public speculation helps to carry the risk for the producers, dealers, and millers who wish to hedge their cash grain transactions."

form of gambling. *See, e.g., Irwin v. Williar*, 110 U.S. 499, 508-09 (1884) (describing futures contracts as "nothing more than a wager"); *see also Cothran v. Ellis*, 16 N.E. 646, 647 (Ill. 1888) (describing futures as "gambling in grain"); s*ee also Rumsey v. Berry*, 65 Me. 570, 574 (Me. 1876) (finding futures contracts to be void as contrary to public policy). For example, an Arkansas law declared that "[t]he buying or selling or otherwise dealing in what is known as futures . . . with a view to profit, is hereby declared to be gambling" and made dealing in futures illegal. *See* William W. Mansfield, *A Digest of the Statutes of Arkansas* § 1848 (U.M. Rose ed., 1884).

Nevertheless, the Supreme Court and Congress acknowledged that futures markets served a valuable economic function and should be given room to develop. A futures contract's "value [is] well known as a means of avoiding or mitigating catastrophes, equalizing prices and providing for periods of want." *Bd. of Trade of Chi.*, 198 U.S. 236 at 247-48.[3] And Congress ultimately centralized the oversight and regulation of futures trading on federally regulated contract markets. The first federal legislation designed to create a comprehensive federal regulatory framework for futures markets was the Future Trading Act of 1921, Pub. L. No.

---

[3] Even after the Supreme Court recognized the legitimacy of futures trading on organized exchanges, states continued to characterize commodity futures markets as illegal gambling. *See* John V. Rainbolt II, *Regulating the Grain Gambler and His Successors*, 6 Hofstra L. Rev. 1, 6 (1977).

67-66, 42 Stat. 187 (1921) ("21 Act"), followed by the Grain Futures Act of 1922, Pub. L. No. 67-331, 42 Stat. 998 (1922) ("22 Act"). In passing these laws, Congress recognized the importance of uniform federal regulation of futures markets, despite concerns by some members of Congress who objected to the proposed law because it would interfere with state police powers. H.R. Rep. No. 67-1095, at 5 (1922) (Conf. Rep.).

But the Supreme Court found that this preemptive design was not sufficiently explicit in the statute, which resulted in states continuing to regulate or even prohibit futures trading. *Dickson v. Uhlmann Grain Co.*, 288 U.S. 188, 198-99 (1933) (rejecting "the contention that Congress occupied the field in respect to contracts for future delivery; and that necessarily all state legislation in any way dealing with that subject is superseded.") And when Congress expanded federal oversight of futures markets in 1936 with the Commodity Exchange Act, Pub. L. No. 74-675, 49 Stat. 1491 (1936), the boundary between federal and state authority remained unsettled as futures markets expanded beyond their agricultural origins. Market participants continued to face the persistent threat of state prosecution through a patchwork of state laws and regulations.

In 1973, futures exchanges recommended that "federal policy . . . be uniform throughout the United States" and not "subject to the vagaries" of different obligations in "different jurisdictions." Review of Commodity Exch. Act and

Discussion of Possible Change: Hearings Before the H. Comm. on Agric., 93d Cong., 1st Sess. 121 (1973). And the very next year, Congress explicitly spoke on the question in the Commodity Futures Trading Commission Act of 1974, Pub. L. 93-463, 88 Stat. 1389 (1974) ("74 Act").

B. Congress Gave the CFTC "Exclusive" Jurisdiction over Futures Trading in 1974.

The 74 Act amendments to the CEA worked a sea change in the regulation of U.S. derivatives markets in three critical ways. First, Congress established the CFTC, vesting in it the authority to administer the CEA. Second, Congress expanded the scope of the CEA to cover "all commodities." Third, Congress expressly gave the CFTC "exclusive jurisdiction" over U.S. commodity futures and options markets. The 74 Act amended Section 2 of the CEA to provide that "the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an 'option' . . ., and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market designated pursuant to section 5 of this Act or any other board of trade, exchange, or market." 74 Act, Section 201(b), 88 Stat. at 1395 (codified at 7 U.S.C. § 2(a)(1)).

Preemption was an express goal of the 74 Act. Congress recognized the need for uniform nationwide regulation of futures and options markets because

concurrent regulation by the states or other federal regulators such as the Securities and Exchange Commission could lead to "total chaos."[4] Potential limiting language was stricken from the statute "to assure that Federal preemption is complete." 120 Cong. Rec. S 30458, 30464 (daily ed. Sept. 9, 1974) (Statement of Sen. Curtis). All commodity futures markets were to be under the CFTC's exclusive jurisdiction. The 74 Act "preempt[ed] the field insofar as futures regulation is concerned" such that "if any substantive State law regulating futures trading was contrary to or inconsistent with Federal law, the Federal law would govern." H.R. Rep. No. 93-1383 (1974) (Conf. Rep.), *reprinted in* 1978 U.S.C.C.A.N. 2087, 2110-11.

C. Congress Reinforced and Clarified the CFTC's Exclusive Jurisdiction After 1974.

Amendments to the CEA between 1978 and 2010 repeatedly reinforced and clarified the CFTC's exclusive jurisdiction over futures and options. In the Futures Trading Act of 1978 ("78 Act"), Congress preserved the CFTC's exclusive authority over futures transactions on CFTC-registered DCMs while clarifying the states' ability to pursue certain violations of the CEA against actors other than federally regulated exchanges. The 78 Act added a section to the CEA authorizing

---

[4] See Commodity Futures Trading Act of 1974: Hearings Before the S. Comm. on Agric. & Forestry on S. 2485, S. 2578, S. 2837, H.R. 13113, 93d Cong., 2d Sess. 685 (1974) (statement of Sen. Clark).

states to bring actions for injunctive or monetary relief for specified violations of the CEA and to enforce their "general civil or criminal antifraud" statutes. *See* 78 Act, Pub. L. 95-405, § 15(7), 92 Stat. 865, 873 (1978).[5] Other than this explicit authorization of state authority, the CEA retained the broad preemption of state laws put in place in 1974. Proposals to carve off pieces of the CFTC's "exclusive" jurisdiction were rejected, because "[t]he nature of the underlying commodity is not an adequate basis to divide regulatory authority." S. Rep. No. 95-850, at 111-12 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2087, 2110-11. Just because "a futures contract market does not fit into the traditional mold where there are both hedging and price-discovery functions should not be the determining factor in whether the contract is to be regulated by the CFTC." *Id*. Congress also further added to the list of justifications supporting exclusive jurisdiction citing concerns over "costly duplication and possible conflict of regulation or over-regulation." *Id.*

The Futures Trading Act of 1982 (the "82 Act") further clarified the scope of the CEA's preemption of other federal and state laws and the role of the states in pursuing illegal or fraudulent off-exchange transactions, while still recognizing "the CFTC['s] exclusive jurisdiction to regulate futures trading and enforce the

[5] This "Jurisdiction of the States" provision is now found in CEA Section 6d, 7 U.S.C. § 13a-2. The language of subsection (7) remains the same in the current version of the CEA.

provisions of the Act, thereby preempting any State regulatory laws." H.R. Rep. No. 97-565, at 44-45 & 102-03 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3871, 3893-94 & 3951-52. First, the 82 Act clarified the procedures for states to pursue violations of the CEA's anti-fraud provisions in state court. Second, the 82 Act clarified the role of states with respect to off-exchange futures transactions. Language was added to permit "criminal prosecution under any federal criminal statute" or the application of federal or state laws to *off-exchange* transactions or *unregistered* market participants. 82 Act, Pub. L. 97-444, § 229, 96 Stat. 2294, 2318 (1982). The broad preemption of other potentially applicable state or federal laws remained as to transactions *on* DCMs and as to market participants registered with the CFTC. *See* H.R. Rep. No. 97-565, at 44-45 & 102-103, 1982 U.S.C.C.A.N. at 3893-94, 3951-52. Adding again to the reasons for exclusive jurisdiction, the Committee report noted it "was done in recognition of the somewhat esoteric nature of the commodity futures markets and the desire to have knowledgeable and uniform enforcement of the Act" before ultimately concluding that "[t]he Committee . . . continues to support the idea of a single unified program of regulation and exclusive CFTC jurisdiction over exchange-traded futures."

In 1992, Congress began grappling with the advent of a new type of derivative financial product, swaps. In the Futures Trading Practices Act of 1992 ("92 Act"), Pub. L. 102-546, 106 Stat. 3590 (1992), Congress gave the CFTC

authority to "exempt" certain off-exchange ("over-the-counter" or "OTC") swap transactions from the CEA's mandatory exchange trading regime for futures and options. The 92 Act added language to CEA Section 12(e) to preempt the application of state gambling and bucket shop laws as applied to OTC derivatives (swaps) transactions that the CFTC exempted pursuant to its new authority in CEA Section 4(c). While the 82 Act allowed the states authority to apply state and local laws to off-exchange transactions, the 92 Act limited this authority at least as to off-exchange swaps that received an exemption from the CFTC. The goal was to provide "legal certainty under both the Act and state gaming and bucket shop laws for transactions covered by the terms of an exemption." H.R. Rep. No. 102-978, at 80 (1992) (Conf. Rep.), *reprinted in* 1992 U.S.C.C.A.N. 3179, 3212.

The next evolution of the scope of the CEA occurred in 2000 with the passage of the Commodity Futures Modernization Act of 2000 ("CFMA"), Pub. L. No. 106-554, Appendix E & § 103, 114 Stat. 2763A-365, 2763A-377 (2000). The CFMA exempted or excluded swap transactions from the CEA's exchange trading requirements. However, in so doing, the CFMA also preempted the application of state and local laws to those "excluded" swap transactions. The preemption of state and local laws as to on-exchange transactions remained as is, and the preemption of state and local laws as to off-exchange transactions (exempt or excluded swaps) was expanded.

D. Congress Embraced Preemption as to Swaps Transactions in the Dodd Frank Act.

In the wake of the 2008 financial crisis, Congress created a framework within the CEA for the on-exchange execution, clearing and reporting of vast portions of the previously "OTC" swaps markets. In the 2010 Dodd-Frank Act, Congress expressly extended the CFTC's "exclusive jurisdiction" to encompass "transactions involving swaps."[6] The Dodd-Frank Act also added a new subsection, 2(d), which specifies that certain CEA provisions do not apply to swaps. Section 2(d) eliminated the concurrent jurisdiction of states as to off-exchange swap transactions. The authority for state regulation of swaps (whether on- or off-exchange) is now based on Section 12(e)(2), which applies to any swap that the CFTC may exempt pursuant to Section 4(c). This new preemption model is consistent with the one originally created in 1974 for commodity futures, *except* this model was even broader. Congress did not carve out a role for states to regulate off-exchange swaps through a grant of concurrent jurisdiction, despite having done so for off-exchange commodity futures in 1982.

* * *

[6] *See* Pub. L. No. 111-203, 124 Stat. 1376 (2010); 7 U.S.C. § 2(a)(1)(A).

ARGUMENT

I. Event Contracts Trading on CFTC-Regulated Markets Is Subject to the CFTC's Exclusive Jurisdiction.

A. Under the Plain Language of CEA Section 1(a)(47), Event Contracts Are "Swaps."

After Dodd-Frank, the statutory definition of "swap" is deliberately broad. As such, it encompasses event contracts within multiple sub-definitions of CEA § 1a(47)(A). CEA § 1a(47)(A)(i) defines the term "swap," in relevant part, to include "any agreement, contract, or transaction . . . that is a[n] . . . option of any kind that is for the purchase or sale, or based on the value, of 1 or more . . . quantitative measures, or other financial or economic interests or property of any kind," and CEA § 1a(47)(A)(ii) defines swap to include "any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery . . . that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence."[7]

Congress's use of the word "any" in multiple sub-definitions of § 1a(47) confirms the statute's breadth. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 218–19 (2008) (observing that the word "any," read naturally carries an expansive

[7] *See also* §§ 1a(47)(A)(iv) (including transactions "commonly known to the trade as swaps") and (vi) ("any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v)").

meaning). The word "*any*" in the swap definition reflects a conscious decision to avoid a narrow construction that could limit the purpose of derivatives markets. Thus, as an example, an event contract that is settled based on the outcome of a sporting event is therefore an agreement providing for a payment dependent on a future occurrence, and nothing in the statutory text excludes such instruments.

The plain meaning of the statute includes event contracts even though the terms "event" and "contingency" are undefined. Where a statute does not define a term, courts interpret it according to its ordinary meaning. *Bostock v. Clayton County, Ga.,* 590 U.S. 644, 654-55 (2020). Dictionary definitions confirm the breadth of the relevant terms "event" and "contingency." An event is "something that happens: occurrence,"[8] and a "contingency" is an "event that may but is not certain to occur."[9] The final score of a sporting event is a future occurrence whose outcome is uncertain until the game concludes and falls easily within the broad language of the swap definition as well as the broad definitions of "event" or "contingency." Moreover, Congress did not limit covered swaps to binary outcomes; instead, it expressly encompassed contracts measured by the *extent* of the occurrence of an event. This broad language encompasses contracts based on the margin of victory or any other quantifiable result of a sports event.

---

[8] https://www.merriam-webster.com/dictionary/event.
[9] https://www.merriam-webster.com/dictionary/contingency.

An event contract is also a binary option. See 17 C.F.R. 1.3 (defining commodity option). A binary option is a "type of option whose payoff is either a fixed amount or zero. For example, there could be a binary option that pays $100 if a hurricane makes landfall in Florida before a specified date and zero otherwise." CFTC Futures Glossary, https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm#B (last visited Feb. 17, 2026). Commodity option transactions must be conducted in compliance with the CEA and the Commission's regulations related to swaps. 17 C.F.R. 32.2(a); *see also* Commodity Options, 77 Fed. Reg. 25320, 25321 n.6 (Apr. 27, 2012) ("the swap definition . . . includes options . . . (whether or not traded on a DCM)").

Importantly, when Congress has limited the Commission's jurisdiction over derivatives it has only done so by expressly embedding narrow exclusions in the statutory commodity definition itself (*i.e.*, onions and movie box office receipts).[10] Here, Congress wrote specific, enumerated exclusions into the definition of swap in § 1a(47)(B), confirming that when it intended to limit the Commission's jurisdiction, it did so expressly, not by inviting courts or states to create additional, atextual carve-outs.[11]

---

[10] *See* 7 U.S.C. § 1a(9).

[11] 7 U.S.C. § 1a(47)(B) (excluding, inter alia, physically settled forward transactions, certain insurance and consumer arrangements, and other ordinary-course commercial agreements).

The CEA's text is designed to account for financial innovation. Futures were novel at one point. But even as financial derivatives markets have developed and grown, Congress has chosen to vest the CFTC with broad jurisdiction. That a derivative is novel or different cannot be an excuse for a Court to re-write existing law. The law should be faithfully applied. And if it needs to be amended, that is the job of Congress, not the Courts.

Excluding event contracts from the definition of swap would leave no principled boundary preventing any other event-based derivatives, including currently listed contracts tied to weather, energy, economic indices, and political outcome contracts, from falling outside the CEA. The consequences of such a ruling would be immediate and substantial. States could characterize any derivative as prohibited gambling, thereby subjecting nationally (and internationally) traded swaps to a patchwork of state restrictions. This concern is not hypothetical. Nevada's cease and desist letter to KalshiEX LLC at issue in a related case orders it to "immediately cease and desist from offering any event-based contracts in Nevada," without limitation to sports. If Nevada's approach were permitted to stand, event contracts referencing agricultural, metal, energy, and financial outcomes could likewise all become subject to state-by-state bans across the country. The resulting market fragmentation would erode the nationally uniform framework Congress established to reduce risk, promote transparency, and

safeguard market integrity within the financial system. *See* Further Definition of "Swap", "Security-Based Swap", and "Security-Based Swap Agreement"; Mixed Swaps; Security Based-Swap Agreement Recordkeeping, 77 Fed. Reg. 48208, 48209 (Aug. 13, 2012).

The CFTC has treated event contracts as measuring the level of the outcome of an event for nearly two decades.[12] Moreover, Congress deliberately adopted an expansive definition of "swap" following the 2008 financial crisis to ensure a comprehensive regulatory oversight of derivatives markets. *See* 156 Cong. Rec. S5923 (daily ed. July 15, 2010) (Statement of Sen. Lincoln) ("Section 721 includes a broad and expansive definition of the term 'swap' that is subject to the new regulatory regime established in Title VII."). Nothing in the statutory text or legislative history suggests that the occurrence of an event, or extent of its occurrence, excludes an event's outcome. The swap definition is written broadly to capture contracts that shift risk based on uncertain future developments. Event contracts do exactly that.

[12] *See* Concept Release on the Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25669, 25671 (May 7, 2008).

B. Sports Event Contracts Are Associated with Potential Financial, Economic, and Commercial Consequences.

As the statutory definition makes clear, the relevant inquiry is intentionally broad. The statute is framed in expansive terms, requiring only that the contract be "associated with *potential* financial, economic, or commercial consequence." That definitional framework reflects Congress's recognition that derivatives markets serve a wide spectrum of market participants whose economic exposures are not limited to any specific market participant. *See Alabama Power Co. v Costle*, 636 F.2d 323, 353 (D.C. Cir. 1979) (recognizing that "potential . . . will always and inherently exceed actual"). Because the statute does not demand certainty, sports event contracts fall comfortably within the statute's reach.

Broadly speaking, sporting events are economic enterprises that generate billions of dollars in economic activity and materially affect both regional and national markets. *See* Ryan Grandeau, *Securing the Best Odds: Why Congress Should Regulate Sports Gambling Based on Securities-Style Mandatory Disclosure*, 41 Cardozo L. Rev. 1229, 1247 (2020). Stadiums function as regional economic anchors around a network of businesses, including hotels, restaurants, transportation providers, retailers, and event management firms. *See, e.g.*, *Los Angeles Mem'l Coliseum Comm'n v. NFL,* 726 F.2d 1381, 1397 (9th Cir.1984) (discussing claim that a professional sporting team's presence generates local business activity) and *Pennsylvania v. Nat'l Collegiate Athletic Ass'n*, 948 F. Supp.

2d 416, 433 (M.D. Pa. 2013) (summarizing the Commonwealth's allegations that the sanctions would cause a loss of football-related hospitality revenue for surrounding businesses). For these reasons, hotels likely adjust pricing models, restaurants expand staffing to accommodate increased demand, vendors increase supply orders, and cities allocate resources to accommodate projected crowds. All of these decisions pose economic risk, which is precisely the type of economic exposure that derivatives markets are designed to mitigate.[13]

The issues presented on appeal do not require this Court to resolve the outer limits of the definition of a swap or engage in line drawing between a swap and a wager. That line drawing exercise presents complicated fact questions concerning the exact structure and mechanics of the instruments, who is the price maker, the difference between an open exchange and a bilateral arrangement, and unrelated legal questions, including the applicability of the CEA to purely intrastate transactions, among others. It is sufficient to resolve this case that the transactions conducted on a CFTC-registered DCM qualify as swaps under the CEA.

---

[13] *See, e.g.,* KalshiEx's "February 2026 Sportsbook Hedging Rebate Program" filing with the CFTC, available on the CFTC's website at: https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationRules/59640 (last visited 2/17/2026).

II. The CEA Preempts Other Federal and State Actors from Exercising Regulatory Authority Over Swaps, Including Event Contracts, on CFTC-Regulated Markets.

CEA § 2(a)(1)(A)'s "exclusive jurisdiction" includes "transactions involving swaps" trading on a CFTC-registered DCM. The "exclusive jurisdiction" provision of 7 U.S.C. § 2(a)(1) preempts application of state gambling laws to event contracts trading on DCMs governed by the CEA, whether the question is evaluated as a matter of field preemption or conflict preemption. Congress intended the CFTC to have exclusive jurisdiction over federally registered DCMs and transactions conducted on those exchanges, displacing state gambling laws that would otherwise apply.

A. The CEA Was Intended to, and Does, Occupy the Field of Regulating Commodity Derivatives Exchanges.

Where Congress has declared federal authority to be exclusive, state laws attempting to regulate the same subject matter must give way. *See Arizona v. United States*, 567 U.S. 387, 399 (2012); *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 163 (2016); *Duke Energy Trading & Mktg., L.L.C. v. Davis,* 267 F.3d 1042, 1057 (9th Cir. 2001); *see also Transcon. Gas Pipe Line Co. v. Pa. Env't Hearing Bd.*, 108 F.4th 144, 151-52 (3d Cir. 2024) (an "explicit statutory conferral of exclusive jurisdiction . . . withdraws any concurrent jurisdiction"), *Richardson v. Kruchko & Fries,* 966 F.2d 153, 158 (4th Cir. 1992) (state-law claims preempted where they fell within federal agency's "exclusive jurisdiction").

The inquiry does not turn on whether Congress anticipated every possible form of state interference; it turns on whether state law intrudes into a field Congress has reserved to federal regulation. While not needed given the explicit statutory language, preemptive intent may be inferred "if the scope of the statute indicates that Congress intended federal law to occupy the legislative field." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008). Such is the case here. CEA § 2(a)(1)(A) makes plain that Congress intended the CEA to occupy the field of "accounts, agreements . . . and transactions involving swaps or contracts of sale of a commodity for future delivery . . . traded or executed on a contract market . . . or any other board of trade, exchange, or market." When an instrument is trading on a CFTC-regulated market as a "swap" or "future," state gambling laws do not apply.

CEA § 2(a)(1)(A)'s "exclusive jurisdiction" over futures and swaps traded on a DCM "preempts the application of state law." *Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980). "Precisely, preemption is appropriate '[w]hen application of state law would directly affect trading on or the operation of a futures market.'" *Effex Cap., LLC v. Nat'l Futures Ass'n,* 933 F.3d 882, 894 (7th Cir. 2019) (quoting *Am. Agric. Movement, Inc v. Bd. of Trade of Chicago*, 977 F.2d 1147, 1156 (7th Cir. 1992), *abrogated on other grounds by Time Warner Cable v. Doyle*, 66 F.3d 867 (7th Cir. 1995)). Offering event contracts on a DCM cannot, in and of itself,

be an activity that is unlawful under any state law. "Congress's intent was to provide the CFTC with exclusive jurisdiction to regulate commodities" and "[s]uch exclusive jurisdiction precludes states from exercising supplementary regulatory authority over commodity transactions." *Stuber v. Hill*, 170 F. Supp. 2d 1146, 1151 (D. Kan. 2001).

This is not a new or novel concept. For decades courts have recognized that the CEA preempts application of other federal or state laws to instruments trading on CFTC-regulated markets.[14] Again, this is part and parcel of Congress's intent

---

[14] *See Chi. Mercantile Exch. v. SEC*, 883 F.2d 537, 544, 548 (7th Cir. 1989) (recognizing that the CFTC is "the sole lawful regulator" where "its jurisdiction is exclusive"--i.e., if the at-issue derivative falls within Section 2(a)(1)(A)'s reach); *Point Landing, Inc. v. Omni Cap. Int'l, Ltd.*, 795 F.2d 415, 422 (5th Cir. 1986), *aff'd sub nom. Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97 (1987) (finding the CEA preempted private rights of action under securities laws because "[a]ny other result would frustrate the intent of Congress to preempt the field insofar as futures regulation is concerned."); *Curran v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 622 F.2d 216, 232 (6th Cir. 1980), *aff'd*, 456 U.S. 353 (1982) ("[T]he thrust of the [CEA's exclusive-jurisdiction] provision was to ensure that regulatory bodies other than the CFTC would not interfere with the orderly development and enforcement of commodities regulation."); *Paine, Webber, Jackson & Curtis, Inc. v. Conaway*, 515 F. Supp. 202, 205-06 (N.D. Ala. 1981) (holding that the CEA preempted private plaintiff's counterclaim under Alabama gambling statute purporting to void all futures transactions in which delivery of the commodity is not intended); *Int'l Trading, Ltd. v. Bell*, 556 S.W.2d 420, 424 (1977) (finding the "vesting of exclusive jurisdiction is a clear indication that Congress intended no regulation in this field except under the authority of the [A]ct"); *Texas v. Monex Int'l, Ltd.*, 527 S.W.2d 804, 806 (Tex. Civ. App. 1975), *writ refused* (Dec. 17, 1975) (holding the CEA preempted Texas securities laws over margined commodity transactions).

for the CEA to occupy the field of commodity derivatives, as the very purpose of the 74 Act was to "assure that Federal preemption is complete." 120 Cong. Rec. S. 30,458, 30,464 (daily ed. Sept. 9, 1974) (statement of Sen. Curtis). That the instruments at issue here involve swaps on sports events does not change the preemption framework.[15]

B. The "Savings Clause" in CEA § 2(a)(1)(A) Does Not Nullify its Field Preemptive Effect; It Preserves Traditional State Powers Over State-Regulated Gambling.

The grant of "exclusive jurisdiction" in § 2(a)(1)(A) does not permit a state to define federally regulated derivatives transactions as illegal under state law. The "savings clause" in § 2(a)(1)(A) does not nullify this conclusion. Specifically, that subsection provides, "[e]xcept as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred . . . on . . . other regulatory authorities under the laws of the United States or of any State," or "(II) restrict . . . such other authorities from carrying out their duties and responsibilities in accordance with such laws," or "supersede or limit the jurisdiction conferred on courts of the United States or any State."

---

[15] Notably, the Unlawful Internet Gambling Enforcement Act of 2006 specifically excludes transactions "conducted on or subject to the rules of a registered entity" under the CEA, reinforcing the field-preemptive effect of the CFTC's exclusive jurisdiction. 31 U.S.C. § 5362(1)(E)(ii).

As a matter of plain language interpretation, this "savings clause" only applies "[e]xcept as hereinabove provided" in CEA § 2(a)(1)(A). That means other laws that would ordinarily apply outside the field of "accounts, agreements . . . and transactions . . . traded or executed on a contract market" still apply, just not to transactions that are trading on CEA-governed markets. *FTC v. Ken Roberts Co.*, 276 F.3d 583, 591 (D.C. Cir. 2001) (observing that other agencies like the FTC "retain their jurisdiction over all matters beyond the confines" of "accounts, agreements, and transactions involving contracts of sale of a commodity for future delivery") (quoting CEA § 2(a)(1)(A)). The "savings clause" preserves traditional, non-conflicting state powers, but does not empower states to use state powers against transactions on CEA-governed markets. *Hunter v. FERC*, 711 F.3d 155, 159 (D.C. Cir. 2013) ("To be clear, there are limits to what comes within CEA section 2(a)(1)(A)'s orbit, but once a scheme crosses the statute's event horizon, the CFTC has exclusive jurisdiction."). Thus the "savings clause" does not allow states to prohibit the very types of contracts that the CFTC is exclusively empowered to regulate.

Properly interpreted, the "savings clause" means that the CEA does not displace traditional state authority to enforce state criminal or civil antifraud laws, nor does it displace state authority to regulate purely intrastate conduct or transactions. But the CEA explicitly displaces state attempts to regulate swaps that

are conducted on a CFTC-registered contract market. To the specific question in this case, the CEA expressly bars state laws from regulating or prohibiting these transactions that are conducted on CFTC-regulated DCM.

C. State Gambling Laws Are Conflict Preempted.

Application of gambling laws is also preempted under the concept of conflict preemption. State law is pre-empted "to the extent of any conflict with a federal statute." *Hillman v. Maretta*, 569 U.S. 483, 490 (2013) (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). Conflict preemption occurs when compliance with both federal and state law is impossible, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941). Field preemption can be understood as a type of conflict preemption, because a state law falling within a preempted field conflicts with Congress's intent to exclude state regulation, making the categories not "rigidly distinct." *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 n.5 (1990).

Here, gambling laws are preempted under both impossibility and obstacle conflict preemption. As for impossibility, a DCM is required by federal law to provide "impartial access" to all eligible participants nationwide. 17 C.F.R. § 38.151(b). If a state bans the contract, the DCM cannot fulfill its federal

mandate to provide impartial national access. As for obstacle preemption, gambling laws often require local licensing, fees, and specific hardware (like localized servers). Applying state-by-state local requirements to national commodity exchanges would create the very "patchwork" that Congress set out to prevent.

Nor does the presumption against preemption alter this conclusion. Even accepting arguendo that regulation of gambling is a historic police power of the states, the Court should not apply a presumption against preemption. The entire purpose of the exclusive jurisdictional provision in CEA § 2(a)(1)(A) is to provide national uniformity for derivatives trading and to prevent 50 different states from undermining this national regulatory structure by claiming derivatives markets are subject to state gambling laws. Congress's "clear and manifest purpose" was indeed to preempt these historic police powers. *Altria Grp., Inc.*, 555 U.S. at 77 (noting "the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress") (quoting *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218, 230 (1947)).

The plain language of the text, underscored by the consistent legislative history to preempt states from applying 50 state requirements on national markets, indicates this "clear and manifest purpose" to preempt state police powers.

III. Subjecting Derivatives Listed on a CFTC-Registered DCM to State Regulation Would Have Destabilizing Economic Effects.

If this Court holds that sports event contracts listed on CFTC-registered DCMs do not qualify as swaps or are outside the CFTC's exclusive jurisdiction within the meaning of the statute, the consequences would not be confined to a single category of event contracts. The interpretation would redraw the statutory boundary Congress established to ensure a comprehensive federal oversight of derivatives markets, inviting the public to characterize an expanding universe of event contracts as beyond the CEA's reach. At least eight DCMs have collectively self-certified with the CFTC more than 3,000 event based contracts with the CFTC pursuant to CFTC Rule 17 C.F.R. § 40.2, with a notable increase in such filings during the last two years.[16] Importantly, the vast majority of these contracts are tied to non-sport outcomes involving measurable commodity indicators, including cryptocurrency price levels and related indices, GDP releases, benchmark interest-rate decisions, election outcomes, temperature forecasts, electricity usage, and the price movements of precious metals. *Id*. These event contracts rest on objectively measurable outcomes no less than sports event contracts. A finding excluding such

---

[16] *See* CFTC Designated Contact Market Products, *available at* https;//www.cftc.gov/IndustryOversight/Industry Filings/TradingOrganizationProducts?Organization=CM (last visited February 13, 2026).

contracts from the definition of swap would therefore risk destabilizing the settled expectations upon which these markets depend, fostering uncertainty in an area where Congress sought uniformity and regulatory clarity. It could introduce the "chaos" Congress sought to prevent by providing the CFTC with exclusive jurisdiction over futures trading in 1974. Because even modest ambiguity in the scope of the CEA can move rapidly through interconnected financial markets, the CFTC respectfully requests that the Court not adopt a construction that could generate systemic consequences for CEA preemption far removed from the case at hand.

CONCLUSION

For the foregoing reasons, the CFTC respectfully submits that this Court should reverse and remand the judgment of the district court.

Dated: February 17, 2026

Respectfully Submitted,

/s/ Anne Stukes
D.C. Bar 469446
Tyler S. Badgley, *General Counsel*
Anne Stukes, *Acting Deputy General Counsel*
Carlin Metzger, *Assistant General Counsel*
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5127

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Fed. R. App. 29(a)(5), the foregoing brief complies with the type-volume limitations, in that it has 6,652 words, excluding the parts of the brief, exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type style requirements of Fed. R. App. P. 32(a)(6) because this brief was prepared in proportionally spaced typeface using Microsoft Word 365 and is set in 14-point sized Times New Roman type style.

/s/ Anne Stukes

CERTIFICATE OF SERVICE

I certify that on February 17, 2026, I electronically filed this Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the ACMS system. I certify that all participants in the case are registered ACMS users and that service will be accomplished by the ACMS system.

/s/ Anne Stukes

Appendix C

Advanced Notice of Proposed Rulemaking Relating to Prediction Markets

rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, ''FAA National Environmental Policy Act Implementing Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO KY D Fort Knox, KY [Amended]

Godman AAF, KY

(Lat. 37°54′25″ N, long. 085°58′19″ W)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.6-mile radius of Godman AAF. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASO KY E2 Fort Knox, KY [Amended]

Godman AAF, KY

(Lat. 37°54′25″ N, long. 085°58′19″ W)

Within a 4.6-mile radius of Godman AAF. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ASO KY E4 Fort Knox, KY [Removed]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Fort Knox, KY [Amended]

Godman AAF, KY

(Lat. 37°54′25″ N, long. 085°58′19″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Godman AAF.

* * * * *

Issued in Fort Worth, Texas, on March 12, 2026.

Courtney E. Johns,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2026–05097 Filed 3–13–26; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AF65

Prediction Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is issuing this Advance Notice of Proposed Rulemaking and seeking public comment regarding event contract derivatives traded on markets commonly referred to as ''prediction markets.'' In particular, the Commission is seeking information and public comment on statutory core principles and Commission regulations that apply to prediction markets, the types of event contracts that may be prohibited as contrary to the public interest, cost-benefit considerations related to prediction markets, and other topics. The Commission may use the information and comments received from this Notice to inform potential future agency action, such as rulemaking, with respect to prediction markets.

DATES: Comments must be in writing and received by April 30, 2026.

ADDRESSES: You may submit comments, identified by ''Prediction Markets'' and RIN 3038–AF65, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this release and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Mark Fajfar, Senior Assistant General Counsel, 202–418–6636, *mfajfar@cftc.gov,* Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

[1] 17 CFR 145.9.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Prediction Markets

On prediction markets, participants buy and sell contracts based on whether events stated in the contracts occur. Prediction markets ''function as information aggregation vehicles'' because the contract prices will reflect the market participants' aggregate beliefs regarding whether the events will occur.[2]

As discussed further below, the contracts traded on prediction markets may fall within the definition in the Commodity Exchange Act (CEA) of the term ''swap.'' [3] The contracts may also be contracts for the future delivery of a commodity (futures contracts) that are covered by the CEA.[4] A prediction market which offers swaps or futures contracts for trading by the general public must register with the CFTC as a designated contract market (DCM), which the Commission is charged with overseeing.[5] Since the early 1990s, parties have sought Commission staff guidance regarding prediction markets, and the Commission first designated a prediction market as a DCM in February 2004.[6]

While the term ''event contract'' is not a defined term in the CEA or the CFTC's regulations thereunder, the CFTC has used this term to describe derivative contracts, typically with a binary payoff structure, based on the outcome of an underlying occurrence or event since at least 2008.[7] In this document, the term ''prediction market'' refers to a CFTC-registered DCM or swap execution facility (SEF) that offers event contracts for trading.[8]

Since 2021, the Commission has observed a significant increase in the number of event contracts listed for trading on prediction markets, as well as in the diversity of occurrences and events underlying such contracts.[9] The Commission has also received recent applications for DCM registration, and expressions of interest regarding DCM registration, from entities that have indicated that they are interested primarily, or exclusively, in operating prediction markets.[10]

As noted above, event contracts can fall within multiple subsections of the CEA's definition of ''swap.'' CEA section 1a(47)(A)(ii) defines ''swap'' to include ''any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.'' [11] Also, CEA section 1a(47)(A)(i) defines the term ''swap'' to include ''any agreement, contract, or transaction . . . that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind.'' [12] Event contracts traded as swaps under CEA section 1a(47)(A)(i) are sometimes referred to as binary options, a type of swap which is an ''option whose payoff is either a fixed amount or zero.'' [13]

Prediction markets can also list event contracts for trading as futures contracts.[14] Since futures contracts are specifically excluded from the statutory definition of ''swap,'' these event contracts are not swaps.[15]

Although the event contracts listed on CFTC-registered DCMs and SEFs are swaps or futures contracts subject to the jurisdiction of the CFTC,[16] other event contracts referencing events associated with potential financial, economic or commercial consequences may be security-based swaps or other instruments subject to the jurisdiction of the SEC.[17]

---

[2] *See* Concept Release on Appropriate Regulatory Treatment of Event Contracts, 73 FR 25669, 25669 (May 7, 2008) (2008 Concept Release).

[3] *See* CEA section 1a(47), 7 U.S.C. 1a(47).

[4] *See* CEA section 2a(1)(A), 7 U.S.C. 2(a)(1)(A).

[5] *See Id.,* which expressly extends the CFTC's ''exclusive jurisdiction'' to encompass ''transactions involving swaps or contracts of sale of a commodity for future delivery . . . traded or executed on a contract market designated pursuant to [CEA section 5, 7 U.S.C. 7] . . . .'' The CFTC shares jurisdiction over mixed swaps and security futures with the Securities and Exchange Commission (SEC), and the SEC has sole jurisdiction over security-based swaps. *See* section 1a(44) of the CEA, 7 U.S.C. 1a(44) and sections 3(a)(55) and 3(a)(68) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78c(a)(55) and 78c(a)(68). *See also* section 712(d)(1) of Title VII of the Wall Street Transparency and Accountability Act of 2010 (Dodd-Frank Act) (directing the CFTC and SEC to undertake joint rulemaking on covered topics).

[6] *See* CFTC Order of Designation for HedgeStreet, Inc. (Feb. 20, 2004), available at *https://www.cftc.gov/sites/default/files/opa/press04/opa4894-04.htm.* The Commission's Division of Market Oversight issued staff no-action positions to two academic institutions. The no-action positions provide that, subject to specified terms, staff will not recommend enforcement action for operating prediction markets, without registration as a DCM, swap execution facility, or foreign board of trade, that offer trading in political and economic indicator event contracts for academic purposes. *See* CFTC Staff Letter No. 93–66 issued to the University of Iowa (June 18, 1993), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/93-66.pdf.* This no-action position superseded a more limited no-action position issued in 1992. *See also* CFTC Staff Letter No. 14–130 issued to Victoria University of Wellington, New Zealand (Oct. 29, 2014), available at *https://www.cftc.gov/csl/14-130/download.*

[7] *See* 2008 Concept Release. *See also* Contracts & Products: Event Contracts, available at *https://www.cftc.gov/IndustryOversight/ContractsProducts/index.htm.*

[8] In addition to DCMs, a SEF may make any swap, including an event contract, available for trading. *See* CEA section 5h, 7 U.S.C. 7b–3. However, swap trading on a SEF is not available to the general public, but rather only to institutional investors within the definition of ''eligible contract participant'' in CEA section 1a(18), 7 U.S.C. 1a(18).

[9] From 2006–2020, DCMs listed for trading an average of approximately five event contracts per year. In 2021, this number increased to 131, and the number of newly-listed event contracts per year remained at a similar level until 2025, when DCMs certified approximately 1,600 event contracts for listing for trading. These event contracts are based on a wide variety of financial indices, economic indicators, weather events, political events, international events, scientific and cultural events, current events, and sporting events. A list of event contracts certified for listing is available on the CFTC's website. *See https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts?Status=Certified&Category=Event.*

[10] As of March 2026, Commission staff are reviewing several pending applications for DCM designation from entities with a stated interest in operating prediction markets. Commission staff have received multiple additional inquiries from other entities indicating an interest in applying for DCM registration in order to operate prediction markets.

[11] 7 U.S.C. 1a(47)(A)(ii).

[12] 7 U.S.C. 1a(47)(A)(i).

[13] *See* CFTC Futures Glossary, available at *https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm#B.*

[14] *See* CEA section 2a(1)(A), 7 U.S.C. 2(a)(1)(A). A list of event contracts certified for listing as futures contracts is available on the CFTC's website. *See https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts?Type=Future&Category=Event.*

[15] CEA section 1a(47)(B), 7 U.S.C. 1a(47)(B), provides that ''[t]he term 'swap' does not include—(i) any contract of sale of a commodity for future delivery (or option on such contract) . . . .''

[16] *See supra,* note 5.

[17] *See* 7 U.S.C. 1a(47)(B) (providing ''exclusions'' from the definition of ''swap'' under the CEA, including for securities such as security based-swaps, certain options, and debt securities); *see also, e.g.,* 15 U.S.C. 78c(a)(68)(A) (defining ''security-based swap'' under the Exchange Act).

B. Statutory and Regulatory Requirements

A prediction market that seeks to list event contracts for trading, or make event contracts available for clearing, must comply with the substantive and procedural requirements that apply, more generally, to the listing for trading, or making available for clearing, of derivative contracts.[18] Further, a prediction market is subject to statutory requirements to only list or permit trading in derivative contracts that are not readily susceptible to manipulation;[19] to enforce compliance with contract terms and conditions;[20] and to monitor trading on the exchange in order to prevent manipulation, price distortion, and disruption of the settlement process through market surveillance, compliance, and enforcement practices and procedures.[21]

In addition to the more generally applicable requirements to which registered entities are subject when listing derivative contracts for trading or making such contracts available for clearing, CEA section 5c(c)(5)(C) grants the Commission the authority to prohibit prediction markets from listing for trading or making available for clearing particular types of event contracts, if the Commission determines that such contracts are contrary to the public interest.[22]

Specifically, CEA section 5c(c)(5)(C)(i) provides that, ''[i]n connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities[23] that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in [CEA] section la(2)(i)),[24] by a [DCM] or [SEF], the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—(I) activity that is unlawful under any Federal or State law; (II) terrorism; (III) assassination; (IV) war; (V) gaming; or (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.'' [25]

In 2011, the Commission adopted final rules under part 40 of the Commission's regulations, including new Regulation 40.11.[26] The Commission adopted Regulation 40.11 to implement CEA section 5c(c)(5)(C) as part of broader changes to the Commission's part 40 regulations.[27]

C. Past Commission Notices Regarding Prediction Markets

In 2008, the Commission published the 2008 Concept Release, requesting input from the public on the appropriate regulatory treatment of prediction markets.[28] The 2008 Concept Release was prompted by the Commission's receipt of requests for guidance related to the application of the CEA to prediction markets.[29] The Commission ultimately did not take further action at that time.

In 2024, the Commission proposed rules to further specify the types of event contracts that fall within the scope of CEA section 5c(c)(5)(C) and are contrary to the public interest.[30] In 2026, the Commission withdrew the proposed rules to reconsider them ''in light of various forms of state regulatory actions and litigation concerning the Commission's exclusive jurisdiction over event contract derivatives listed on [DCMs] and the proper application of the swap and excluded commodity definitions under the [CEA].'' [31]

Given that the number of applications for DCM registration has more than doubled over the past year, largely from entities that are interested primarily, or exclusively, in operating prediction markets, the Commission is issuing this Advance Notice of Proposed Rulemaking to seek information about significant issues that have come to light since the 2024 proposal. The comments provided will assist the Commission in the formulation of a potential future agency action, including rulemaking, with respect to prediction markets.

II. Questions and Request for Comment

In responding to each of the following questions, please provide a detailed response, including the rationale for such response, cost and benefit considerations, and relevant supporting information, such as data, or studies when available. The Commission encourages commenters to include the assigned topic number of the specific request for comment in their submitted responses to facilitate the review of public comments by Commission staff.

A. Core Principles and Commission Regulations

1. What factors should the Commission consider in determining whether to provide guidance or amend its regulations regarding how the DCM Core Principles in CEA section 5(d) apply to prediction markets? [32] Are there specific points on which the Commission should provide guidance or

[18] For example, Regulation 40.2, 17 CFR 40.2, sets forth the general process by which a DCM or SEF may list a new derivative contract for trading by providing the Commission with a written certification. *See also infra,* note 27.

[19] *See* Core Principle 3 for DCMs, CEA section 5(d)(3), 7 U.S.C. 7(d)(3), and Core Principle 3 for SEFs, CEA section 5h(f)(3), 7 U.S.C. 7b–3(f)(3).

[20] *See* Core Principle 2 for DCMs, CEA section 5(d)(2), 7 U.S.C. 7(d)(2), and Core Principle 2 for SEFs, CEA section 5h(f)(2), 7 U.S.C. 7b–3(f)(2).

[21] *See* Core Principle 4 for DCMs, CEA section 5(d)(4), 7 U.S.C. 7(d)(4), and Core Principle 4 for SEFs, CEA section 5h(f)(4), 7 U.S.C. 7b–3(f)(4).

[22] 7 U.S.C. 7a–2(c)(5)(C).

[23] The term ''excluded commodity'' is defined in CEA section 1a(19), 7 U.S.C. 1a(19), as: ''(i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure; (ii) any other rate, differential, index, or measure of economic or commercial risk return, or value that is—(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or (II) based solely on one or more commodities that have no cash market; (iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or (iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) 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.''

[24] There is no ''section 1a(2)(i)'' in the CEA. The Commission believes that the reference in CEA section 5c(c)(5)(C)(i) to ''section 1a(2)(i)'' is a typographical or drafting error.

[25] 7 U.S.C. 7a–2(c)(5)(C)(i). CEA section 5c(c)(5)(C)(ii), 7 U.S.C. 7a–2(c)(5)(C)(ii), further provides that ''[n]o agreement, contract or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.''

[26] Provisions Common to Registered Entities, 76 FR 44776 (July 27, 2011).

[27] Part 40 of the Commission's regulations, more generally, implements the contract and rule submission requirements for registered entities set forth in CEA section 5c(c). For example, Regulation 40.2 sets forth the general process by which a DCM or SEF may list a new derivative contract for trading by providing the Commission with a written certification—a ''self-certification''—that the contract complies with the CEA, including the CFTC's regulations thereunder. 17 CFR 40.2; *see also* CEA section 5c(c)(1), 7 U.S.C. 7a–2(c)(1). The Commission must receive the DCM's or SEF's self-certified submission at least one business day before the contract's listing. 17 CFR 40.2(a)(2). Regulation 40.3 sets forth the general process by which a DCM or SEF may elect voluntarily to seek prior Commission approval of a derivative contract that the DCM or SEF seeks to list for trading. 17 CFR 40.3; *see also* CEA sections 5c(c)(4)–(5), 7 U.S.C. 7a–2(c)(4)–(5). Amendments to an existing derivative contract also must be submitted to the Commission either by way of self-certification or for prior Commission approval. 17 CFR 40.5, 40.6.

[28] *See supra,* note 2.

[29] Between 1992 and 2008, CFTC-registered exchanges listed for trading event contracts involving interests such as regional insured property losses, the count of bankruptcies, temperature volatilities, corporate mergers, and corporate credit events. 2008 Concept Release, 73 FR at 25671.

[30] Event Contracts; Proposed Rule, 89 FR 48968 (June 10, 2024).

[31] Event Contracts; Withdrawal of Proposed Regulatory Action, 91 FR 5386 (Feb. 6, 2026).

[32] 7 U.S.C. 7(d).

adopt rule amendments? Why or why not?

2. With respect to the following DCM Core Principles, what factors are relevant to prediction markets?

a. Core Principle 2 states that a DCM ''shall establish, monitor, and enforce compliance with the rules of the [DCM], including—(i) access requirements; . . . and (iii) rules prohibiting abusive trade practices.'' [33] Regulation 38.151, adopted under this core principle, requires that a DCM provide ''impartial access to its markets and services, including . . . [a]ccess criteria that are impartial, transparent, and applied in a non-discriminatory manner.'' [34] What aspects of prediction markets affect how a DCM provides impartial access and prohibits abusive trade practices? Are there potential barriers to impartial access that the Commission should consider? Are there particular risks of abusive trading?

b. Core Principle 2 also requires a DCM to ''establish, monitor, and enforce compliance with . . . the terms and conditions of'' contracts traded on the DCM.[35] In this regard, what factors should the Commission consider regarding a DCM's rules related to resolution criteria for event contracts? For example, if there is a dispute regarding how an event contract is resolved or how the trigger event for an event contract is determined (such as a dispute regarding whether an event underlying a contract has occurred), what factors should the Commission consider in setting expectations for DCMs to have rules to resolve the dispute? Are dispute resolution procedures for other types of swaps, such as credit default swaps, helpful precedents? Also, what considerations under Core Principle 14, which requires a DCM to have ''rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries,'' [36] are relevant in this regard?

c. Core Principle 3 states that a DCM may list ''only contracts that are not readily susceptible to manipulation.'' [37] How should a determination of whether an event contract is ''readily susceptible to manipulation'' be made? What factors should be considered? Are there particular aspects of event contracts that make this determination different from the determination with respect to other listed contracts? Do any existing rules for other types of exchanges and platforms (*i.e.,* not prediction markets) limit or mitigate the potential for manipulation? If so, how and to what extent are these rules appropriate as requirements for prediction markets? See also the questions regarding inside information in part II.E. below.

d. Core Principle 4 states that a DCM ''shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures.'' [38] Do any aspects of prediction markets pose challenges to compliance with this Core Principle or, on the other hand, facilitate compliance? Are there market surveillance, compliance, or enforcement practices on which the Commission should focus? Are there existing surveillance practices for detecting suspicious activity in other types of exchanges and platforms that would be useful in prediction markets?

e. Core Principle 5 states that a DCM shall, for each contract, adopt position limitations or position accountability for speculators as is necessary and appropriate to ''reduce the potential threat of market manipulation or congestion.'' [39] What factors should the Commission expect a DCM to consider in adopting position limitations or position accountability for prediction markets? For example, what factors should the Commission consider regarding how position limits across similar event contracts should be aggregated (*e.g.,* whether there is the same underlying reference, or whether there are similar references)? Are there reasons why event contracts, as compared to other swaps and futures contracts, should, or should not, be subject to different position limitations or position accountability? Are existing position limitation or position accountability provisions helpful as precedent for determining how prediction markets should implement such measures?

f. Core Principle 11 requires that a DCM have ''rules and procedures for ensuring the financial integrity of transactions entered into on or through facilities of the [DCM] (including the clearance and settlement of the transactions with a derivatives clearing organization [(DCO)]); and rules to ensure the financial integrity of any [intermediary] and the protection of customer funds.'' [40] Currently, event contracts are fully collateralized. What factors should the Commission consider in determining whether prediction markets should be permitted to offer trading on margin, and should such factors be different for retail as opposed to institutional customers? If margin is provided to retail customers, what disclosure, if any, should the Commission consider to ensure that customers are fully informed of the consequences and potential losses resulting from the customer's failure to meet margin requirements? If prediction markets are allowed to offer trading on margin, what factors should be involved in the calculation of initial margin, such as concentration, or liquidity (*i.e.,* the cost to the DCM to liquidate a defaulting member's portfolio)? What methods should be involved, such as a flat percentage rate or a statistical analysis? Given that some event contracts resolve quickly and others may not resolve for years, what time series of data and other time period considerations should be involved when calibrating appropriate margin? What factors should be involved in considering other issues such as whether daily variation margin should be required, the time intervals for collecting margin, and the instruments permitted for posting initial margin and exchanging variation margin? What products should be eligible for cross-margin with event contracts if trading on margin is allowed? See also question 3.c. regarding the implications of margin trading for DCOs.

g. Core Principle 20 requires a DCM to ''establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity.'' [41] What sources of operational risk related to prediction markets should the Commission consider? What operational risk analysis and other measures do prediction markets currently employ? Are there challenges to the reliability, security or scalable capacity of the systems used by prediction markets?

h. In general under the DCM Core Principles, what factors should the Commission consider with respect to blockchain-based prediction markets? Are there challenges or advantages in applying existing regulations and guidance to blockchain-based prediction

[33] CEA section 5(d)(2), 7 U.S.C. 7(d)(2).

[34] 17 CFR 38.151.

[35] CEA section 5(d)(2)(A)(ii), 7 U.S.C. 7(d)(2)(A)(ii).

[36] CEA section 5(d)(14), 7 U.S.C. 7(d)(14).

[37] CEA section 5(d)(3), 7 U.S.C. 7(d)(3).

[38] CEA section 5(d)(4), 7 U.S.C. 7(d)(4).

[39] CEA section 5(d)(5), 7 U.S.C. 7(d)(5).

[40] CEA section 5(d)(11), 7 U.S.C. 7(d)(11) (formatting modified).

[41] CEA section 5(d)(20), 7 U.S.C. 7(d)(20).

markets? Which areas, if any, would benefit from Commission guidance or rule amendments for blockchain-based prediction markets?

3. Are there aspects of the clearing of event contracts that the Commission should consider in applying the DCO Core Principles in CEA section 5b(c)(2)?[42] Are there specific points on which the Commission should provide guidance or adopt rule amendments? If so, why?

a. The following DCO Core Principles may be relevant in this regard: (C) participant and product eligibility, (D) risk management, (H) rule enforcement, and (I) system safeguards.[43] What factors should the Commission consider in applying these Core Principles?

b. Are there relevant differences in how the Core Principles and underlying regulations for DCMs and DCOs apply to prediction markets? If so, how should the differences factor into the Commission's consideration of these issues?

c. What implications for DCOs should the Commission consider if event contracts were traded on prediction markets on margin? Are there any issues arising with respect to, for example, the requirements in DCO Core Principle D that ''(iv) . . . [t]he margin required from each member and participant of a [DCO] shall be sufficient to cover potential exposures in normal market conditions'' and ''(v) . . . [e]ach model and parameter used in setting margin requirements under clause (iv) shall be—(I) risk-based; and (II) reviewed on a regular basis''?[44] What factors should the Commission consider regarding the clearing silo, if any, that would be appropriate for event contracts? What factors should the Commission consider regarding whether event contracts should be eligible for margin credit or cross margin, both on DCOs, and when cross-margined with securities exchanges? See also question 2.f. regarding margin considerations for DCMs.

4. Institutional traders (that is, parties that are eligible contract participants) may enter into event contracts on prediction markets registered as SEFs, which are subject to Core Principles in CEA section 5h(f).[45] Are there aspects of prediction markets that the Commission should consider in applying these Core Principles? How is trading on prediction markets by institutional traders the same, or different from, retail trading on prediction markets? How would or does prediction market trading on DCMs and SEFs impact liquidity in both types of exchanges? What factors should the Commission consider in determining whether any public disclosure requirements should apply to prediction market trading on SEFs? For example, would public disclosure help to mitigate, or exacerbate, adverse selection? Are there specific points on which the Commission should provide guidance or adopt rule amendments? If so, why?

5. What factors should the Commission consider in determining whether to provide guidance or amend any other of its regulations with respect to the listing, trading, and clearing of event contracts on prediction markets?

a. CEA section 2(a)(13) authorizes the Commission ''to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.''[46] CEA section 2(a)(13)(G) states that each swap ''shall be reported to a registered swap data repository.''[47] What factors should the Commission consider in applying these provisions to prediction markets listing event contracts as swaps? Are there aspects of event contract swaps that hinder or facilitate their reporting to a swap data repository or the public availability of the relevant transaction and pricing data? To what extent should such reporting and data availability be standardized in order, for example, to facilitate Commission analysis and to detect potential cross-market activity from a risk or manipulation perspective? Are public identifiers (*e.g.,* CUSIP/ISIN/LEI)[48] appropriate for event contracts? How does such reporting and data availability relate to enhanced price discovery?

b. CEA section 4c(a)(1) and (2)(A) provide that it is unlawful to enter into a transaction involving a futures contract, option thereon, or swap, if the transaction is a pre-arranged or noncompetitive trade, or a wash sale.[49] What factors should the Commission consider in applying these provisions to prediction markets? Are there aspects of prediction markets that make them more or less susceptible to pre-arranged or noncompetitive trades, or wash sales?

c. CEA section 4c(a)(5) provides that it is unlawful to engage, on any CFTC-registered entity, in disruptive trading practices.[50] What factors should the Commission consider in applying this provision to prediction markets? Are there aspects of prediction markets that make them more or less susceptible to disruptive trading practices?

6. With respect to any rule changes that the Commission may propose for the foregoing reasons, what are the relevant considerations of costs and benefits?[51] What less costly alternatives should the Commission consider? Please provide any relevant specific information, data, or studies regarding the costs and benefits of such regulations that you may have.

B. Public Interest

7. As described above, CEA section 5c(c)(5)(C) provides for the Commission to make a determination that event contracts are ''contrary to the public interest'' if the event contracts involve any of five listed activities or ''other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.''[52] In general, what factors should the Commission consider in making a public interest determination under this section? (Public interest factors specific to the five listed activities are discussed in part II.C., below, in connection with those activities.)

8. The public interests underlying the CEA are described in CEA section 3(a), which states that ''[t]he transactions subject to [the CEA] . . . are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.''[53] Further, CEA section 3(b) provides that in order to foster the public interests described in subsection (a), the

[42] 7 U.S.C. 7a–1(c)(2).

[43] CEA sections 5b(c)(2)(C), (D), (H), (I), 7 U.S.C. 7a–1(c)(2)(C), (D), (H), (I).

[44] CEA section 5b(c)(2)(D), 7 U.S.C. 7a–1(c)(2)(D).

[45] 7 U.S.C. 7b–3(f). The term ''eligible contract participant'' is defined in CEA section 1a(18), 7 U.S.C. 1a(18).

[46] 7 U.S.C. 2(a)(13)(B); *see also* 17 CFR part 43 and 17 CFR part 45.

[47] 7 U.S.C. 2(a)(13)(G).

[48] A CUSIP number is an identifier for financial instruments assigned by the Committee on Uniform Securities Identification Procedures. An International Securities Identification Number (ISIN) is an identifier used globally. A legal entity identifier (LEI) is assigned through the Global Legal Entity Identifier Foundation.

[49] 7 U.S.C. 6c(a)(1) and (2)(A). *See also* Regulation 1.38(a), 17 CFR 1.38(a) (competitive execution requirement).

[50] 7 U.S.C. 6c(a)(5).

[51] CEA section 15(a) requires that the Commission, before it promulgates a regulation under the CEA, consider the costs and benefits of its action. 7 U.S.C. 19(a). Further, CEA section 15(a)(2) states that ''[t]he costs and benefits of the proposed Commission action shall be evaluated in light of—(A) considerations of protection of market participants and the public; (B) considerations of the efficiency, competitiveness, and financial integrity of futures markets; (C) considerations of price discovery; (D) considerations of sound risk management practices; and (E) other public interest considerations.'' 7 U.S.C. 19(a)(2). In responding to this question, please consider these five considerations.

[52] 7 U.S.C. 7a–2(c)(5)(C).

[53] 7 U.S.C. 5(a).

purposes of the CEA include ''to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to [the CEA] and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among [DCMs], other markets and market participants.'' [54] How should the public interests set out in CEA section 3 inform the Commission's public interest determination under CEA section 5c(c)(5)(C)?

9. Under a past version of the CEA that was repealed in 2000, the Commission applied an ''economic purpose'' test as part of determining whether a DCM could list a contract for trading.[55] Are there any elements of the former ''economic purpose'' test that should or should not be applied in the Commission's public interest determination under CEA section 5c(c)(5)(C)?

10. What role do event contracts play in ''managing and assuming price risks, discovering prices, or disseminating pricing information'' as contemplated by CEA section 3(a)? How are event contracts used in hedging, which is one aspect of managing price risks? How should the Commission incorporate considerations of hedging, price risk, price discovery, and price dissemination in its public interest determination under CEA section 5c(c)(5)(C)?

11. CEA section 3(b) lists several purposes of the CEA, including to prevent price manipulation, to protect all market participants from fraudulent or other abusive sales practices, and to promote responsible innovation and fair competition.[56] What factors should the Commission consider in its effort to fulfill these purposes with respect to prediction markets? Is there any potential conflict between these purposes, and if so, how should they be balanced?

12. How do event contracts compare to, or substitute for, insurance contracts? Should the liquidity and availability of insurance with respect to a particular event be a factor in the Commission's public interest determination?

13. Why, or why not, would it be appropriate for the Commission to propose any changes to its regulations related to its public interest determination?

14. If the Commission were to propose any changes to its regulations related to its public interest determination, what considerations of costs and benefits would be relevant to those changes? What less costly alternatives should the Commission consider? Please provide any relevant specific information, data, or studies that you may have regarding the costs and benefits of such rule changes.

C. Activities Listed in CEA Section 5c(c)(5)(C)

15. CEA section 5c(c)(5)(C) lists five activities, and provides that if an event contract involves any such activity, the Commission may determine that the event contract is contrary to the public interest. What factors should the Commission consider in determining the scope of these five listed activities? What aspects of these activities would be relevant to the Commission's public interest determination?

16. The first listed activity is an ''activity that is unlawful under any Federal or State law.'' What types of event contracts could potentially involve such activity? What steps should the Commission appropriately take in order to determine which State laws may be involved in a particular event contract? What steps should the Commission appropriately take in order to determine which Federal laws, such as the Exchange Act, may be involved in a particular event contract? If an event contract involves an activity that is unlawful under some State laws, but not others, how should this conflict be resolved? What public interest factors should the Commission consider for event contracts involving unlawful activity?

17. The second and third listed activities are terrorism and assassination. Are the meanings of these terms self-evident, or are there any ambiguities that the Commission should consider? Are specific definitions in other contexts, such as insurance, helpful? Would event contracts involving cyberterrorism be covered by the terrorism provision, and if so, what factors distinguish cyberterrorism from other cyber attacks? What public interest factors should the Commission consider for event contracts involving terrorism or assassination?

18. The fourth activity is war. Does this activity encompass all military actions, or are there military actions that do not constitute war? What factors distinguish war from, for example, civil unrest? What factors distinguish war from political actions, or other actions as part of international relations? Are specific definitions in other contexts, such as insurance, helpful? What public interest factors should the Commission consider for event contracts involving war?

19. The fifth activity is gaming. What factors should the Commission consider in determining the scope and public interest implications of this activity?

a. What sources should inform the Commission's determination of the scope of the term ''gaming''? For example, is gaming synonymous with, or more or less extensive than, the scope of activities covered by State and Federal gambling statutes? Are there characteristics—such as an entertainment purpose, or an element of chance—that distinguish gaming from other activities?

b. In this regard, how should the Commission distinguish between various types of contests? For example, should a sports competition be treated differently than an award competition, and if so, what factors support this distinction? What other types of contests should or should not be considered to be gaming?

c. What aspects of event contracts involving gaming should the Commission consider in a public interest determination? For these event contracts, are there any challenges to the deterrence of manipulation and protection from abusive sales practices contemplated by CEA section 3(b)? If so, how could these challenges be mitigated? How are the responsible innovation and fair competition goals in CEA section 3(b) served by event contracts involving gaming?

d. How should the Commission factor into its public interest determination the characteristics of market participants that trade event contracts involving gaming? For example, do these market participants tend to be younger than those trading other financial instruments, and if so, how should this inform the Commission's consideration?

e. What aspects of responsible gaming standards, such as self-exclusion programs, monetary or time limits, or advertising limits, disclaimers, or warnings, should the Commission consider in its public interest determination?

f. How do the various types of event contract that involve gaming differ from each other? How are these differences relevant to the Commission's public interest determination?

20. CEA section 5c(c)(5)(C)(i)(VI) provides that the Commission may determine that an event contract is contrary to the public interest if it involves another ''similar activity determined by the Commission, by rule or regulation, to be contrary to the

[54] 7 U.S.C. 5(b).

[55] *See* 2008 Concept Release, 73 FR at 25672.

[56] 7 U.S.C. 5(b).

public interest.'' [57] What factors should the Commission consider in determining whether an activity is similar to the activities listed in CEA section 5c(c)(5)(C)? Are there any examples of existing event contracts involving potentially similar activities that should be a factor in the Commission's determination on this issue? Are there any differences in how the public interest determination should be applied to such similar activities, as compared to the listed activities?

21. Why, or why not, would it be appropriate for the Commission to propose any changes to its regulations related to the activities listed in CEA section 5c(c)(5)(C)?

22. If the Commission were to propose any changes to its regulations related to the activities listed in CEA section 5c(c)(5)(C), what considerations of costs and benefits would be relevant to those changes? What less costly alternatives should the Commission consider? Please provide any relevant specific information, data, or studies that you may have regarding the costs and benefits of such regulations or rule changes.

D. Procedural Aspects of CEA Section 5c(c)(5)(C)

23. CEA section 5c(c)(5)(C)(i) provides that the Commission may make a public interest determination ''[i]n connection with the listing'' of event contracts by prediction markets.[58] What aspects of the prediction market listing process are relevant to deciding at what point in the listing process the public interest determination could occur? What factors should inform the Commission's interpretation of what occurs ''[i]n connection with the listing'' by a prediction market of an event contract? For example, why would it be appropriate, or not, for the Commission to make a public interest determination when a listing application is reasonably expected, but not yet filed?

24. What factors should inform the Commission's interpretation of whether CEA section 5c(c)(5)(C) contemplates that elements of a public interest determination could be made with respect to a category of event contracts, rather than a specific event contract? For example, what factors should the Commission consider in determining whether to provide guidance regarding how it expects to make any public interest determination? Would it be useful for the Commission to provide illustrative examples of event contracts that do, or do not, involve the listed activities? Why or why not?

25. CEA section 5c(c)(5)(C)(i) provides that the Commission may make a public interest determination for event contracts that ''involve'' the listed activities.[59] What elements are relevant to determining what event contracts ''involve''? What factors should inform the Commission's interpretation of when event contracts are sufficiently tied to a listed activity in order to say that the event contracts ''involve'' that activity?

26. CEA section 5c(c)(5)(C)(iv) provides that the Commission must take final action regarding its public interest determination ''not later than 90 days from the commencement of [the Commission's] review unless the party seeking to offer the contract or swap agrees to an extension.'' [60] How should this time limit inform the Commission's procedure for making public interest determinations? Considering this limitation, what steps would be appropriate, or not, for the Commission to take prior to making its determination?

27. Why, or why not, would it be appropriate for the Commission to propose any changes to its regulations related to procedures under CEA section 5c(c)(5)(C)?

28. If the Commission were to propose any changes to its regulations related to procedures under CEA section 5c(c)(5)(C), what considerations of costs and benefits would be relevant to those changes? What less costly alternatives should the Commission consider? Please provide any relevant specific information, data, or studies that you may have regarding the costs and benefits of such regulations or rule changes.

E. Inside Information

29. The price on a prediction market could be viewed as an indication of how likely the underlying event is to occur. The price may be a more reliable indicator of probability if the people trading on the prediction market have some insight into how likely the underlying event is to occur. On the other hand, trading by these informed participants may lead to manipulation, unfairness, and the misuse of inside information. Is there some public interest utility if people with an asymmetric information advantage on a particular event contract are able to trade on prediction markets? Does the public interest utility depend on the type of event in question? What factors should the Commission consider in evaluating and balancing the public interest in this scenario?

30. Some events underlying event contracts are under the control of a single individual or small group of individuals. What role should this aspect of event contracts play in the Commission's consideration of how prediction markets should be regulated? Do the considerations change depending on the type of event in question? Are there particular challenges related to cross-market manipulation—for example, where an individual or small group of individuals seeks to move the prediction market to influence another market, or vice versa? Are prediction markets more likely than other DCMs or SEFs to be susceptible to manipulation? Why or why not?

31. CEA section 6(c)(1) provides that ''[i]t shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by [July 21, 2011], provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.'' [61] What aspects of prediction markets are relevant to the application of this statute? Are prediction markets more or less likely than other derivative markets to be susceptible to ''any manipulative or deceptive device or contrivance''? How should the potential for application of this statute inform the Commission's regulation of prediction markets?

32. CEA section 4c(a)(3) provides that ''[i]t shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress . . . or any judicial officer or judicial employee . . . who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which

[57] 7 U.S.C. 7a–2(c)(5)(C)(i)(VI).

[58] 7 U.S.C. 7a–2(c)(5)(C)(i).

[59] *Id.*

[60] 7 U.S.C. 7a–2(c)(5)(C)(iv).

[61] 7 U.S.C. 9(1). *See also* Regulation 180.1, 17 CFR 180.1.

information has not been disseminated [or disclosed] . . . in a manner which makes it generally available to the trading public, . . . to use the information in his personal capacity and for personal gain to enter into, or offer to enter into [a futures contract, option on a futures contract, commodity option, or swap].'' [62] Similarly, CEA section 4c(a)(4) provides that it is unlawful for any such Federal Government employee or official to impart such information in his personal capacity and for personal gain with intent to assist another person in entering into a futures contract, option on a futures contract, commodity option, or swap, and it is unlawful for the other person who receives such information from any such Federal Government employee or official to knowingly use the information in such transactions.[63] How are prediction markets likely to be affected by nonpublic information that is available to Federal Government employees or officials? How should the potential for application of this statute inform the Commission's regulation of prediction markets?

F. Types of Event Contracts and Other Issues

33. As noted above, event contracts may be covered by the statutory definition of the term ''swap'' in CEA section 1a(47)(A).[64] What aspects of prediction markets are relevant to whether event contracts should, or should not, appropriately be classified as swaps? What aspects, if any, distinguish event contracts from other types of swaps? The definition in CEA section 1a(47)(A)(ii) includes an event contract that ''is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.'' [65] What potential financial, economic, or commercial consequences underlie event contracts? Similarly, CEA section 1a(47)(A)(i) includes an event contract that is an option ''based on the value, of . . . financial or economic interests or property of any kind.'' [66] How are any event contracts based on the value of financial or economic interests or property? What idiosyncratic risks embedded in event contracts differentiate them from other commodity derivative instruments? How should the Commission take these risks into account when considering how to regulate event contracts and prediction markets? Commodity options are also covered by the statutory swap definition in CEA section 1a(47)(A)(i).[67] How are event contracts similar to, or different from, other types of commodity options?

34. Event contracts are also traded on DCMs as futures contracts.[68] What aspects of prediction markets are relevant to whether event contracts should, or should not, appropriately be classified as futures contracts? What aspects, if any, distinguish event contracts from other types of futures contracts?

35. The event underlying an event contract is typically within the definition of the term ''excluded commodity'' in CEA section 1a(19).[69] Are there any event contracts that are based on events that are not within this statutory definition? If so, how are those event contracts similar to, or different from, event contracts based on events that are within the statutory definition of ''excluded commodity''? How are such differences, if any, relevant to the Commission's regulation of event contracts and prediction markets?

36. Are there any agreements, contracts or transactions that are significantly similar to event contracts, but are not listed on a DCM or SEF? If so, how are those agreements, contracts or transactions similar to, or different from, event contracts listed on DCMs and SEFs?

37. 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 agreements, contracts, or transactions that ''will not be considered swaps or security-based swaps when entered into by consumers (natural persons) . . . primarily for personal, family, or household purposes.'' [70] 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 agreements, contracts, or transactions in the swap or security-based swap definition, to limit the types of persons that can enter into or engage in them, or to otherwise to subject these agreements, contracts, or transactions to the regulatory scheme for swaps and security-based swaps.'' [71] Are any event contracts similar to, or different from, the types of agreements, contracts and transactions that are excluded from the swap definition under this interpretation? How are such similarities or differences, if any, relevant to the CFTC's regulation of those event contracts?

38. As noted above, CEA section 15(a) requires that the Commission, before it promulgates a regulation under the CEA, consider the costs and benefits of its action, including an evaluation ''in light of—(A) considerations of protection of market participants and the public; (B) considerations of the efficiency, competitiveness, and financial integrity of futures markets; (C) considerations of price discovery; (D) considerations of sound risk management practices; and (E) other public interest considerations.'' [72] How are these five considerations relevant to the Commission's regulation of prediction markets? In general, what other costs and benefits should the Commission consider as it determines whether to adopt or amend any regulations with respect to prediction markets? Are there less costly alternatives that the Commission should consider? If possible, please provide specific information, data, or studies that you believe would be helpful to the Commission in this regard.

39. CEA section 15(b) requires that the Commission ''take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of [the CEA], as well as the policies and purposes of [the CEA], in issuing any order or adopting any Commission rule or regulation.'' [73] What aspects of prediction markets are relevant to the Commission's consideration of the public interest to be protected by the antitrust laws as it determines whether to adopt or amend any regulations with respect to prediction markets? It may be appropriate to consider the scope of the relevant market in this regard; in that case, what factors should the Commission take into account? Also, it may be appropriate for the Commission to ''endeavor to take the least anticompetitive means,'' as contemplated by CEA section 15(b),

[62] 7 U.S.C. 6c(a)(3).

[63] 7 U.S.C. 6c(a)(4).

[64] *See* text accompanying note 11, *supra.*

[65] 7 U.S.C. 1a(47)(A)(ii).

[66] 7 U.S.C. 1a(47)(A)(i).

[67] *Id.*

[68] *See supra,* note 14.

[69] 7 U.S.C. 1a(19). The definition is set out in full in note 23, *supra.*

[70] Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208, 48246 (Aug. 13, 2012). This further definition was adopted pursuant to Dodd-Frank Act section 712(d)(1), which directed the CFTC and SEC to undertake a joint rulemaking to define, among other terms, ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement.''

[71] *Id.*

[72] 7 U.S.C. 19(a).

[73] 7 U.S.C. 19(b).

with respect to prediction markets; in that case, what factors should the Commission take into account?

40. As noted above, the Commission has received recent applications for DCM registration from entities that have indicated that they are interested primarily, or exclusively, in operating prediction markets. While registered entities are not considered small entities by the Commission for Regulatory Flexibility Act (RFA) purposes,[74] the Commission is nevertheless seeking information on how any potential rule changes for prediction markets would impact ''small entities'' as defined by the RFA.[75] What projected cost increases would there be for any small entities impacted by a potential rule change? What less costly alternatives or flexibilities should the Commission consider? In general, how do small entities use prediction markets?

The Office of Management and Budget has determined that this action is a significant regulatory action as defined in Executive Order 12866, as amended, and this action has been reviewed by the Office of Management and Budget.

Issued in Washington, DC, on March 12, 2026, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Prediction Markets—Commission Voting Summary

On this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2026–05105 Filed 3–13–26; 8:45 am]

BILLING CODE 6351–01–P

[74] The Commission previously determined that DCMs are not small entities in accordance with the RFA. *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982). Similarly, the Commission previously determined that SEFs are not small entities for purposes of the RFA. *See* Core Principles and Other Requirements for SEFs, 78 FR 33476, 33548 (June 4, 2013).

[75] 5 U.S.C. 601 *et seq.* The RFA provides that the term ''small entity'' has the same meaning as ''small business'', ''small organization'' and ''small governmental jurisdiction'' defined in paragraphs (3), (4) and (5) of section 601. ''Small business,'' in turn, is defined as having the same meaning of ''small business concern'' set forth in section 3 of the Small Business Act (SBA). 5 U.S.C. 601(6). The RFA permits an agency to establish its own definition of small entity; otherwise, size standards set forth by the SBA apply. A size standard, which is usually stated in number of employees or average annual receipts, represents the largest size that a business (including its subsidiaries and affiliates) may be to remain classified as a small business for SBA and federal contracting programs. The definition of ''small'' varies by industry. The SBA provides that the small business size threshold for securities and commodity exchanges is $47 million in average annual receipts. *See* SBA's 2022 Table of Size Standards, classifying securities and commodity exchanges under the North American Industry Classification System (NAICS), code 523210, Sector 52-Finance and Insurance, Subsector 523-Securities, Commodity Contracts, and Other Financial Investments and Related Activities, available at *https://www.sba.gov/document/support-table-size-standards.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2015–N–1765]

RIN 0910–AH14

General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of the proposed rule titled ''General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products,'' which published in the **Federal Register** of December 22, 2015. FDA is taking this action because it no longer intends to finalize the proposed rule.

DATES: The proposed rule published on December 22, 2015 (80 FR 79493) is withdrawn as of March 16, 2026.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this document into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Daniel Schieffer, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5562, Silver Spring, MD 20993–0002, 301–796–3350, *daniel.schieffer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 22, 2015 (80 FR 79493), FDA (the Agency or we) issued a proposed rule titled ''General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products'' (the Proposed Rule). Sunlamp products are both ''devices'' under section 201(h)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(h)(1)) and ''electronic products'' under section 531(2) of the FD&C Act (21 U.S.C. 360hh(2)). They are designed to incorporate one or more ultraviolet (UV) lamps intended for irradiation of any part of the living human body, by UV radiation with wavelengths in air between 200 and 400 nanometers, to induce skin tanning (see §§ 878.4635(a) and 1040.20(b)(9) (21 CFR 878.4635(a) and 1040.20(b)(9))). Sunlamp products include tanning beds and tanning booths. Sunlamp products as defined in the Proposed Rule did not include ultraviolet lamps for dermatological disorders regulated under 21 CFR 878.4630.

FDA has undertaken several regulatory initiatives related to sunlamp products. Previously, in a final reclassification order that we issued on June 2, 2014 (79 FR 31205), FDA reclassified sunlamp products and UV lamps intended for use in sunlamp products from class I to class II, making them subject to premarket notification (510(k)) requirements, and established special controls under the device authorities of the FD&C Act. The special controls consist of, among other requirements, performance testing and labeling requirements, including a warning that sunlamp products should not be used on persons under the age of 18 years. That order was effective on September 2, 2014.

Second, in a proposed rule issued simultaneously with the Proposed Rule, FDA proposed amendments to the sunlamp products and UV lamps performance standard at 21 CFR 1040.20, which includes technical and labeling requirements issued in large part under the electronic product radiation control provisions of the FD&C Act (80 FR 79505). Those proposed amendments, if finalized, would update the electronic product performance standard to reflect current science and harmonize with certain consensus standards. FDA's proposed amendments to the sunlamp products and UV lamps performance standard at 21 CFR 1040.20 are not affected by this withdrawal.

Finally, in the Proposed Rule, FDA proposed to establish device restrictions under section 520(e) of the FD&C Act (21 U.S.C. 360j(e)), which authorizes FDA to issue regulations imposing restrictions on the sale, distribution, or use of a device. The Proposed Rule contained three types of proposed restrictions on the use of sunlamp products. First, the Proposed Rule proposed restricting the use of sunlamp products to individuals age 18 and older under proposed § 878.4635(c)(1). Second, in proposed § 878.4635(c)(4), the Proposed Rule proposed requiring

Appendix D

CFTC Staff Advisory on Prediction Markets

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

CFTC Staff Advisory
Division of Market Oversight

To: **Designated Contract Markets**

Subject: **Prediction Markets Advisory**

"Prediction markets," on which "event contract" derivatives are traded, are rapidly increasing in popularity with the American public both as a financial asset class and as a proven source of reliable information for news media, sports leagues, financial institutions, and everyday Americans. Staff of the Division of Market Oversight ("**DMO**") of the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") believes it is important to encourage innovation and growth in these markets, within the federal oversight framework for Commission-registered derivatives exchanges set forth in the Commodity Exchange Act ("**CEA**")[1] and Commission regulations.[2]

Commission staff is issuing this advisory to share with designated contract markets ("**DCMs**") certain views based on staff's experience overseeing the listing and trading of event contracts. While certain aspects of the advisory focus on sports-related event contracts, the core principle compliance and product listing requirements highlighted in the advisory apply equally to other categories of event contracts – and to derivative products more generally. DCMs have self-regulatory obligations for the contract markets they operate.[3] As front-line regulators, DCMs should be proactive, ensuring proper surveillance and oversight of trading in all of the products that they list, accounting for the particular characteristics and attributes of each product.

This advisory is intended to provide market participants, legal counsel, and interested members of the public DMO staff's current views on the listing and trading of event contracts. This advisory

[1] 7 U.S.C. 1 et seq.

[2] Commission regulations can be found at 17 CFR Chapter 1.

[3] *See* part II.A., below.

should be reviewed by all registered DCMs and all entities that have applied for designation as a contract market with the Commission.

I. BACKGROUND

While the term ''event contract'' is not a defined term in the CEA or the Commission's regulations, event contracts are a type of derivative contract, often a swap with a binary payoff structure, whose settlement is based on the outcome of an underlying occurrence or event. As amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''**Dodd-Frank Act**''), the statutory definition of "swap" in section 1a(47) of the CEA is deliberately broad. As such, it can encompass event contracts within multiple sub-definitions.

Section 1a(47)(A)(i) of the CEA defines the term "swap," in relevant part, to include "any agreement, contract, or transaction . . . that is a[n] . . . option of any kind that is for the purchase or sale, or based on the value, of 1 or more . . . quantitative measures, or other financial or economic interests or property of any kind," and section 1a(47)(A)(ii) of the CEA defines "swap" to include "any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery . . . that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." Thus, as an example, an event contract that is settled based on the outcome of a sporting event is an agreement providing for a payment dependent on a future occurrence.[4]

II. REGULATORY REQUIREMENTS FOR EVENT CONTRACT MARKETS OFFERED BY DCMs

As a general matter, DCMs are reminded that section 5c(c)(5)(C) of the CEA provides that the Commission may determine that an event contract is contrary to the public interest if the contract involves, among other things, assassination, war, or terrorism.[5] No such contract determined by the Commission to be contrary to the public interest may be listed or made available for clearing or trading on or through a registered entity.[6]

A. CEA section 5(d) and Part 38

DCMs must comply with 23 statutory Core Principles that are set forth in the CEA,[7] as well as applicable CFTC rules and regulations.[8] The statutory Core Principles for DCMs reflect the important role that these exchanges play in promoting the integrity of derivatives markets by,

---

[4] DMO staff also notes that depending on how the product is structured, an event contract may constitute a futures contract or a swap under the CEA. An event contract may be structured as a futures contract on an "excluded commodity," as defined by 7 U.S.C. 1a(19)(iv), where, for example, the futures contract settles based on an occurrence, extent of an occurrence, or contingency that is beyond the contracting parties' control and associated with a financial, commercial, or economic consequence.

[5] 7 U.S.C. 7a-2(c)(5)(C).

[6] *Id*.

[7] *See, generally,* CEA Section 5(d), 7 U.S.C. 7(d).

[8] *See, generally*, 17 CFR Part 38.

among other things, establishing and enforcing rules for trading on the DCM and monitoring trading activity. Under DCM Core Principle 3, each DCM has a specific statutory obligation to list for trading only derivative contracts that are not readily susceptible to manipulation.[9] Core Principle 4 requires a DCM to have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process, through market surveillance, compliance, and enforcement practices and procedures.[10] And Core Principle 12 requires a DCM to establish and enforce rules to protect markets and market participants from abusive practices, and to promote fair and equitable trading on the DCM.[11]

To meet these obligations, a DCM must, among other things, conduct real-time monitoring of all trading activity on its trading platform(s) to identify disorderly trading and any market or system anomalies.[12] If the DCM identifies any such anomalies, Commission regulations set forth procedures for the DCM to engage in appropriate inquiries,[13] which may include obtaining trader-level data, and may lead under certain circumstances to disciplinary action by the DCM.

Commission staff further reminds DCMs and market participants that Commission Regulation 180.1 makes it unlawful for any person to employ any device, scheme, or artifice to defraud or attempt to defraud any person or manipulate the price of any contract listed on a DCM.[14] Without limitation, these practices include misappropriation of confidential information in breach of a pre-existing duty of trust and confidence to the source of the information (commonly known as "insider trading"), pursuant to CEA section 6(c)(1) and Commission Regulations 180.1(a)(1) and (3).[15] The Commission retains authority to investigate and bring civil enforcement actions related to any such activity.

B. DCM Core Principle 3 and the Appendix C Guidance

Of particular note, DCM Core Principle 3 requires a DCM to only list for trading contracts that are not readily susceptible to manipulation. In connection with this requirement, the Commission has adopted guidance that is set forth in Appendix C to Part 38 (the "**Appendix C Guidance**").[16] The Appendix C Guidance outlines certain relevant considerations for a DCM when designing a contract, and providing supporting documentation and data in connection with the submission of the contract to the Commission.

With respect to cash-settled contracts (which include event contracts), DCMs are encouraged to recognize and account for the possibility that cash-settled contracts may create an incentive to

---

[9] CEA section 5(d)(3), 7 U.S.C. 7(d)(3).

[10] CEA section 5(d)(4), 7 U.S.C. 7(d)(4).

[11] CEA section 5(d)(12), 7 U.S.C. 7(d)(12).

[12] *See* 17 CFR 38.157.

[13] *See, e.g.,* 17 CFR 38.153, 38.158, 38.250, 38.254.

[14] *See* 17 CFR 180.1 and 180.2.

[15] *See* CFTC Division of Enforcement Press Release, https://www.cftc.gov/PressRoom/PressReleases/9158-26.

[16] *See* 17 CFR Part 38, Appendix C.

manipulate or artificially influence the data from which the cash-settlement price is derived or to exert undue influence on the cash-settlement price's computation in order to profit on a position.[17] Accordingly, DCMs are encouraged to consider whether certain categories of event contracts create a heightened potential for manipulation or price distortion. For example, in the context of sports-related event contracts, such contracts could involve those that resolve or settle based on injuries to individual sports participants, unsportsmanlike conduct, or physical altercations between sports participants, as well as contracts that resolve or settle based on the action of a single individual or a small group of individuals, such as officiating actions occurring during a sporting event. DMO staff encourages DCMs to engage with staff in the early phases of designing such contracts to determine if any heightened manipulation or price distortion risks exist, and, if so, whether they may be mitigated with appropriate controls.

With respect to non-price based contracts, some things to consider are the nature and sources of the data comprising the cash-settlement calculation, the computational procedures, and the mechanisms in place to ensure the accuracy and reliability of the index value.[18] The DCM's evaluation should also consider the extent to which a third party has, or will adopt, safeguards against unauthorized or premature release of the index value itself or any key data used in deriving the index value.[19] DCMs should continue to consider the principles of the Appendix C Guidance around transparency, accuracy, reliability, and impartiality when evaluating novel contracts.

C. Product Submission Requirements

To offer a new product for trading, including an event contract, a DCM can provide the Commission with a written certification—a "self-certification"—that the contract complies with the CEA, including the CFTC's regulations thereunder.[20] Alternatively, the DCM may elect voluntarily to seek prior Commission approval of the contract.[21] In each case, the DCM must submit prescribed information to the Commission, including but not limited to, the contract's terms and conditions.[22]

The prescribed information that must be submitted to the Commission also includes an "explanation and analysis that is complete" with respect to the contract's "compliance with applicable provisions of the [CEA], including core principles and the Commission's regulations thereunder."[23] For example, the DCM's obligation to list only contracts that are not readily

---

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] CEA section 5c(c)(1), 7 U.S.C. 7a-2(c)(1). *See also* 17 CFR 40.2. The Commission must receive the DCM's self-certified submission at least one business day before the contract's listing. 17 CFR 40.2(a)(2).

[21] CEA sections 5c(c)(4)–(5), 7 U.S.C. 7a-2(c)(4)–(5). *See also* 17 CFR 40.3.

[22] 17 CFR 40.2–40.3.

[23] 17 CFR 40.2(a)(3)(v) (for self-certification) and 40.3(a)(4) (for Commission approval). The "explanation and analysis" requirement for self-certified contracts provides for such explanation and analysis to be "concise." 17 CFR 40.2(a)(3)(v). The "explanation and analysis" requirement for contracts submitted for prior Commission approval does not include the "concise" qualifier. 17 CFR 40.3(a)(4).

susceptible to manipulation. The explanation and analysis must "either be accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources[.]"[24] Further, if requested by Commission staff, a DCM must provide any "additional evidence, information or data that demonstrates that the contract meets, initially or on a continuing basis, the requirements" of the CEA or the Commission's regulations or policies thereunder.[25]

III. DCM LISTING FOR TRADING OF CERTAIN EVENT CONTRACTS

Sports-related event contracts and event contracts more generally have often been shown to be consistent with DCM Core Principle 3 where the settlement outcome depends on the aggregate performance of multiple participants over an extended period of play. The breadth of the outcome, in the typical case, reduces the ability of any single actor to manipulate the settlement value without material cost or substantial risk of detection. These categories of event contracts have been self-certified by DCMs pursuant to Commission Regulation 40.2.

DMO staff reminds DCMs that a self-certified product submission must include an explanation and analysis of the contract's compliance with applicable provisions of the CEA and Commission regulations. DMO staff 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. Where multiple permutations of a contract may be listed, with different underlying events, there may be different manipulation risks that would need to be analyzed. Overly broad or generalized contract specifications may also impact a DCM's ability to provide a complete explanation and analysis of compliance in the DCM's product submission to the Commission. DMO staff would expect a product submission to include, among other things, a description of the settlement methodology that accounts for differing potential permutations of the contract, including identification of the specific data source(s) on which settlement will be based, and an assessment of the reliability, objectivity, and manipulation resistance of such sources.[26] DMO staff recommends proactive engagement with DMO staff when designing contracts with multiple possible permutations.

DMO staff recognizes that sports-related event contracts may implicate the involvement of professional sports leagues and their integrity units, as well as the governing bodies of non-professional sports organizations. DMO staff further understands that the Commission is actively discussing issues of settlement integrity with some relevant sports leagues and their governing bodies and foresees that appropriate information sharing by these entities with the CFTC may lead to enhanced CFTC oversight capabilities. DMO staff therefore recommends that DCMs consider (1) engaging in pre-self-certification communications with such relevant sports governing bodies or authorities when developing terms and conditions, compliance and market oversight programs for sports-related events contracts, (2) including, as part of the self-certified product submission, an explanation of whether the contract is consistent with the relevant league's or governing body's

[24] 17 CFR 40.2(a)(3)(v) (for self-certification) and 40.3(a)(4) (for Commission approval).

[25] 17 CFR 40.2(b) (for self-certification) and 40.3(a)(10) (for Commission approval).

[26] A statement that a contract will settle based upon a consensus of yet-to-be-determined sources may not be sufficient to satisfy the requirements of DCM Core Principle 3.

integrity standards, as applicable, (3) establishing information-sharing and data arrangements with the relevant sports integrity monitoring organization, and (4) relying on official data provided by the relevant league or governing body, as applicable, as the settlement source. DCMs are also encouraged to look to, among other items, any league integrity standards or guidance around markets, contracts, and restricted or insider participants lists, in order to protect against manipulation and insider trading, and to protect the integrity of the relevant league or governing body, as applicable, and the sporting events which it administers. DMO staff also recommends that DCMs cooperate with any league-run investigations into potential manipulation or insider trading investigations. In the view of DMO staff, engagement with the sports leagues and other sports governing bodies may further a DCM's ability to comply with their obligations under DCM Core Principle 3 with respect to sports-related event contracts by enhancing access to information about the nature and dynamics of underlying events (e.g., information about categories of individuals who should be restricted from trading in certain sports-related event contracts as an informed participant).

DMO staff reminds all DCMs that the Commission retains authority to stay the listing of a self-certified contract pending Commission proceedings for filing a false certification or pending a petition to alter or amend the contract terms and conditions pursuant to section 8a(7) of the CEA. This would include any proceedings for filing a false certification that a contract complies with the "not readily susceptible to manipulation" requirements of DCM Core Principle 3. DMO staff believes that proactive engagement with DMO staff and any relevant sports league or governing body may reduce the likelihood of Commission action.

****

This advisory is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter. This advisory does not provide any no-action position with respect to a recommendation by any division that the Commission initiate an enforcement action for failure to comply with the CEA or Commission regulations. Further, this advisory is not intended to, does not, and may not be relied upon to create any new binding rules or regulations, or to amend existing rules or regulations. This advisory represents only the views of DMO and does not necessarily represent the views of the Commission or of any other division or office of the Commission.

Questions concerning this advisory may be directed to DMOletters@cftc.gov.

Sincerely,

_____

Frank N. Fisanich
Acting Director
Division of Market Oversight