COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
BUSINESS LITIGATION SESSION

COMMONWEALTH OF MASSACHUSETTS, Plaintiff, v. KALSHIEX LLC, Defendant.	CIVIL ACTION NO. 2584CV02525-BLS1

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
EMERGENCY MOTION TO STAY INJUNCTION PENDING APPEAL

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Defendant KalshiEX LLC ("Kalshi") submits this memorandum of law in support of its emergency motion, pursuant to Mass. R. Civ. P. 62(c), to stay the preliminary injunction that the Court has indicated it will enter as soon as January 23, 2026. *See* Mem. of Decision and Order on Pl.'s Mot. for a Prelim. Inj. and Def.'s Mot. to Dismiss, Dkt. No. 47 (the "PI Decision").[1] Kalshi respectfully requests that the Court stay its forthcoming preliminary injunction pending exhaustion of any state-level appeals, including (if applicable) any review by the Massachusetts Supreme Judicial Court ("SJC"). If the Court is inclined not to grant relief, Kalshi alternatively requests an interim stay while it seeks a stay pending appeal from the Massachusetts Appeals Court.

INTRODUCTION

This Court was the first in the country to grant a motion for preliminary injunction against Kalshi—or any other prediction market—for allegedly operating in violation of state law. Every other court to issue injunctive relief has done so in favor of Kalshi.[2] Just last week, a court granted a temporary restraining order in favor of Kalshi against state enforcement pending preliminary injunction proceedings.[3] In another case, the preliminary injunction is on appeal in the Third Circuit;[4] in a third case, the trial court reversed its own injunction while maintaining its holding that the Commodity Exchange Act ("CEA") preempts state law as applied to derivatives trading.[5] Another court denied Kalshi's motion for preliminary injunction, but the state regulators agreed to

[1] In accordance with the PI Decision, Kalshi will separately submit a comprehensive response to the Commonwealth's proposed preliminary injunction order, submitted on January 21, 2026. Dkt. No. 48 (not yet docketed). This memorandum addresses the Commonwealth's proposed order only to the extent necessary to explain why a stay pending appeal is justified here.

[2] *KalshiEX LLC v. Flaherty*, 2025 WL 1218313, at *6 (D.N.J. Apr. 28, 2025); *KalshiEX LLC v. Hendrick*, 2025 WL 1073495, at *6 (D. Nev. Apr. 9, 2025).

[3] *KalshiEX LLC v. Orgel*, No. 3:26-cv-00034, Dkt. No. 22 (M.D. Tenn. Jan. 12, 2026).

[4] *KalshiEX LLC v. Flaherty*, No. 25-1922 (3d Cir. filed May 15, 2025).

[5] *KalshiEX, LLC v. Hendrick*, 2025 WL 3286282, at *1, *10 (D. Nev. Nov. 24, 2025) ("Hendrick II").

stay enforcement pending appeal in the Fourth Circuit.[6] Yet another denied certain Indian tribes' motion for preliminary injunction against Kalshi.[7] And even in Massachusetts, the federal district court recently granted a motion for reconsideration of a dismissal order and authorized Robinhood Derivatives, LLC ("Robinhood") to seek to stop the Commonwealth from enforcing state law against Robinhood for brokering trades in event contracts, presenting the possibility that a state court and federal court ***in the same state*** might issue diametrically opposed injunctions governing the conduct of the same regulator.[8] In short, the lay of the land on the central question here—whether the CEA preempts state law as applied to the trading of event contracts on a designated contract market—is deeply unsettled and evolving by the day.

If there were ever a case where a stay pending appeal was warranted, this is it. State and federal courts in Massachusetts have recognized that such a stay is proper where the law is unsettled and the federal sovereign has significant competing policy interests.[9] Both concerns apply here. The growing disparity in legal authority relating to prediction markets is stark. Likewise, the proposed preliminary injunction would directly affect the operation of a federally regulated exchange at a state's behest. Under these unusual circumstances, a temporary pause is

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[6] *KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667, 671 (D. Md. 2025); Joint Mot. to Stay Proceedings, *KalshiEX LLC v. Martin*, No. 25-cv-1283-ABA, Dkt. No. 86 (D. Md. Aug. 19, 2025).

[7] *Blue Lake Rancheria v. Kalshi Inc.*, 2025 WL 3141202, at *1, *6 (N.D. Cal. Nov. 10, 2025).

[8] Order Granting Mot. for Recons., *Robinhood Derivatives, LLC v. Campbell*, No. 1:25-cv-12578-RGS, Dkt. No. 86 (D. Mass. Jan. 8, 2026).

[9] *See Chiswick, Inc. v. Constas*, 18 Mass. L. Rptr. 104 (Mass. Super. Ct. 2004) (finding split of authority weighed in favor of stay); *Haverhill STEM, LLC v. Jennings*, 2020 Mass. Super. LEXIS 2919, at *11-13 (June 2, 2020) (recognizing legislative policy interests in holding that stay of Superior Court's own order was appropriate); *German v. Rubin*, 2017 WL 3364324, at *3-4 (Mass. Super. Ct. July 14, 2017) (recognizing that stay of Superior Court's own order was warranted where injunction would have created inconsistent obligations across federal and state sources of law); *Insulet Corp. v. EOFlow Co.*, 779 F. Supp. 3d 124, 143 (D. Mass. 2025) (granting stay pending appeal from preliminary injunction in part because the moving party raised "a substantial question of law on which there is genuine room for meaningful difference of opinion").

needed to ensure that the appellate courts can deliberate on these issues of first impression without irreparable harm to the appellant.

Kalshi recognizes that courts seldom stay their own orders. But there are exceptions, *see infra* at 4, and for the reasons explained, the Court should issue that exceptional relief here. By any measure, the central questions of law are unsettled, rapidly evolving, and momentous in their implications. The potential harm to Kalshi is also immense and irreparable. Meanwhile, the Commonwealth will suffer no immediate harm from a temporary stay, as evidenced by the Attorney General's nine-month delay in initiating this enforcement action, and the Commonwealth's acquiescence in the ongoing operation of other prediction markets offering sports event contracts in Massachusetts while this case proceeds.

The Court's preliminary injunction order should be stayed pending final appeal in the Massachusetts courts.

PROCEDURAL BACKGROUND

On January 20, 2026, this Court issued the PI Decision, in which it granted the Commonwealth's motion for preliminary injunction, denied Kalshi's motion to dismiss, and informed the parties that it intends to issue a preliminary injunction against Kalshi after a hearing held on January 23, 2026. Pursuant to Mass. Gen. Law ch. 231, § 118, Kalshi intends to promptly appeal the PI Decision and any resulting preliminary injunction order (the "PI Order"). Counsel for the parties have engaged in discussions regarding the terms of a consensual stay of the PI Order pending appeal, but have been unable to reach an agreement.

LEGAL STANDARDS

Pursuant to Massachusetts Rule of Civil Procedure 62(c), when a party appeals an interlocutory judgment granting an injunction, the court in its discretion may suspend that injunction during the pendency of the appeal. A court may issue such a stay where the appellant

demonstrates: (1) a likelihood of success on the merits of its appeal; (2) a likelihood of irreparable harm if the Court denies the stay; (3) the absence of substantial harm to the other party if the stay issues; and (4) the absence of harm to the public interest from granting the stay. *Haverhill*, 2020 Mass. Super. LEXIS 2919, at *11 (citing *C.E. v. J.E.*, 472 Mass. 1016, 1017 (2015)).

Granting a stay of a court's own injunctive order pending appeal is particularly appropriate where (1) there is a "split of authority" on material legal issues, *Chiswick, Inc.*, 18 Mass. L. Rptr. at 105; or (2) the order may create inconsistent obligations or infringe on the interests sought to be protected by other legal regimes (here, the CEA and regulations promulgated thereunder by the CFTC), *see Haverhill*, 2020 Mass. Super. LEXIS 2919, at *11-13 (recognizing stay of Superior Court's own order was appropriate in light of interests sought to be protected by anti-SLAPP statute and litigation privilege); *German*, 2017 Mass. Super. LEXIS 102, at *3-4 (recognizing stay of Superior Court's own order was warranted where injunction could require Harvard University to violate federal and local laws).

ARGUMENT

I. Kalshi Is Likely to Succeed on the Merits of Its Appeal.

Although the PI Decision was issued two days ago, and Kalshi is still evaluating it, Kalshi respectfully submits that there are serious questions that make it likely to succeed on appeal. Without limitation, these include: (1) whether the presumption against preemption applies notwithstanding the CEA's express statutory language displacing state law with respect to trading on designated contract markets ("DCMs"); (2) whether 7 U.S.C. § 2(a)(1)(A) preempts some, but not all, state laws as applied to trading on DCMs, and excludes state gaming laws from the scope of preemption; (3) whether the CEA's "Special Rule," by authorizing the CFTC to prohibit event contracts involving activity that is unlawful under state law, shows that states may regulate derivatives markets; and (4) whether Massachusetts law does not conflict with federal law because

the former merely imposes "additional" requirements over and above the federal regulatory scheme. Courts have granted stays or injunctions pending appeal on far lesser showings of likelihood of success than Kalshi has made here. *See Insulet Corp.*, 779 F. Supp. 3d, at 143 (granting partial motion to stay injunction pending appeal where moving party presented "a substantial question of law on which there is genuine room for meaningful difference of opinion"); *In re Miraj & Sons, Inc.*, 201 B.R. 23, 27 (Bankr. D. Mass. 1996) (extending stay despite "Court's confidence in the rectitude of its decision" where law was "unsettled" and moving party presented "substantial case" on appeal).

A. The Presumption Against Preemption Does Not Apply.

A core premise of the PI Decision is that the "presumption" against preemption applies in this case. PI Decision at 7-8. Indeed, this premise was material to the Court's analysis of the preemption issue. *Id.* at 8 ("[T]he presumption guides the court's analysis in this case."). But the Court's application of this presumption is vulnerable on appeal.

First, the Court assumed that field preemption may only be implied, not express, which led the Court to conclude that "[o]nly implied preemption is at issue in this case." *Id.* Respectfully, an appellate court is likely to conclude otherwise, for field preemption may indeed be express. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 n.6 (2000) (the preemption "categories" "are not 'rigidly distinct,'" and "'field' preemption may fall into any of the categories of express, implied, or conflict preemption"); *see also Patel v. 7-Eleven, Inc.*, 183 N.E.3d 398, 409 n.15 (Mass. 2022) ("Preemption can be either express, as evidenced through congressional statement or enactment, or implied.").

Second, Kalshi's briefs argued emphatically that the CEA ***expressly*** preempts the field of trading on DCMs. Mem. of Law in Supp. of Def.'s Mot. to Dismiss and in Opp'n to Pl.'s Mot. for Prelim. Inj., Dkt. No. 41 ("Kalshi Br.") at 10-28. Indeed, Kalshi's principal argument was that the

statutory text unambiguously displaces state law by providing that state law would not be "supersede[d] or limit[ed]" by the CEA, "[e]xcept as hereinabove provided"—*i.e.*, except with respect to trading on DCMs. 7 U.S.C. § 2(a)(1)(A). The PI Decision failed to acknowledge that Kalshi was asserting an express field preemption argument.[10] And it failed to recognize—and adhere to—the Supreme Court authority cited in Kalshi's brief (at 11) providing that the presumption against preemption does ***not*** apply where, as here, a statute expressly preempts state law. *See Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016).

B. The CEA Does Not Carve Out State Gaming Laws From the Scope of Preemption.

The PI Decision agreed with Kalshi that, by giving the CFTC "exclusive jurisdiction" over trading on DCMs, Congress intended to preempt state law. PI Decision at 10. However, the Court held that this preemptive intent extended only to "*some* state law," but not "as far as state gaming laws." *Id.* (emphasis in original). From the text of the exclusive jurisdiction provision, however, an appellate court is likely to adopt a different interpretation. By its terms, the provision does not purport to discriminate among state laws; it does not discuss state law at all, but rather preserves the "jurisdiction" of state "regulatory authorities" except in areas where the CFTC is given exclusive jurisdiction. 7 U.S.C. § 2(a)(1)(A). And even if there were any ambiguity in this regard (there is not), the legislative history of the CEA makes clear that, far from carving out state gaming laws, those laws were a principal target of Congress's preemptive intent. *See* Kalshi Br. 14-15. The same is true of the Dodd-Frank Act of 2010, which recognized that event contracts might

[10] Alternatively, the Court appeared to view "express preemption" as requiring the use of the word "preempt" in the statutory text. PI Decision at 11 (referring to 7 U.S.C. § 16(e) as "[t]he CEA's express preemption provision"). That is not correct. Preemption does not turn on "magic words." *See Wolicki-Gables v. Arrow Int'l, Inc.*, 634 F.3d 1296, 1301 (11th Cir. 2011). The grant of "exclusive jurisdiction" to a federal agency preempts state intrusion on the same "regulatory turf." *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 163 (2016); *see also Roma, III, Ltd. v. Bd. of Appeals of Rockport*, 478 Mass. 580, 589 (2018).

potentially "involve . . . gaming," but would nonetheless be subject to the CFTC's exclusive jurisdiction. 7 U.S.C. § 7a-2(c)(5)(C)(i)(V).

Moreover, the PI Decision acknowledged that, even on this more limited interpretation of CEA preemption, the preemptive scope would extend to "a state's targeted attempt to regulate a derivative market." PI Decision at 10. The Court was correct: As the Seventh Circuit explained in *American Agriculture Movement, Inc. v. Board of Trade of Chicago*, the CEA's preemptive effect applies to state law claims that "bear[] upon the actual operation of the commodity futures markets." 977 F.2d 1147, 1156 (7th Cir. 1992). And, as an appellate court is likely to determine, that is exactly what will happen here. The Commonwealth's proposed order seeks not only to enjoin Kalshi from offering an entire class of derivatives contracts on its federally regulated exchange, but also dictates further restrictions governing deposits, fees, advertising, account creation, and derivative product design. Dkt. No. 48 (not yet docketed). It also seeks to mandate how Kalshi shall settle existing trades, communicate with market participants, and manage its recordkeeping. *Id.* If this is not a "targeted attempt to regulate a derivative market," in the words of the PI Decision, it is hard to imagine what would be.[11]

C. The Special Rule Does Not Grant States Jurisdiction Over DCMs.

The PI Decision further reasoned that Congress did not intend to preempt state laws as applied to trading on DCMs, but instead sought to preserve them. Quoting extensively from *Martin*, 793 F. Supp. 3d 667, the Court pointed to the language of the Special Rule concerning "activity that is unlawful under . . . State law." PI Decision at 11 (quoting 7 U.S.C. § 7a-2(c)(5)(C)(i)). But an appellate court is likely to draw the opposite inference from the Special

[11] Nor is it an answer to argue that Kalshi's sports event contracts are not really derivatives, as the Commonwealth argued in its preliminary injunction motion. Mem. in Supp. of Pl.'s Emergency Mot. for Prelim. Inj., Dkt. No. 5, at 14. The PI Decision did not credit that argument; rather, it expressly "assume[d] without deciding that Kalshi's event contracts are swaps." PI Decision at 10.

Rule's text—that it reflects Congress's intent to give ***the CFTC*** authority to determine whether certain categories of event contracts should be prohibited on public interest grounds, including with respect to event contracts involving activity deemed unlawful under state law. Far from an invitation for 50 states to substitute their own public-interest judgment for the CFTC's, the Special Rule confirms Congress's delegation of that authority exclusively to the CFTC.

D. The Commonwealth's Enforcement Action and Proposed PI Order Stand as an Obstacle to Congress's Objective of Exclusive Federal Regulation of DCMs.

The PI Decision also rejected Kalshi's conflict preemption argument on the ground that Massachusetts law only "imposes an *additional* regulatory burden on [Kalshi's] event contract platform." PI Decision at 14 (emphasis in original). The Court reasoned that the CEA and CFTC regulations create a regulatory floor on top of which the Commonwealth may layer additional obligations, with "both systems . . . operat[ing] in harmony." *Id.* But the same could have been said of the patchwork of state laws—including state gambling laws—that Congress sought to address with the 1974 amendments to the CEA. That patchwork, layered on top of federal oversight of the nation's derivative markets, had given rise to "total chaos," not harmony. *Commodity Futures Trading Commission Act: Hearings Before the S. Comm. on Agric. & Forestry on S. 2485, S. 2578, S. 2837, and H.R. 13113*, 93d Cong. 685 (1974) (statement of Sen. Clark).

In 1974, as in this case, states were seeking to impose additional, and often contradictory, legal standards. *FTC v. Ken Roberts Co.*, 276 F.3d 583, 588 (D.C. Cir. 2001) (holding that one "aim" of the 1974 Act was to "avoid unnecessary, overlapping and duplicative regulation"). An appellate court is likely to find, consistent with Supreme Court precedent, that state law conflicts with federal law where state regulation is "at odds with the goal of uniformity that Congress sought to implement." *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990). As the newly confirmed CFTC Chair recently declared: "The CFTC's approach should be to deliver the

minimum effective dose of regulation—nothing more and nothing less." Michael Selig, *America's Financial Markets Are Ready for a Golden Age*, Wash. Post (Jan. 20, 2026), https://perma.cc/79EF-U376. An "additional" dose of regulation above what the CFTC requires openly conflicts with that policy.

II. Kalshi Will Suffer Irreparable Harm Absent a Stay.

Kalshi will also suffer irreparable harm in the absence of a stay. At the time of this filing, the contours of the PI Order remain uncertain. However, the order proposed by the Commonwealth will certainly cause harm to Kalshi that could not be remedied if Kalshi is successful on appeal.

First, the proposed PI Order would require Kalshi to develop and implement complex and expensive technology it currently lacks, in order to geolocate not only persons who have self-identified as Massachusetts residents, but also those who happen to be located in Massachusetts at any given moment, whether as resident, short-term visitor, or something in between. As Kalshi has explained, achieving and maintaining this capacity will require annual investment of many millions of dollars, and it is doubtful that Kalshi would be able to recover that investment, due to sovereign immunity principles, if it turns out to have been the result of an unlawful regulatory dictate. *See* Decl. of Xavier Sottile ("Sottile Decl.") ¶¶ 22-41, Dkt. No. 43.

Second, the proposed PI Order would require Kalshi to implement this geolocation technology within ***seven days*** of the injunction taking effect. As Kalshi has long explained, such a deadline is not technologically feasible; implementation would take months. Sottile Decl. ¶ 31. Thus, no matter Kalshi's efforts, Kalshi would immediately be out of compliance with the court's PI Order absent a stay, potentially exposing the company to sanctions or other penalties—to say nothing of the substantial reputational consequences. Nor is it an answer, as the Commonwealth has suggested, that the CFTC supposedly put Kalshi and other regulated entities "on notice" of the

need for contingency planning in connection with litigation over the lawfulness of sports event contracts. Dkt. No. 45, Exhibit A. Nothing in that advisory purports to admonish entities to adopt geolocation technology or any other particular practice—and understandably so, as differential treatment of users around the country would likely ***violate*** the CEA, not shore up compliance. The advisory simply reminds the CFTC's registered entities to safeguard customer funds and adopt contingency planning for any close-out of existing trades (if necessary), not to seek to pre-comply with whatever injunction might result from the many cases pending around the country.

Third, while the Commonwealth's proposed PI Order threatens to put Kalshi out of compliance with the contemplated injunction, it also risks forcing Kalshi to violate its ***federal*** regulatory obligations. The CEA requires DCMs to comply with nearly two dozen "Core Principles" that govern DCMs. The regulations appear to prohibit a CFTC-designated exchange from closing its business to residents of a particular state. Sottile Decl. ¶¶ 56-57. Kalshi would thus face a "Hobson's choice"—the PI Order "would mean leaving it subject to state enforcement or obligating it to shift its business practices, consequences that are not cleanly undone." *Flaherty*, 2025 WL 1218313, at *7. It could be "impossible for [Kalshi] to comply with both state and federal law." *Crosby*, 530 U.S. at 372.

Finally, the proposed PI Order would cause Kalshi serious commercial and reputational harm. This harm extends both to users who will observe market disruption and uncertainty and may abandon Kalshi's platform, Sottile Decl. ¶ 59, as well as to Kalshi's "futures commission merchant" partners, who could lose the ability to offer Kalshi sports event contracts to their own Massachusetts customers, undermining consumer trust in their and Kalshi's platforms. *Id.* ¶ 60. Recently, the Sixth Circuit affirmed a finding of irreparable harm based on exactly this kind of lost

business and "goodwill," which cannot easily be regained if Kalshi prevails on appeal. *Churchill Downs Tech. Initiatives Co. v. Mich. Gaming Control Bd.*, 162 F.4th 631, 643 (6th Cir. 2025).

III. Temporarily Staying the PI Order Will Not Cause Substantial Harm to the Commonwealth.

Nor will a stay cause substantial harm to the Commonwealth. While Kalshi of course acknowledges that the Court has ruled preliminarily that Massachusetts law is not preempted, any fair assessment of the legal landscape must appreciate that there remain serious unsettled questions on this front, as reflected in the widely divergent outcomes in lawsuits around the country (with more guidance to come from appellate courts). In light of that context, the Commonwealth's proposed PI Order is hardly on solid regulatory ground. A brief pause is justified to ensure that the PI Order is lawful before it goes into effect. Indeed, the Commonwealth waited nine months to initiate this lawsuit against Kalshi; a few more months to obtain appellate guidance and ensure that the PI Order is legally justified should not make a material difference, especially when offset against the substantial harm to Kalshi's business.

Moreover, the Commonwealth has made no (public) attempt to enforce the Sports Wagering Law on any other federally regulated prediction market offering sports event contracts in Massachusetts. There is no material difference between the sports event contracts offered by Kalshi and those offered by other prediction markets in the state. Nevertheless, the Commonwealth has permitted those entities to offer such contracts in Massachusetts for the better part of a year. This provides significant evidence that the Commonwealth would suffer no cognizable harm by staying the PI Order until appeals in this action have been exhausted.

IV. A Stay Is in the Public Interest.

There is no public interest in enforcing a preempted law. *See Ass'n of Am. Univs. v. Dep't of Def.*, 792 F. Supp. 3d 143, 181 (D. Mass. 2025) ("There is generally no public interest in the

perpetuation of unlawful agency action.") (quoting *League of Women Voters of U.S. v. Newby,* 838 F.3d 1, 12 (D.C. Cir. 2016)). Quite the opposite: the public has a first-order interest in ensuring that preempted Massachusetts laws are ***not*** enforced against federally regulated entities. And the Commonwealth itself lacks any legitimate interest in enforcing a state law that is preempted. *See Arizona v. United States*, 567 U.S. 387, 399, 401 (when Congress occupies field, it "foreclose[s] any state regulation in the area" and renders "even complementary state regulation . . . impermissible"); *Churchill*, 162 F.4th at 643.

An injunction in these circumstances would negatively affect the interests of those in Massachusetts who might otherwise trade in Kalshi's sports event contracts before the Massachusetts appellate courts have an opportunity to weigh in on this issue of first impression.[12] People in Massachusetts would be systematically excluded from a nationwide exchange that, in the words of the CFTC's newly confirmed chairman, has "exploded in popularity as broad swaths of market participants seek to hedge portfolio risks and test their abilities to forecast truth." Michael Selig, *America's Financial Markets Are Ready for a Golden Age*, Wash. Post (Jan. 20, 2026), https://perma.cc/79EF-U376. Unlike Kalshi's event contracts, sports wagers offered by Massachusetts licensees cannot be traded on an open exchange for market value, leaving the Commonwealth's consumers at a disadvantage to peers across the country.

Moreover, staying the injunction would be consistent with existing Massachusetts law and regulations. In Massachusetts, individuals ages eighteen and up can engage in derivatives trading in the Commonwealth on CFTC-regulated DCMs. The Secretary of the Commonwealth also

[12] This will not only be the first injunction to be issued against any federally regulated exchange for allegedly operating in violation of state law by offering event contracts, but it will also be the first injunction issued against any entity under the Massachusetts Sports Wagering Law. Indeed, Kalshi is aware of no action in the modern era of derivatives regulation in which a state sought to compel a federal exchange (*e.g.*, the Chicago Mercantile Exchange, which also offers event contracts) to ringfence its operations in this manner.

recognizes that the CFTC's jurisdiction over commodities contracts is exclusive. *See* 950 CMR § 14.402(B)(13)(g) (excluding commodities contracts subject to the exclusive jurisdiction of the CFTC from Secretary's reporting requirements). The Massachusetts legislature, for its part, has determined that trading on derivatives exchanges does not constitute unlawful gaming—at least where such exchanges have been "established for a period of at least ten years." Mass. G.L. ch. 137, § 4. To be sure, Kalshi was founded in 2018, fewer than 10 years ago. But it strains credulity for the Commonwealth to argue that the same trading conduct that ostensibly engenders insidious harms today would be perfectly acceptable had Kalshi been founded two years earlier.

V. The Court Should Stay the PI Order to Permit Kalshi to Seek a Stay Pending Appeal From the Massachusetts Appeals Court.

If the Court decides not to stay the PI Order pending appeal, Kalshi will expeditiously move for a stay in the Appeals Court. *See* Mass. R. Civ. P. 6(a). Kalshi respectfully requests that, at a minimum, the Court grant an administrative stay of its PI Order until fourteen (14) days following the issuance of a final decision by the Appeals Court denying Kalshi's motion to stay.

CONCLUSION

For the foregoing reasons, Kalshi respectfully requests that the Court stay the PI Order pending exhaustion of any state-level appeals, through and including review by the SJC (if applicable). Kalshi alternatively requests an interim stay while it seeks a stay pending appeal in the Appeals Court.

Respectfully submitted,

Dated: January 23, 2026

KalshiEX LLC

By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2026, I served the above document on all counsel of record for the parties by email.

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