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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

North American Derivatives Exchange, Inc.  
d/b/a Crypto.com | Derivatives North  
America,

Plaintiff,

v.

Kirk D. Hendrick, in his official capacity as  
Chairman of the Nevada Gaming Control  
Board; George Assad, in his official capacity  
as a Member of the Nevada Gaming Control  
Board; Chandeni K. Sendall, in her official  
capacity as a Member of the Nevada Gaming  
Control Board; the State of Nevada on  
relation of the Nevada Gaming Control  
Board; Aaron D. Ford, in his official capacity  
as Attorney General of Nevada,

Defendants.

Case No.: 2:25-cv-00978-JCM-DJA

**PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

**(ORAL ARGUMENT REQUESTED)**

Plaintiff North American Derivatives Exchange, Inc. d/b/a Crypto.com | Derivatives North America (“CDNA”) respectfully moves for a preliminary injunction against Defendants’ threatened enforcement of Nevada gaming laws to prohibit trading of federally regulated event contracts listed on CDNA’s Designated Contract Market (“DCM”). This Motion is based on the referenced pleadings and papers on file herein, the following Memorandum of Points and Authorities, the Declaration of Kevin Dan,<sup>1</sup> and any oral argument the Court may entertain in connection with this Motion.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **INTRODUCTION**

The Nevada Gaming Control Board (“NGCB”) has unlawfully asserted jurisdiction to regulate—and prohibit—the trading of federally regulated derivatives listed by CDNA. CDNA is a federally regulated DCM under the federal Commodities Exchange Act (“CEA”). The event contracts that CDNA lists are lawful under the CEA, are traded in a national market, and are subject to exclusive regulation by the Commodity Futures Trading Commission (“CFTC”) under federal law. It is not within the remit of the NGCB—or any other state authority in any state—to assume jurisdiction of this federal market and require CDNA (which is not even based in Nevada) to prohibit Nevada residents from accessing its trading market.

Federal law vests the CFTC with “exclusive jurisdiction” to regulate derivatives on DCMs, including the event contracts at issue here. 7 U.S.C. § 2(a)(1)(A). The two courts that have addressed this issue so far have both granted preliminary injunctions enjoining states from imposing state regulation on a DCM based on federal preemption by the CEA. *KalshiEX, LLC v. Hendrick*, 2025 WL 1073495, at \*5–7 (D. Nev. Apr. 9, 2025) (Gordon, C.J.) (hereinafter “*Kalshi v. Hendrick*”); *KalshiEX LLC v. Flaherty*, 2025 WL 1218313, at \*4–6 (D.N.J. Apr. 28, 2025) (hereinafter “*Kalshi v. Flaherty*”). No court has ruled otherwise. This Court should reach the same conclusion.

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<sup>1</sup> Attached hereto as Exhibit A.

1 The derivatives in question here trade in a national market that is heavily regulated at the  
2 federal level. CDNA is registered with and designated by the CFTC pursuant to the CEA as a self-  
3 regulatory organization within a regulated marketplace. The CFTC prescribes rules that govern  
4 what types of derivatives may be listed and provides for examination, enforcement, and penalties  
5 in the event its rules are violated. CDNA offers derivatives to be traded in full compliance with  
6 those rules.

7 The NGCB does not appear to contend that *all* event contracts are unlawful. Rather, it  
8 appears to take the view that because the underliers of certain derivatives listed by CDNA and sold  
9 nationwide—the outcome of live events, including sporting events—are events on which people  
10 may *also* wager, the event contracts in question themselves become “gaming” under state law. But  
11 what the NGCB has failed to explain is how other people’s gambling on the outcome of a given  
12 event could transform the otherwise lawful derivative contracts listed by CDNA into gambling  
13 subject to state regulation.

14 Efforts by state gaming authorities to assume jurisdiction over the derivatives markets are  
15 nothing new. For decades leading up to the enactment of the CEA, state regulators sought to  
16 regulate all manner of derivatives products, including under state gaming law. In 1936, Congress  
17 made a deliberate policy choice to remove derivatives contracts from state regulation, providing  
18 for uniform nationwide rules. That decision has been repeatedly re-affirmed. And both Congress  
19 and the CFTC have developed specific rules pursuant to which the CFTC may—but is not required  
20 to—disallow the trading of event contracts that reference gaming.

21 The issue presented in this case is straightforward. The Court is not required to assess  
22 whether the event contracts listed by CDNA are gambling. Rather, the only questions before the  
23 Court are whether CDNA is in fact a federally regulated DCM (it demonstrably is), whether the  
24 contracts at issue are traded on CDNA’s DCM (they demonstrably are), and whether the Court  
25 will enforce the CFTC’s “exclusive jurisdiction” to regulate such contracts (it should).

26 CDNA is entitled to a preliminary injunction in this case because the NGCB threatens  
27 immediate and irreparable injury by assuming regulatory jurisdiction over federally regulated  
28

event contracts and purporting to prohibit CDNA from making its trading market available in Nevada. If the NGCB is permitted to do so, CDNA would suffer immediate injury in the form of unrecoupable compliance costs, lost business opportunities, reputational damage, and potential collateral effects to its business from being found to be engaged in unlawful vice activities. CDNA's users would also be harmed by the forced pausing or liquidation of Nevada users' contracts and the ensuing market disruptions. Moreover, because money damages are generally not available against a state, CDNA's injury would be unredressable even if it were to ultimately prevail in this litigation. Accordingly, CDNA respectfully requests that the Court issue a preliminary injunction.

### **BACKGROUND**

#### **A. Congress Established a Comprehensive Regulatory Scheme for Exclusive Federal Oversight of Futures Markets.**

The CFTC regulates financial derivative contracts and their markets. Derivative contracts are financial tools that allocate risk between counterparties. *See KalshiEX LLC v. Commodity Futures Trading Comm'n*, 2024 WL 4164694, at \*1–2 (D.D.C. Sept. 12, 2024), *appeal dismissed*, 2025 WL 1349979 (D.C. Cir. May 7, 2025) (hereinafter “*Kalshi v. CFTC*”). Historically, the archetypal example is a grain futures contract, which allows buyers to lock in prices and manage agricultural market volatility by agreeing to buy or sell a specified amount of a crop at a fixed price on a future date. For over a century, the federal government has regulated national derivatives markets to promote uniformity and integrity in national trading.

“Under the CEA, the CFTC has exclusive jurisdiction to regulate commodities and futures on designated exchanges.” *Kalshi v. Hendrick*, 2025 WL 1073495, at \*3. Congress enacted the CEA in 1936 to replace the fragmented system of state oversight with a uniform federal framework for regulating commodities and futures markets. In 1974, Congress enacted sweeping amendments to the CEA to modernize and centralize federal oversight, expressly granting the CFTC “exclusive jurisdiction” over futures markets. 7 U.S.C. § 2(a)(1)(A). Congress feared inconsistent state regulations could destabilize futures markets, noting concerns that “states . . . might step in to

1 regulate the futures markets themselves.” *Am. Agric. Movement, Inc. v. Bd. of Trade*, 977 F.2d  
 2 1147, 1156 (7th Cir. 1992), *abrogated on other grounds by Time Warner Cable v. Doyle*, 66 F.3d  
 3 867 (7th Cir. 1995). As one Senator warned, applying varied state laws to futures trading “would  
 4 just lead to total chaos.” *Commodity Futures Trading Commission Act: Hearings Before the*  
 5 *Senate Committee on Agriculture & Forestry* (hereinafter “Senate Hearings”), 93rd Cong., 2d  
 6 Sess. 685 (1974) (statement of Sen. Clark). Prior to passing the 1974 amendments, the Senate  
 7 removed a provision from the CEA that would have preserved state authority over futures trading,  
 8 thereby confirming the CFTC’s exclusive regulatory power. *See* 120 Cong. Rec. 30,464 (Sept. 9,  
 9 1974) (statements of Sen. Curtis, supported by Sen. Talmadge).

10 The CFTC’s regulatory framework is comprehensive and exclusive. To offer derivatives  
 11 for public trading, an exchange must seek and receive the CFTC’s designation as a contract market.  
 12 7 U.S.C. §§ 2(e), 7(a); 17 C.F.R. § 38.3(a). The application for such a designation must provide  
 13 detailed information demonstrating the exchange’s capacity to abide by the CEA, including the  
 14 CFTC’s “Core Principles” for DCMs, which include, among other requirements, providing  
 15 “impartial access” to the DCM. 17 C.F.R. §§ 38.3(a)(2), 38.151(b). Under the scheme Congress  
 16 established, once the CFTC has designated an exchange as a contract market, the CFTC has  
 17 “exclusive jurisdiction” and enforcement powers to regulate derivatives—including any swaps and  
 18 futures—traded on that DCM. *See* 7 U.S.C. § 2(a)(1)(A).

19 As long as the DCM abides by the requirements set forth in the CEA and CFTC regulations,  
 20 it may list contracts on its exchange without pre-approval from the CFTC. A CFTC-designated  
 21 contract market may certify that a contract complies with applicable law by filing a “written  
 22 certification” with the CFTC at the time of listing. 7 U.S.C. § 7a-2(c)(1); *see also* 17 C.F.R.  
 23 § 40.2(a). Within ten days, the CFTC reviews the reports and may initiate review of any contract  
 24 under its purview. *See* 7 U.S.C. § 7a-2(c)(2); 17 C.F.R. § 40.11(c). If the CFTC does not take  
 25 action within the ten-day period, the contract becomes “effective.” *See* 7 U.S.C. § 7a-2(c)(2).  
 26 Alternatively, exchanges may submit contracts to the CFTC for approval prior to listing. 7 U.S.C.

§ 7a-2(c)(4)(A); 17 C.F.R. §§ 40.3(a), 40.11(c). The CFTC “shall approve a new contract” unless the CFTC finds that it would violate the CEA. 7 U.S.C. § 7a-2(c)(5)(B).

Among the products the CFTC regulates under this regime are event contracts listed on DCMs. Event contracts are a type of derivative contract with a payment schedule based on the outcome of a specified event as of an expiration date. The purchaser of an event contract takes a position on an event’s outcome—usually a “yes” or “no” position, with “yes” meaning the event will occur by the expiration date and “no” meaning the event will not occur. The “yes” position purchaser profits if the specified outcome occurs by the expiration date, while the “no” position purchaser profits if it does not. The event contract’s purchase price fluctuates based on supply and demand, reflecting the market’s perception of the likelihood of the specified event’s occurrence or non-occurrence. The event contract holder may sell their position at a profit or loss prior to expiration. An event contract could be tied to a variety of events, including specified movements of a financial index, a particular yield on the 10-year U.S. treasury note, the magnitude of the upcoming hurricane season, or the outcome of political, scientific, or live sporting events.

The CFTC regulates event contracts as a derivative referencing an “excluded commodity,” a category which includes specified commodities that are not subject to the same set of CEA regulations as physical commodities. *See id.* §§ 1a(19), (47)(A)(ii), (iv), (vi); *see Kalshi v. CFTC*, 2024 WL 4164694, at \*2–3. “Event contracts” are “agreements, contracts, transactions, or swaps in excluded commodities.” 7 U.S.C. § 7a-2(c)(5)(C)(i). Events themselves constitute “excluded commodities” under the CEA, defined as any “occurrence, extent of an occurrence, or contingency” that is “beyond the control of the parties to the relevant contract” and “associated with” economic consequences. *Id.* § 1a(19)(iv).

The CEA contains a “Special Rule” authorizing—but not requiring—the CFTC to prohibit specific types of event contracts it determines to be “contrary to the public interest.” The CFTC has discretionary authority to deem contracts contrary to the public interest if they “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

1 regulation, to be contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(i). The CFTC “may,”  
 2 but need not, prohibit an event contract under the Special Rule only if it falls into one of these six  
 3 categories. *Id.*

4 **B. CDNA Is Registered as a CFTC-Designated Contract Market**  
 5 **Under Federal Law.**

6 The CFTC first certified CDNA’s predecessor as a DCM in 2004, confirming its market  
 7 complied with the CEA. ECF No. 1 (“Compl.”) ¶ 64. In 2010, the CFTC recertified its  
 8 registration. *Id.* For two decades, the entity now known as CDNA has operated continuously as  
 9 a CFTC-regulated DCM and has been fully regulated as a derivatives exchange under federal law  
 10 alongside entities like the Chicago Mercantile Exchange and the Intercontinental Exchange. *Id.*  
 11 Because CDNA operates as a CFTC-designated contract market, its event contracts fall under the  
 12 “exclusive jurisdiction” of the CFTC. 7 U.S.C. § 2(a)(1)(A). Under this designation, CDNA is  
 13 subject to a comprehensive set of federal obligations designed to safeguard market integrity.

14 On January 30, 2025, pursuant to 7 U.S.C. § 7a-2(c)(1) and 17 C.F.R. § 40.2(a), CDNA  
 15 certified and announced its intention to list a new category of event contracts: “Industry Event -  
 16 Live Presentations” contracts. *See* Jan. 30, 2025 CDNA Certification Letter, attached hereto as  
 17 Ex. B, at 1. These contracts allow users to trade on the outcome of live events in the performing  
 18 arts, spectator sports, and related industries, provided the users themselves are not participants in  
 19 the events. *See id.* at 4–5. CDNA designed these event contracts “to manage the risk of a variety  
 20 of market participants, whose businesses face economic consequences based on the outcome of a  
 21 respective Industry Event, and to enable price discovery for related commercial enterprises.” *Id.*  
 22 at 8. These Industry Event – Live Presentations contracts provide for payment “dependent on the  
 23 occurrence or nonoccurrence . . . of an event or contingency associated with a potential financial,  
 24 economic, or commercial consequence” and are therefore “swaps” as defined by the CEA. 7  
 25 U.S.C. § 1a(47)(A)(ii).

26 Under the process described above, as a CFTC-designated contract market, CDNA ensured  
 27 that these contracts adhered to product-related regulatory standards and certified that they  
 28



1 complied with applicable law prior to the time of listing. *See* 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. §  
 2 40.2(a). CDNA’s contracts with return profiles that are dependent on the outcome of live sporting  
 3 events (hereinafter “Sports Event Contracts”) at issue in this case have all been certified and  
 4 deemed “effective” under this process. *See* 7 U.S.C. § 7a-2(c); 17 C.F.R. § 40.2(a).

5 **C. The Nevada Regulatory Scheme for Gaming.**

6 Gaming in Nevada is subject to a two-tiered system of regulatory oversight. The NGCB  
 7 establishes and enforces rules and regulations governing gaming in the State of Nevada. Compl.  
 8 ¶ 21. The Nevada Gaming Commission (“NGC”) is the final authority on licensing matters in  
 9 Nevada, and it acts on recommendations of the NGCB with regard to licensing.<sup>2</sup> Together, the  
 10 NGCB and NGC administer and enforce gaming laws and regulations throughout Nevada. The  
 11 NGCB seeks to assert its authority over Sports Event Contracts offered for trading on CDNA based  
 12 on its view that these contracts violate various provisions of Nevada gaming law. *Id.* ¶ 70.

13 The NGCB issued a cease-and-desist order to CDNA on May 20, 2025. May 20, 2025  
 14 NGCB Cease-and-Desist Order, attached hereto as Ex. C. The NGCB’s order states that CDNA  
 15 “has been offering, and continues to offer, event-based wagering contracts in Nevada on sporting  
 16 events through its exchange” and that this offering “is unlawful in Nevada, unless and until  
 17 approved as licensed gaming by the Nevada Gaming Commission.” *Id.* at 1. The NGCB  
 18 concluded that “by offering event-based wagering contracts in Nevada, [CDNA] is operating as  
 19 an unlicensed sports pool in violation of [Nevada law].”<sup>3</sup> *Id.* at 2.

20 The NGCB ordered CDNA to “immediately cease and desist from offering in Nevada any  
 21 event-based wagering contracts concerning sporting events.” *Id.* In response to the order, counsel  
 22 for CDNA contacted Nevada Deputy Attorney General John Michela by email requesting a time  
 23 to discuss the cease-and-desist order and asking “how the Board intend[ed] to proceed in light of  
 24 the federal injunction issued in the case involving Kalshi.” May 22, 2025 through June 4, 2025

26 \_\_\_\_\_  
 27 <sup>2</sup> *Gaming Commission*, Nevada Gaming Commission and the Nevada Gaming Control Board,  
<https://gaming.nv.gov/gaming/commission/>.

28 <sup>3</sup> Unauthorized sports wagering can lead to both criminal and civil liability under Nevada law. *See infra* p. 20.





on the merits; (2) they are likely to suffer irreparable harm; (3) the balance of equities tips in their favor, and (4) a preliminary injunction is in the public interest.” *Matsumoto v. Labrador*, 122 F.4th 787, 804 (9th Cir. 2024). CDNA meets each element.

**A. CDNA Is Likely to Succeed on the Merits Because the CEA Preempts Application of Nevada Gaming Law to CFTC-Regulated Event Contracts.**

“The Supremacy Clause provides a clear rule that federal law ‘shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.’” *Arizona v. United States*, 567 U.S. 387, 399 (2012) (quoting U.S. Const. art. VI, cl. 2). “Under this principle, Congress has the power to preempt state law.” *Id.* There are three types of federal preemption: express, field, and conflict. *Id.* A court’s inquiry is the same under each—whether Congress intended a particular federal law to preempt state law. All three types of preemption apply to event contracts listed on CDNA.

*1. The CEA Expressly Preempts Nevada Gaming Law as Applied to CDNA.*

Congress may preempt state law “by enacting a statute containing an express preemption provision.” *Arizona*, 567 U.S. at 399. Congress expressed its intent in the text of the CEA that state law is preempted as to CFTC-regulated derivatives:

The [CFTC] shall have *exclusive jurisdiction* . . . with respect to accounts, agreements . . . and transactions involving swaps or contracts of sale of a commodity for future delivery . . . traded or executed on a contract market designated pursuant to section 7 of [the CEA] or a swap execution facility pursuant to section 7b–3 of [the CEA] or any other board of trade, exchange, or market, and transactions subject to regulation by the [CFTC] pursuant to section 23 of [the CEA].

7 U.S.C. § 2(a)(1)(A) (emphasis added). In *Kalshi v. Hendrick*, Chief Judge Gordon found this “plain and unambiguous language grants the CFTC exclusive jurisdiction over accounts, agreements, and transactions involving swaps or contracts of sale of a commodity for future delivery” traded on a CFTC-designated exchange. 2025 WL 1073495, at \*5.

The Sports Event Contracts traded on CDNA are exactly that—derivative contracts traded on a DCM. Like other event contracts, a Sports Event Contract is a “swap” as defined by the CEA,

because it is an “agreement, contract, or transaction” that provides for a payment “dependent on the occurrence [or] non-occurrence” of a specified event “associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. § 1a(47)(A)(ii). Sports events have a wide array of *actual* financial, economic, and commercial consequences for a variety of market participants—from the vendors who sell event- or team-branded merchandise to broadcasters who promote and air the events themselves. The Sports Event Contracts CDNA offers provide a means to hedge against the commercial risks of the underlying sports events, just like any other derivative contract does. Sports Event Contracts are thus “swaps” traded on a “contract market designated pursuant to section 7” of the CEA, putting them squarely under the “exclusive jurisdiction” of the CFTC. 7 U.S.C. § 2(a)(1)(A). Section 2 of the CEA expressly preempts states from asserting their authority to regulate these contracts.

2. *Nevada’s Sports Wagering Laws Are Field Preempted as Applied to CDNA.*

Even if express preemption did not apply, field preemption does. Field preemption is implied “[w]hen the federal government completely occupies a given field or an identifiable portion of it.” *Pac. Gas & Elec. Co. v. State Energy Res. Conservation and Dev. Comm’n*, 461 U.S. 190, 212–13 (1983). “[T]he ultimate touchstone of pre-emption analysis” is the “purpose of Congress.” *Nat’l Fed’n of the Blind v. United Airlines Inc.*, 813 F.3d 718, 724 (9th Cir. 2016) (quoting *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992)). Congress’s intent to occupy a field can be expressed in a statute’s text and legislative history, *see e.g.*, *Pac. Gas & Elec. Co.*, 461 U.S. at 203–13, or in a scheme of “federal statutory directives” that “provide a full set of standards” that are “designed as a ‘harmonious whole,’” *Arizona*, 567 U.S. at 401 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 72 (1941)). “Where Congress occupies an entire field . . . even complementary state regulation is impermissible.” *Id.* The CEA’s text and legislative history, as well as the comprehensive nature of its regulatory framework, illustrate Congress’s clear intent to occupy the field of derivatives trading on federally designated contract markets.

**Statutory Text.** The same provisions discussed with respect to express preemption demonstrate Congress’s intent to preempt the field of derivatives traded under CFTC oversight. It

could not be clearer—Section 2 affords “exclusive jurisdiction” to the CFTC over derivatives traded on a DCM. 7 U.S.C. § 2(a)(1)(A). Put simply, if the CFTC is hands on, Congress wants the states to be hands off. *See Kalshi v. Hendrick*, 2025 WL 1073495, at \*6 (“In sum, if Kalshi were offering its contracts without CFTC designation, then the defendants could regulate it. But because Kalshi is a CFTC-designated DCM, it is subject to the CFTC's exclusive jurisdiction and state law is field preempted.”).

Chief Judge Gordon of this Court and Judge Kiel of the United States District Court for the District of New Jersey have already recognized the preemptive effect of the CEA on state gaming law as applied to Sports Event Contracts traded on DCMs. *See Kalshi v. Hendrick*, 2025 WL 1073495, at \*5–6; *Kalshi v. Flaherty*, 2025 WL 1218313, at \*5–6. On June 3, 2025, Chief Judge Gordon denied defendants’ motion to dismiss in *Kalshi v. Hendrick*, affirming his prior ruling that “Kalshi was likely to prevail on its arguments that the CEA preempts Nevada gaming laws” and rejecting other arguments for dismissal. Order Denying Defs.’ Mot. to Dismiss at 13, *KalshiEX, LLC v. Hendrick*, No. 2:25-cv-00575 (D. Nev. June 3, 2025). These decisions are consistent with those of numerous courts that have recognized the CEA preempts state and local laws as applied to derivatives trading on DCMs. *See Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980) (finding CEA “preempts the application of state law” to futures trading); *see also Paine, Webber, Jackson & Curtis, Inc. v. Conaway*, 515 F. Supp. 202, 207 (N.D. Ala. 1981) (holding that “the Alabama gambling statutes, if construed to require actual delivery [of a commodity], would directly conflict with the federal purpose of fostering the markets in that they would destroy the markets in this state, and that Congress has preempted the field”); *Sinclair & Co. v. Gurule*, 757 P.2d 225, 228 (Idaho Ct. App. 1988) (declining to find commodity futures contracts unenforceable as gambling under state law because, “with passage of the CEA, the federal government has moved to occupy the entire field of commodities futures traded on federally regulated exchanges” and “a state should not treat commodity transactions as ‘gambling’ because such treatment could destroy the market”).

**Statutory Purpose.** The text of the CEA, as amended in 1974, comports with Congress’s purpose of regulating the expanding commodity futures market with a uniform set of federal

1 regulations. The 1974 amendments were intended to “avoid unnecessary, overlapping and  
 2 duplicative regulation.” *FTC v. Ken Roberts Co.*, 276 F.3d 583, 588 (D.C. Cir. 2001). Congress  
 3 wanted to avoid overlap with the Securities and Exchange Commission and was concerned that  
 4 the states might “step in to regulate the futures markets themselves” and introduce “conflicting  
 5 regulatory demands.” *Am. Agric. Movement*, 977 F.2d at 1156. Congress addressed these  
 6 concerns by putting “all exchanges and all persons in the industry under the same set of rules and  
 7 regulations for the protection of all concerned.” H.R. Rep. No. 93-975, at 79 (1974). Indeed, one  
 8 sponsor of the 1974 amendments lamented that the application of “different state laws would just  
 9 lead to total chaos.” Senate Hearings, 93rd Cong., 2d Sess. 685 (1974) (statement of Sen. Clark).

10 Courts throughout the country have agreed that the whole point of the exclusive jurisdiction  
 11 provision of the CEA was to preempt parallel state regulation. *Hofmayer v. Dean Witter & Co.*,  
 12 459 F. Supp. 733, 737 (N.D. Cal. 1978) (“In the light of Congress’ plainly stated intent to have the  
 13 Commodity Exchange Act, as amended, preempt the field of regulation of commodity futures  
 14 trading, any claim under federal or state securities statutes is barred.”); *Jones v. B.C. Christopher*  
 15 *& Co.*, 466 F. Supp. 213, 220 (D. Kan. 1979) (“It is now established, however, that the SEC and  
 16 other federal agencies are ‘stripped’ of authority to regulate commodities transactions . . . and that  
 17 state regulatory agencies are likewise preempted by the ‘exclusive jurisdiction’ of the CFTC.”)  
 18 (citations omitted); *Int’l Trading Ltd. v. Bell*, 262 Ark. 244, 250–51 (1977) (finding CEA’s  
 19 language “express[es] a clear intention to vest exclusive jurisdiction of the regulation of  
 20 commodity options in the [CFTC] and to supersede the jurisdiction of all state and federal  
 21 agencies”); *Taylor v. Bear Stearns & Co.*, 572 F. Supp. 667, 673 (N.D. Ga. 1983) (noting that “the  
 22 primary concern of Congress was preemption of federal and state regulatory schemes”).  
 23 Attempting to preclude trading of Sports Event Contracts on CDNA, a CFTC-regulated DCM,  
 24 directly contradicts this clear purpose.

25 **Legislative History.** If the text and purpose were not clear enough, the legislative history  
 26 of the CEA crystallizes congressional intent to occupy the field of CFTC-regulated derivatives.  
 27 The exclusive jurisdiction provision was introduced by the 1974 amendments to the CEA. The  
 28

Conference Report that preceded the enactment of those amendments elucidates the purpose of the exclusive jurisdiction provision: “Under the exclusive grant of jurisdiction to the Commission, the authority of the Commodity Exchange Act (and the regulations issued by the Commission) *would preempt the field insofar as futures regulation is concerned.*” S. Rep. No. 93-1194, at 35 (1974) (Conf. Rep.) (emphasis added). *See also Kalshi v. Hendrick*, 2025 WL 1073495, at \*6 (“[L]egislative history supports the conclusion that Congress intended to occupy the field and preempt state law from applying to CFTC-designated exchanges.”).

The drafting history of the 1974 amendments eliminates any doubt of Congress’s preemptive purpose. At that time, Congress deleted a provision that would have preserved the states’ authority over derivatives trading on federally designated contract markets. *See Kevin T. Van Wart, Preemption and the Commodity Exchange Act*, 58 Chi.-Kent L. Rev. 657, 687–88 (1982); *see also* 120 Cong. Rec. 30,464 (Sept. 9, 1974) (statements of Sens. Curtis and Talmadge). The Senate made this deletion and clarified that “the [CFTC’s] jurisdiction, where applicable supersedes State as well as Federal agencies.” S. Rep. No. 93-1131, at 5848 (1974). “Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.” *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 442–43 (1987). The Senate’s deliberate deletion of the provision for concurrent state jurisdiction is an unmistakable indication of Congress’s intent to preempt parallel state regulation.

**Comprehensive Regulatory Scheme.** The CEA’s comprehensive regulatory framework, including its enforcement provisions, confirms Congress’s intent to occupy the field exclusively. The CEA establishes “a comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356 (1982) (quoting H.R. Rep. No. 93-975, at 1 (1974)). Congress establishes such comprehensive structures when it means to leave “no room for the states to supplement federal law.” *Louisiana Pub. Serv. Comm’n v. F.C.C.*, 476 U.S. 355, 368–69 (1986); *see also Arizona*, 567 U.S. at 401 (explaining that a federal scheme’s “comprehensive” nature supports field preemption). An

1 exchange may offer derivatives only after obtaining CFTC designation as a regulated exchange. 7  
2 U.S.C. §§ 2(e), 7(a); 17 C.F.R. § 38.3(a). To receive this designation, the exchange must submit  
3 a detailed application demonstrating its ability to comply with the CFTC’s extensive regulatory  
4 requirements. 17 C.F.R. § 38.3(a). The CFTC then conducts a thorough review of the application  
5 to determine whether the exchange satisfies its standards. *See id.*

6 Once designated as a federally regulated contract market, a DCM is governed by the  
7 CFTC’s far-reaching regulatory scheme, which includes, among other requirements,  
8 recordkeeping obligations, 17 C.F.R. §§ 38.950, reporting requirements, *id.* § 38.450, and liquidity  
9 standards, *id.* § 38.1101(a)(2). Congress also authorized CFTC-designated exchanges to list  
10 contracts—including event contracts—through a certification process, whereby the exchange  
11 affirms that the contract complies with the CEA. Congress granted the CFTC authority to conduct  
12 a post-certification review if it believes the contract may violate any applicable statute or  
13 regulation. *See* 7 U.S.C. § 7a-2(c)(2); 17 C.F.R. § 40.11(c). To keep its designation, a DCM must  
14 comply with all Core Principles and CFTC regulations. 7 U.S.C. § 7(d). If an exchange disregards  
15 a CFTC regulation, the Commission may pursue civil and criminal penalties. *See* CFTC Division  
16 of Enforcement, Enforcement Manual (2020), at § 3.3.

17 Importantly, the CEA expressly permits the CFTC to reject event contracts that it finds  
18 “contrary to the public interest” if they “involve” conduct such as “activity that is unlawful under  
19 any Federal or State law,” “terrorism,” “assassination,” “war,” “gaming,” or other comparable  
20 conduct identified by the CFTC through rule or regulation. 7 U.S.C. § 7a-2(c)(5)(C)(i). This  
21 authority is discretionary. The statute provides that the CFTC “may”—not must—find a contract  
22 contrary to the public interest if it falls into one of the listed categories. *Id.* That judgment is  
23 assigned to the CFTC alone—not to the NGCB and its counterparts in 50 individual states.  
24 Cumulatively, this elaborate regulatory structure demonstrates Congress’s intent to occupy the  
25 field of futures contracts on federally designated exchanges.

26 Individually, and in aggregate, the text, history, purpose, and comprehensive structure of  
27 the CEA demonstrate that Congress intended to occupy the field of derivatives traded on federally  
28



1 designated contract markets. As a result, Nevada’s gaming laws are field preempted as applied to  
 2 CDNA’s Sports Event Contracts.

3           3.       *Nevada’s Gaming Laws Are Conflict Preempted as Applied to CDNA.*

4           The NGCB’s cease-and-desist order directed CDNA to take one of two options: Either  
 5 permanently stop offering trading of Sports Event Contracts in Nevada or stop offering them until  
 6 CDNA obtains a sports wagering license under Nevada law. Either option would directly conflict  
 7 with the congressional objectives underlying the CEA and would put CDNA at odds with specific  
 8 regulatory requirements for operating a DCM. *See Crosby v. Nat’l Foreign Trade Council*, 530  
 9 U.S. 363, 373 (2000) (“If the purpose of the act cannot otherwise be accomplished—if its operation  
 10 within its chosen field else must be frustrated and its provisions be refused their natural effect—  
 11 the state law must yield to the regulation of Congress . . . .”) (quoting *Savage v. Jones*, 225 U.S.  
 12 501, 533 (1912)). Application of Nevada’s gaming laws to the Sports Event Contracts at issue  
 13 here would frustrate congressional purposes of uniformity of regulation and uniformity of  
 14 enforcement as applied to derivatives traded under CFTC oversight, as well as furtherance of the  
 15 CFTC’s Core Principles, and would jeopardize CDNA’s designation as a DCM.

16           *First*, application of Nevada’s sports wagering laws to CDNA would frustrate the CEA’s  
 17 purpose of bringing futures markets “under a uniform set of regulations.” *Am. Agric. Movement*,  
 18 977 F.2d at 1156. As the Seventh Circuit noted, “a contract market could not operate efficiently,  
 19 and perhaps not at all, if varying and potentially contradictory legal standards governed its duties  
 20 to investors.” *Id.* The assertion of state authority and the demands in the NGCB’s cease-and-  
 21 desist order cannot be squared with Congress’s intent to shield regulated exchanges from being  
 22 governed by a patchwork of potentially conflicting legal regimes. The NGCB’s order seeks to  
 23 subject a CFTC-regulated DCM to the state’s licensure scheme—precisely the type of regulation  
 24 Congress intended to preclude. The inconsistency becomes even more apparent when considering  
 25 that, if the NGCB is allowed to proceed, each of the other 49 states and the District of Columbia  
 26 could likewise attempt to impose their own laws on CDNA. Subjecting DCMs to state regulation  
 27  
 28

1 would create “an obstacle to the accomplishment and execution of the full purposes and objectives  
2 of Congress.” *Hines*, 312 U.S. at 67. These state laws are therefore preempted.

3       *Second*, subjecting CDNA to Nevada’s sports wagering laws would frustrate Congress’s  
4 intended uniformity of enforcement for DCMs. Preemption also arises where there is “a conflict  
5 in the method of enforcement.” *Arizona*, 567 U.S. at 406. A state law creates an “obstacle” to a  
6 federal regulatory framework when Congress adopts a particular method of enforcement to achieve  
7 its objectives, and state law imposes a different approach that disrupts “the careful balance struck  
8 by Congress.” *Knox v. Brnovich*, 907 F.3d 1167, 1175 (9th Cir. 2018) (citation and internal  
9 quotations omitted). This is especially true when Congress reserves “prosecutorial power” and  
10 “discretion” to federal authorities—a state law allowing prosecutions for the same conduct  
11 “conflicts with the federal scheme.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1027 (9th Cir.  
12 2013). Otherwise, as the Supreme Court cautioned, a state could initiate charges “even in  
13 circumstances where federal officials in charge of the comprehensive scheme determine that  
14 prosecution would frustrate federal policies.” *Arizona*, 567 U.S. at 402.

15       That is precisely the danger presented by the NGCB’s actions. Once CDNA received  
16 CFTC designation as a contract market, it was permitted under federal law to list event contracts  
17 by certifying that those contracts comply with federal requirements. The CFTC—and no other  
18 body—has the authority to review that certification on the basis that the contracts are “contrary to  
19 the public interest,” 7 U.S.C. § 7a-2(c)(5)(C)(i). If the CFTC determines that CDNA has violated  
20 federal law, it may act. *See* CFTC Division of Enforcement, Enforcement Manual (2020), at § 3.3.  
21 Congress provided the CFTC with a range of enforcement tools and vested the agency with  
22 discretion to determine how best to deploy them.

23       Allowing Nevada to impose its own laws on federally regulated exchanges would  
24 “disrupt[] ‘the congressional calibration of force.’” *Valle del Sol*, 732 F.3d at 1027 (quoting  
25 *Crosby*, 530 U.S. at 380). The NGCB’s cease-and-desist order asserts that CDNA’s activities are  
26 “in violation of Nevada law” and expressly reserves the rights of itself and other Nevada authorities  
27 “to pursue criminal and civil actions based on [CDNA’s] past and future conduct within the state.”  
28

Ex. C, at 2. One example of a statute NGCB alleges CDNA to be violating is Nevada Revised Statutes (“NRS”) § 463.160—a willful violation of which is a category B felony for which an offender “*shall* be punished” by one to ten years imprisonment and/or a fine of up to \$50,000. NRS § 463.360(3) (emphasis added). If there were no preemption here, the federal enforcement regime enacted by Congress would be frustrated by state-imposed civil and criminal sanctions. *See Crosby*, 530 U.S. at 373–74 (finding conflict preemption where state law “undermin[ed]” Congress’s “delegation of effective discretion” to the executive). Courts have recognized conflict preemption where state discipline and enforcement regimes diverge from the federal scheme. For example, the Sixth Circuit held that the CEA preempted an Ohio statute that required payment to investors of any interest earned on collateral because it conflicted with a regulation promulgated by the CFTC. *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 563–64 (6th Cir. 1998). Similarly, the Seventh Circuit held that the CEA preempted a state law defamation claim against a registered futures association because the CEA regulates in a “comprehensive way” the “disciplinary proceedings” by self-regulated organizations and a state common-law challenge to those proceedings would “impair[ ] significantly” such an organization’s “capacity to discipline its members.” *Effex Cap., LLC v. Nat’l Futures Ass’n*, 933 F.3d 882, 893–94 (7th Cir. 2019).

*Third*, the NGCB’s order is at odds with the CFTC Core Principles that underpin CDNA’s status as a DCM. *See Kalshi v. Hendrick*, 2025 WL 1073495 at \*7 (noting the “potential existential threat” that if Kalshi disrupted contracts or geographically limited access to its national exchange, the CFTC could find Kalshi to have violated the CFTC’s Core Principles). The CFTC’s Core Principle 2 requires CDNA to “provide its members, persons with trading privileges, and independent software vendors with *impartial access* to its markets and services.” 17 C.F.R. §§ 38.150, 38.151(b) (emphasis added). Evicting users from the contract market and terminating their contracts based on their location within the State of Nevada would not be providing “impartial access.” Under Core Principle 4, CDNA is required to “establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions.” 17 C.F.R. §§ 38.250, 38.255. Abruptly cutting off Nevada residents—including those residents

1 holding ongoing investments—from CDNA’s Sports Event Contracts would constitute exactly the  
 2 sort of disruption the CFTC requires CDNA to prevent. In contemplating such a disruption, the  
 3 Seventh Circuit emphasized that “[w]hen application of state law would directly affect trading on  
 4 or the operation of a futures market, it would stand ‘as an obstacle to the accomplishment and  
 5 execution of the full purposes and objectives of Congress,’ and hence is preempted.” *Am. Agric.*  
 6 *Movement*, 977 F.2d at 1156–57 (citation omitted). In this scenario, it may be “impossible for  
 7 [CDNA] to comply with both state and federal law”—the quintessential case for conflict  
 8 preemption. *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby*, 530 U.S. at 372).

9 Many courts have extended these principles to find state laws preempted by the CEA on  
 10 conflict preemption grounds. *See Am. Agric. Movement*, 977 F.2d at 1155–56 (holding the CEA  
 11 preempted state law whose application “would directly affect trading on or the operation of a  
 12 futures market”); *Rasmussen v. Thomson & McKinnon Auchincloss Kohlmeyer, Inc.*, 608 F.2d  
 13 175, 178 (5th Cir. 1979) (affirming dismissal of a claim that trading in futures contracts violated a  
 14 Georgia gambling statute “on the ground that the [CEA] preempts all state laws inconsistent with  
 15 its provisions”); *Paine, Webber*, 515 F. Supp. at 207 (finding application of that state’s gambling  
 16 laws “would destroy the markets in this state” and holding them preempted); *Sinclair & Co.*, 757  
 17 P.2d at 228 (holding the application of state’s gambling laws to federally regulated exchanges  
 18 “could destroy the market.”); *see also Thrifty Oil Co. v. Bank of Am. Nat’l Trust & Sav. Ass’n*, 322  
 19 F.3d 1039, 1055–57 (9th Cir. 2003) (finding CEA preempted California’s Bucket Shop Law as  
 20 applied to swaps exempted from coverage by the CEA).

21 Because imposing Nevada sports wagering law obligations on CDNA would frustrate the  
 22 purpose and effect of the CEA’s uniformity of regulation, uniformity of enforcement, and  
 23 furtherance of the CFTC’s Core Principles, those laws are conflict preempted.

24 **B. CDNA Will Suffer Irreparable Harm if the Requested Relief Is Not Granted.**

25 Absent an injunction, CDNA will be forced to decide between: (1) risking imposition of  
 26 unlawful civil and criminal penalties by refusing to comply with the cease-and-desist order; or (2)  
 27  
 28

1 complying with the cease-and-desist order, which would result in significant unrecoverable losses  
2 for CDNA and its users. Either way, CDNA will be irreparably harmed.

3 A court may find irreparable harm and exercise its discretion to grant an injunction when  
4 monetary damages are an inadequate remedy. *See OnPointe Cmty. Care LV LLC v. Charter Health*  
5 *Holdings, Inc.*, 2023 WL 2430192, at \*3 (D. Nev. Jan. 10, 2023) (citing *Stanley v. Univ. of S.*  
6 *Cal.*, 13 F.3d 1313, 1320–21 (9th Cir. 1994)) (“To show irreparable harm, a plaintiff must  
7 demonstrate that other legal remedies like money damages cannot cure that harm.”). The cost of  
8 compliance with a preempted state law is considered irreparable where, as here, such costs would  
9 be unrecoverable through a final judgment due to the opposing party’s sovereign immunity. *See*  
10 *California Pharmacists Ass’n v. Maxwell-Jolly*, 563 F.3d 847, 852 (9th Cir. 2009), *vacated on*  
11 *other grounds by Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 565 U.S. 606 (2012) (finding  
12 irreparable harm where plaintiffs “can obtain no remedy in damages against the state because of  
13 the Eleventh Amendment.”).

14 *I. CDNA Will Suffer Irreparable Harm if It Does Not Comply with the Cease-*  
15 *and-Desist Order.*

16 CDNA faces the imminent threat of criminal and civil prosecution if it does not comply  
17 with the NGCB’s cease-and-desist order. The NGCB asserts that CDNA is “operating as an  
18 unlicensed sports pool” and is violating various Nevada statutes. Ex. C, at 1–2. The purported  
19 violations of Nevada law carry penalties including fines and incarceration.<sup>4</sup>

20 CDNA therefore faces an imminent threat of being subjected to these civil and criminal  
21 penalties. Indeed, the NGCB warned CDNA that it must “immediately cease and desist from  
22 offering in Nevada any event-based wagering contracts concerning sporting events.” Ex. C, at 2.

23  
24 <sup>4</sup> *See* NRS § 463.360(3) (willful violation of NRS § 463.160 is a category B felony to be punished by one to ten years  
25 imprisonment and/or a fine of up to \$50,000); NRS § 463.360(6) (violation of chapter 463 provisions with unspecified  
26 penalties is a gross misdemeanor); NRS § 193.140 (penalty for gross misdemeanor is imprisonment of up to 364 days  
27 and/or fine of up to \$2,000); NRS § 465.088(1)(a) (first violation of NRS § 465.086 is a category C felony to be  
28 punished by one to five years imprisonment, with additional fine of up to \$10,000 (or more if required or authorized  
by statute) permitted, *see* NRS § 193.130; subsequent violation is a category B felony to be punished by one to six  
years imprisonment, with additional fine of up to \$10,000 permitted); NRS § 465.092(3) (violation of NRS § 465.092  
is a misdemeanor to be punished by imprisonment of up to six months and/or fine of up to \$1,000, *see* NRS § 193.150)

1 This threat of imminent civil and criminal prosecution establishes irreparable harm. *See Kalshi v.*  
 2 *Hendrick*, 2025 WL 1073495, at \*8 (finding “fac[ing] civil and criminal liability” contributed to a  
 3 showing of “a likelihood of irreparable harm”). As the Supreme Court has recognized, a plaintiff  
 4 establishes irreparable harm when it demonstrates a credible threat of “imminent” enforcement of  
 5 a preempted state law. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 382 (1992)  
 6 (“[T]he [imminent] prospect of state suit . . . supplies the necessary irreparable injury.”). This  
 7 irreparable injury is particularly significant, where, as here, “repetitive penalties attach to  
 8 continuing or repeated violations and the moving party lacks the realistic option of violating the  
 9 law once and raising its federal defenses.” *Id.* at 381. In these circumstances, litigants are faced  
 10 with a “Hobson’s choice: continually violate the [state] law and expose themselves to potentially  
 11 huge liability; or violate the law once as a test case and suffer the injury of obeying the law during  
 12 the pendency of the proceedings and any further review.” *Id.* The NGCB’s threat of imminent  
 13 enforcement of preempted state statutes that carry severe civil and criminal penalties would force  
 14 CDNA to make this “Hobson’s choice.”

15           2.       *CDNA Will Suffer Irreparable Harm if It Complies with the Cease-and-*  
 16                    *Desist Order.*

17           CDNA will also suffer irreparable harm if it complies with the NGCB’s order—if  
 18 compliance is even possible. To cease offering Sports Event Contracts in Nevada as the NGCB  
 19 has ordered, CDNA would need to identify users in Nevada and exclude them from its market.  
 20 Doing so would cause CDNA (and its users) to suffer irreparable harm.

21           CDNA does not restrict users’ access to the market or particular contracts based on  
 22 location. Rather, because CDNA is a national exchange, it has no need to identify the geographical  
 23 location of any individual user at a particular time. To comply with the NGCB’s order to cease  
 24 permitting Nevada residents to access Sports Event Contracts, CDNA would have to immediately  
 25 develop the technological capability to geolocate all of its users and exclude users from certain  
 26 contracts based on their location. As explained in detail in the attached Declaration of Kevin Dan,  
 27 developing this technology would subject CDNA to significant challenges and costs. Decl. of  
 28

Kevin Dan (hereinafter “Dan Decl.”) ¶¶ 12–19. Developing this technology would also take significant time, making immediate compliance with the NGCB’s order all but impossible. *Id.* ¶¶ 18–19. The necessity of taking on substantial expenses in order to comply with a state law that CDNA is challenging as preempted supports a showing of irreparable harm. *See Kalshi v. Hendrick*, 2025 WL 1073495, at \*8 (requiring Kalshi to “spend millions to geofence, which might result in losing its CFTC designation” contributed to “a likelihood of irreparable harm”).

Even if the Nevada sports wagering statutes are later found to be preempted by the CEA, these costs to comply with the cease-and-desist order would likely be unrecoverable, as the Defendants likely would be immune from suit. *See Stanley v. Trs. of California State Univ.*, 433 F.3d 1129, 1133 (9th Cir. 2006) (“In an action for incurred monetary damages, state sovereign immunity can be overcome only by explicit abrogation by Congress pursuant to its powers under the Fourteenth Amendment or by state consent to suit.”) The Ninth Circuit has concluded that costs that are unrecoverable due to sovereign immunity qualify as irreparable harm. *See California Pharmacists Ass’n*, 563 F.3d at 852.

The NGCB’s order also poses an existential threat to CDNA because complying with it would jeopardize CDNA’s status as a DCM. *See Kalshi v. Hendrick*, 2025 WL 1073495, at \*7 (recognizing the “potential existential threat of the CFTC taking action against [Kalshi]” for disrupting contracts or geographically limiting “who can enter contracts on what is supposed to be a national exchange”). Terminating existing contracts in Nevada would violate CFTC Core Principles requiring exchange markets to provide “impartial access” to markets, 17 C.F.R. § 38.151(b), and prevent “market disruptions.” 17 C.F.R. § 38.255; Dan Decl. ¶¶ 29–33. As described above, compliance with the cease-and-desist order would require CDNA to *cause* the very market disruption it is required to prevent. Excluding users based on their location would be contrary to CDNA’s responsibility to provide impartial access to its markets. These violations of CFTC Core Principles could cause CDNA to lose its CFTC designation as a DCM, putting its entire business in jeopardy. *See* 17 C.F.R. § 38.100(a) (requiring compliance with Core Principles to “maintain” designation as a contract exchange). In addition, CDNA could be subject to



significant civil penalties, further adding to the harm CDNA would incur absent an injunction. *See* 7 U.S.C. §§ 13a, 13a-1(d). This potential for devastating harm to CDNA’s business further supports a finding of irreparable harm. *See Kalshi v. Hendrick*, 2025 WL 1073495, at \*8 (finding irreparable harm to Kalshi posed by reputational harm, unredressable expenditures, and potential loss of CFTC designation from compliance with state cease-and-desist order).

**C. The Balance of Equities and the Public Interest Support Enjoining Enforcement of Nevada’s Sports Wagering Laws.**

The other preliminary injunction elements likewise support CDNA’s requested relief because the public interest and the harm to CDNA from denying the injunction outweigh any potential harm to the Defendants from granting the injunction. *See Valle del Sol*, 732 F.3d at 1029 (“[I]t is clear that it would not be equitable or in the public’s interest to allow the state . . . to violate the requirements of federal law, especially when there are no adequate remedies available.”) (citation and internal quotation marks omitted); *United States v. California*, 921 F.3d 865, 893 (9th Cir. 2019) (“[P]reventing a violation of the Supremacy Clause serves the public interest.”).

Compliance with the NGCB’s order would cause significant harms to the public, particularly CDNA’s users. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009) (noting the particular relevance of public interest analysis where “the impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences”); *see also Kalshi v. Hendrick*, 2025 WL 1073495, at \*8 (determining the public interest weighed in favor of an injunction in part because “third parties’ contracts and investment expectations would be disrupted if Kalshi were forced to terminate its existing [sports and election event] contracts for Nevada-based users”). To comply with the NGCB’s order, CDNA would be forced to pause or liquidate numerous users’ positions in Sports Event Contracts. *See* Dan Decl. ¶¶ 20–21. A substantial number of investors exiting the Sports Event Contract market simultaneously could distort contract prices and send a false signal to other investors, setting off further market disruption. *See id.* ¶¶ 22–28. The CFTC requires CDNA to prevent this sort of market disruption, as it is contrary to the CFTC’s interest in “safeguarding the public interest in commodity futures markets.” *CFTC v. Brit.*

1 *Am. Commodity Options*, 560 F.2d 135, 142 (2d Cir. 1977). Further, Nevada users would be barred  
 2 from responding to market fluctuations and denied the flexibility they relied on in investing in an  
 3 event contract position traded on CDNA's DCM. *See* Dan Decl. ¶¶ 22–24, 27. These negative  
 4 effects on CDNA's users would also cause substantial harm to CDNA's reputation. *Id.* ¶¶ 34–36.

5 The financial, reputational, and potential legal harms CDNA would face in the absence of  
 6 a preliminary injunction are exactly the kinds of harms that tip the balance of equities in favor of  
 7 issuing an injunction:

8 The balance of hardships tips in Kalshi's favor given that it is facing substantial  
 9 monetary expenditures, reputational damage, or civil and criminal prosecution  
 10 based on the defendants' demands [that Kalshi cease offering its sport and election  
 11 event contracts on its CFTC-designated exchange] that the defendants likely cannot  
 make because they are preempted. In contrast, the defendants are not facing much  
 harm in the short term because I believe they are preempted.

12 *See Kalshi v. Hendrick*, 2025 WL 1073495, at \*7. Here too, the harms faced by CDNA are  
 13 significant and even existential, while any purported harms faced by the Defendants would be  
 14 negligible or nonexistent.

15 **D. No Security or at Most *De Minimis* Security Is Appropriate.**

16 Rule 65(c) of the Federal Rules of Civil Procedure requires a party seeking a preliminary  
 17 injunction to post “security in an amount that the court considers proper to pay the costs and  
 18 damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R.  
 19 Civ. P. 65(c). A district court has broad discretion in setting the amount of security and “may  
 20 dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the  
 21 defendant from enjoining his or her conduct.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.  
 22 2003) (citing *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)). The Defendants  
 23 will suffer no compensable costs or damages by halting enforcement of Nevada's gaming laws  
 24 against CDNA during the pendency of this litigation. As a result, no security is needed. If this  
 25 Court elects to require a security, it should set it at a nominal amount.

26 **CONCLUSION**

27 CDNA respectfully requests that the Court grant a preliminary injunction.  
 28

1 Dated this 5<sup>th</sup> day of June, 2025.

2 SNELL & WILMER L.L.P.

3  
4 By: /s/ Bradley Austin

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20 *North America*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2025, I electronically filed the foregoing **PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of Court for the U.S. District Court, District of Nevada by using the Court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED this 5<sup>th</sup> day of June, 2025.

/s/ Debbie Shuta  
An Employee of Snell & Wilmer L.L.P.

**INDEX OF EXHIBITS TO PLAINTIFF'S**  
**MOTION FOR PRELIMINARY INJUNCTION**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
Exhibit A	Declaration of Kevin Dan	001 - 012
Exhibit B	Jan. 30, 2025 CDNA Certification Letter	013 - 029
Exhibit C	May 20, 2025 NGCB Cease-and-Desist Order	030 - 032
Exhibit D	May 22, 2025 through June 4, 2025 Email Chain	033 - 039
Exhibit E	June 3, 2025 CDNA Response to NGCB	040 - 042

# **EXHIBIT A**

*Declaration of Kevin Dan*

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Exchange, Inc., d/b/a Crypto.com |  
Derivatives North America*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

North American Derivatives Exchange, Inc.  
d/b/a Crypto.com | Derivatives North  
America,

Plaintiff,

v.

Kirk D. Hendrick, in his official capacity as  
Chairman of the Nevada Gaming Control  
Board; George Assad, in his official capacity  
as a Member of the Nevada Gaming Control  
Board; Chandeni K. Sendall, in her official  
capacity as a Member of the Nevada Gaming  
Control Board; the State of Nevada on  
relation of the Nevada Gaming Control  
Board; Aaron D. Ford, in his official capacity  
as Attorney General of Nevada,

Defendants.

Case No.: 2:25-cv-00978

**DECLARATION OF KEVIN DAN**



**DECLARATION OF KEVIN DAN**

I, Kevin Dan, declare under penalty of perjury:

1. I am the Chief Compliance Officer and Chief Regulatory Officer of North American Derivatives Exchange, Inc. d/b/a Crypto.com | Derivatives North America (“CDNA”). I have nearly 25 years’ experience in the financial services field, including time with the National Futures Association and several entities registered with the United States Commodity Futures Trading Commission (“CFTC”). I have been in my current role since 2020.

2. As Chief Compliance Officer and Chief Regulatory Officer at a CFTC-registered entity, it is my responsibility to demonstrate compliance with the Commodity Exchange Act (“CEA”) and CFTC regulations, including the Core Principles related to the contracts offered for trading at CDNA. This responsibility includes, but is not limited to, establishing and administering compliance policies and procedures and promoting an overall culture of compliance.

3. The facts set forth herein are within my personal knowledge, and if called as a witness, I could and would competently testify to them. I submit this Declaration in support of CDNA’s Motion for Preliminary Injunction (“Motion”).

4. CDNA is a CFTC-registered designated contract market (“DCM”). On January 30, 2025, pursuant to 7 U.S.C. § 7a-2(c)(1) and 17 C.F.R. § 40.2(a), CDNA certified and announced its intention to list a new category of event contracts: “Industry Event - Live Presentations.” See Jan. 30, 2025 CDNA Certification Letter, a true and correct copy is attached to the Motion as Exhibit B, at 1. The event contracts certified under this process include event contracts CDNA currently offers on its market where the underlying event is a sporting event (“Sports Event Contracts”).

1           5.       On May 20, 2025, the Nevada Gaming Control Board (the “NGCB”) sent a cease-  
2 and-desist order to CDNA demanding that CDNA cease offering what the NGCB calls “event-  
3 based wagering contracts” in Nevada and asserting various violations of Nevada law. *See* May  
4 20, 2025 NGCB Cease-and-Desist Order, a true and correct copy is attached to the Motion as  
5 Exhibit C, 1–3.

6           6.       Through counsel, CDNA has sought to obtain agreement from the NGCB to forbear  
7 on enforcement action against CDNA pending the outcome of this litigation. While NGCB has  
8 agreed to do so pending the outcome of this Motion, NGCB has informed CDNA’s counsel that it  
9 is unwilling to forebear enforcement action pending the outcome of the case.

10          7.       I offer this Declaration to describe the harms that CDNA and its users will incur  
11 absent relief from this Court—specifically, the harms that would result if CDNA did not comply  
12 with the cease-and-desist order and the harms that would result if CDNA did comply.

13 **I. Harms Resulting from Noncompliance**

14          8.       In the absence of a preliminary injunction, if CDNA continues to offer Sports Event  
15 Contracts in Nevada, it risks the imposition of unlawful civil and criminal penalties by Nevada  
16 state authorities.

17          9.       The NGCB has asserted that CDNA’s operations in Nevada violate multiple  
18 Nevada statutes carrying criminal and civil penalties. Ex. C, at 1–2. The NGCB warned CDNA  
19 that failure to comply with its demands “shall be considered as willful intention to violate Nevada  
20 law.” *Id.* at 2. The NGCB further stated that “NCGB, as well as all state and local enforcement  
21 and regulatory agencies in Nevada, expressly reserve all rights to pursue criminal and civil actions  
22 based on [CDNA’s] past and future conduct within the state.” *Id.*

1           10. Thus, CDNA's operations, which are lawful under federal law, risk exposing  
2 CDNA, as well as its officers and directors, to criminal and civil liability. The NGCB's demands  
3 create a catch-22 for CDNA: continue to operate its business in Nevada with potential civil and  
4 criminal liability hanging over its head or comply with the cease-and-desist order and suffer  
5 significant harms to its business, its reputation, and its users.

6 **II. Harms Resulting from Compliance**

7           11. Complying with the cease-and-desist order and immediately ceasing to offer Sports  
8 Event Contracts in Nevada would cause significant harms to CDNA and its users. Compliance  
9 with the cease-and-desist order would present significant, if not insurmountable, technological  
10 challenges. And immediately halting access to Sports Event Contracts in Nevada would cause  
11 significant harm to CDNA's Nevada-based users who currently hold positions in those contracts,  
12 to CDNA, and to CDNA's Sports Event Contracts market overall.

13 **A. Harms Resulting from Technological Challenges in Complying with the**  
14 **Cease-and-Desist Order**

15           12. The NGCB's cease-and-desist order demands that CDNA cease offering Sports  
16 Event Contracts in Nevada "immediately." Ex. C, at 2. But to do so, CDNA would have to make  
17 significant technological changes to its market to allow CDNA to attempt to determine the precise  
18 geographical location of its users and cease offering Sports Event Contracts to certain users based  
19 on their location. I have engaged in internal discussions with our leadership and technical team to  
20 determine the feasibility of compliance at both steps. Compliance would be costly and difficult to  
21 implement even under a relaxed timeline and even more costly and difficult to implement  
22 immediately.

23           13. As a national derivatives exchange registered with the CFTC, CDNA is subject to  
24 uniform federal regulation. CDNA, therefore, does not currently have a mechanism to attempt to

1 identify the precise location of its users at a particular time because it is subject to the same rules  
2 regardless of where its users are located at the time they take a position on a contract through  
3 CDNA's market.

4 14. Users' precise, real-time location may be ascertained through a process called  
5 geolocation (or geopositioning). Geolocation is a multi-step and technically complex process that  
6 allows real-time identification of the physical location of a device using several sources of data,  
7 including Internet Protocol ("IP") addresses, Bluetooth data, cell phone towers, WiFi access  
8 points, and GPS signals. Geolocation offers a more consistent and reliable method for identifying  
9 a device's precise location at any point in time than the less sophisticated method of relying solely  
10 on the device's IP address to determine its location. Whereas geolocation provides a specific  
11 location cross-referenced across multiple sources of information, IP-based location tracking  
12 provides only city-level location data. Such data is subject to readily available methods by which  
13 individuals can mark their IP-based location as anywhere in the world through use of virtual private  
14 networks ("VPNs") and other methods.

15 15. As a national exchange regulated by the CFTC, and not by individual states, CDNA  
16 has never had the need to develop geolocation technology to determine the precise location of its  
17 users. CDNA does not restrict access to its market or to particular contracts based on a user's  
18 location because CDNA is subject to the requirements set by the CFTC, which does not apply  
19 different standards to users in different states and requires users to be treated uniformly regardless  
20 of their state of residence.

21 16. Federal law requires that CDNA keep Know Your Customer ("KYC") data on any  
22 user that takes a position on a contract through CDNA's market. In compliance with that  
23 requirement, CDNA collects information on the permanent residence and IP address of each of its  
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1 users and maintains a database with this information. Critically, however, a user's permanent  
2 address alone would not identify the state a user is in at the time he or she takes a position on a  
3 contract through CDNA's market, and an IP address cannot be relied upon to provide one's  
4 accurate and precise location for the reasons discussed above. If CDNA were required to comply  
5 with the NGCB's cease-and-desist order, it would need to implement geolocation technology into  
6 its market to ensure compliance.

7 17. Because CDNA does not currently have geolocation technology to identify the  
8 precise location of its users, CDNA cannot immediately comply with the cease-and-desist order  
9 and cease offering Sports Event Contracts in Nevada. CDNA's existing KYC data could identify  
10 users with a permanent residence in Nevada and prevent those users from entering Sports Event  
11 Contracts. But that approach would be underinclusive in that it would fail to capture users who  
12 reside in another state but are physically located in Nevada at the time they enter the contract. That  
13 approach would also be overinclusive, as users with a permanent residence in Nevada would be  
14 unable to enter Sports Event Contracts, even if they enter those contracts while outside of Nevada.  
15 CDNA could also attempt to use IP addresses to identify Nevada users, but IP addresses can only  
16 provide city-level location data that might not accurately reflect the location of those users if they  
17 use a VPN or other method for masking their IP addresses. This approach, therefore, would risk  
18 misidentifying users who are located near the border of another state.

19 18. If CDNA sought to implement geolocation technology to track user location at a  
20 level beyond the regulatory requirements imposed by the CFTC, it would be time-consuming and  
21 expensive. To comply with Nevada law prohibiting receiving or allowing another person to  
22 receive a wager from anyone located in Nevada through any medium of communication, *see Nev.*  
23 *Rev. Stat. § 465.092*, CDNA would need to enlist the services of a reputable, licensed location-

1 based technology provider. Based on my understanding of the market and prior experience, I  
2 estimate that contracting with a licensed location-based technology provider would cost CDNA up  
3 to millions of dollars annually.

4 19. After implementing geolocation technology to identify users physically located in  
5 Nevada at the time they enter contracts on CDNA's market, CDNA would then have to implement  
6 technology to exclude users, either from certain contracts or from CDNA's market altogether,  
7 based on their presence in Nevada. This process is called "geofencing." Developing and  
8 implementing geofencing technology to create a virtual boundary around Nevada would be  
9 technologically challenging, time-consuming, and expensive.

10 **B. Harms from Halting Access to Sports Event Contracts in Nevada**

11 20. Even if CDNA could implement geolocation and geofencing technology to prevent  
12 users located within Nevada from entering certain event contracts, that would not immediately  
13 eliminate any positions in Sports Event Contracts currently held by users located in Nevada. As  
14 of today, there are approximately 11,900 accounts on CDNA associated with a permanent address  
15 in Nevada.

16 21. The NGCB's demand that CDNA immediately cease to offer Sports Event  
17 Contracts in Nevada could be understood to require CDNA to prevent Nevada users from *any*  
18 further trading on Sports Event Contracts, including exiting current positions. Nevada users  
19 would, therefore, be locked into their positions on those contracts until the conclusion of the  
20 underlying event. Alternatively, CDNA could be required to force its Nevada users to liquidate  
21 their current positions at either their cost basis or current market value. Each of these possible  
22 approaches would cause CDNA and its users incalculable financial harm by undoing their ability  
23 to, among other things, hedge future risks.

**i. Preventing Trades by Nevada Users Currently Holding Positions in Sports Event Contracts**

22. To comply with the NGCB's order to immediately cease offering Sports Event Contracts in Nevada, CDNA could be required to prevent Nevada users who currently hold positions in Sports Event Contracts from selling their positions to another CDNA user. As a result, Nevada users would be locked into their positions until the outcome of the underlying sports event. Nevada users, therefore, would not be able to access the funds they invested in positions in Sports Event Contracts. Given current market conditions and uncertainty, this lack of access could result in substantial losses.

23. Pausing Nevada users' positions would also disturb Nevada users' investment-backed expectations. Users of CDNA's market expect to be able to alter their investments as market conditions change. But if Nevada users are prevented from altering their positions in Sports Event Contracts, they will be unable to react to changing market conditions by exiting their positions during the pendency of their contracts.

24. Users of derivatives, including Sports Event Contracts, are constantly ascertaining risk and market conditions to make decisions about their current positions and exit those positions when market conditions so dictate. Indeed, traders often take positions on long-term contracts with the intent to exit their positions prior to the expiration of the contract. These traders monitor market fluctuations during the pendency of the contract to determine the opportune time to exit their positions. Flexibility regarding when a trader can exit a position, therefore, is often essential to his or her strategy for using derivatives to hedge against future risks.

**ii. Liquidating Nevada Users' Positions**

25. As an alternative to pausing trading on Sports Event Contracts currently held by Nevada users, CDNA could settle all Sports Event Contracts involving a Nevada user by refunding



1 the cost of the user's position or paying out its current value. Either approach would cause  
2 significant harm to both CDNA and its users.

3 26. To begin, paying out Nevada users based on either the cost of their positions or the  
4 positions' current value would cause substantial harm to CDNA. CDNA is a neutral market  
5 operator that matches trades between willing buyers and willing sellers. Thus, when a user enters  
6 a Sports Event Contract through CDNA's market, CDNA does not take the opposite position in  
7 the contract; rather, another user on CDNA's market does. CDNA holds *users'* funds during the  
8 pendency of an open contract, but CDNA does not have access to the immediate liquidity necessary  
9 to refund users' investments from its *own* funds. Thus, if CDNA were forced to use its own funds  
10 to refund the cost of users' positions in Sports Event Contracts involving a user located in Nevada,  
11 it would cause significant financial harm to CDNA.

12 27. Liquidating Nevada users' positions at either their cost basis or current value could  
13 also lead to substantial losses for CDNA users or otherwise deprive them of the value of their  
14 investments. Indeed, if CDNA liquidated Nevada users' positions in Sports Event Contracts based  
15 on their cost value, any Nevada user whose position has increased in value would be deprived of  
16 the value of that increase. Similarly, if CDNA liquidated Nevada users' positions based on their  
17 current value, Nevada users may suffer significant losses. For example, a Nevada user may have  
18 purchased a position in a Sports Event Contract for 50 cents, but due to current market conditions,  
19 the current value of that position is only 25 cents. The Nevada user may have conviction that this  
20 will ultimately become a winning position or may have decided to wait out the decline in value  
21 and exit their position after anticipated gains. But if CDNA were forced to liquidate the contract  
22 at the current price, the trader would be forced to incur this substantial loss in value.

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28. Liquidating Nevada users' positions in Sports Event Contracts at their cost basis or market value would also cause a significant disruption in the market for Sports Event Contracts. If many traders exit a particular position simultaneously, it may send a false signal to the market regarding the value of that position, causing the price to change in response. This distorting effect on the price of a position caused by the forced exit of a group of traders could impair other traders' ability to accurately ascertain market conditions and alter their own positions accordingly.

**C. Harms from CDNA's Violation of CFTC Requirements to Provide Impartial Access to Markets and Prevent Price Distortion**

29. As explained above, complying with the cease-and-desist order would result in significant disruption to the Sports Event Contracts market. This disruption would not only harm other investors on CDNA's market, but it would also jeopardize CDNA's status as a CFTC-registered DCM.

30. DCMs are governed by a number of Core Principles promulgated by the CFTC. One of those Core Principles provides that DCMs are responsible for preventing "manipulation, price distortion, and disruptions of the delivery or cash-settlement process." 17 C.F.R. § 38.250. But compliance with the cease-and-desist order would require CDNA to engage in precisely the sort of price distortion and disruptions to the settlement process that it is responsible for preventing. Indeed, preventing Nevada users from exiting current positions in Sports Event Contracts could cause disruptions to the settlement process, and liquidating Nevada users' positions would cause significant price distortion.

31. In addition, the CFTC's Core Principles require DCMs like CDNA to establish "[a]ccess requirements" that provide users with "impartial access" to its market. *See* 17 C.F.R. §§ 38.150, 38.151. The access criteria must be "impartial . . . and applied in a non-discriminatory manner." *Id.* § 38.151(b)(1). If CDNA is required to exclude certain users from accessing its

1 market based on the state in which the user is located, it could be accused of not providing impartial  
2 access and could be found to have violated the CFTC's Core Principle requiring the provision of  
3 access in a non-discriminatory manner.

4 32. Failing to comply with the CFTC's Core Principles could cause CDNA to lose its  
5 designation as a DCM. *See* 17 C.F.R. § 38.100(a). Losing its status as a CFTC-registered DCM  
6 would be devastating for CDNA's business.

7 33. In addition, failing to comply with these Core Principles could subject CDNA to  
8 significant civil penalties. *See* 7 U.S.C. §§ 13a, 13a-1(d).

9 **D. Reputational Harms**

10 34. Compliance with the cease-and-desist order would cause reputational harms to  
11 CDNA.

12 35. CDNA currently has approximately 11,900 users with permanent addresses in  
13 Nevada. The market uncertainty and disruption caused by those users abruptly being frozen in or  
14 leaving the market could cause other users to leave the CDNA market, as they would lose  
15 confidence in the integrity of the market. Even if CDNA were to ultimately prevail in this  
16 litigation, regaining users' confidence would be exceedingly difficult, as users would likely turn  
17 to other markets in the wake of the uncertainty created by the actions CDNA would be forced to  
18 take to comply with the cease-and-desist order.

19 36. Moreover, other states may follow Nevada's lead and impose their own laws on  
20 CDNA's offerings. In fact, other states have already sent similar cease-and-desist demands to  
21 CDNA and other DCMs. The very real threat that other states will continue to follow suit would  
22 cause further uncertainty regarding the market for CDNA's products, leading to further  
23 reputational harms.

37. I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 5, 2025

DocuSigned by:

*Kevin Dan*

15270625AA854CA...

Kevin Dan  
Chief Compliance Officer &  
Chief Regulatory Officer  
North American Derivatives Exchange, Inc.  
d/b/a Crypto.com | Derivatives North  
America

# **EXHIBIT B**

*January 30, 2025 CDNA Certification Letter*



**crypto.com**

**DERIVATIVES NORTH AMERICA**

January 30, 2025

Via CFTC Portal Submissions

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
3 Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington D.C. 20581

**RE: Certification of Contingent Derivatives Contract (Industry Event - Live Presentations - NAICS 711) - Submission Pursuant to Commission Regulation 40.2(a)**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act” or “CEA”), and §40.2(a) of the regulations promulgated by the Commodity Futures Trading Commission (the “Commission”) under the Act, the North American Derivatives Exchange, Inc. d/b/a Crypto.com | Derivatives North America (the “Exchange” or “CDNA”) hereby certifies a contingent derivatives contract that is a tradeable financial instrument (*i.e.* a swap) based on an event in the live presentations industry (the “Event Contract” or “Contract”). The Exchange intends to list the Event Contract for trading no later than February 3, 2025.

In connection with this certification, CDNA is submitting the following:

- (i) A concise explanation and analysis of the Event Contract;
- (ii) A certification that the Event Contract complies with the Act and Commission Regulations thereunder;
- (iii) A certification that CDNA has posted a copy of the product submission on its website;
- (iv) The intended listing date of the Event Contract;
- (v) The terms and conditions of the Event Contract, set forth in Exhibit A hereto; and
- (vi) A discussion of the Event Contract’s compliance with applicable provisions of the Act and Commission Regulations thereunder, set forth in Exhibit B hereto.

The Event Contract is a contingent derivatives contract that is a tradeable financial instrument designed to express a market view related to the broad and varying economic and commercial impacts of the outcome of an event in the live presentations industry. Separate, discrete and identifiable live presentation industry events (each an “Industry Event”) not only have an outcome that determines a leader, an achievement, an accomplishment, a champion, a title holder or a winner of a particular live presentation industry event, but more importantly the outcome of a live presentation industry event has a substantial economic and commercial impact on businesses and individuals throughout America depending on many factors.<sup>1</sup> CDNA designed the Event Contract to meet the varied and diverse hedging and market needs of commercial firms and individuals impacted by or with an economic interest in the Industry Event outcome. The Event Contract is traded in the centralized market of the Exchange where bids and offers are matched first by price and then time priority. There is no intervention in the trading process by the Exchange. Rather, the Event Contract trades in a competitive, open, and efficient market and mechanism for executing transactions. The trading provides a market for the price and information discovery process related to market sentiment on the outcome of the Industry Event.

The Event Contract operates in a manner equivalent to economic event contracts that CDNA and other designated contract markets have certified for trading.<sup>2</sup> Price bands will apply so that the Contract may only be listed at increments of at least \$0.25 and at most \$99.75. The Contract has a notional value of \$100 and a minimum price fluctuation of \$0.25 to align with other CDNA contracts.

As outlined in Exchange Rule 5.18, trading will be available at all times outside of any maintenance windows and as set forth in the Trading System, which CDNA will announce in advance. At least one dedicated market maker that is committed to providing immediate liquidity will participate upon the Event Contract’s launch. CDNA has further imposed position limits as described in more detail below. Members will be charged fees in accordance with Exchange Rule 3.9 in such amounts as may be revised from time to time and reflected on CDNA’s website.

During the Event Contract trading hours, Members are able to adjust their positions and trade freely. After trading of the Event Contract has closed, CDNA will determine the Expiration Value and whether the Payment Criteria encompasses the Expiration Value (i.e., whether the market outcome is “Yes” or “No”). The market is then settled by CDNA, and either the long position

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<sup>1</sup> The U.S. The Bureau of Labor Statistics maintains data for over 100 industries and uses the North American Industry Classification System (NAICS) for supersectors, sectors, and industries to categorize the data. The Event Contract encompasses Industry Events in the industry categorized under NAICS 711 (Performing Arts, Spectator Sports, and Related Industries). See <https://www.bls.gov/iag/tgs/iag711.htm>.

<sup>2</sup> See e.g., Rule Certification: Nadex Lists New Event Binary Contracts – Submission Pursuant to Commission Regulation §40.2(a), Nov. 26, 2021, available at: <https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/47219>.

holders or the short position holders are paid the Settlement Value. In this case, “long position holders” refers to Members who purchased the “Yes” side of the Event Contract and “short position holders” refers to Members who purchased the “No” side of the Event Contract. If the Expiration Value is “Yes” (please see Exhibit A for the conditions upon which the Expiration Value is “Yes”), then the long position holders are paid an absolute amount proportional to the size of their position and the short position holders receive no payment. If the Expiration Value is “No,” then the short position holders are paid an absolute amount proportional to the size of their position and the long position holders receive no payment. Specification of the circumstances that would trigger an Expiration Value of “Yes” are included below in the section titled “Payment Criterion” in Exhibit A. The Expiration Date of the Contract is designed to account for multiple possible contingencies regarding the timing of the determination of the event.

In accordance with §40.2(a)(2) of the Commission’s Regulations and as set forth above, the Exchange intends to list the Event Contract for trading no later than February 3, 2025.

The contract specifications as they will appear in the CDNA Rulebook are set forth in Exhibit A. A complete index of the Core Principles for designated contract markets, which addresses each applicable Core Principle, is set forth in Exhibit B.

The Exchange hereby certifies that the product complies with the Act, as amended, and the Commission Regulations adopted thereunder. No substantive opposing views were expressed to the Exchange with respect to any of these actions. The Exchange hereby certifies that a copy of this submission was concurrently posted on the CDNA website.

Should you have any questions regarding the above, please do not hesitate to contact me by telephone at (312) 884-0161 or by email at Kevin.Dan@nadex.com.

Sincerely,

/s/

Kevin Dan  
Chief Compliance Officer and Chief Regulatory Officer  
The North American Derivatives Exchange, Inc. d/b/a Crypto.com | Derivatives North America



**EXHIBIT A**

*The Contract Specifications set forth below will appear in the Rulebook as Rule 13.29. Capitalized terms not defined herein shall have the meaning set forth in the Rulebook.*

### 13.29 CONTINGENT DERIVATIVES CONTRACT - INDUSTRY EVENT - LIVE PRESENTATIONS - NAICS 711

(a) **SCOPE** – These Rules shall apply to the Class of Contracts referred to as the Contingent Derivatives Contract - Industry Event- Live Presentations - NAICS 711, a type of “Event Contract” listed by the Exchange.

(b) **UNDERLYING** – The Underlying for this Contract is a separate, discrete and identifiable industry event (the “Industry Event”) that determines a leader, champion, title holder or winner for that specific Industry Event that occurs on a specific Date.

(i) **Industry Event**: refers to any separate, discrete and identifiable live presentation industry event in Performing Arts, Spectator Sports, and Related Industries<sup>3</sup> where the outcome identifies a leader, an achievement, an accomplishment, a champion, a title holder or a winner (the “Industry Event Holder”) from the eligible participants in the Industry Event (the “Industry Participants”).

(ii) **Date**: refers to the month, day and year in which the Industry Event takes place.

(c) **SOURCE AGENCY** – The Source Agency is the final result of the Industry Event reported by AP News or as a back-up Source Agency, any U.S. national news provider as published on the Trading System.

(d) **TYPE** – The Type of Contract is a contingent derivatives contract (i.e. an Event Contract), which is a Swap.

(e) **PAYMENT CRITERION** – The Payment Criterion for the Event Contract encompasses the Expiration Value where the Industry Event Holder is determined by the outcome of the Industry Event, as published by the Source Agency on the Expiration Date. Industry Event Holder will have the value set forth on the Trading System.

(f) **MINIMUM TICK** – The Minimum Tick size for the Event Contract shall be \$0.25.

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<sup>3</sup> The U.S. The Bureau of Labor Statistics maintains data for over 100 industries and uses the North American Industry Classification System (NAICS) for supersectors, sectors, and industries to categorize the data. The Event Contract encompasses Industry Events in the industry categorized under NAICS 711 (Performing Arts, Spectator Sports, and Related Industries). See <https://www.bls.gov/iag/tgs/iag711.htm>.

(g) POSITION LIMIT – The Position Limit for the Event Contract shall be 2,500 Contracts, or as updated on the Exchange’s website or Trading System.

(h) MARKET MAKER ALTERNATIVE POSITION LIMIT – The Position Limit for Market Makers shall be 250,000 Contracts, or as updated on the Exchange’s website or Trading System.

(i) LAST TRADING DATE – The Last Trading Date is the same as the Expiration Date. The Last Trading Time is the same as the Expiration Time. No trading in the Event Contract shall occur after its Last Trading Date and Last Trading Time.

(j) SETTLEMENT DATE AND TIME – The Settlement Date and Time will be the same as the Last Trading Date and Last Trading Time.

(k) EXPIRATION DATE – The Expiration Date of the Event Contract will be the date on which the Industry Event is held. The Expiration Date will be adjusted if a potential Industry Event Holder is eliminated from being eligible to participate in the Industry Event.

(l) EXPIRATION TIME – The Expiration Time of the Event Contract will be the start time of the Industry Event. The Expiration Time will be adjusted if a potential Industry Event Holder is eliminated from being eligible to participate in the Industry Event.

(m) SETTLEMENT VALUE – The Settlement Value is the amount paid to the holder of the in-the-money Event Contract on the Settlement Date. The Settlement Value of an in-the-money Event Contract is \$100.

(n) EXPIRATION VALUE – The Expiration Value is the value of the Underlying as documented by the Source Agency on the Expiration Date at the Expiration Time.

(o) CONTINGENCIES – If the Source Agency does not actually announce the outcome on or before the Expiration Date due to a delay, postponement or otherwise in such release announcement by the Source Agency, the Settlement Date and Time, Expiration Date, and Expiration Time will be delayed until the Underlying outcome is released.

(p) TRADING PROHIBITIONS – Certain individuals are prohibited from trading the Event Contract. Those persons include:

- Current and former Industry Participant players, coaches, agents and staff.
- Paid employees and management of the Industry Participants.
- Owners of the Industry Participants.
- Household members and immediate family members (siblings, children, and parents) of any of the above.

(q) TEMPORARY MARKET SUSPENSIONS – The Event Contract market will be temporarily suspended beginning approximately 60 seconds prior to the official start time of any event that is used to determine the Industry Event Holder or as set forth in the Trading System.

**CONFIDENTIAL TREATMENT REQUESTED BY CDNA PURSUANT TO 17 CFR 145**

**EXHIBIT B**

**COMPLIANCE WITH APPLICABLE PROVISIONS OF THE ACT AND COMMISSION  
REGULATIONS THEREUNDER**

**BACKGROUND**

In connection with CDNA's certification of the Economic and Commercial Event Contract (the "Event Contract"), below we set forth a concise explanation and an analysis of the swap's compliance with applicable provisions of the Act, including Core Principles, and the Commission's Regulations thereunder.

The Event Contract is a contingent derivatives contract that is a tradeable financial instrument designed to express a market view related to the broad and varying economic and commercial impacts of the outcome of an event in the live presentations industry events. Separate, discrete and identifiable live presentation industry events (each an "Industry Event") not only have an outcome that determines a leader, an achievement, an accomplishment, a champion, a title holder or a winner of a particular live presentation industry event, but more importantly the outcome of an live presentation industry event has a substantial economic and commercial impact on businesses and individuals throughout America depending on many factors.<sup>4</sup> CDNA designed the Event Contract to meet the varied and diverse hedging and market needs of commercial firms and individuals impacted by or with an economic interest in the Industry Event outcome. The Event Contract is traded in the centralized market of the Exchange where bids and offers are matched first by price and then time priority. There is no intervention in the trading process by the Exchange or any other market participant. Rather, the Event Contract trades in a competitive, open, and efficient market and mechanism for executing transactions. The trading provides a market for the price and information discovery process related to market sentiment on the outcome of the Industry Event.

A wide range of factors and developments, including but not limited to the following, shape the significant commercial impact of Industry Events:

1. which Industry Participant make it to an Industry Event;
2. which Industry Participant leader, title holder or winner of an Industry Event;
3. where the Industry Event is located;
4. the hometowns of Industry Participants that makes it to the Industry Event;

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<sup>4</sup> The U.S. The Bureau of Labor Statistics maintains data for over 100 industries and uses the North American Industry Classification System (NAICS) for supersectors, sectors, and industries to categorize the data. The Event Contract encompasses Industry Events in the industry categorized under NAICS 711 (Performing Arts, Spectator Sports, and Related Industries). See <https://www.bls.gov/iag/tgs/iag711.htm>.

5. the decisions by businesses as to how much money to spend on Industry Event advertisements within and beyond the surrounding areas of where the Industry Event is held;
6. how many people are drawn to the Industry Event (in person, streamed over the Internet, or watching from a local restaurant or bar);
7. the hiring of part-time and full-time employees to support the Industry Event and ancillary and adjacent activities, including any applicable post-Industry Event parades and celebrations;
8. impacts on the production and sales of products and services advertised during the Industry Event;
9. impacts on the production and sales of ancillary and adjacent products and services that support the Industry Event (e.g. hotels, airlines, rental properties, car rentals, entertainment events, taxis and rideshares, tourism generally, food items including chicken wings, pizza, and beverages);
10. decisions by viewers and the public at-large on taking a market view related to the Industry Event;
11. the impact of all Industry Event participant sponsorships including visibility, future branding campaigns, and advertisement thereon; and
12. City, county, and state level tax receivables.

The Event Contract's commercial utility directly derives from the broad-based and diverse number of businesses and individuals that are economically impacted by Industry Event and the availability of a fully regulated approach to hedging against the commercial risks associated with uncertain outcomes.

The Event Contract is designed to manage the risk of a variety of market participants, whose businesses face economic consequences based on the outcome of a respective Industry Event, and to enable price discovery for related commercial enterprises. As set forth below, these market participants take on material economic risk based on the outcome of an Industry Event. As is the case with any financial derivatives contract, the Event Contract may also be bought and sold speculatively, which creates a robust and healthy market. The Event Contract may also meet other hedging and speculative needs and suit other purposes of market participants that CDNA has not considered.

Industry Events serve as a significant economic driver whose economic effects can be felt in infrastructure investments, transportation networks, and the global supply chain. With this in mind, the following is a sampling of just some of the market participants that would benefit from hedging their economic exposure on a federally-regulated derivatives exchange. These market participants encounter direct and quantifiable economic consequences when engaging in activities related to the outcome of the Industry Event, making the Industry Event, itself, a commercial event.

### 1. Vendors and Merchandisers

Vendors and merchandisers would benefit from the ability to hedge their risks associated with the uncertainty of supply chain and product demand. Vendors and merchandisers take on risk when deciding how to utilize services and distribute products for an event that a large percentage of Americans consume, as with other commercial products and services. Moreover, vendors and merchandisers may use an Industry Event to introduce promotional events where, if their forecasted result does not occur, the vendor or merchandiser may face a significant commercial impact.

### 2. Advertisers

Advertisers would benefit from hedging their investment in Industry Event ad campaigns. Advertisements can reach millions of dollars for a 30-second commercial spot and thus carry the risk to advertisers' return on investment if the commercial or branding does not perform as expected.

### 3. Local Municipality (Host Location)

Local municipalities would benefit from hedging the risk exposure they take on as Industry Event hosts. Industry Events have the potential to generate millions of dollars in local gross domestic product, and billions of dollars in overall economic impact. This economic benefit, however, is by no means guaranteed to be net positive. Moreover, local municipalities face exposure to risk from fan unrest and local property destruction following the outcome of an Industry Event, which necessitates increased financial resources for safety and emergency response. Local municipalities that host Industry Events would benefit from having the ability to hedge the risk associated with the outcome of an Industry Event that comes with a substantial up-front investment with indeterminate revenue outcomes and safety concerns.

### 4. Local Municipalities (Association Participant Hometowns)

Local municipalities where Industry Participants partaking in an Industry Event are located would benefit from hedging their risk regarding the outcome. In addition to safety and security concerns noted above, the local municipality may wish to host a celebration, such as a parade, to fete the victorious Industry Participant. In such a circumstance, the local governments would be at risk of a major outlay to host a celebration. Hedging this exposure would mitigate the economic impact to local municipalities' budgets.

### 5. Airlines

Airlines and other travel-related industries would benefit from being able to hedge their exposure for an anticipated major commercial event such as an Industry Event. Airlines take on risk as

they prepare for surge in travel demand because they must increase flights and capacity to accommodate the influx of fans to and from particular locations.

#### 6. Stadium and Arena Owners and Operators

The owners and operators of the stadium or arena in which an Industry Event is held would benefit from being able to hedge the risk of hosting such a massive event. The stadium or arena owners and operators take on risk as they make a substantial investment in hosting an Industry Event and must account for insurance, weather-related incidents, vendors, workers' compensation, sponsors, security, and other third-party service providers. As the production inputs of an Industry Event increase, the stadium owners and operators would benefit from being able to hedge these operational risks based on the outcome of the event.

#### 7. Broadcast and Streaming Companies

Broadcast and streaming companies would benefit from hedging the risk associated with bidding on the broadcast rights to an Industry Event. Bids to air the Industry Event require billions of dollars, and come with the risk that the association participants playing will not be able to develop an audience that would allow the broadcast or streaming companies to recoup their costs. Additionally, the broadcast and streaming companies face operational risks, such as lag or dead air, that would threaten their reputation and their financial wellbeing. The competitiveness and outcome of the Industry Event influences overall viewership that influences a broadcaster's willingness to bid on the broadcast rights.

#### 8. Insurance Companies

Insurance companies would benefit from being able to hedge the risks presented to them by insuring occurrences and developments related to an Industry Event. Insurance companies take on a variety of risks relating to an Industry Event in terms of individual homeowner policies as well as large policies insuring the venue itself, whether in the city where an Industry Event is located or in the hometowns of the association participants in an Industry Event that year. Homeowner's insurance claims place insurers at risk during the Industry Event due to large group gatherings with increased grilling, fires, and alcohol, which all have the potential to lead to an increased volume of claims. Policies ensuring the venue itself pose exposure to the insurance companies that write the respective policies if an emergency occurs. Therefore, insurance companies would benefit from having the ability to hedge these risks associated with the outcome of the Industry Event.

\* \* \* \* \*

Trading in the Event Contract would also offer market participants the opportunity to engage in price discovery related to the economic outcome, one of the key benefits of transacting in a

regulated exchange environment. With millions in viewership and billions of dollars in revenue, each Industry Event presents unique risks and opportunities for market participants to optimize through business decision-making, from merchandising choices to insurance policy writing. By offering the Event Contract on a CFTC-registered exchange such as CDNA, market participants can take advantage of the transparency, liquidity, efficiency and real-time pricing adjustments of a regulated, exchange-trading environment. Industry Events provide a massive pool of consumer data—offering market participants access to that data would enhance informed decision-making about how to mitigate risks and adjust their risk profiles, thereby establishing a fair market value and supply for their goods and services. The establishment of the true price gives participants an opportunity to engage in calculated risk-mitigation and risk-taking to best achieve their goals and benefit the public and communities they serve.

Based on the above, the Event Contract would allow market participants access to a product that would meet their legitimate hedging needs and allow for efficient and accurate price discovery in these markets.

**CONFIDENTIAL TREATMENT REQUESTED BY CDNA PURSUANT TO 17 CFR 145**



**CONFIDENTIAL TREATMENT REQUESTED BY CDNA PURSUANT TO 17 CFR 145****DESIGNATED CONTRACT MARKET ("DCM") CORE PRINCIPLES**

The Exchange has identified the following DCM Core Principles as potentially being impacted by the launch of the Event Contract: Core Principle 2 (Compliance with Rules), Core Principle 3 (Contracts Not Readily Subject to Manipulation), Core Principle 4 (Prevention of Market Disruption), Core Principle 7 (Availability of General Information), Core Principle 8 (Daily Publication of Trading Information), and Core Principle 18 (Recordkeeping).

**A. Core Principle 2 Compliance with Rules**

Core Principle 2 requires the DCM to have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market. The Exchange has a dedicated Compliance/Regulatory staff that monitors the markets, investigates potential rule violations, and imposes sanctions against individuals who have been determined to have violated the Rules. The Exchange has an automated trade surveillance system, SCILA, which is capable of detecting potential trade practice violations, and also conducts real-time market monitoring of all trading activity in all Contracts, at all hours the Exchange is open. The Exchange is able to set the parameters by which the system detects potential issues. Chapter 9 of the Exchange Rulebook sets forth the Exchange's authority to investigate and sanction Members for activity that violates the Exchange Rules. Exchange Rule 2.10 grants the Exchange jurisdiction over any Person initiating or executing a transaction on or subject to the Rules of the Exchange, either directly or through an intermediary, and any Person for whose benefit such transaction has been initiated or executed. The Exchange's jurisdiction continues notwithstanding the termination of the Person's Exchange Membership. Exchange Rule 3.3 requires all Trading Members and Authorized Traders to comply with the Exchange Rules and to cooperate with the Exchange promptly and fully in any investigation, call for information, inquiry, audit, examination or proceeding. Such cooperation may involve a request for the Member's or Authorized Trader's activity in the relevant Underlying. Accordingly, the listing of the Event Contract will not negatively impact the Exchange's ability to comply with this Core Principle.

The Exchange certifies that its surveillance program together with its participation in a key industry group for information sharing and regulatory coordination addresses the requirements of Core Principle 2.

**B. Core Principle 3 Contracts Not Readily Subject to Manipulation and Core Principle 4 Prevention of Market Disruption**

Core Principles 3 and 4 (Contracts Not Readily Subject to Manipulation and Prevention of Market Disruption), implemented by Commission Regulations 38.200 and 38.250, require a DCM

to list only contracts that are not readily susceptible to manipulation and to prevent market disruption. The Exchange has at least one existing Market Maker that has committed to providing liquidity in these contracts, which should limit opportunities for markets in the Event Contract to be manipulated. As previously stated, the Exchange also uses the SCILA surveillance system to assist with market monitoring and has a staff dedicated to market surveillance to detect potential market manipulation.

The Exchange has dedicated staff to conduct surveillance of the market and uses the SCILA surveillance system to assist with market monitoring at all times the Event Contract will be listed.

The Exchange trading system has a cap-check feature that ensures a trader has sufficient funds in the account to fully collateralize the Order if executed before the Order is accepted by the Exchange. The Exchange also has the ability to block new Orders and/or cancel working Orders if necessary to prevent market disruption.

Additionally, Commission Regulation 38.256 requires a DCM to have the ability to comprehensively and accurately reconstruct all trading on its trading facility. The Exchange is currently able to reconstruct trading in its markets based on the data stored in the database, the SCILA surveillance system, as well as the Exchange log files. Trade data will continue to be stored in this same manner following the addition of the Event Contract. Therefore, the addition of these contracts will not negatively impact the Exchange's ability to comply with these Core Principles.

#### C. Core Principle 5 Position Limits

Core Principle 5 requires the DCM set position limits or position accountability to reduce the potential threat of market manipulation or congestion. The Exchange has set the initial position limit for Trading Members at 2,500 Contracts, thereby reducing the motivation for an individual to manipulate the Underlying in order to affect the Exchange settlement, explained in detail above. Market Makers will not be subject to the 2,500 Contract position limit in order to provide sufficient liquidity to the market. Market Makers will instead be subject to an Alternative Position Limit of 250,000 Contracts. A Market Maker taking advantage of the Alternative Position Limits must, within one business day following a request by the Exchange's Compliance Department, provide the Exchange Compliance Department with a trade register detailing all trading activity in any account owned or controlled by the Market Maker in the relevant Underlying during the 15 minutes immediately before and after any Expiration time identified by the Exchange's Compliance Department in the request.

D. Core Principle 7 Availability of General Information and Core Principle 8 Daily Publication of Information

Core Principles 7 and 8, implemented by Commission Regulations 38.400, 38.401, 38.450, and 38.451, require a DCM to make available to the public accurate information regarding the contract terms and conditions, as well as daily information on contracts such as settlement price, volume, open interest, and opening and closing ranges. The Exchange makes the Exchange Rulebook available on its website, as well as the Daily Bulletin which contains the preceding required information. The Results page on the website also publishes the Expiration Value and Settlement Value for all the Exchange contracts settled during that week. Contract specifications for the new Event Contracts will likewise be set forth in the Rulebook and on the Exchange website. Settlement prices, volume, open interest, and opening and closing ranges for the Event Contract will be included on the Daily Bulletin and posted on the Exchange website. Therefore, the addition of the Event Contract will not negatively impact the Exchange's ability to comply with these Core Principles.

E. Core Principle 9 Execution of Transactions

Core Principle 9 requires the DCM to provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process. The Exchange has [one] dedicated Market Maker[s] that have committed to pricing a two-sided market. Market participants are able to view the orderbook up to five layers deep (depending on the market activity at any particular time) on the platform. The Exchange displays the Time and Sales of all Contracts traded on the Exchange website which is updated every 15 minutes. Therefore, the addition of the Event Contract will not negatively impact the Exchange's ability to comply with this Core Principle.

F. Core Principle 10 Trade Information

Core Principle 10 requires the DCM to maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information to assist in the prevention of customer and market abuses and to evidence any violations of the Exchange Rules. The Exchange maintains an electronic audit trail as required by the Commission Regulations which enables the Exchange to review all activity on the Exchange.

G. Core Principle 11 Financial Integrity of Transactions

Core Principle 11 requires the DCM to establish and enforce rules and procedures for ensuring the financial integrity of transactions entered on the contract market. As with all Contracts offered on the Exchange, the Event Contract will be fully collateralized and Members entering a

transaction will have knowledge of their maximum risk prior to executing a transaction. All transactions will be cleared by CDNA's registered derivatives clearing organization.

H. Core Principle 12 Protection of Markets and Market Participants

Core Principle 12 requires a DCM to protect markets and market participants from abusive practices committed by any party and to promote fair and equitable trading on the contract market. Chapter 5 of the Exchange Rulebook establishes Rules to protect the market and market participants from abusive, disruptive, fraudulent, noncompetitive, and unfair conduct and trade practices. The Rules apply to all market participants and transactions on the Exchange, and participants will need to comply with the Rules when trading the Event Contract.

I. Core Principle 18 Recordkeeping

Finally, Core Principle 18, implemented by Commission Regulation 38.951, requires a DCM to maintain records of all activities relating to the business of the DCM, (i) in a form and manner that is acceptable to the Commission, and (ii) for a period of at least 5 years. A DCM must maintain such records in accordance with the applicable requirements of Commission Regulations.

**CONFIDENTIAL TREATMENT REQUESTED BY CDNA PURSUANT TO 17 CFR 145**

**CONFIDENTIAL TREATMENT REQUESTED BY CDNA PURSUANT TO 17 CFR 145****DCM CORE PRINCIPLES**

Core Principle Number	Core Principle Name	Addressed in or Not Applicable to Certification
1	Designation as Contract Market	Not applicable (designation granted)
2	Compliance with Rules	Addressed
3	Contracts Not Readily Subject to Manipulation	Addressed
4	Prevention of Market Disruption	Addressed
5	Position Limitations or Accountability	Addressed
6	Emergency Authority	Not applicable (the Exchange Rulebook, 2.4 Emergency Rules)
7	Availability of General Information	Addressed
8	Daily Publication of Trading Information	Addressed
9	Execution of Transactions	Addressed
10	Trade Information	Addressed
11	Financial Integrity of Transactions	Addressed
12	Protection of Markets and Market Participants	Addressed
13	Disciplinary Procedures	Not applicable (the Exchange Rulebook, Chapter 9 Rule Enforcement)

14	Dispute Resolution	Not applicable (the Exchange Rulebook, 10.2 – 10.4 Arbitration)
15	Governance Fitness Standards	Not applicable (the Exchange Rulebook, 2.2 Service Restrictions, 11.2 Service and Disciplinary History)
16	Conflicts of Interest	Not applicable (the Exchange Rulebook, 2.6 Voting, 2.9 Trading Limitations, 11.1 Non-Public Information, 11.3 Voting)
17	Composition of Governing Boards of Contract Markets	Not applicable (internal review and appointment of directors)
18	Recordkeeping	Addressed
19	Antitrust Considerations	Not applicable
20	System Safeguards	Not applicable (internal controls and policies in place)
21	Financial Resources	Not applicable (capital requirements and quarterly reporting compliant)
22	Diversity of Boards of Directors	Not applicable (not public company, internal review and appointment of directors)
23	Securities and Exchange Commission	Not applicable

**CONFIDENTIAL TREATMENT REQUESTED BY CDNA PURSUANT TO 17 CFR 145**

# **EXHIBIT C**

*May 20, 2025 NGCB Cease-and-Desist Order*



JOE LOMBARDO  
Governor

**NEVADA GAMING CONTROL BOARD**

1919 College Parkway, Suite 110, P.O. Box 8003, Carson City, Nevada 89702  
7 State of Nevada Way, Las Vegas, Nevada 89119  
3650 S. Pointe Circle, Suite 203, P.O. Box 31109, Laughlin, Nevada 89028  
557 W. Silver Street, Suite 207, Elko, Nevada 89801  
9670 Gateway Drive, Reno, Nevada 89521

KIRK D. HENDRICK, *Chairman*  
HON. GEORGE ASSAD (RET.), *Member*  
CHANDENI K. SENDALL, *Member*

May 20, 2025

Las Vegas  
(702) 486-2000

Travis McGhee  
Chief Executive Officer  
North American Derivatives Exchange, Inc.  
dba Crypto.com | Derivatives North America  
200 W. Jackson Blvd, Suite 1400  
Chicago, IL 60606

Kevin Dan  
Chief Compliance Officer  
Chief Regulatory Officer  
North American Derivatives Exchange, Inc.  
dba Crypto.com | Derivatives North America  
200 W. Jackson Blvd, Suite 1400  
Chicago, IL 60606

lawenforcementglobal@crypto.com

Via FedEx Priority Overnight and Electronic Mail

Re: Order to Cease and Desist Unlawful Activity in the State of Nevada

Dear Messrs. McGhee and Dan:

The Nevada Gaming Control Board (NGCB) is aware that Crypto.com has been offering, and continues to offer, event-based wagering contracts in Nevada on sporting events through its exchange. The NGCB's Enforcement Division has verified these facts. Based on an NGCB review of the function of the contracts, and in consultation with the Gaming Division of the Nevada Office of the Attorney General, Crypto.com is hereby notified that offering event-based wagering contracts is unlawful in Nevada, unless and until approved as licensed gaming by the Nevada Gaming Commission.

Presuming that Crypto.com consulted with Nevada legal counsel, your company was undoubtedly advised that Nevada has a long and storied history of strictly regulating gaming activity. Encompassed within such strict regulation is the requirement that a person must be licensed to operate a sports pool in Nevada. NRS 463.160 and 463.245. A sports pool is a person in "the business of accepting wagers on sporting events or other events by any system or method of wagering." NRS 463.0193. Systems and methods of wagering include percentage games where an entity does not act as the "house" but only



Order to Cease and Desist Unlawful Activity in the State of Nevada  
Crypto.com  
Page 2

takes a cut of the amounts wagered. A “sporting event” is “an individual race, game, match or contest, and any group, series or part thereof.” Nev. Gam’g Comm’n Reg. 26B.020(12). Sporting events include, without limitation, collegiate, Olympic, and other amateur sporting events. See Nev. Gam’g Comm’n Reg. 22.010(2). Finally, Nevada law defines a wager as “a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.” NRS 463.01962.

The event-based wagering contracts offered through Crypto.com allow a person to place money on the outcome of an uncertain event. Crypto.com allows a person to pay money to enter into a “contract” providing that the person will receive a set payout if the person correctly picks the outcome of the sporting event. The payouts for picking the winner of a sporting event are not based on the actions of the person entering the “contract” through Crypto.com. Finally, Crypto.com is in the business of offering event-based wagering contracts which constitute a system or method of wagering on sporting events and other events. Therefore, by offering event-based wagering contracts in Nevada, Crypto.com is operating as an unlicensed sports pool in violation of NRS 463.160(1)(a) and NRS 463.245(2).

Pursuant to NRS 463.360(3), violation of NRS 463.160 is a category B felony. Crypto.com’s event-based wagering contracts concerning sporting events also violate NRS 463.350, NRS 465.086, and NRS 465.092.

Based on the foregoing, all transgressions by Crypto.com to date are in violation of Nevada law. Moreover, any offenses by Crypto.com after receipt of this letter shall be considered willful violations of Nevada law. Accordingly, Crypto.com is hereby ordered to immediately cease and desist from offering in Nevada any event-based wagering contracts concerning sporting events.

**Written confirmation of Crypto.com’s cessation of all prohibited activities within Nevada is required by 5:00 p.m. on Wednesday, June 4, 2025. Failure to provide confirmation by such time shall be considered as willful intention to violate Nevada law.**

Nothing herein is intended to be, nor shall be, construed as legal advice. Indeed, based on the seriousness of this matter, and the potential for criminal and civil penalties against the company and its representatives, you are strongly advised to seek legal advice from competent counsel regarding Nevada’s gaming laws.

Please be advised that the NGCB, as well as all state and local law enforcement and regulatory agencies in Nevada, expressly reserve all rights to pursue criminal and civil actions based on Crypto.com’s past and future conduct within the state.

Order to Cease and Desist Unlawful Activity in the State of Nevada  
Crypto.com  
Page 3

If you or your legal counsel have any questions, please contact John S. Michela, Senior Deputy Attorney General, at JMichela@ag.nv.gov.

Your immediate attention to this matter is appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "K.D. Hendrick", with a stylized flourish at the end.

Kirk D. Hendrick  
Chairman

cc: The Honorable Joe Lombardo, Governor of Nevada  
Hon. George Assad (Ret.), Member, Nevada Gaming Control Board  
Chandeni Sendall, Member, Nevada Gaming Control Board  
Kristi Torgerson, Chief, NGCB Enforcement Division  
Craig A. Newby, First Assistant Attorney General  
Darlene B. Caruso, Chief Deputy Attorney General, Gaming  
Jessica E. Whelan, Chief Deputy Attorney General, Complex Litigation  
Alissa C. Engler, Chief Deputy Attorney General, Criminal Prosecution  
John S. Michela, Senior Deputy Attorney General, Gaming  
Records and Research

# EXHIBIT D

*May 22, 2025 through June 4, 2025 Email Chain*

**From:** [Jessica E. Whelan](#)  
**To:** [Bamberger, Nowell D.](#); [John S. Michela](#)  
**Cc:** [Austin, Bradley](#); [Solomon, Matthew](#); [Robertson, Caleb J.](#); [Jeny M. Beesley](#)  
**Subject:** RE: Cease and Desist Letter to North American Derivatives Exchange  
**Date:** Wednesday, June 4, 2025 5:23:54 PM  
**Attachments:** [image001.png](#)

---

**This Message Is From an External Sender**

Attention: This message originated from an external email domain.

Nowell,

Thank you for the call today. I confirm your understanding of our discussion in the points below. I will confer with my team and let you know how much time we will need for our response to your forthcoming motion for preliminary injunction.

Thank you,  
Jessica

**Jessica E. Whelan**

Chief Deputy Solicitor General - Litigation

Office of the Attorney General

1 State of Nevada Way

Suite 100

Las Vegas, Nevada 89119

[jwhelan@ag.nv.gov](mailto:jwhelan@ag.nv.gov)

D: 702-486-4346



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**From:** Bamberger, Nowell D. <[nbamberger@cgsh.com](mailto:nbamberger@cgsh.com)>

**Sent:** Wednesday, June 4, 2025 1:58 PM

**To:** Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>; John S. Michela <[JMichela@ag.nv.gov](mailto:JMichela@ag.nv.gov)>

**Cc:** Austin, Bradley <[baustin@swlaw.com](mailto:baustin@swlaw.com)>; Solomon, Matthew <[msolomon@cgsh.com](mailto:msolomon@cgsh.com)>; Robertson, Caleb J. <[cjrobertson@cgsh.com](mailto:cjrobertson@cgsh.com)>; Jeny M. Beesley <[JBeesley@ag.nv.gov](mailto:JBeesley@ag.nv.gov)>

**Subject:** RE: Cease and Desist Letter to North American Derivatives Exchange

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Jessica:

Thanks for your time earlier. To confirm our conversation:

1. I understand that you waive service for the individual defendants, but not the dual service requirement. And accordingly we will not separately serve the individual defendants, but will still serve your central office in Carson City.
2. CDNA will promptly file a motion for a preliminary injunction.
3. We will agree to a reasonable stipulated briefing schedule on the PI motion. Please let us know how long you want to respond to it, and we're happy to put the stip together.
4. Defendants will not commence enforcement action against CDNA prior to the PI motion being decided.

These points are subject to our mutual reservation of all rights, claims and defenses.

Let me know if I got any of this wrong.

Best,  
Nowell

---

**Nowell D. Bamberger**  
Cleary Gottlieb Steen & Hamilton LLP  
Assistant: [mstefanick@cgsh.com](mailto:mstefanick@cgsh.com)  
2112 Pennsylvania Avenue, NW  
Washington, DC 20037  
T: +1 202 974 1752  
[nbamberger@cgsh.com](mailto:nbamberger@cgsh.com) | [clearygottlieb.com](http://clearygottlieb.com)

---

**From:** Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>  
**Sent:** Wednesday, June 4, 2025 2:26 PM  
**To:** John S. Michela <[JMichela@ag.nv.gov](mailto:JMichela@ag.nv.gov)>; Bamberger, Nowell D. <[nbamberger@cgsh.com](mailto:nbamberger@cgsh.com)>  
**Cc:** Austin, Bradley <[baustin@swlaw.com](mailto:baustin@swlaw.com)>; Solomon, Matthew <[msolomon@cgsh.com](mailto:msolomon@cgsh.com)>; Robertson, Caleb J. <[cjrobertson@cgsh.com](mailto:cjrobertson@cgsh.com)>; Jeny M. Beesley <[JBeesley@ag.nv.gov](mailto:JBeesley@ag.nv.gov)>  
**Subject:** RE: Cease and Desist Letter to North American Derivatives Exchange

Hello Mr. Bamberger,

As John mentioned, I will be lead counsel in this case. Please reach out directly at your convenience. I will be away from my desk this afternoon but reachable by cell: 812-550-5640. Or we can set up a video call for this evening or later this week.

Thank you,  
Jessica

**Jessica E. Whelan**

Chief Deputy Solicitor General - Litigation

Office of the Attorney General

1 State of Nevada Way

Suite 100

Las Vegas, Nevada 89119

[jwhelan@ag.nv.gov](mailto:jwhelan@ag.nv.gov)

D: 702-486-4346



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**From:** John S. Michela <[JMichela@ag.nv.gov](mailto:JMichela@ag.nv.gov)>

**Sent:** Wednesday, June 4, 2025 8:57 AM

**To:** Bamberger, Nowell D. <[nbamberger@cgsh.com](mailto:nbamberger@cgsh.com)>; Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>

**Cc:** Austin, Bradley <[baustin@swlaw.com](mailto:baustin@swlaw.com)>; Solomon, Matthew <[msolomon@cgsh.com](mailto:msolomon@cgsh.com)>; Robertson, Caleb J. <[cjrobertson@cgsh.com](mailto:cjrobertson@cgsh.com)>

**Subject:** RE: Cease and Desist Letter to North American Derivatives Exchange

Mr. Bamberger,

Jessica Whelan will be leading this matter on the litigation front. I am copying her on this e-mail so you may reach out to her directly for any issues related to Crypto.com's litigation of the matter.

Thank you,

John

John S. Michela  
Senior Deputy Attorney General  
Gaming Division  
Nevada Office of the Attorney General  
775-687-2118

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---

**From:** Bamberger, Nowell D. <[nbamberger@cgsh.com](mailto:nbamberger@cgsh.com)>  
**Sent:** Tuesday, June 3, 2025 12:40 PM  
**To:** John S. Michela <[JMichela@ag.nv.gov](mailto:JMichela@ag.nv.gov)>  
**Cc:** Austin, Bradley <[baustin@swlaw.com](mailto:baustin@swlaw.com)>; Solomon, Matthew <[msolomon@cgsh.com](mailto:msolomon@cgsh.com)>; Robertson, Caleb J. <[cjrobertson@cgsh.com](mailto:cjrobertson@cgsh.com)>  
**Subject:** RE: Cease and Desist Letter to North American Derivatives Exchange

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Mr. Michela:

Please see the attached correspondence, which responds to the C&D Letter, and also attaches a complaint filed in federal court earlier today. Please note our request to meet and confer within the next 24 hours in advance of filing a motion for a Temporary Restraining Order.

We would like to avoid the burden and inconvenience on the defendants of formal service, and therefore request that they agree to accept formal service of the summons and complaint. Please let us know, otherwise we will accomplish service.

Regards,  
Nowell

---

**Nowell D. Bamberger**  
Cleary Gottlieb Steen & Hamilton LLP  
Assistant: [mstefanick@cgsh.com](mailto:mstefanick@cgsh.com)  
2112 Pennsylvania Avenue, NW  
Washington, DC 20037  
T: +1 202 974 1752  
[nbamberger@cgsh.com](mailto:nbamberger@cgsh.com) | [clearygottlieb.com](http://clearygottlieb.com)

**From:** John S. Michela <[JMichela@ag.nv.gov](mailto:JMichela@ag.nv.gov)>  
**Sent:** Wednesday, May 28, 2025 6:18 PM  
**To:** Bamberger, Nowell D. <[nbamberger@cgsh.com](mailto:nbamberger@cgsh.com)>  
**Cc:** Solomon, Matthew <[msolomon@cgsh.com](mailto:msolomon@cgsh.com)>; Robertson, Caleb J. <[cjrobertson@cgsh.com](mailto:cjrobertson@cgsh.com)>  
**Subject:** RE: Cease and Desist Letter to North American Derivatives Exchange

Mr. Bamberger,

I am in receipt of your e-mails regarding the Cease-and-Desist Letter (C&D) from my client, the Nevada Gaming Control Board (Board), and your request to discuss this matter further. I have discussed your email with my client. Any response from your client, North American Derivatives Exchange, Inc., dba [Crypto.com](https://crypto.com) | Derivatives North America, to the C&D should be submitted to Board Chairman Kirk Hendrick in writing with a copy to me.

You also asked how the Board intends to proceed in light of the federal injunction issued in the Kalshi case. During the hearing held by the Court on May 15<sup>th</sup>, the judge specifically clarified that the preliminary injunction only applies to action against Kalshi.

We look forward to your response to the C&D and anticipate that your client will respect the Board's statutory mandate to strictly regulate gaming to protect Nevada's citizens and visitors and ensure the continued growth and success of Nevada's licensed and regulated gaming industry.

Thank You,

John

John S. Michela  
Senior Deputy Attorney General  
Gaming Division  
Nevada Office of the Attorney General  
775-687-2118

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**From:** Bamberger, Nowell D. <[nbamberger@cgsh.com](mailto:nbamberger@cgsh.com)>  
**Sent:** Wednesday, May 28, 2025 2:00 PM  
**To:** John S. Michela <[JMichela@ag.nv.gov](mailto:JMichela@ag.nv.gov)>  
**Cc:** Solomon, Matthew <[msolomon@cgsh.com](mailto:msolomon@cgsh.com)>; Robertson, Caleb J. <[cjrobertson@cgsh.com](mailto:cjrobertson@cgsh.com)>  
**Subject:** RE: Cease and Desist Letter to North American Derivatives Exchange

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Dear Mr. Michela –

Referring to my email below, please let us know if there is a time when we can speak on this



matter.

Best,  
Nowell

---

**Nowell D. Bamberger**

Cleary Gottlieb Steen & Hamilton LLP

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**From:** Bamberger, Nowell D.

**Sent:** Thursday, May 22, 2025 10:27 PM

**To:** [JMichela@ag.nv.gov](mailto:JMichela@ag.nv.gov)

**Cc:** Solomon, Matthew <[msolomon@cgsh.com](mailto:msolomon@cgsh.com)>

**Subject:** Cease and Desist Letter to North American Derivatives Exchange

Dear Mr. Michela:

We represent North American Derivatives Exchange Inc. ("CDNA"), which received a Cease and Desist letter from your office dated May 20, 2025.

Please let us know if there is a good time to discuss this matter with you early next week. We would like to have the opportunity to engage with you, and also would like to gain a better understanding of how the Board intends to proceed in light of the federal injunction issued in the case involving Kalshi.

Thank you very much, and we look forward to speaking.

Regards,  
Nowell

---

**Nowell D. Bamberger**

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# **EXHIBIT E**

***June 3, 2025 CDNA Response to NGCB***

CLEARY GOTTlieb STEEN & HAMILTON LLP

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June 3, 2025

**VIA EMAIL AND FEDEX**

Kirk D. Hendrick  
Chairman  
Nevada Gaming Control Board  
7 State of Nevada Way  
Las Vegas, Nevada 89119

Re: *Cease-and-Desist Letter To North American Derivatives  
Exchange, Inc. d/b/a Crypto.com | Derivatives North America (“CDNA”)*

Dear Mr. Hendrick:

We write on behalf of our client North American Derivatives Exchange, Inc., d/b/a Crypto.com | Derivatives North America (“CDNA”). CDNA is in receipt of your May 20, 2025 “Order to Cease and Desist Unlawful Activity in the State of Nevada” alleging that CDNA is engaged in unlicensed sports wagering in violation of Nevada law and ordering CDNA to provide written confirmation that it has ceased “all prohibited activities within Nevada” by June 4, 2025.

Since receiving your letter, we have attempted to engage with your office on behalf of CDNA. We believe such engagement to be particularly appropriate in this instance given that a federal court has entered an injunction preventing the Nevada Gaming Control Board (the “NGCB”) from enforcing state law against another federally regulated designated contract market (“DCM”), KalshiEX LLC. *See KalshiEX LLC v. Hendrick*, 2025 WL 1073495 (D. Nev. Apr. 9, 2025) (hereinafter “*Kalshi v. Hendrick*”). Remarkably, your May 20, 2025 letter was sent well after the preliminary injunction was entered in *Kalshi v. Hendrick* and yet makes no mention of that or the fact that the legal positions contained therein have been effectively rejected by two federal judges. 2025 WL 1073495; *KalshiEX LLC v. Flaherty, et al.*, 2025 WL 1218313 (D.N.J. Apr. 28, 2025) (hereinafter “*Kalshi v. Flaherty*”). At a minimum, your letter is misleading insofar as it purports to order CDNA to comply with your interpretation of state law, while omitting the highly material fact that the NGCB is currently enjoined by a federal court from enforcing that very same legal position.

June 3, 2025

Page 2

Shortly after CDNA received your purported cease-and-desist order and pursuant to the order's instructions, we contacted John S. Michela and asked for a time to discuss how your office anticipated this matter would proceed in light of the preliminary injunction issued in *Kalshi v. Hendrick*. Given the lack of response to our initial outreach, we contacted Mr. Michela again nearly a week later, on May 28, 2025, again to request a time for engagement on these issues. In response to our outreach, your office declined a request for a call to discuss this matter, and responded:

You also asked how the Board intends to proceed in light of the federal injunction issued in the *Kalshi* case. During the hearing held by the Court on May 15th, the judge specifically clarified that the preliminary injunction only applies to action against *Kalshi*.

While we recognize that, as a formal matter, the preliminary injunction entered in *Kalshi v. Hendrick* literally forecloses the NGCB from taking enforcement action against that entity, there was nothing unique about *Kalshi v. Hendrick* that informed the court's reasoning in that case. Rather, the court held "[b]ecause *Kalshi* is a CFTC-designated DCM, it is subject to the CFTC's exclusive jurisdiction and state law is field preempted." *Kalshi v. Hendrick*, 2025 WL 1073495 at \*6. We are aware of no reason that the court's findings against the NGCB would not equally apply to CDNA. Nor are we aware of any legal basis for the NGCB or its members to relitigate that same legal issue seriatim, at least in the same procedural posture. *Kalshi v. Hendrick* is also no aberration. As you are no doubt aware, only a few weeks later a federal judge in New Jersey reached exactly the same conclusion, in a case brought against that state's gaming authority. See *Kalshi v. Flaherty*, 2025 WL 1218313, at \*6 ("I am persuaded that *Kalshi*'s sports-related event contracts fall within the CFTC's exclusive jurisdiction and am unconvinced by defendants' arguments to the contrary.").

Had your office taken our call, we would have tried to discuss and agree on an orderly process for taking this matter forward. We would have proposed that further proceedings with respect to CDNA be stayed pending the outcome of the *Kalshi v. Hendrick* matter, which will have obvious relevance to this case. Failing that, we would have proposed an orderly schedule for briefing the relevant issues to the court—including, importantly, the basis that the NGCB has (if any) to distinguish CDNA from *Kalshi*.

Met with your refusal to engage in any sort of dialogue, and a purported order that CDNA cease and desist from lawful activity (an "order" that is both facially invalid and unlawful in light of federal preemption), CDNA was left with no choice but to commence legal action. Earlier today, CDNA filed a case in federal court seeking declaratory judgment against you, the NGCB, and its members in their official capacities, as well as the Attorney General of Nevada. A copy of CDNA's complaint is attached for your reference and serves as CDNA's substantive response to the unfounded allegations in your letter.

We would still like to meet and confer with you about an orderly process moving forward—one that could avoid burdening the court with entirely unnecessary emergency motions practice. In addition to this being the appropriate process, the NGCB's participation in such a

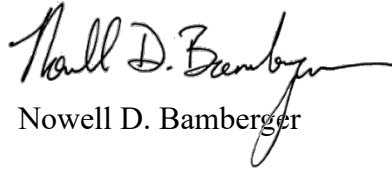
June 3, 2025

Page 3

process is required by the Local Rules. But if you are unwilling to engage in such dialogue, CDNA will be left with no choice but to ask the court to enter a temporary restraining order.

Pursuant to Local Rule 7-4, we request that you or your counsel make yourselves available to meet and confer regarding the matters addressed above. Given the statements made in your purported cease and desist order, however, we require assurance that neither the NGCB nor any other Nevada state authority will commence enforcement action against CDNA prior to the conclusion of any such meet and confer process. **Please be advised that, in the absence of such confirmation by 5:00 PM Pacific Time on June 4, 2025, CDNA will move for a temporary restraining order.**

Yours sincerely,

A handwritten signature in black ink, appearing to read "Nowell D. Bamberger", with a long, sweeping horizontal line extending to the right.

Nowell D. Bamberger

Enclosures

cc: John S. Michela, Senior Deputy Attorney General, Gaming Division

Bradley Austin, Snell & Willmer