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Dear Mr. Kirkpatrick and Mr. Fajfar:

This letter is a response to the Commodity Futures Trading Commission (CFTC) request for comment on "Prediction Markets", RIN number 3038–AF65.

I am a professor of business law at Seton Hall Law School, and, among other things, previously practiced derivatives law in regulatory and transactional capacities at Sullivan & Cromwell LLP and Sidley Austin LLP. My scholarship focuses on derivatives and other financial markets, and my recent research has focused on prediction markets and their regulation by the CFTC.[1] I write in my personal capacity, and the views expressed in this letter represent only my

[1] Ilya Beylin, *Event Contracts Are a Step Too Far for Derivatives Regulation*, 4 UNIV. CHI. BUS. L. REV. 77 (2025); Ilya Beylin, *Exchanges are Using Federal Derivatives Law to Provide Gambling Products to Retail Traders: A Descriptive Account with Suggestions for Regulatory Intervention* (forthcoming REV. BANK. FIN. L. 2026) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5282276.

personal views. The views expressed in this letter are not the views of Seton Hall University, Seton Hall Law School, or anyone else associated with Seton Hall.

Event contracts pose difficult issues as the CFTC contends with (a) limited resources, (b) an epic expansion of its regulatory authority under the Dodd-Frank Act and potentially legislation related to cryptocurrencies, and (c) the evolution of financial markets. There is substantial industry pressure to liberalize the trading of event contracts through designated contract markets (DCMs). However, before doing so, at least a pause and reflection are warranted, particularly because (a) event contracts blur the line between financial activity and gambling, and I believe some cross that line, and (b) Congress has effectively instructed the CFTC to proceed with caution in approving these products when enacting Section 5c(c)(5)(C) of the Commodity Exchange Act (CEA).

In this response, I address some but not all of the questions posed in the CFTC's Advance Notice of Proposed Rulemaking regarding Event Contracts, 91 Fed. Reg. 12516 (March 16, 2026) (the "***ANPR***"). The questions are referenced in italics with my responses following in non-italicized text, however, certain responses are relevant to more than one question.

Question 2(b) concerns Core Principle 2 applicable to DCMs and the factors that the CFTC should consider regarding a DCM's rules related to resolution criteria for event contracts.

Many event contracts listed in the preceding year overwhelmingly serve an entertainment purpose and lack appreciable utility for managing risk (or setting prices in related cash markets). A number of platforms list these contracts in denominations of a dollar or less, representing trivial amounts consistent with discretionary spending on entertainment on the part of retail traders rather than risk management. Total transaction sizes are consistent with the contracts being used for entertainment rather than risk management, with transaction sizes regularly being below $100. On a number of contract markets run by Kalshi and other DCMs catering to these consumer preferences, the overall volume of trading for a contract does not exceed six figures and is inconsistent with risk management. The fundamentally different purpose behind these contracts manifests in their design, as they are drawn from popular headlines and pop culture sources.[2] As discussed more below, this is not how risk management products have been designed.

The business model of serving consumers' entertainment interests leads to many event contracts being infrequently offered in contrast to traditional DCM traded products, which are consistently offered on monthly or similar cycles.[3] The sporadic or one-off nature[4] of many event contracts leads to a relatively ad hoc and discretionary application of judgment in their settlement; this is in contrast to traditional DCM products, which settle based on robust indices with settlement honed through repeat experience developed over years. For this reason, a number of products recently filed with the CFTC pose risks of failing to satisfy Core Principle 2. These products endanger the reputation of the CFTC administered derivatives ecosystem through raising

[2] *Will Prediction Markets Live Up to the Hype?*, THE ECONOMIST (Feb. 19, 2022), ("Kalshi specifically looks for events ripped from headlines, says Luana Lopes Lara, one of its co-founders.").
[3] See, for example, futures contracts on agricultural, energy, metal, foreign exchange, or interest rate products.
[4] The infrequent (sometimes one time only) appearance of certain event contracts makes it highly unlikely that businesses or other market participants will develop risk management strategies that rely on these contracts as the development of these strategies requires time and investment.

substantive disputes as to the rigor and impartiality of the settlement process. This threatens the perceived integrity of derivatives exchanges. Guard rails should be established against products that settle based on a substantial exercise of discretion on the part of the DCM.

Question 2(c) concerns Core Principle 3 applicable to DCMs and how determinations should be made whether an event contract is readily susceptible to manipulation.

Many event contracts raise heightened risk of manipulation. Traditional DCM products settle on indices that aggregate many thousands of independent expressions of supply and demand. In contrast, event contracts can settle on outcomes determined by one individual or a small group of individuals. Examples include contracts that settle based on (a) words an individual uses in a press conference, (b) who the president will pardon, (c) how many times Bill Ackman will accuse MIT professors of plagiarism, or (d) the decision by a small committee to award a prize to an individual. The tight connection between the decisions of an individual or a small group of individuals and the settlement of many event contracts is unprecedented in the derivatives space and brings unprecedented risks of manipulation.

Prediction markets are inept at predicting the outcome of decisions by one person or a small group of people.[5] Over the last year, as these contracts traded on exchanges like Kalshi, they have exhibited substantial volatility and have been largely inaccurate through significant portions of their lifecycle. Critically, these contracts are substantially unlike contracts that harness the wisdom of the crowd; these contracts are not brought to an accurate price as traders digest myriad relevant data points because non-insiders have few relevant data points.

Contracts that resolve based on the behavior of one individual or a small group of individuals have substantially different cost-benefit considerations than traditional derivatives contracts. These contracts are especially poor at managing risk and aggregating information. At the same time, these contracts are subject to substantially heightened risks of manipulation as well as insider trading. Guard rails should be established against products that settle based on the decisions of an individual or a small group of individuals.

Question 2(d) concerns Core Principle 4 applicable to DCMs, which requires a DCM to "have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through market surveillance, compliance, and enforcement practices and procedures."

Please see my response to question 2(c) immediately above.

Question 2(f) concerns Core Principle 11 applicable to DCMs and asks about collateral practices that should be applicable to event contracts.

DCMs providing event contracts currently profit from their full collateralization. The prepayment provides interest free funding to the exchanges and represents a cost to consumers. However, addressing this hidden fee structure through permitting margin raises significant

[5] Rebecca Haw Allensworth, *Prediction Markets and Law: A Skeptical Account*, 122 HARV. L. REV. 1217, 1231-32 (2009) ("where the predicted event is not itself the result of aggregated actions or preferences, an information market is not a very good tool").

concerns. Retail traders may have operational difficulties meeting collateral calls. The non-posting of collateral may, in turn, lead to involuntary closure of positions to the detriment of retail traders. Moreover, interruptions in margin flows between retail traders, their futures commission merchants (FCMs) and derivatives clearing organizations (DCOs) may put at risk the FCMs and DCOs. I commend the CFTC for raising this difficult issue among other difficult issues affecting prediction markets. My suggestion is to segregate the flows of margin involving event contract retail traders to reduce the risk that products beyond event contracts will be affected should there be a default by retail traders related to one or more event contracts. In other words, the default in posting margin by a retail trader in event contracts should never create the risk that its FCM will default in posting margin on traditional derivatives products. It is important to keep traditional derivatives markets insulated from the financial integrity risks that new retail margin flows pose, at least until the CFTC and DCOs have more experience with these products.

Question 3 concerns DCO Core Principles and the clearing of event contracts.

Please see my response to question 2(f) immediately above.

Question 4 concerns institutional traders on prediction markets.

Trading in event contracts by institutional traders is substantially different from trading by retail traders. In the latter case, the motivation is very likely to be gambling (i.e., the thrill of the transacting experience) rather than legitimate financial goals such as investing or managing risk. Institutional traders, however, are highly unlikely to engage in financial transactions for gambling purposes. Among other things, it is unheard of for individuals to delegate gambling to funds or other asset managers, whereas traditional financial functions are frequently delegated to these entities. For this reason, the mental health concerns (including concerns with over-consumption and impulsive activity) that should inform the CFTC's approach to event contract trading by retail market participants are irrelevant in the context of institutional traders. Among other things, the CFTC would do well to study and compare institutional trader behavior to behavior of retail traders; these trends can partly inform which products are actually gambling products masquerading as derivatives with legitimate financial functions. In this regard, it would also be helpful for the CFTC to study the transaction sizes and overall market interest across event contracts. As discussed above, small transaction sizes are indicative of gambling rather than risk management. These statistics can help inform which types of event contracts are used for entertainment rather than the public interest enshrined in Section 3(a).

Question 7 concerns construing the phrase "public interest" in the context of CEA Section 5c(c)(5)(C).

Congress has not provided specific guidance on interpreting the phrase "public interest" as it is used in Section 5c(c)(5)(C). The CFTC does have authority to articulate factors or other frameworks towards construing this term based on the agency's technical expertise. *Loper Bright Enterprises v. Raimondo*[6] endorses deference to agencies in areas of their subject matter expertise.

[6] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024) ("although an agency's interpretation of a statute 'cannot bind a court,' it may be especially informative 'to the extent it rests on factual premises within [the agency's] expertise.'").

The CFTC has decades of subject matter expertise in formulating how and the circumstances under which derivatives markets serve the broader economy and society. The CFTC can draw on this expertise to develop a framework for implementing the "public interest" within the meaning of Section 5c(c)(5)(C). Additional considerations relevant to construing the term "public interest" are discussed in relation to question 8 immediately below.

Question 8 concerns the public interests underlying the Commodity Exchange Act as discussed in Section 3 of that Act.

I have done extensive research on the meaning of "public interest" as used in Section 3 of the CEA.[7] The CFTC must always consider whether a contract serves hedging or price discovery functions when assessing whether it is appropriate to permit listing of the product on a designated contract market or swap execution facility, i.e., whether a product is consistent with the CEA. That obligation arises under Section 3(a) of the CEA, which limits (with emphasis added) the transactions subject to the CEA to those that serve the specified public interest:

> "(a) FINDINGS.—The transactions subject to this Act are entered into regularly in interstate and international commerce and are affected with a *national public interest* by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities."

The public interest that the CEA is intended to achieve can be divided between "managing and assuming price risks" (i.e., hedging) and "discovering prices, or disseminating pricing information" (i.e., enabling cash market pricing on the basis of prices developed in derivatives markets). This statement of purpose was adopted with the Commodity Futures Modernization Act (CFMA) of 2000. At the time, it replaced a statement of purpose that is traceable to the 1920s and 1930s era, long before the CFTC was founded and when commodity-derivative regulation was in service of agricultural markets. While one may argue the price discovery goals referred to in the CFMA language relate to aggregating information through pricing as a goal in itself without regard to cash markets[8], this is inconsistent with the history of the language used in Section 3(a). Throughout the 1990s and in the runup to the enactment of the CFMA, regulators and other professional commentators referred to "discovering prices" and "disseminating pricing information" as functions serving related cash markets.[9]

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[7] Beylin, *Event Contracts Are a Step Too Far for Derivatives Regulation supra* note 1.

[8] As background, economic theory drawing on Hayekian insights sometimes uses the term "price discovery" to refer simply to the capacity of markets to aggregate information about supply and demand through the price formed through market interactions. Under this definition, any price is itself valuable as an aggregation of information. Many prediction markets have designed products so that their pricing reflects dispersed estimates of event likelihoods, highlighting the value of a market-set price without more. However, price discovery in this Hayekian sense is foreign to the CEA.

[9] *See*, *for example*, Testimony of CFTC Chair Mary Shapiro before the House Banking and Financial Services Committee (March 30, 1995) ("Commodity futures and options contracts are risk-shifting instruments that . . . provide a means to construct and adjust hedges on all types of commodities and financial instruments quickly and cheaply . . . In addition, because the price of a futures or option contract is derived from the value of an underlying commodity, the prices that result from futures trading serve as reference points in cash markets."); Report of the President's Working Group on Financial Markets, *Over the Counter Derivatives Markets and the Commodity Exchange Act* (Nov. 1999) (in arguing against the regulation of swaps markets, distinguishing swaps from futures in that the former do not

Again, the transactions that are subject to the CEA are those that serve the specified public interest. For many event contracts, there are no relevant cash markets and only their hedging utility can qualify them for the privilege of regulation under the CEA (i.e., preemption of regulation under state law). Under Section 3(a), the CFTC has no authority (or can adopt an interpretation to preclude authority) to regulate a product that does not have appreciable hedging or price discovery functions just as the CFTC would have no authority to regulate cars or avocados should a designated contract market or swap execution facility launch sales of vehicles or vegetables. It may be that some products listed on one or more regulated platforms do not qualify as commodity interests, and are instead subject to state law regulation for these reasons. But while prior self-certifications may have been lightly reviewed, this is a good time to take stock and reassert the boundaries of the CEA. In this regard, it is useful to reference the long history of trading in futures under state law for non-agricultural products until the Commodity Futures Trading Commission Act of 1974 famously expanded the definition of commodity; for example, silver futures traded for at least half a century outside of the CEA, and instead subject to state law. To exclude some event contracts from the scope of products permissible to a DCM is not a stance against "responsible innovation." Rather it recognizes that some products should develop under state or other law rather than under the CEA. Event contracts (like other products) that do not exhibit significant hedging or price discovery utility should not get the benefit of preemption accorded to listed products regulated under the CEA.

Recent technological and contractual innovations have increased the risk of gambling and other forms of personal consumption activity through derivatives markets.[10] Exchanges have overtly focused on broadening their clientele to retail customers. Online trading makes the expenses of supporting a pit irrelevant. Technology also greatly reduces the costs of advertising, particularly to retail customers who do not expect expensive features or customer support. Products such as binary options enable full funding at the outset, and thus obviate the operational costs of margin and other risk management. These contracts are easy to launch for exchanges, and the positions are easy to enter into for retail participants. At the same time, many of the new contracts settle on the basis of newsworthy events that receive attention from amateur prognosticators. Unless these contracts have appreciable hedging utility, they have no prospect of surviving except through cultivating a mentality among retail traders that engaging with these contracts is a form of personal consumption (e.g., entertainment). These are not the purposes CFTC regulated markets have served, and these are not the participant goals that the CEA is designed to protect. The CEA has never been about furthering markets devoted solely to speculation or innovation for the sake of innovation. Furthermore, this business model on the part of exchanges will encourage marketing to retail investors that ultimately undermines public faith in CFTC regulation. This business model should not be permitted among DCMs as it will

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serve the price discovery functions that the latter have served); *A New Regulatory Framework for Trading Facilities, Intermediaries and Clearing Organizations*, 66 Fed. Reg. 14262, 14267 (March 9, 2001) (discussing price discovery and price dissemination as serving price formation in cash markets referenced by regulated derivatives); *Exempt Commercial Markets*, 68 Fed. Reg. 66032, 66034-35 (Nov. 25, 2003) (same).

[10] Other factors have also contributed to the risk that derivatives exchanges design predatory products that profit from retail traders without serving the goals of the CEA, including (a) increased direct trading (i.e., direct access to exchanges without FCM intermediation), (b) exchange demutualization, and (c) product filing changes under the Commodity Futures Modernization Act of 2000.

challenge the CFTC's competencies and erode respect for regulated derivatives markets. Even if the interpretation of Section 3(a) that I advocate for above is not adopted, it is important to extract from Section 3(a) that the CEA is overwhelmingly designed to serve Main Street in hedging and pricing cash market activity.

Where there is a genuine question as to whether a product has hedging utility, it is reasonable to expect that the platform submitting the product to the CFTC will have internal studies demonstrating the hedging utility. As part of product development, platforms interview potential customers, and in particular, the community that may use a product for hedging purposes. For example, in launching event contracts on heating and cooling degree days, the CME interviewed utility companies to identify the temperature at which air-conditioning and heating systems are activated, thereby arriving at the 65 degree Fahrenheit baseline.[11] Without documented interests on the part of potential customers, a product should not launch. Regulatory certification or approval for a well-designed product with bona fide hedging potential is not a high-risk proposition, and thus can procedurally follow the other stages of product development. If at the time of regulatory submission there is a question as to the hedging utility of a product, the surveys and other marketing information the platform developed prior to submission can be referenced to assess hedging utility. This marketing information may be qualitative, but frequently includes quantitative components. The CFTC should engage with ex-employees of major derivative exchanges' marketing and product development departments and through those consulting arrangements obtain a realistic understanding of the internal information an exchange should be expected to have.

The utility of a product for hedging or price discovery purposes is not the only consideration that is relevant in the course of a public interest analysis. As CFTC-regulated derivative markets evolve, new risks need to be considered. These risks will vary based on the type of product. Additional considerations may include concerns regarding moral hazard, interference with States' police power, the competencies and resources of the CFTC, the jurisdiction and authority of the CFTC, public perceptions of regulated markets, protecting market participants from fraud and manipulation as well as other matters of market integrity, the reliability of prices for the product (e.g., whether relevant information is available only to a few individuals and/or is guarded as secret), the risks of corruption (or perception thereof) with respect to public and private bodies, and other matters. However, at a minimum, the utility of a product for hedging and pricing related cash markets should be considered in assessing event contracts.

Question 9 concerns the "economic purpose" test previously applied under the CEA.

As my research shows and as summarized above, (A) to a substantial degree, the economic purpose test can continue to apply through Section 3(a) of the CEA, and (b) at the very least, the

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[11] See CME, Overview of Weather Markets available online at https://www.cmegroup.com/education/lessons/overview-of-weather-markets.html ("A 'degree day' is a measure of how much a day's temperature deviates from 65 degrees Fahrenheit, or 18 degrees Celsius. This baseline temperature was established by utility companies after observing that air conditioners and furnaces are usually turned on when the temperature rises above or falls below this benchmark.")

CFTC has authority to interpret "public interest" in a way that effectively applies the economic purpose test to event contracts within the scope of categories enumerated in Section 5c(c)(5)(C).

Question 10 concerns the extent to which event contracts serve the public purpose referenced in Section 3(a).

As discussed above, there is a substantial risk that many event contracts do not advance the goals of the CEA as delineated in Section 3(a). In many cases, I believe, exchange product filings would mislead the CFTC and market participants if they asserted that the event contract significantly serves the goal of "managing and assuming price risks, discovering prices, or disseminating pricing information". In fact, many event contracts are designed to serve entertainment goals akin to gambling.[12]

Question 11 concerns the purposes of the CEA listed in Section 3(b).

It is important to emphasize that Section 3(b) seeks to promote "responsible" innovation rather than all innovation. Enabling gambling outside the bounds of state regulation does not amount to "responsible" innovation. It is nihilistic innovation. Opening up sports betting to residents of states like Texas and California where the democratic process within the states supports a ban on sports gambling is not "responsible" innovation. Allowing eighteen year olds to gamble on sports whereas their state would not permit it until they reach twenty one is not "responsible" innovation. The exchanges pushing to offer gambling products under the CEA are engaging in regulatory arbitrage rather than responsible innovation. Moreover, they are attempting to use the CEA to engage in unfair competition through avoiding the licensing fees and state taxes generally paid by gambling platforms. The goals of Section 3(b) are disserved when derivatives exchanges are able to offer gambling products like sports wagers under the CEA and outside the constraints of state gambling regulation.

Question 12 concerns the connection between event contracts and the availability of related insurance.

The availability of insurance related to an event may be evidence that there is a genuine market for managing the risk related to that event. However, there are limits on this proposition. For example, an individual can get insurance against her house burning down or life insurance. That does not mean that *other* individuals or businesses have a legitimate interest in managing the risk that an individual's house burns down or that she dies. In cases like these, the insurance market will be a suitable means to manage risk whereas a derivatives market would not be. As a contrary example, there is insurance related to crop yields or weather events. Legitimate event contracts may be (and have been) written on crop yields or weather events.

Question 15 asks about activities listed under Section 5c(c)(5)(C) of the CEA.

The ANPR requests comments on what products should be treated as those involving "(I) activity that is unlawful under any Federal or State law; (II) terrorism; (III) assassination; (IV) war; (V) gaming; or (VI) other similar activity . . . ." Admittedly, this requires the CFTC to engage in

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[12] Beylin, *Exchanges are Using Federal Derivatives Law to Provide Gambling Products to Retail Traders: A Descriptive Account with Suggestions for Regulatory Intervention* supra note 1.

considerations beyond its typical remit of caring for the health of derivatives markets and related cash markets. It is for this very reason that a broad reading of the prohibition under 5c(c)(5)(C) would be appropriate, because enabling the listing of socially controversial products suspends the application of state law through preemption and puts pressure on CFTC resources as primary watchdog for the products. While the CFTC is ill equipped to make these public interest determinations, it is even less well equipped to supervise trading where it has implications for mental health (e.g., gambling addiction), foreign policy (e.g., elections, war, assassination and terrorism), government integrity (e.g., elections and policy, war, assassination, terrorism), and other matters whose social relevance is to a great extent beyond the boundaries of commerce and finance. Furthermore, lack of clarity provides a disservice to the platforms interested in listing the contracts for the benefit of their outside lawyers. While there is uncertainty, applications will be made, denied, and only law firms will profit while clients lose money and CFTC resources are exhausted. A bright line rule that broadly prohibits categories of products has significant advantages over product-by-product determinations.

Question 19 asks about the term "gaming" as used in Section 5c(c)(5)(C) of the CEA.

The term "gaming" should cover "the staking or risking by any person of something of value upon: (i) the outcome of a contest of others; (ii) the outcome of a game involving skill or chance; (iii) the performance of one or more competitors in one or more contests or games; or (iv) any other occurrence or non-occurrence in connection with one or more contests or games."[13] This definition should be clarified to include other contests, such as legal adjudications (e.g., who will win a certain trial), races to invent or commercial products (e.g., will a vaccine for an epidemic be patented by a certain date) and market share measures (e.g., will Pepsi's share of the soft drink market increase by 1% from 1/1/2027 to 1/1/2028). Similarly, events and contingencies based on cessation of, or reduction in, competition should also be excluded from the permissible subjects for derivative products (e.g., whether Ukraine joins NATO, whether a bilateral treaty is reached, and perhaps whether humans succeed in causing a specie's extinction). Simply put, these events result from prices too idiosyncratic to analogize to products traditionally within the CFTC's remit under Section 3(a). Products based on these types of underliers raise issues of moral hazard. And their ability to assist in hedging or price discovery is too limited, and instead, these products are too likely to be used for gambling (i.e., gaming).[14] As insulation from court challenge, products discussed in this paragraph should also be treated as products banned under state law and products in "similar activity" to those listed in Section 5c(c)(5)(C). As a reminder, while many states have expanded legal gambling in recent years – some have not.

In assessing whether a contract that may be prohibited as involving "gaming" should be excluded from listing, the CFTC should consider the self-regulatory program of the DCM filing the contract. In particular, the CFTC should consider whether the DCM seeks to satisfy responsible gaming standards. Offering products to individuals under twenty one years old,

[13] Relatedly, it was a mistake for the CFTC to drop its appeal of *KalshiEX LLC v. Commodity Futures Trading Comm'n*, No. 23-3257, 2024 WL 4164694 (D.D.C. Sep. 12, 2024).

[14] In addition, products on market share – like products on specific merger or acquisition transactions, as well as products on factors relevant to a specific firm's costs, revenues or other financial features – should not be regulated without input from the SEC.

broadly advertising products (particularly to young traders via social media), not supporting self-exclusion lists, not prominently disclosing traders' cumulative losses, and otherwise failing to promote responsible gambling through self-regulation should endanger an exchange's product submission if the submission involves "gaming."

Question 30 asks about events that are under the control of a single individual or a small group of individuals.

Please see response above to Question 2(c).

Question 36 asks about agreements, contracts or transactions similar to event contracts that are not listed on a DCM or SEF.

Please see response to Question 37, which discussed traditional gambling instruments that are not listed on DCMs or SEFs and are similar to many event contracts.

Question 37 asks about the exemption from the definition of "swap" applicable to consumer transactions.

Many event contracts do not qualify as swaps under the joint rulemaking[15] from the CFTC and Securities and Exchange Commission (SEC) further defining the terms "swap" and "security-based swap", among other things ("Definitional Rulemaking"). The Definitional Rulemaking specifies that the scope of the term "swap" and, more generally coverage under Title VII of the Dodd-Frank Act is meant to address the types of risks that led to the financial crisis of 2007-08.[16] Instruments of the sort that did not contribute to the crisis, including consumer transactions, are excluded from the definition of "swap". The Definitional Rulemaking provides:

> "The Commissions are stating that certain customary consumer and commercial transactions that have not previously been considered swaps or security-based swaps do not fall within the statutory definitions of those terms. Specifically with regard to consumer transactions, the Commissions are adopting as proposed the interpretation that certain transactions entered into by consumers (natural persons) as principals or their agents primarily for personal, family or household purposes would not be considered swaps or security-based swaps."[17]

This carveout from the term "swap" makes sense. Consumer transactions entered into by individuals primarily for personal, family or household purposes did not contribute to the financial crisis that motivated the Dodd-Frank Act. Consumer transactions are outside of the over-the-counter derivatives market terms like "swap", "security-based swap" and "mixed swap" were meant to address. There is extensive evidence (some of which is reviewed above and in the two articles cited in footnote 1) that DCMs are launching event contracts predominantly for individuals' entertainment purposes. These event contracts target individuals and represent

[15] Further Definition of "Swap", "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208 (Aug. 13, 2012).
[16] Id. at 48308.
[17] Id. at 48318.

transactions entered into "primarily for personal . . . purposes" within the meaning of the Definitional Rulemaking.

Wagers on sports games and other events existed in Nevada and certain other United States locations at the time the Dodd-Frank Act was enacted and at the time the Definitional Rulemaking was adopted. Such gambling did not contribute to the financial crisis and was already subject to separate regulatory regimes outside of the CEA. There is no reason to believe the definition of swap was intended to apply to these wagering contracts. Indeed, to assume that the definition of swap covers such contracts creates absurdities. It has been the case for many decades that these contracts were entered into (a) without involvement of DCMs, and (b) involving individuals who do not qualify as eligible contract participants (ECPs). Off-exchange swaps with a non-ECP are illegal, and yet the CFTC has never sought to pursue sports gambling or similar transactions as violative of the CEA.[18]

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The evolution of event contracts products poses a classic case of where law struggles to keep up with markets. Changes on various dimensions (including technology, scale, commercial practice, and cultural attitudes to financial market participation) have prompted products that challenge assumptions the CEA and its regulatory framework have been built on. The CFTC has a difficult role in making the CEA fit new possibilities for derivatives trading.

A rational approach to regulation builds on information and enlists the assistance and input of interested parties. I applaud your work and appreciate the difficult decisions that have to be made. I would be glad to hear from you at ilya.beylin@shu.edu to discuss these and related matters further whether via setting up a call or through correspondence.

Sincerely,

Professor Ilya Beylin

[18] As the ANPR explains, event contracts may also be styled as "futures", which reduces the impact of correctly applying the jointly adopted interpretation of "swap".