July 27, 2026

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Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Prediction Markets; Public Interest Determinations, RIN 3038-AF65

DraftKings Inc. ("DraftKings") appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "Commission") Notice of Proposed Rulemaking regarding Prediction Markets; Public Interest Determinations (the "Proposed Rule").[1] DraftKings supports the Commission's effort to provide clearer standards under section 5c(c)(5)(C) of the Commodity Exchange Act ("CEA"). A workable rules-based framework will help registrants design compliant contracts, optimize integrity infrastructure, and offer customers responsible engagement tools and resources.

DraftKings submits this comment from the perspective of a company with deep experience in sports integrity, responsible customer engagement, and regulated market operations, and more recently as a market participant whose experience is directly relevant to the Proposed Rule. DraftKings owns Railbird Exchange, LLC (a designated contract market), DraftKings Predictions (a futures commission merchant), and an affiliated market maker.

DraftKings supports the Proposed Rule's core architecture and urges targeted revisions to make the final rule more precise, administrable, and tied to actual integrity risk. DraftKings' comments are organized around five themes:

- **First**, the Commission should preserve the Proposed Rule's core structure: involvement with an enumerated activity should trigger review, not end it; public-interest review should remain written, factor-based, and contract-specific; and consolidated review should be narrowly bounded.[2]

- **Second**, the Commission should not define "gaming" to include sporting events or athletic competitions. If the Commission nevertheless treats sports-related event contracts as involving gaming, that classification should only trigger the public-interest inquiry and should carry no adverse presumption.[3]

- **Third**, the sports-specific factors should be applied through objective contract-design, settlement, surveillance, and integrity principles rather than categorical labels. The final rule should preserve a workable path for well-designed sports event contracts, including

[1]Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806 (June 12, 2026), RIN 3038-AF65 (the "Proposed Rule").
[2]See Proposed Rule 40.11(a)(4)(iii); § 40.11(b)(1); Appendix F section (d) (defining "gaming").
[3]See Proposed Rule 40.11(a)(6)(iii)(A) and Appendix F section (g)(3)(ii) (identifying factors favorable to sports event contracts).

appropriately designed discrete-action contracts, while allowing heightened review for genuinely higher-risk categories.[4]

- **Fourth**, settlement, league-coordination, surveillance, and retail-facing controls should remain fit for purpose. Settlement data should be reliable, objective, verifiable, and clearly disclosed; official league data should not be mandatory; league coordination should not become a private approval right; and retail-facing responsibilities should be allocated clearly.[5]

- **Fifth**, the Commission should preserve process protections and account for the competitive and integrity costs of overbroad restrictions. The 90-day review period should be treated as a ceiling, not a default, and the final rule should avoid pushing activity to less transparent markets.[6]

DraftKings addresses each of these themes below. Several related implementation points are broken out in separate sections for readability.

I. <u>The Proposed Rule's Core Structure Should Be Preserved</u>

DraftKings supports the Proposed Rule's three-step analytical structure: (1) whether a contract is an event contract; (2) whether it involves an enumerated activity under CEA section 5c(c)(5)(C); and (3) whether, taking into account all relevant factors, the contract is contrary to the public interest.[7] This structure is faithful to the statute and preferable to the categorical approach that characterized the Commission's 2024 proposal.[8]

A. Involvement with an Enumerated Activity Should Trigger Analysis, Not End It

The Proposed Rule correctly treats involvement with an enumerated activity as the start of the analysis, not the end. The statute authorizes the Commission to *determine* that a contract involving a listed activity is contrary to the public interest. It does not make those contracts automatically impermissible.

B. Written, Factor-Based, Contract-Specific Review

DraftKings supports written, factor-based, contract-specific review.[9] That approach lets the Commission focus on the contract's design, settlement mechanics, surveillance, participant restrictions, and concrete public-interest risks. It is more durable and more administrable than categorical determinations by label.

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[4] See Appendix F section (g)(3)(iii)(D)-(E) (discussing discrete-action contracts).

[5] See Appendix F section (g)(3)(ii)(B) and proposed § 40.11(a)(6)(iii)(A)(3) (settlement data factors).

[6] See Proposed Rule 40.11(c)-(f) (process provisions).

[7] See Proposed Rule 40.11(a)(3) (defining "involves"); §§ 40.11(a)(5)-(6) (public-interest factors); § 40.11(c) (review process).

[8] See CFTC, Withdrawal of Prior Proposed Rule, 91 Fed. Reg. 5386 (Feb. 6, 2026).

[9] See Proposed Rule 40.11(a)(5) and (a)(6) (general and activity-specific public-interest factors); § 40.11(c)(2) (written findings requirement).

C. Consolidated Review Should Be Narrowly Bounded

DraftKings does not object to consolidated review where contracts are truly similar.[10] But "substantially similar" should mean similar in settlement terms, risk profile, market structure, and public-interest characteristics. It should not mean similar only in subject-matter label. For example, two contracts that settle on the same season-long statistical metric using the same settlement source and similar controls may be appropriate for consolidated review. By contrast, a season-long team win-total contract and a contract settling on game attendance or broadcast viewership should not be consolidated merely because both are sports-related; they present different settlement terms, data sources, and public-interest characteristics.

II. The Commission Should Not Define "Gaming" to Include Sporting Events or Athletic Competitions

The Proposed Rule's most consequential definitional choice is whether "gaming" includes sporting events and athletic competitions.[11] DraftKings respectfully urges the Commission not to take that step. The final rule can address sports-related integrity concerns directly without defining the underlying sporting event as gaming.

A. The Statutory Term Is "Gaming," Not "Sports" or "Games"

Congress listed "gaming" in section 5c(c)(5)(C).[12] It did not list "sports," "sporting events," "athletic competitions," "contests," or "games." That choice matters. The Commission should not treat "gaming" as a catch-all for every rule-governed competition involving skill, athletic ability, recreation, or entertainment.

Sports wagering may or may not be gaming, depending on how that term is used. A sporting event is different. The underlying competition exists independently of whether anyone wagers on it. Treating the athletic event itself as gaming would collapse the distinction between the regulated contract, any wagering activity around the event, and the event itself.

B. Gambling Around an Activity Does Not Transform the Activity into Gaming

The Proposed Rule recognizes that gambling around an activity does not necessarily make the activity gaming. Its Nobel Prize example illustrates the point.[13] The same logic should apply to sports. A football season does not become gaming because people wager on football games. The underlying activity remains an athletic competition.

C. Legislative History Does Not Compel a Broader Reading

The Feinstein-Lincoln colloquy does not compel a broader reading. It reflected concern that futures markets could be used for gambling-like contracts with no commercial or informational

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[10]See Proposed Rule 40.11(c)(4) (consolidated review of substantially similar contracts).

[11]See Proposed Rule 40.11(a)(4)(iii) (involvement of gaming); § 40.11(b)(1) (defining "gaming").

[12]7 U.S.C. § 7a-2(c)(5)(C)(i).

[13]See Proposed Rule, 91 Fed. Reg. at 35822 (discussing the Nobel Prize as an example of an activity not constituting "gaming"). The same reasoning applies to professional athletic competitions: the competition exists for purposes independent of any wagering that may occur around it.

utility.[14] That is a concern about contract design and public-interest effects, not a statutory definition of sports as gaming.

D. The Commission Has Adequate Tools Without Redefining "Gaming"

The Commission can address sports-related risks through existing tools: Core Principles, contract-design review, settlement standards, surveillance, information sharing, participant restrictions, the proposed public-interest factors, and enforcement authority.[15] Those tools are better suited to integrity risk than a threshold definition that treats all sporting events as gaming.

III. <u>In the Alternative: If Sports Are Treated as Gaming, That Classification Should Carry No Adverse Presumption</u>

If the Commission nevertheless concludes that "gaming" encompasses sporting events or athletic competitions, DraftKings urges the Commission to make clear that this classification *only triggers* the public-interest inquiry under CEA section 5c(c)(5)(C). It does not predetermine the outcome. Classification as involving gaming should carry no adverse presumption against the contract or the registered entity proposing to list it.

A. The Proposed Rule's Recognition of Favorable Sports Factors Should Be Strengthened

The Proposed Rule recognizes that certain sports event contracts with aggregate outcomes, objective settlement, integrity infrastructure, surveillance, and trading controls are "unlikely to be contrary to the public interest."[16] DraftKings supports that recognition. The final rule should make the point clearer: sports classification should not create a heightened burden, shift the baseline against the contract, or make "gaming" a soft prohibition.

B. The Changed Legal Landscape Supports a Non-Presumptive Approach

The regulatory landscape also supports a non-presumptive approach. Since 2010, sports wagering has developed into a regulated market in many states. Whatever the original rationale for including "gaming" in Rule 40.11, sports-related event contracts should not be treated as if they occupy the same posture as unlawful activity or national-security threats. The Commission's withdrawal of the 2024 proposal confirms the need for a fair, factor-based approach.[17] Any gaming classification should trigger review, not prejudge it.

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[14] See 156 Cong. Rec. S5907 (daily ed. July 15, 2010) (colloquy between Sen. Feinstein and Sen. Lincoln). The colloquy expressed concern about "gambling on sporting events through futures markets" but did not purport to define "gaming" for statutory purposes.

[15] See CEA § 5(d)(3) (Core Principle 3, contracts not readily susceptible to manipulation); CEA § 5(d)(4) (Core Principle 4, monitoring of trading); CEA § 6(c)(1) (manipulation and deceptive devices); 17 C.F.R. § 180.1 (prohibition on manipulation).

[16] See Appendix F section (g)(3)(ii) (factors favorable to certain sports event contracts); proposed § 40.11(a)(6)(iii)(A) (sports-specific favorable factors including objective settlement, distributed outcome control, and surveillance infrastructure).

[17] CFTC, Withdrawal of Prior Proposed Rule, 91 Fed. Reg. 5386 (Feb. 6, 2026). See also CFTC Press Release No. 9249-26 (June 10, 2026) (Chairman Selig: "[W]e must protect the integrity of our regulated

C. Regulatory Certainty Requires Clear Affirmative Standards

Market participants need to know that a well-designed sports event contract can be certified and offered without later being rejected based on label alone. The final rule should answer that question affirmatively for contracts that meet objective, disclosed, and verifiable standards. Ambiguity will chill investment in compliance, surveillance, and responsible contract design.

D. The Compliance-Infrastructure Factor Should Ask Whether Risks Can Be Effectively Managed

DraftKings also recommends refining proposed Section 40.11(a)(5)(iii), which asks whether trading or clearing a contract would "challenge" a prediction market's compliance or self-regulatory tools. The term is too open-ended. Many new contracts require enhanced surveillance or escalation procedures. The better question is whether the registered entity can effectively manage the contract's risks through appropriate tools, infrastructure, and targeted enhancements.

If a registered entity can demonstrate objective settlement, effective surveillance, participant restrictions, escalation protocols, and dispute procedures, the need to enhance compliance processes should not itself weigh against listing. If the Commission identifies a specific compliance concern, it should allow the registered entity, where feasible, to address that concern through targeted contract modifications, participant restrictions, surveillance enhancements, reporting obligations, or other tailored controls, rather than treating the concern as a basis for prohibiting the contract outright.

IV. <u>The Commission Should Preserve a Workable Path for Well-Designed Sports Event Contracts</u>

DraftKings supports the Proposed Rule's recognition that sports event contracts with objective, integrity-protective characteristics can satisfy the public-interest standard.[18] The final rule should make that path clear and should focus on design, settlement, surveillance, and participant controls rather than contract labels.

A. Objective Contract-Design Principles Should Govern

The Proposed Rule identifies favorable factors for sports contracts, including aggregate outcomes, objective settlement, distributed control, surveillance, integrity infrastructure, and trading controls.[19] DraftKings supports those principles.

Those factors should be applied based on the contract's actual design: settlement mechanics, outcome-determination process, detectability, and participant restrictions. A contract should not be treated differently because it is colloquially labeled "aggregate," "statistical," "player performance," "prop," or "micro" if its design satisfies the relevant factors.

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markets without standing in the way of responsible innovation" and describing the Commission's goal of a "durable, transparent framework").

[18] See Appendix F section (g)(3)(ii) and proposed § 40.11(a)(6)(iii)(A).

[19] See proposed § 40.11(a)(6)(iii)(A)(1)-(6) (listing favorable factors including aggregate outcomes, objective settlement, distributed control, surveillance, integrity infrastructure, and trading controls); Appendix F section (g)(3)(ii)(A)-(E).

B. Individual Statistical Performance Should Not Be Presumed Problematic

Individual statistical performance should not be presumed problematic merely because it references an athlete.[20] Where settlement is objective, based on performance over a game, season, tournament, or defined period, and not within one actor's determinative control, the contract should be evaluated under the same factor-based framework as team-level contracts.

C. Risk Factors Are Not Contract Labels

The final rule should distinguish *risk factors* from *contract labels*. Risk factors include determinative control, subjective settlement, information leakage, and weak surveillance. Labels such as "micro," "prop," or "individual" do not themselves identify risk.

V. Discrete-Action Event Contracts Should Not Be Categorically Prohibited

The Proposed Rule treats certain discrete-action contracts as presenting heightened concerns.[21] DraftKings agrees that some granular sports markets raise legitimate integrity issues. But the final rule should not categorically prohibit all contracts that might be labeled "discrete-action contracts." That would be overinclusive and underprotective.

A. "Discrete-Action Contracts" Is Too Blunt a Label

"Discrete-action contracts" covers many different designs. Some contracts may turn on a single actor's controllable conduct or on injury, misconduct, or officiating. Others settle on objective, publicly observed team-level or segment-level outcomes that no one person can readily determine. These contracts are often referred to as micro markets.

The final rule should identify the *risk factors* that make some granular contracts problematic and apply heightened scrutiny to contracts with those factors. It should preserve a path for objective, monitorable, integrity-controlled contracts that settle on narrower time horizons or game segments.

B. Some Markets May Warrant Heightened Review

DraftKings does not argue that all discrete-action contracts should be permitted. The following categories may warrant heightened review:

- **Injury contracts**: Contracts designed to monetize athlete injury, injury severity, duration, or medical diagnosis raise obvious public-interest concerns.[22]
- **Officiating-dependent contracts**: Contracts settling solely on subjective judgment from a single officiator present integrity and settlement-objectivity concerns.[23]
- **Single-actor control contracts**: Contracts within the determinative control of one actor present manipulation risks that may not be mitigable through surveillance alone.

[20] See Appendix F section (g)(3)(ii)(C) (statistical performance and season-long metrics as potentially favorable); Proposed Rule 40.11(a)(6)(iii)(A) (favorable factors not limited to team-level outcomes).

[21] See Appendix F section (g)(3)(iii)(D)-(E) (discrete-action contracts involving specific participants, specific plays, or narrow in-game segments as raising heightened public-interest concerns).

[22] See Appendix F section (g)(3)(iii)(A) (injury contracts likely contrary to the public interest).

[23] See Appendix F section (g)(3)(iii)(B)-(C) (officiating-dependent contracts).

- **Altercation and misconduct contracts**: Contracts that incentivize violence, altercations, or disciplinary events outside ordinary play raise concerns.[24]

C. Many Discrete-Action Contracts Are Objective, Monitorable, and Integrity-Controlled

Many granular contracts do not share those risk factors. Team-level outcomes over a defined segment, possession-level results, and similar contracts can settle on objective, publicly observed events that depend on multiple participants. These contracts can be monitored and controlled through limits, prohibited-person restrictions, surveillance, and escalation.

The relevant distinction is not "micro versus macro." The key questions are whether settlement is objective, whether control of the outcome is distributed, whether the market is monitorable, whether suspicious activity can be detected, and whether prohibited persons are restricted.

D. Integrity Controls Can Be Adapted to the Prediction-Market Framework

DraftKings Sportsbook uses layered integrity controls relevant to this analysis, including prohibited-person screening, suspicious-activity monitoring, escalation protocols, account/device/geolocation analytics, customer-history review, market suspension authority, limits, integrity alerts, and league-facing processes.[25]

DraftKings does not suggest that sportsbook controls automatically satisfy CFTC requirements or are necessary to satisfy CFTC requirements. But those controls show that granular sports-market risks can be identified, monitored, escalated, and mitigated in a fit-for-purpose derivatives framework.

E. A Categorical Ban Would Be Underprotective

A categorical prohibition would not eliminate demand. It would push activity to less transparent offshore or unregulated venues with weaker surveillance, fewer prohibited-person controls, and less accountability to regulators, leagues, and law enforcement. That would reduce visibility into the very risks the Commission seeks to manage.

VI. Injury, Officiating, and Altercation Categories

A. Injury Contracts

DraftKings agrees that contracts designed to monetize athlete injury, injury severity, duration, or medical diagnosis raise public-interest concerns.[26] They may create incentives around physical harm and implicate sensitive medical information.

The final rule should nevertheless distinguish those contracts from protective features that *reduce or manage* exposure when an injury unexpectedly affects a market whose settlement premise is something else. In the sportsbook context, early-exit and similar injury-relief features

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[24] See Appendix F section (g)(3)(iii)(F) (altercations, fights, and combat-sports clarification).

[25] See Appendix F section (g)(3)(ii)(D) and proposed § 40.11(a)(6)(iii)(A)(5)-(6) (surveillance, information sharing, prohibited-person restrictions, and integrity controls as favorable factors).

[26] See Appendix F section (g)(3)(iii)(A).

provide customer relief when a player leaves a game early due to injury and a player-performance wager is materially affected.

These tools do not make injury the object of the wager. Instead, they may credit the stake on an eligible single wager, remove the affected leg from a sportsbook parlay, or recalculate the remaining legs of a wager whose original premise has been disrupted by the player's early exit.

A comparable prediction-market feature would not create the same incentive concerns as a contract that settles on whether an athlete is injured, how severe the injury is, or how long the athlete remains unavailable. Properly designed, the feature would operate only as a protective adjustment to an otherwise permissible contract; it would not be listed, traded, or priced as a standalone injury outcome. It would reduce or neutralize exposure rather than create affirmative upside from injury.

The Commission should therefore draft the injury-contract category carefully. Event contracts that explicitly settle solely by reference to the occurrence, severity, duration, or diagnosis of athlete injury may warrant prohibition or heightened review. Protective features, early-exit mechanisms, contract adjustments, or risk-reducing tools that mitigate injury-related exposure without making injury the object of the contract should not be swept into the same category.

B. Officiating Contracts

DraftKings agrees that contracts settling solely on the judgment of a single referee, umpire, or other game official warrant scrutiny.[27] They can raise integrity and settlement concerns.

The Commission should clarify that broader game outcomes or player-statistical outcomes are not disqualified merely because officiating may affect them. The relevant question is whether settlement depends *solely or primarily* on an officiating judgment. This category should not include sports in which judges determine scoring, ranking, or winners as part of the ordinary rules of competition, such as figure skating or diving; contracts involving those sports should not be treated as officiating-outcome contracts merely because the sport relies on judges to determine the result.

C. Physical Altercations and Combat Sports

DraftKings supports targeted treatment of contracts designed around misconduct, violence outside ordinary play, or disciplinary events.[28] The category should not sweep in combat sports or contact sports where physical contact is an expected and governed part of competition.

[27] See Appendix F section (g)(3)(iii)(B)-(C).
[28] See Appendix F section (g)(3)(iii)(F).

VII. Settlement Data and League Coordination

A. Settlement Standards Should Emphasize Reliability, Not Mandate a Specific Data Source

DraftKings supports settlement criteria that are reliable, objective, verifiable, clearly specified in advance, and consistently disclosed.[29] Those standards are essential to market confidence and fair settlement.

DraftKings strongly opposes any rule requiring sports event contracts to settle exclusively on official league data.[30] Official data may be a suitable source. But the regulatory standard should be data quality: reliability, objectivity, verifiability, suitability for the contract, and advance disclosure. A categorical mandate would embed a commercial model into federal rules and could disqualify contracts that can settle reliably using other objective sources.

The final rule should require registered entities to specify settlement sources, disclose methodology, maintain contingency procedures for disputes or data unavailability, and keep records showing consistent application of settlement criteria.

B. League Coordination Should Support Integrity Without Creating Private Approval Rights

DraftKings supports coordination with sports leagues, governing bodies, and integrity monitors where appropriate.[31] Information sharing, prohibited-person lists, joint investigation protocols, and escalation channels can strengthen integrity.

But coordination should not become a league veto, mandatory consultation regime, exclusive data mandate, private approval right, or adverse presumption against entities without formal league agreements.[32]

A registered entity should be able to satisfy the integrity factors through robust surveillance, prohibited-person screening, suspicious-activity escalation, settlement governance, and other controls, even without a formal commercial arrangement with a league.

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[29] See Appendix F section (g)(3)(ii)(B) and proposed § 40.11(a)(6)(iii)(A)(3) (settlement-data reliability, objectivity, and verifiability as favorable factors).

[30] The Proposed Rule discusses "league-verified" and "official" data as potentially relevant to the settlement analysis. DraftKings does not object to recognizing official data as one permissible source but opposes a categorical mandate. See Appendix F section (g)(3)(ii)(B).

[31] See Appendix F section (g)(3)(ii)(D) and proposed § 40.11(a)(6)(iii)(A)(5)-(6) (information sharing and surveillance coordination as favorable factors).

[32] The Commission should be mindful that mandatory league-coordination requirements could create barriers to entry and anti-competitive dynamics if leagues condition cooperation on exclusive commercial arrangements or refuse to cooperate with certain registered entities. The standard should be the adequacy of the entity's integrity controls, not the existence of a particular commercial relationship.

VIII. Surveillance, Responsible Engagement, and Retail-Facing Controls

A. Surveillance and Integrity Infrastructure

DraftKings supports robust surveillance, participant restrictions, and suspicious-activity escalation. These should be proportionate to the risks presented by the listed contracts.[33] For sports event contracts, relevant controls may include trading-pattern analysis, prohibited-person restrictions, material non-public information (MNPI) policies, suspicious-activity escalation, cross-market monitoring where feasible, and coordination with integrity monitors or league contacts where appropriate.

B. Responsible Engagement and Customer Protections

DraftKings supports meaningful customer protections for retail-facing sports event contracts, including onboarding, identity verification, risk disclosures, customer education, promotional supervision, responsible-engagement tools and resources, age gating, and complaint handling.

Those obligations should attach to the entity responsible for the customer relationship.[34] Intermediaries should handle onboarding, communications, disclosures, promotions, and responsible-engagement tools and resources. Contract design, contract terms, settlement governance, and market-level integrity should remain with the listing exchange.[35]

The Commission can draw on consumer-protection best practices from adjacent regimes, including state-regulated gaming. It should not import those regimes wholesale. Event contracts operate under a federal derivatives framework, and responsible-engagement standards should be tailored to that framework.

IX. Process

A. Written Initiation, Response Rights, and Written Findings

DraftKings supports the Proposed Rule's procedural framework: written initiation identifying the factors at issue, an opportunity to respond, a staff recommendation, a written Commission order, and an explanation of consistency with prior decisions or the reason for departure.[36]

These protections are essential to transparency and to a coherent body of public-interest determinations. The Commission should preserve them in the final rule.

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[33] See proposed § 40.11(a)(6)(iii)(A)(5)-(6).

[34] DraftKings addressed the allocation of retail-facing responsibilities in its April 30, 2026 comment letter on the Commission's ANPRM, Prediction Markets, RIN 3038-AF65. DraftKings' view is that retail access to prediction markets should occur through an affiliated FCM or, if the Commission continues to permit disintermediated access, subject that model to requirements identical to those imposed on intermediaries.

[35] DraftKings requests confirmation regarding the allocation of responsibility among registered entities and intermediaries. A DCM should remain responsible for contract design, listing standards, contract terms, settlement governance, and market-level integrity. An FCM or IB should be able to rely on the DCM's listing determination and should not be required to independently evaluate whether a listed contract satisfies Rule 40.11. Intermediaries should remain responsible for their customer-facing obligations, not for substituting their own contract-approval judgment for that of the listing exchange.

[36] See Proposed Rule 40.11(c)(1)-(3); § 40.11(d); § 40.11(e).

B. The 90-Day Deadline Should Be a Ceiling, Not a Default

DraftKings supports the deemed-conclusion mechanism and urges the Commission to treat 90 days as a *ceiling*, not a default. The Commission should resolve reviews as promptly as practicable. Straightforward contracts should not remain under review simply because the statute permits up to 90 days.

The Commission should also clarify how the 10-day initiation period and 90-day review period will operate in practice, including what types of reviews may be resolved on an expedited basis.

C. Suspension Should Not Be Mandatory

The Proposed Rule permits, but does not require, suspension during review.[37] DraftKings supports that approach. Suspension can harm position holders and market confidence, so it should be reserved for serious, concrete, and immediate public-interest risks.

Where action short of suspension is appropriate, the Commission should consider less disruptive tools, including prospective modifications, closing-only trading, position limits, enhanced reporting, enhanced surveillance, or orderly wind-down procedures.

D. Delegation

DraftKings does not object to staff delegation in principle.[38] The final rule should preserve Commission-level review, publish the governing standards, and make clear that staff-level determinations do not bind future Commission consideration.

X. Costs, Competition, and Offshore Migration

The Commission has recognized the importance of responsible innovation and fair competition.[39] It should also consider the competitive and public-interest costs of overbroad prohibitions.

A rule that bars well-designed, integrity-controlled sports event contracts, or makes compliance impractical, risks pushing demand to offshore or unregulated venues. Those venues generally have weaker customer protections, weaker surveillance, fewer prohibited-person controls, and less accountability to U.S. regulators and law enforcement. This is an integrity point. The Commission best protects the public when activity occurs in regulated, surveilled, transparent markets with clear responsibilities. The final rule should use the least anticompetitive means of achieving its objectives.

Clear, objective, and consistently applied standards also promote competitive neutrality among registered entities.

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[37] See Proposed Rule 40.11(c)(3).

[38] See Proposed Rule 40.11(f).

[39] CFTC Press Release No. 9249-26 (June 10, 2026) (quoting Chairman Selig as saying "[t]he CFTC will protect the integrity of our regulated markets without standing in the way of responsible innovation….").

Conclusion

DraftKings supports the Commission's effort to establish a clear, durable, factor-based framework under CEA section 5c(c)(5)(C). Consistent with the themes above, the Proposed Rule's core structure should be preserved, with targeted revisions to improve precision and administrability.

DraftKings respectfully urges the Commission to adopt the following revisions in the final rule:

- **First**, preserve the Proposed Rule's core structure: enumerated-activity involvement should trigger review, not end it; public-interest review should remain written, factor-based, and contract-specific; and consolidated review should be narrowly bounded.
- **Second**, clarify that "gaming" does not include a sporting event or athletic competition merely because persons may separately wager on it, and if the Commission treats sports-related contracts as involving gaming, make clear that such classification triggers review without an adverse presumption.
- **Third**, apply the sports-specific factors through objective contract-design, settlement, surveillance, and integrity principles rather than categorical labels, while preserving a workable path for well-designed sports event contracts, including appropriately designed discrete-action contracts, and applying heightened review to genuinely higher-risk categories.
- **Fourth**, keep settlement, league coordination, surveillance, and retail-facing controls fit for purpose by requiring reliable, objective, verifiable, and clearly disclosed settlement data without mandating official league data or creating private approval rights.
- **Fifth**, preserve the Proposed Rule's process protections, treat the statutory deadline as a ceiling rather than a default, and use the least anticompetitive means to keep activity in regulated, transparent, and surveilled U.S. markets.

A well-designed final rule can protect market integrity, safeguard customers, and preserve responsible competition in regulated U.S. derivatives markets. DraftKings welcomes continued engagement with the Commission and its staff.

Respectfully submitted,

DraftKings Inc.