

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

QCX LLC, d/b/a Polymarket US,

Plaintiff,

v.

ANDY WILSON, in his official capacity as Attorney General of Ohio; ANDROMEDA MORRISON, in her official capacity as Interim Executive Director of the Ohio Casino Control Commission; THOMAS J. STICKRATH, in his official capacity as Chair and Commissioner of the Ohio Casino Control Commission; PENELOPE CUNNINGHAM, in her official capacity as Vice Chair and Commissioner of the Ohio Casino Control Commission; SHEETAL BAJORIA, in her official capacity as Commissioner of the Ohio Casino Control Commission; SCOTT BORGEMENKE, in his official capacity as Commissioner of the Ohio Casino Control Commission; TRIFFON CALLOS, in his official capacity as Commissioner of the Ohio Casino Control Commission; KEITH CHENEY, in his official capacity as Commissioner of the Ohio Casino Control Commission; and CHRISTOPHER SMITHERMAN, in his official capacity as Commissioner of the Ohio Casino Control Commission,

Defendants.

Case No.: 26-1502

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This action seeks to prevent imminent and irreparable harm arising from Ohio's threatened enforcement of state gambling laws against federally regulated derivatives exchanges—enforcement that the Constitution and Congress prohibit. Plaintiff QCX LLC, d/b/a Polymarket US, operates a lawful, nationwide designated contract market subject to the exclusive jurisdiction of the Commodity Futures Trading Commission (“CFTC”). Ohio's threatened

enforcement through its protectionist licensing regime violates the U.S. Constitution’s Commerce Clause and is preempted by the Commodity Exchange Act (“CEA”).

2. On the view that lawful derivatives are sports gambling, Defendants demand that Polymarket US’s nationwide exchange contort itself to fit a state regulatory scheme designed for in-State casinos. It is a felony to operate “sports gaming” in the State without a license issued by the Ohio Casino Control Commission (“Commission”). Ohio Rev. Code § 3775.99(B)(9). But the few licenses that are available go only to those with an in-State physical presence. *Id.* § 3775.04(A)(3). When parceling out those licenses, the Commission is further directed to take into account *how much* of a “physical presence” the applicant has in Ohio, the duration of the applicant’s in-State presence, as well as the extent of “any expenditures for physical infrastructure” within the State. *Id.* § 3775.041(C). Assuming a license *were* available, Polymarket US’s operations would not just have to be run from Ohio, *see* Ohio Admin. Code 3775-9-02(C); Ohio Rev. Code § 3775.11(C)—they would be limited to serving *only those physically present in Ohio*, cutting the company off from the rest of the United States, *see* Ohio Rev. Code § 3775.11(A); Ohio Admin. Code 3775-17-01(A), (D). These discriminatory, balkanizing measures violate the Constitution’s promise of open, interstate commerce. And, under settled precedent, they are unlawful.

3. Ohio’s attempt to regulate Polymarket US is unlawful for a second, independent reason: Through the CEA, Congress vested the CFTC with sole regulatory authority over derivatives traded on designated contract markets. Among the financial instruments subject to the CFTC’s exclusive jurisdiction are event contracts, a type of derivative whose value depends on the outcome of real-world events. Polymarket US offers event contracts for trading on a CFTC-regulated exchange. Exercising its comprehensive, exclusive authority, the CFTC decides whether

to prohibit certain event contracts as contrary to the “public interest.” 7 U.S.C. § 7a-2(c)(5)(C). Despite this congressional grant of authority, the State has claimed for *itself* the power—backed by the threat of fines—to decide whether federally regulated trading may take place at all, asserting “jurisdiction over all persons conducting or participating in the conduct of sports gaming in the State of Ohio.” Ex. 1 (Cease and Desist Letter) at 1–2.

4. Ohio is attempting to relitigate a debate Congress settled over 50 years ago. Back then, too, States treated derivatives trading as unlawful gambling—just as Ohio today accuses Polymarket US of “bookmaking . . . in violation of Ohio civil and criminal law.” Ex. 1 at 2. That is one reason why, in 1974, Congress amended the CEA to grant the CFTC “exclusive jurisdiction” over certain derivatives “traded or executed on a contract market designated” under the Act. 7 U.S.C. § 2(a)(1)(A). And when States objected, Congress answered by spelling out the “Jurisdiction of States” in the Act itself: A State may sue to enforce the CEA only against persons “*other than* a contract market”; Congress preserved the State’s jurisdiction to wield state law only when bringing an enforcement action “on the basis of a[] . . . general civil or criminal antifraud statute.” 7 U.S.C. § 13a-2 (emphasis added). In other words, Congress has already decided that the enforcement Ohio threatens is not Ohio’s to pursue.

5. Since then, Congress has repeatedly expanded the CFTC’s exclusive authority to cover new derivatives—including event contracts—traded on federally regulated contract markets. And recently, in light of the “debate regarding the scope of the [CFTC]’s jurisdiction under the [CEA], particularly as it relates to event contracts,” the CFTC promulgated an Interim Final Rule and Notice of Proposed Rulemaking (“NPRM”) to clarify its jurisdiction over event contracts as swaps. Further Definition of “Swap” to Exclude Casino-Style Gambling Products, RIN 3038-AF81, at 4 (proposed Oct. 9, 2026) (to be codified at 17 C.F.R. § 1.3) (“Interim Final

Rule”), Ex. 2¹; Further Definition of “Swap” — Inclusions, RIN 3038–AF82 (proposed Oct. 9, 2026) (“NPRM”), Ex. 3.² The NPRM defines “swap” to “expressly clarify that event contracts, including those based on sports-, politics-, cultural, and weather-related events, are swaps” under the CEA. NPRM at 11. And the Interim Final Rule seeks to affirm and codify the CFTC’s “longstanding position that casino-style gambling products, including sports-wagering contracts entered into on a sportsbook and casino games, are not swaps and do not fall within the CFTC’s jurisdiction.” Interim Final Rule at 9.

6. The Sixth Circuit’s recent decision in *KalshiEX LLC v. Schuler*, 2026 WL 2884087 (6th Cir. Sept. 25, 2026), was decided against a different legal landscape. The Interim Final Rule and NPRM—promulgated under an express delegation to define certain key statutory terms—remove any doubt that the CFTC has exclusive jurisdiction, and that Polymarket US’s event contracts are swaps. Moreover, *Schuler* held that the CEA’s “exclusive jurisdiction provision displaces direct enforcement and regulatory authority pertaining to the licensing and operation of” designated contract markets—foreclosing Ohio’s demand that Polymarket US obtain a license or cease operating in the State. *Id.* at *21. *Schuler* also remains subject to rehearing and certiorari, and other courts continue to reach conclusions at odds with *Schuler*’s own. See *Coinbase Fin. Mkts. v. Raoul*, 2026 WL 2969682, at *18 (N.D. Ill. Oct. 2, 2026); *United States v. Minnesota*, 2026 WL 2150211, at *14–15 (D. Minn. July 27, 2026). As the Third Circuit also recently recognized, “the text of the [CEA] preempts otherwise applicable state laws that purport to regulate . . . event contracts on CFTC-licensed [contract markets].” *KalshiEX, LLC v. Flaherty*, 172 F.4th 220, 228 (3d Cir. 2026).

¹ <https://www.cftc.gov/media/14726/IFREventContractsSwapExclusion100926/download>.

² https://www.cftc.gov/media/14731/NRPM_EventContractsSwapInclusions100926/download.

7. The threat to Polymarket US is immediate and concrete. On October 2, 2026, the Commission sent Polymarket US³ a letter demanding that it “immediately cease and desist from offering” sports-event contracts to persons located in Ohio “without a license issued by the Commission” and that it confirm its compliance in writing “no later than fourteen (14) days following the date of th[e] letter.” Ex. 1 at 1–2. The letter warns that Polymarket US’s “failure to abide by th[e] notice may result in the Commission pursuing all legal remedies and actions,” including “administrative, civil, nuisance, or criminal actions.” *Id.* at 2. Polymarket US therefore faces a real and imminent risk of enforcement, exposing it to civil penalties, criminal prosecution, forced cessation of operations within Ohio, and severe collateral consequences to its nationwide operations.

8. The harm resulting from state enforcement would be irreparable. Even a meritless state enforcement action would immediately disrupt Polymarket US’s federally authorized operations, fragment a national market, reduce liquidity, jeopardize critical banking and commercial relationships, undermine user trust, and harm Ohio residents. Even the *threat* of enforcement forces Polymarket US to choose between exercising its federal right to operate nationwide and submitting to unlawful state coercion. The resulting disruption to a nationally uniform market cannot be remedied through damages. What’s more, the chilling effect on lawful activity and the deprivation of Ohio residents’ access to a federally regulated exchange are precisely the harms Congress sought to prevent when it vested the CFTC with sole regulatory authority over derivatives traded on designated contract markets.

³ The letter was addressed to “PM US Tech (QC Tech LLC),” not QCX LLC d/b/a Polymarket US.

9. Defendants suffer no cognizable harm from being barred from enforcing laws in a domain the Constitution and Congress removed from state control. The State’s local interests are already governed and safeguarded by the CFTC’s exclusive federal oversight. By contrast, absent judicial intervention, Ohio’s actions threaten to fracture a nationally uniform federal regulatory regime, disrupt lawful markets, burden interstate commerce, and deprive consumers of access to platforms Congress sought to protect. *See Minnesota*, 2026 WL 2150211, at *17 (“[W]hen the state law is likely preempted,” “the harm to the state . . . is diminished” and “the public interest” “is less significant”).

10. For these reasons, Polymarket US seeks declaratory and injunctive relief to prevent unlawful state overreach, maintain the integrity of the federal regulatory framework, and avert imminent harm that cannot be remedied after the fact.

JURISDICTION AND VENUE

11. This is an action for declaratory and injunctive relief brought under 42 U.S.C. § 1983, and the Court’s equitable powers, *see Ex parte Young*, 209 U.S. 123 (1908), to enforce the Commerce Clause and the Supremacy Clause of the United States Constitution. The federal questions presented are (1) whether Ohio state law—including Ohio Revised Code Chapters 2915, 3767, and 3775—violates the Commerce Clause as applied to Polymarket US by discriminating against interstate commerce; and, (2) to the extent those same laws purport to regulate or prohibit Polymarket US’s activities governed exclusively by federal law (or otherwise conflict with federal law), whether state law is preempted by the CEA. This Court has jurisdiction to grant the relief sought in this action under 28 U.S.C. §§ 1331, 1343, 2201, and 2202.

12. This Court has personal jurisdiction over the Defendants. The Defendants are domiciled and perform their duties in Ohio.

13. Venue is proper in this District under 28 U.S.C. § 1391(b). All Defendants are residents of the State of Ohio, and a substantial part of the events giving rise to the claims occurred in this District.

PARTIES

14. Plaintiff Polymarket US is a Delaware limited liability company with its principal place of business in New York. Polymarket US operates a derivatives exchange and prediction market where users can buy, sell, and exchange financial products known as event contracts. Polymarket US is a contract market that is federally licensed and regulated by the CFTC pursuant to the CEA.

15. Defendant Andy Wilson is the Attorney General of Ohio. This suit is brought against Attorney General Wilson in his official capacity.

16. Defendant Andromeda Morrison is the Interim Executive Director of the Ohio Casino Control Commission. This suit is brought against Interim Executive Director Morrison in her official capacity.

17. Defendant Thomas J. Stickrath is the Chair and Commissioner of the Ohio Casino Control Commission. This suit is brought against Chair Stickrath in his official capacity.

18. Defendant Penelope Cunningham is the Vice Chair and Commissioner of the Ohio Casino Control Commission. This suit is brought against Vice Chair Cunningham in her official capacity.

19. Defendant Sheetal Bajoria is a Commissioner of the Ohio Casino Control Commission. This suit is brought against Commissioner Bajoria in her official capacity.

20. Defendant Scott Borgemenke is a Commissioner of the Ohio Casino Control Commission. This suit is brought against Commissioner Borgemenke in his official capacity.

21. Defendant Triffon Callos is a Commissioner of the Ohio Casino Control Commission. This suit is brought against Commissioner Callos in his official capacity.

22. Defendant Keith Cheney is a Commissioner of the Ohio Casino Control Commission. This suit is brought against Commissioner Cheney in his official capacity.

23. Defendant Christopher Smitherman is a Commissioner of the Ohio Casino Control Commission. This suit is brought against Commissioner Smitherman in his official capacity.

24. Defendants Wilson, Morrison, Stickrath, Cunningham, Bajoria, Borgemenke, Callos, Cheney, and Smitherman have the power and duty to enforce Ohio's laws, including the laws preempted by federal law. Ohio Rev. Code § 109.02; *id.* chs. 3772, 3775; *see* Ex. 1 at 1–2.

FACTUAL AND LEGAL BACKGROUND

A. Event contracts are derivative financial instruments that incorporate real-time information to generate accurate predictions about real-world events.

25. This case is about derivatives, financial instruments that derive their value from an underlying asset or event. Derivatives, the Supreme Court has long recognized, “are of the utmost importance to the business world.” *Bd. of Trade of City of Chi. v. Christie Grain & Stock Co.*, 198 U.S. 236, 248–49 (1905).

26. One common kind of derivative is a “swap.” Swaps are financial contracts where two parties agree to exchange (or swap) payments with each other based on a pre-agreed formula—say, the price of crude oil, interest rates, or the outcome of a real-world event.

27. An event contract, in turn, is a swap that is settled “based on the outcome of an underlying occurrence or event.” CFTC, *Prediction Markets: Public Interest Determinations*, 91 Fed. Reg. 35806, 35807 n.1 (June 12, 2026); *see also* *Flaherty*, 172 F.4th at 226 (“‘[S]wap’ includes event contracts.”).

28. Event contracts allow participants “to manage price risks around whether events stated in the contracts will occur.” 91 Fed. Reg. at 35807.

29. Events may relate to “sporting events, elections, official government action . . . the weather,” or anything else of “potential financial, economic, or commercial consequence.” *See* CFTC Complaint ¶¶ 32, 33, *United States v. Minnesota*, No. 26-cv-02661 (D. Minn. May 19, 2026), Dkt. 1 (“CFTC Minn. Compl.”); 7 U.S.C. § 1a(47)(A)(ii). The CFTC’s recent Notice of Proposed Rulemaking would “expressly clarify” that point. NPRM at 11; *see id.* at 39–40 (proposing to define “swap” to include “[e]vent contracts, including those based on sports-, politics-, cultural, and weather-related events.”).

30. Still, event contracts are nothing new. Since 1992, “Commission-regulated exchanges have listed for trading a variety of commodity futures and options contracts with payout terms based on interests other than price-based interests,” including interests “as diverse as regional insured property losses, the count of bankruptcies, temperature volatilities, corporate mergers, and corporate credit events.” Concept Release on the Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25669, 25671 (May 7, 2008). In 1993, for example, the Commission authorized the Iowa Electronic Markets to list contracts pegged to presidential elections. *Id.* at 25670 & n.5; *see also* 91 Fed. Reg. at 35813. In 2004, “the Commission first designated a prediction market as a designated contract market.” 91 Fed. Reg. at 35807.

31. Event contracts often have a “binary payoff structure.” 91 Fed. Reg. at 35807 n.1. One party takes the position that a particular event will occur (the “yes” position), and the other takes the position that the event will not occur (the “no” position). The terms of the contract specify its payout and expiration date. For example, the parties might take a position on whether Columbus will get more than three feet of rain (the approximate yearly average) in 2026. At the

end of the year, the party that correctly predicted the outcome is paid the agreed amount by the party that did not. If 2026 turns out to be an especially wet year and Columbus sees four feet of precipitation, the party that took the “yes” position on the weather contract would be paid and the party that took the “no” position would not.

32. Event contracts have any number of uses. For example, they can be used to “address[] categories of risk for which traditional financial instruments either do not exist or provide only imperfect hedges.” 91 Fed. Reg. at 35866. The Columbus Zoo and Aquarium might purchase an event contract predicting that the city will have a particularly rainy summer. If the weather turns out as the Zoo predicted, the payout from the contract could offset the Zoo’s loss of revenue from decreased attendance.

33. Event contracts can have enormous predictive value. Because they can be purchased and sold at any time before the expiration date, the price will reflect the trader’s own expectations about the likelihood of a particular outcome. Consider a market on anticipated summer rainfall. As traders buy and sell positions on that contract, its price changes to reflect traders’ overall perception about the contract’s value. If traders think the outcome is increasingly likely, demand for “yes” positions will increase and so will the price. When the outcome seems less likely, the opposite will occur: Demand for “yes” positions will drop, and the price will drop with it. The result is that the price of the contract will reflect the overall market’s view, in real time, about the probability of the outcome. And those probabilities are set by trading activity, not fixed odds. That is true whether the contract concerns summer rainfall or if the Cavaliers will win the Eastern Conference. While a sportsbook names a price and takes the other side of every wager, an exchange’s prices emerge from the collective judgment of market participants trading with one

another. That structural difference makes participating in an exchange inherently different from “betting” on the same question.

34. As the CFTC observed in its recent Notice of Proposed Rulemaking, prediction markets “are rapidly increasing in popularity with the American public both as a financial asset class and as a source of reliable information for news media, sports leagues, financial institutions, and everyday Americans.” 91 Fed. Reg. at 35807. Because traders put capital at stake, prediction markets incentivize accurate predictions. And because prediction markets enable real-time trading on a nationwide basis, they aggregate diverse perspectives and rapidly incorporate new information. As a result, prediction markets regularly outperform pundits and polls. *See* 91 Fed. Reg. at 35831.

35. When it comes to “sports forecasting,” for example, empirical studies show that prediction markets “significantly outperform” the experts. *E.g.*, M. Spann & B. Skiera, *Sports Forecasting: A Comparison of the Forecast Accuracy of Prediction Markets, Betting Odds and Tipsters*, 28 J. Forecasting 55, 65 (2009).⁴

36. The same is true of elections. Through the final days of the 2024 election campaign, for example, prediction markets accurately predicted President Trump would win a decisive victory, despite the view of many pollsters that the race would be considerably closer.⁵

37. Event contracts, like other derivatives, provide significant financial value and generate rich information. They allow parties to mitigate risk, although others are equally free to

⁴ <https://tinyurl.com/2zm5axpc>.

⁵ *See* Allison Morrow, *How prediction markets saw something the polls and pundits didn’t*, CNN (Nov. 8, 2024, at 5:00 ET), <https://www.cnn.com/2024/11/08/business/polymarket-election-trump-nightcap>; James Bickerton, *Mystery ‘Trump Whale’ Speaks Out After Winning \$50 Million by Defying Polls*, Newsweek (Nov. 8, 2024, at 10:57 ET), <https://www.newsweek.com/trump-whale-trader-wins-50-million-election-polls-1982768>.

trade; more participants means more liquidity, more efficient trading, and a greater predictive function. Event contracts supply investment opportunities for traders willing to put time and effort into thinking through the likelihood of occurrences in the real world. And, through the collective wisdom of these efficient, transparent markets, event contracts provide real-time information about events that matter to the public at large.

B. Over the past century, federal regulation of exchange-traded derivatives has become extensive—and exclusive.

38. For about as long as derivatives trading has existed in the United States, however, individual States have attempted to regulate or prohibit it as unlawful gambling. “[T]he long history of federal regulation” in this area, *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 393 (1982), is a direct result of those “coarse attempts” to manage our increasingly “complex society,” *Christie Grain*, 198 U.S. at 247–48.

39. The federal government first intervened in 1922, requiring futures transactions for grain to be “consummated on an exchange designated as a ‘contract market’ by the Secretary of Agriculture.” *Merrill Lynch*, 456 U.S. at 360–61.

40. Congress buttressed this federal scheme a decade later with the CEA, but initially left the States a role in regulating these kinds of derivatives. It provided that the federal law would not “impair” the enforcement of “any State law applicable to any transaction” covered by the Act. Pub. L. No. 74-675, § 5, 49 Stat. 1491, 1494 (1936). States were therefore free to “supplement[] or bolster[] the federal scheme.” *Rice v. Bd. of Trade of City of Chicago*, 331 U.S. 247, 255 (1947).

41. By the 1970s, however, exchanges had become too important to the national economy to permit the “[v]aried and often conflicting” state laws to interfere with national exchanges subject to federal control. 119 Cong. Rec. 41333 (1973). So Congress created the

CFTC and enacted “a comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex,” *Merrill Lynch*, 456 U.S. at 356, “to do away with the patchwork of state regulations and bring futures trading on [designated contract markets] under the exclusive jurisdiction of the CFTC,” *Flaherty*, 172 F.4th at 230.

42. To that end, Congress provided that the CFTC would regulate “all” commodity futures when traded on a CFTC-designated contract market. Pub. L. No. 93-463, § 201, 88 Stat. 1389, 1395 (1974). “The statutory definition of ‘commodity’ is extraordinarily broad and includes practically all goods, articles, services, rights and interests except for onions (due to a history of market manipulation) and movie box-office receipts (because of Hollywood lobbying).” Chairman Michael S. Selig, *WSJ Op-Ed: States Encroach on Prediction Markets*, CFTC (Feb. 17, 2026).⁶ Congress granted the CFTC “*exclusive jurisdiction . . . with respect to accounts, agreements . . . and transactions involving swaps or contracts of sale of a commodity for future delivery . . . traded or executed on a contract market designated*” under the CEA. 7 U.S.C. § 2(a)(1)(A) (emphasis added). “The purpose of this was to separate the functions of the new CFTC from those of the SEC and other regulators,” including state regulators. *Leist v. Simplot*, 638 F.2d 283, 314 (2d Cir. 1980); *see Kelly v. Carr*, 691 F.2d 800, 804 n.12 (6th Cir. 1980) (“Congress intended to avoid a diversity of regulations between the C.F.T.C. and the states.”).

43. Courts immediately recognized “that state regulatory agencies [were] preempted by the ‘exclusive jurisdiction’ of the CFTC” from encroaching on the CFTC’s federal authority. *Jones v. B.C. Christopher & Co.*, 466 F. Supp. 213, 220 (D. Kan. 1979); *accord, e.g., Leist*, 638 F.2d at 322; *United States v. Brien*, 617 F.2d 299, 310 (1st Cir. 1980); *Westlake v.*

⁶ <https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement021726>.

Abrams, 504 F. Supp. 337, 343–44 (N.D. Ga. 1980); *Hofmayer v. Dean Witter & Co.*, 459 F. Supp. 733, 737 (N.D. Cal. 1978).

44. State officials protested this change. A state securities commissioner from Minnesota bemoaned that, because the CFTC had “the authority to regulate” commodity markets “exclusively,” courts had “precluded the application of state securities laws to any transactions involving commodities.” *Extend Commodity Exchange Act: Hearings on H.R. 10285 Before the Subcomm. on Conservation & Credit of the H. Comm. on Agric.*, 95th Cong. 383 (1978). By “giv[ing] exclusive jurisdiction over commodities regulation to the Commodity Futures Trading Commission,” one Texas commissioner complained, Congress had “dismantled an effective regulatory system within the states.” *Id.* at 363–64. And a Secretary of State demanded that Congress “abolish the exclusive jurisdiction of the CFTC and the consequent preemption of state action against commodity-related fraud.” *Id.* at 379.

45. In 1978, Congress responded to those complaints by adding to the CEA a section titled “Jurisdiction of States.” Pub. L. No. 95-406, § 15, 92 Stat. 865, 872 (codified as amended at 7 U.S.C. § 13a-2). That section allows a State to sue to enforce the CEA when any person “other than a contract market” “has engaged in, is engaging in or is about to engage in, any act or practice constituting a violation of” the Act. 7 U.S.C. § 13a-2(1). The only state-law proceedings Congress preserved are those “on the basis of an alleged violation of any general civil or criminal antifraud statute.” *Id.* § 13a-2(7). The corresponding Senate Report explained why contract markets were excluded: “Plenary authority to register, regulate, and discipline the contract markets” was “reserved to the [CFTC].” S. Rep. No. 95-850, at 25 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2087, 2113. Not long after, the Sixth Circuit explained that the 1978

amendment and the Senate Report “resolved the ambiguity with respect to the states’ role in the Commodity Futures industry.” *Kelly*, 691 F.2d at 803 n.8.

46. Congress reaffirmed the preemptive effect of the CFTC’s exclusive jurisdiction in 1982. When amending federal securities laws to preempt state gaming laws, members of Congress explained that a similar amendment to the CEA was unnecessary: “Similar application of state laws would not apply to futures contracts,” because “the CEA gives the CFTC exclusive jurisdiction over futures trading thereby preempting state anti-gaming and bucket shop laws, as well as other state laws.” H.R. Rep. No. 97-626, pt. 1, at 9 (1982) (Conf. Rep.).

47. In 2000, Congress broadened the statutory definition of “commodity” to include any “occurrence, extent of an occurrence, or contingency” that is “associated with a financial, commercial, or economic consequence.” Pub. L. No. 106-554, app. E, § 101(4), 114 Stat. 2763A-371 (2000) (codified at 7 U.S.C. § 1a(19)).

48. Following the 2008 financial crisis, Congress again changed the regulatory landscape. The Dodd-Frank Act of 2010 innovated and expanded CFTC authority in two ways most relevant here.

49. *First*, the Act added exchange-traded swaps to the types of derivatives within the CFTC’s exclusive jurisdiction. As a result, the CFTC now exercises “exclusive jurisdiction . . . with respect to . . . transactions involving swaps . . . traded or executed on a contract market designated” by the CFTC. 7 U.S.C. § 2(a)(1)(A).

50. Event contracts are covered by the Act because payment for event contracts is “dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. § 1a(47)(A)(ii) (defining “swap”).

51. *Second*, the Act introduced what is known as the “Special rule,” which supplies the CFTC the discretion—but not the obligation—to prohibit the trading of “[e]vent contracts” involving subjects including “terrorism,” “assassination,” “war,” and “gaming,” if it determines that they are “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C). “By creating a specific public-interest review process, Congress signaled that these contracts fall within the [CFTC]’s exclusive regulatory purview, not the States’.” CFTC Minn. Compl. ¶ 60.

52. Were there any doubt, Congress vested the CFTC with “exclusive authority to enforce” Dodd-Frank’s swaps provisions, including the Special Rule governing event contracts. 7 U.S.C. § 6b-1(a). And, to ensure consistency and clarity, Congress directed the CFTC to “further define the term[] ‘swap.’” 15 U.S.C. §§ 3801, 8321(b). All told, the CEA grants the CFTC “exclusive jurisdiction” to regulate exchange-traded event contracts, to determine whether they involve “gaming,” and to prohibit them based on the CFTC’s view of the public interest. 7 U.S.C. §§ 2(a)(1)(A), 7a-2(c)(5)(C). And a “purpose of the CEA is to promote responsible innovation,” albeit under the watchful eye of the CFTC. 91 Fed. Reg. at 35829.

53. The CFTC has recently exercised its authority to further define the term “swap.” On October 9, 2026, the CFTC issued an interim final rule confirming that “wagers placed on sportsbooks and casino games” are outside the ambit of the agency’s regulatory authority, and that “tradable instruments,” including “[e]vent contracts,” remain well within the CFTC’s exclusive jurisdiction. Interim Final Rule at 9, 15, 17.

54. The same day, the CFTC published a Notice of Proposed Rulemaking to ensure that the definition of “swaps” includes sports-, politics-, culture-, and weather-related event contracts as swaps and therefore within its exclusive jurisdiction. NPRM at 1.

55. The CFTC issued both rules in direct response to decisions—including the Sixth Circuit’s in *KalshiEX LLC v. Schuler*, No. 26-3196, 2026 WL 2884087 (6th Cir. Sept. 25, 2026)—that, in the agency’s view, had “deviate[d] from the plain text of the ‘swap’ definition” and “impose[d] atextual limitations on the concept of an ‘event.’” Interim Final Rule at 9 (citing *Schuler*, 2026 WL 2884087, at *11). The Interim Final Rule, effective upon publication in the Federal Register, codifies the CFTC’s longstanding position that casino-style gambling products are not swaps and thereby “clarif[ies] the boundaries between the Commission’s jurisdiction over the derivatives markets and State and Tribal jurisdiction over casino-style gambling.” *Id.* at 1, 9. The NPRM, exercising the CFTC’s “express statutory authority to ‘further define’ the term ‘swap,’” would confirm by regulation that event contracts—including sports-related event contracts—are swaps, providing an “independent legal basis” for that conclusion and “facilitat[ing] uniform nationwide treatment of event contracts under the exclusive jurisdiction of the Commission.” NPRM at 13, 31; *see* 15 U.S.C. § 8302(d)(1). In doing so, the CFTC undermined the premise on which *Schuler* rested—establishing once again that contract-market-traded event contracts are swaps within the CFTC’s exclusive jurisdiction, and casino-style gambling products are not.

C. The CEA sets forth the comprehensive regulatory framework for event contracts.

56. The CFTC exercises its exclusive jurisdiction through a comprehensive regulatory framework. Certain derivatives trading in the United States must take place on a board of trade that the CFTC has designated as a contract market. 7 U.S.C. §§ 2(e), 6(a)(1), 7(a). That designation reflects a rigorous federal determination that the contract market satisfies extensive requirements governing market integrity, transparency, financial safeguards, and customer protection.

57. The CFTC-designation process is a demanding one because contract markets are charged with a broad array of functions that the CFTC itself would otherwise have to perform. To obtain approval to operate a designated contract market, an entity must demonstrate to the CFTC that it complies with the CEA's 23 "core principles." 17 C.F.R. § 38.3(a)(2); see 7 U.S.C. §§ 7(d), 8(a). Core principle 1 requires the contract market to comply with *all* CFTC regulations. *See* 17 C.F.R. § 38.100(a)(2). And core principle 2 requires that the entity be "transparent" in its criteria for accessing the market, *id.* § 38.151(b)(1), prohibit abusive, "manipulative[,] or disruptive trading practices," *id.* § 38.152, "maintain an automated trade surveillance system capable of detecting and investigating potential trade practice violations" based on "specific trade execution patterns and trade anomalies," *id.* § 38.156, and "conduct real-time market monitoring of all trading activity on its electronic trading platform(s) to identify disorderly trading and any market or system anomalies," *id.* § 38.157.

58. The remaining core principles provide further protection against contract manipulation, ensure that risk controls are in place to limit market disruptions, and require daily publication of the price and volume of actively traded contracts. *See* 17 C.F.R. §§ 38.200–38.301; 7 U.S.C. § 7(d)(8). For example, a designated contract market must "establish, monitor, and enforce compliance with the rules of the contract market," including "access requirements," "the terms and conditions of any contracts to be traded on the contract market" and "rules prohibiting abusive trade practices on the contract market." 7 U.S.C. § 7(d)(2)(A). And those rules must provide "impartial access to its markets and services" using "[a]ccess criteria that are impartial, transparent, and applied in a non-discriminatory manner." 17 C.F.R. § 38.151(b). These rules, the CFTC has explained, "establish important protections for derivatives markets, market participants, and the general public." CFTC Minn. Compl. ¶ 43.

59. In short, to obtain designation as a contract market, applicants must show that they can be trusted to establish, monitor, and enforce rules for the markets they operate. As the CFTC has explained, contract markets are “self-regulatory organizations[] subject to Commission oversight” that must “meet[] the stringent requirements” under the CEA. 91 Fed. Reg. at 35843; *see* 7 U.S.C. § 5(b) (purpose of the CEA is to “serve the public interest[] . . . through a system of effective self-regulation of trading facilities”).

60. Designated contract markets may not list new kinds of contracts on their exchanges without first submitting the contract for CFTC approval or certifying that the contract complies with federal law and the CFTC’s requirements. 7 U.S.C. § 7a-2(c)(1). Before listing a new contract, the designated contract market must supply the CFTC with a “certification . . . that the product to be listed complies with the [CEA]” and CFTC regulations, as well as “[a] concise explanation and analysis”—with accompanying documentation—“with respect to the product’s terms and conditions” and “the product’s compliance with applicable provisions of the Act, including core principles, and the Commission’s regulations,” among other things. 17 C.F.R. § 40.2(a); *see* 7 U.S.C. § 7a-2(c)(1).

61. More broadly, the CFTC wields considerable tools for enforcing the CEA and its regulations. For example, the CEA empowers the agency to subpoena testimony and documents, 7 U.S.C. § 9(5), bring administrative enforcement actions, *id.* §§ 9(4), 13b, and sue in federal court for injunctive relief, monetary penalties, the appointment of receivers, disgorgement, restitution, the rescission of contracts, and the imposition of trading and registration bans, *id.* § 13a-1.

D. The CFTC licenses Polymarket US as a designated contract market subject to federal law and the CFTC’s exclusive jurisdiction.

62. The CFTC granted Polymarket US its designation as a contract market on July 9, 2025, finding that the platform now doing business as Polymarket US could and would comply with the CEA and the CFTC’s regulations. Order of Designation at 3, *In re Application of QCX LLC for Designation as a Contract Market*, Commodity Futures Trading Comm’n (July 9, 2025).⁷

63. Today, Polymarket US specializes in contracts concerning real-world events of public interest. Since September 30, 2025, Polymarket US has self-certified various financial, election-related, and sports-related event contracts. *See* 7 U.S.C. § 7a-2(c); CFTC, Designated Contract Market Products (listing self-certifications for contracts).⁸

64. These event contracts fall within the heart of the CFTC’s exclusive jurisdiction. Payment on one of Polymarket US’s listed event contracts is “dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. § 1a(47)(A)(ii).

65. One example is event contracts based on which political party will control the United States Senate or United States House of Representatives following the November 3, 2026, elections. Businesses, investors, financial institutions, and consumers routinely adjust their behavior based on which party will control Congress because legislative control can affect taxation, spending, regulation, and other matters with significant economic effects.

66. Another example is event contracts based on the winner of the Super Bowl. The Super Bowl’s “associat[ion] with a potential financial, economic, or commercial consequence” is obvious. 7 U.S.C. § 1a(47)(A)(ii); *see Coinbase*, 2026 WL 2969682, at *7 (“Winning a title game

⁷ <https://www.cftc.gov/filings/documents/2025/orgdcmqcexorderofd250709.pdf>.

⁸ <https://tinyurl.com/yamausyk>.

likely ‘associate[s] with a potential financial, economic, or commercial consequence.’”). Winning the Super Bowl causes a team’s valuation to surge, retailers’ sales of merchandise of that team to skyrocket, and hometown sales to spike. In 2025, for example, the Eagles took in over \$1 billion in revenue from their 2025 win, with Philadelphia restaurants, retailers, and hotels also able to capitalize off the team’s success.⁹ Retailers also regularly tie promotions to game results, including the identity of the winning team, final score, and game duration.¹⁰

67. Sports-related event contracts are not the same as sportsbooks. The financial products and regulatory regimes differ in fundamental ways.

68. Event-contract prices are formed by matching buyers and sellers among diverse market participants, with users from any given state transacting with other users around the country on these nationwide exchanges. Sports betting, by contrast, is conducted through local sportsbooks—regulated at the state level—with each sportsbook independently setting the terms of its wagers. Interim Final Rule at 14. The basic structure of sports betting and derivatives markets is different. Sportsbooks set odds based on proprietary information; event contracts are priced by supply and demand in a relevant market without any input by Polymarket US—*i.e.*, buying and selling activity reflecting the diverse perspectives of millions of individual traders on

⁹ See, e.g., Rachel Moore, *Eagles to Generate \$1.2B Economic Impact with Super Bowl parade season*, PHL17 News (Feb. 13, 2025), <https://phl17.com/phl17-news/eagles-to-generate-1-2b-economic-impact-with-super-bowl-parade-season/>; Jensen Toussaint, *Philadelphia Eagles Valuation Likely to Skyrocket After Second Super Bowl Win*, Philadelphia.Today (Feb. 14, 2025), <https://philadelphia.today/2025/02/philadelphia-eagles-valuation-to-rise/>.

¹⁰ See, e.g., *Buffalo Wild Wings (@bwwings)*, Instagram (Feb. 8, 2026), <https://www.instagram.com/p/DUgIPoekVo8/> (promising free wings if Super Bowl goes to overtime); Talia Naquin, *Cavs fans can score free Wendy’s Frostys: Here’s how*, FOX 8 News (Oct. 9, 2025), <https://fox8.com/news/cavs-fans-can-score-free-wendys-frostys-heres-how/> (offering free Wendy’s Frostys the day after a “high-energy scoring burst” by the Cavaliers); Little Caesars, *Little Caesars Road to the Super Bowl Sweepstakes*, <https://tinyurl.com/LittleCaesarsSBSweepstakes> (last visited Feb. 8, 2026) (conditioning chance to win free Super Bowl ticket on predicting how a customer’s favorite team will perform).

a given event. *Id.* at 14–15, 17–18. And sports bettors typically place wagers against the “house,” so sports bettors and sportsbooks are counterparties to the bet. *Id.* at 14, 17–18. Polymarket US, however, does not operate as a counterparty in the derivatives market. Instead, it operates as a transparent, centralized exchange matching orders of third parties. Polymarket US also makes money in a way that is neutral—by charging a flat fee for each transaction. It does not make money when a bettor loses, and it makes the same amount regardless of the outcome of a particular event. *Id.* at 18.

69. Federal law governs event contracts of all kinds—including sports-related ones—traded on designated contract markets. That is, all derivative instruments listed on centralized exchanges operate pursuant to extensive federal product certification, registration, and approval procedures. Sports-event contracts, like any other “transactions subject to” the CEA, “are entered into regularly in interstate . . . 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.” 7 U.S.C. § 5(a). They are therefore traded on a national exchange and regulated on the national level to ensure “trading in liquid, fair and financially secure trading facilities.” *Id.*

E. The CFTC has vigorously defended its exclusive jurisdiction over designated contract markets.

70. The CFTC has resisted States’ attempts to encroach upon its exclusive jurisdiction over designated contract markets. It has publicly advocated for its exclusive prerogative to regulate event contracts, assertively pursued litigation, and acted as an amicus in support of private parties’ fights against states’ jurisdictional overreach.

71. Earlier this year, CFTC Chairman Selig reiterated that “prediction markets” and “event contracts” “have operated within the CFTC’s regulatory perimeter for more than two

decades” and have played an “important role . . . in the broader financial system.”¹¹ He warned that state litigation against federally regulated markets injects uncertainty that “has not served our markets well” and harms “the public interest.” *Id.* To protect its jurisdiction, he directed the CFTC to reassess its litigation posture in cases implicating jurisdictional boundaries, emphasizing that where “jurisdictional questions” arise, “the Commission has the expertise and responsibility to defend its exclusive jurisdiction over commodity derivatives.” *Id.* “The CFTC will no longer sit idly by,” he admonished, “while overzealous state governments undermine the agency’s exclusive jurisdiction over these markets by seeking to establish statewide prohibitions on these exciting products.”¹²

72. The CFTC has followed through with this warning. In recent months, the Commission has sued numerous States that have sought to outlaw, regulate, or otherwise restrain federally regulated prediction markets.¹³

73. The CFTC explained that those state efforts “intrude[] on the exclusive federal scheme Congress designed to oversee the derivatives industry,” and would “undermine[] [the] uniformity” Congress mandated, *see* CFTC Minn. Compl. ¶¶ 7, 82, by subjecting CFTC-regulated

¹¹ Remarks of Chairman Michael S. Selig, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (Jan. 29, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaseligl>.

¹² *Chairman Michael S. Selig: Op-Ed: States Encroach on Prediction Markets*, *Commodity Futures Trading Comm’n* (Feb. 17, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement021726>.

¹³ *See* Complaint, *United States v. Connecticut*, No. 3:26-cv-00498 (D. Conn. Apr. 2, 2026), Dkt. 1; Complaint, *United States v. Illinois*, No. 1:26-cv-03659 (N.D. Ill. Apr. 2, 2026), Dkt. 1; Complaint, *United States v. New York*, No. 1:26-cv-03404 (S.D.N.Y. Apr. 24, 2026), Dkt. 1; Complaint, *United States v. Wisconsin*, No. 2:26-cv-00749 (E.D. Wis. Apr. 28, 2026), Dkt. 1; CFTC Minn. Compl.; Mot. to Intervene & Proposed Compl. in Intervention, *KalshiEX LLC v. Furcolo*, No. 1:26-cv-00327 (D.R.I. May 28, 2026), Dkt. 19; Complaint, *United States v. New Mexico*, No. 1:26-cv-01912 (D.N.M. June 12, 2026), Dkt. 1 (“CFTC N.M. Compl.”).

exchanges to a “fragmented patchwork of state regulations” that have “resulted in poorer consumer protection and increased risk of fraud and manipulation,” CFTC Press Release No. 9206-26, *CFTC Sues Trio of States to Reaffirm its Exclusive Jurisdiction Over Prediction Markets* (Apr. 2, 2026)¹⁴. The CFTC also emphasized that event contracts traded on designated contract markets are “swaps” within the meaning of the CEA and fall squarely within the CFTC’s exclusive jurisdiction, which prohibits States from “inva[d]ing” that authority. *See, e.g.*, CFTC Minn. Compl. ¶¶ 9, 32. Those federally regulated markets include Polymarket US. *See id.* ¶ 44.

74. The result would be a “massive sea change” that poses “existential” harm to national markets. CFTC Amicus Brief 20, 28, *KalshiEX LLC v. Williams*, No. 26-1835 (2d Cir. Sept. 9, 2026), Dkt. 51.1 (“Second Circuit Br.”). The CFTC’s suits and motions for preliminary injunctions against states like Connecticut, Illinois, Minnesota, New Mexico, New York, Rhode Island, and Wisconsin thus aim “to halt [state] efforts to apply and enforce preempted state laws to national markets that are governed by federal law.” *See, e.g.*, CFTC N.M. Compl. ¶ 1.¹⁵

75. A federal district court recently preliminarily enjoined Minnesota from enforcing state law against CFTC-regulated contract markets, including Polymarket US. *Minnesota*, 2026 WL 2150211, at *10–15. The court held that the CEA’s “exclusive jurisdiction” language likely expressly preempts state regulation of event contracts that qualify as “swaps,” and emphasized the breadth of that definition—an event contract qualifies where “the occurrence of

¹⁴ <https://www.cftc.gov/PressRoom/PressReleases/9206-26>.

¹⁵ *See* Mot. for Prelim. Inj., *United States v. Connecticut*, No. 3:26-cv-00498 (D. Conn. Sept. 11, 2026), Dkt. 102; Mot. for Prelim. Inj., *United States v. Illinois*, No. 26-cv-3659 (N.D. Ill. June 17, 2026), Dkt. 31; Mot. for Prelim. Inj., *United States v. Minnesota*, No. 26-cv-2661 (D. Minn. May 19, 2026), Dkt. 25; Mot. for Prelim. Inj., *United States v. New Mexico*, No. 26-cv-1912 (D.N.M. June 18, 2026), Dkt. 13; Mot. for Prelim. Inj., *United States v. New York*, No. 1:26-cv-03404 (S.D.N.Y. May 1, 2026), Dkt. 34; Mot. for Prelim. Inj., *KalshiEX LLC v. Furcolo*, No. 26-cv-327 (D.R.I. May 29, 2026), Dkt. 23; Mot. for Prelim. Inj., *United States v. Wisconsin*, No. 2:26-cv-00749 (E.D. Wis. May 1, 2026), Dkt. 6.

an event has the capacity to result in the identified consequence in the future.” *Id.* at *12–15. Most recently, on October 2, 2026, the Northern District of Illinois preliminarily enjoined Illinois from enforcing state law against a subset of sports-related contracts “dependent on who will win or lose a title game.” *Coinbase*, 2026 WL 2969682, at *5. In granting the preliminary injunction motion, the court concluded that the state laws Illinois attempted to enforce against prediction markets “likely conflict[] with the [CEA] and [are] accordingly likely preempted.” *Id.* at *16.

F. Defendants pursue Polymarket US and other events-market operators for state law penalties.

76. Whereas the CFTC regulates nationwide derivatives markets, Ohio’s Sports Gaming Act legalized sports wagering in Ohio—under a regime designed to favor local businesses and prevent interstate competition.

77. Ohio issues its mandatory online sports-gaming licenses—type A sports gaming proprietor licenses—only to applicants that maintain “at least one operational place of business in this state” or operate a sports gaming facility in Ohio. Ohio Rev. Code § 3775.04(A)(3). And it directs the Commission to “give preference to . . . professional sports organizations, casino operators, or video lottery sales agents, subject to [] factors” such as “[t]he nature of the applicant’s current or intended physical presence” in Ohio, the “length of time” “the applicant has been doing . . . business in” Ohio, and other “intended contributions to the state.” *Id.* § 3775.041(A), (C); *see also* Ohio Admin. Code 3775-4-02(C) (providing factors for determining whether to grant a Type A sports gaming license). The Commission must also weigh the “taxable income” each applicant pays “to its employees in this state,” its “economic involvement in this state,” and its contribution “to the economic development in the state.” *Id.* § 3775.041(C)(3), (4); Ohio Admin. Code 3775-4-02(C)(12). A license issued on the strength of that preference must be

revoked if the holder “ceases to qualify” as an Ohio professional sports organization, casino operator, or video lottery sales agent. *Id.* § 3775.09(D)(1).

78. The Commission may license no more than twenty-five such proprietors absent a showing that “the sports gaming market in this state needs” more, Ohio Rev. Code § 3775.04(A)(2), and every other operator may offer online wagering only as a “mobile management services provider” acting “on behalf of” a type A proprietor, subject to every requirement imposed on the proprietor itself, *id.* §§ 3775.01(G)(1), 3775.05(E)(1)–(2). A proprietor may contract with a second mobile management services provider only if it is one of the preferred in-state licensees (a professional sports organization or a casino operator or video lottery sales agent) and shows that the second contract “would generate an incremental economic benefit to this state.” *Id.* § 3775.05(A)(1)(b). The Commission’s rules make the same in-state economic benefit the measure of whether additional type A licenses are “need[ed],” of every applicant’s fitness, and of whether a license may be kept. Ohio Admin. Code 3775-4-02(C)(10)–(12), (K)–(L), 3775-4-02.1(B)(1)(b). None of the national online operators that serve Ohioans holds a type A license in its own right; each—FanDuel, DraftKings, BetMGM, Caesars, bet365, Fanatics, and ESPN Bet, among others—appears on the Commission’s list only as a management services provider operating under contract with one of those Ohio proprietors.¹⁶ So the only path to an Ohio license today runs through an Ohio place of business or affiliation with a business located in Ohio.

¹⁶ See Ohio Casino Control Comm’n, Sports Gaming Proprietors and Services Providers (last updated Oct. 16, 2025), https://dam.assets.ohio.gov/image/upload/v1745509283/casinocontrol.ohio.gov/licensing/sports%20gaming/Sports_Gaming_Proprietor_and_Services_Provider_Applicants_List.pdf.

79. These laws serve no apparent purpose beyond protectionism. If the State’s concern was licensee suitability, for example, the Ohio Casino Control Commission separately conditions licensure on suitability, financial, integrity, and responsible-gaming requirements. Ohio Rev. Code § 3775.02(B)(6)–(8), (10)–(11), (F)(2); Ohio Admin. Code 3775-4-01, 3775-4-02. Applicants must submit audited financial statements and undergo a “complete investigation” of their qualifications. Ohio Rev. Code §§ 3775.02(F)(2), 3775.04(D)(3). And the Commission may accept “another jurisdiction’s license” as evidence of a mobile management services provider’s fitness, *id.* § 3775.05(B)(2); *see also* Ohio Admin. Code 3775-4-02(C)(9), a surefire sign that the in-state presence, payroll, and “economic involvement” requirements serve no apparent purpose other than favoring businesses located in Ohio.

80. To place local businesses at a *further* competitive advantage, Ohio law requires that “[t]he server responsible for accepting wagers through an online sports pool shall be located in a secure facility in this state,” Ohio Rev. Code § 3775.11(C), and the Commission’s rules similarly require that “[t]he sports gaming system servers, or other equipment, responsible for accepting wagers must be located within the state of Ohio,” Ohio Admin. Code 3775-9-02(C).

81. There is no obvious nonprotectionist rationale for this requirement, either. The Commission’s own rules provide that the in-state server requirement “does not prohibit sports gaming data from being stored or accessed elsewhere, including cloud-based environments,” *id.*; those rules require every proprietor to give the Commission “read-only remote access to its sports gaming systems” wherever those systems sit, *id.* 3775-16-01(D); and they guarantee the Commission “access to real-time geofence data” from the licensed location-based technology provider, *id.* 3775-9-03(C). Ohio even permits its sports gaming proprietors to manage risk “through the use of a liquidity pool in another jurisdiction.” Ohio Rev. Code § 3775.10(D).

82. But that is not all. If a sportsbook wishes to do business as an Ohio-licensed online sports pool, it may only accept wagers from those in Ohio. Ohio Rev. Code § 3775.11(A). Ohio law permits a type A proprietor to accept wagers only from individuals “who are physically located in this state” and requires it to “use location based technology to prohibit individuals who are not physically present in this state from participating.” *Id.*; see Ohio Admin. Code 3775-17-01(A), (D). As the Sixth Circuit has summarized, Ohio requires that wagers on sporting events be “initiated, received, and completed within the state.” *Schuler*, 2026 WL 2884087, at *3.

83. Ohio officials apparently believe that this balkanized, protectionist regime should apply to interstate derivatives trading. Two weeks ago, the Commission sent Polymarket US and nine other businesses the cease and desist letter at issue here, citing *Schuler* as having made “clear that Ohio’s sports gaming laws apply to Polymarket’s sports event contracts.” Ex. 1 at 2.

84. The letter invokes the Commission’s “jurisdiction over all persons conducting or participating in the conduct of sports gaming in the State of Ohio,” and asserts that, “by offering ‘event contracts’ on sporting events to persons located in the State of Ohio, without a sports gaming license,” Polymarket US “is violating Ohio law,” and that “[p]lainly stated, Polymarket is operating online sports gaming.” Ex. 1 at 1. The letter further asserts that Polymarket US “is clearly engaged in bookmaking or facilitating bookmaking in violation of Ohio civil and criminal law.” *Id.* at 2. The letter “demands that Polymarket cease and desist from offering, participating in offering, or facilitating those who offer sports event contracts in Ohio,” including “soliciting or accepting orders for sports event contracts listed on [contract markets] from persons located in Ohio,” “as well as operating [a contract market] that offers sports event contracts to persons located in Ohio,” and directs Polymarket US to “notify the Commission in writing no later than fourteen

(14) days following the date of th[e] letter that it has complied.” *Id.* It warns that Polymarket US’s “failure to abide by th[e] notice may result in the Commission pursuing all legal remedies and actions against Polymarket, including, but not limited to, administrative, civil, nuisance, or criminal actions pursuant to R.C. Chapters 2915, 3767, and 3775.” *Id.* It threatens “a civil penalty or fine” in “an amount equal to the money or value of the property that Polymarket has unlawfully obtained or retained by offering these event contracts on sporting events to persons located in Ohio.” *Id.* The letter further warns that the Commission “may also pursue additional civil and administrative remedies against Polymarket, its officers, directors, and holding or parent companies.” *Id.*

85. The State’s theory is that Polymarket US’s federally regulated event contracts are “wagers” on “sporting events” within the meaning of Chapter 3775 of the Ohio Revised Code, and that Polymarket US is therefore “operating online sports gaming” that may not be offered to Ohioans “without a sports gaming license.” Ex. 1 at 1. On that theory, Polymarket US may continue to offer its event contracts to Ohioans only by obtaining a license from the Commission and submitting to the Commission’s regulatory oversight, including state requirements governing where its servers are located, where its customers are located, and with whom it does business. *See* Ohio Rev. Code §§ 3775.03(A)(1), 3775.04(A)(3), 3775.05(E)(2), 3775.11(A), (C). But it is for the federal government—not the States—to determine what qualifies as a “swap.” *See* 7 U.S.C. § 2(a)(1)(A) (granting CFTC exclusive jurisdiction “with respect to” swaps traded on designated contract markets); 15 U.S.C. §§ 8302(d)(1), 8321(b) (directing CFTC to “further define the term[] ‘swap’”); 7 U.S.C. § 6b-1(a) (vesting CFTC with “exclusive authority to enforce” the Act’s provisions on swaps).

86. The State’s fourteen-day deadline leaves no doubt that enforcement against Polymarket US is imminent. The Commission has demanded that Polymarket US capitulate by October 16, 2026, or face the full range of Ohio’s civil and criminal remedies. Polymarket US does not hold an Ohio sports wagering license because Ohio may not lawfully require a CFTC-designated contract market to obtain one as a condition of listing federally regulated event contracts. Nor could Polymarket US obtain such a license if it tried. Ohio reserves its online sports-gaming licenses to proprietors with an Ohio place of business or a contractual relationship with a qualifying Ohio-based proprietor, and the Commission has warned existing licensees that partnering with a prediction market will jeopardize their own licenses. *See infra* ¶¶ 98–100. And although Polymarket US runs its markets in accordance with and subject to the exclusive jurisdiction of federal law, Ohio has taken the position that those activities are governed by state law.

G. Looming enforcement of preempted Ohio law irreparably harms Polymarket US.

87. Given the State’s definitive position—that prediction markets violate Ohio’s sports gaming laws—Polymarket US faces the imminent threat of enforcement by Ohio.

88. The threat of enforcement against Polymarket US is real, imminent, and concrete, presenting a live and justiciable controversy. Because Polymarket US must choose between protecting its rights under federal law and facing exposure to imminent state enforcement, this action is ripe for adjudication and the award of injunctive relief now, not after irreparable harm has occurred.

89. The business consequences for Polymarket US arising from Ohio’s near-certain enforcement require this Court’s immediate action. An enforcement action by Ohio—even a meritless one—would raise a red flag for Polymarket US’s business partners, triggering notification and termination clauses in many of Polymarket US’s agreements, and jeopardizing

key partnerships crucial to the company's growth. Additionally, Polymarket US would lose out on potential business partners who would steer clear of a company under a cloud of enforcement proceedings.

90. The alternative—abruptly terminating Ohio users' access to event contracts and unwinding their current positions—is just as damaging. Polymarket US has expended tremendous resources to garner customer goodwill and a solid reputation. Cutting off Ohioans from Polymarket US's event contracts—contracts that are available to users outside Ohio—would deal a decisive blow to Polymarket US's goodwill and reputation within the state. It would disrupt overall liquidity and impair the information that trading generates by forcing Ohio residents off the exchange. And it would create confusion among users about what shutting off their access to the market means for their trading positions. Unwinding existing contracts, in particular, would confuse and frustrate both Ohioans and users on the other side of the contracts.

91. Further, reduced liquidity would deter customers from using the platform. Price discovery and market efficiency are two main reasons why event contracts have predictive value (and thus why Polymarket US is attractive to users). Reduced liquidity dampens both, which are necessary elements of prediction markets' functions, so termination of Ohio-based trading hinders the orderly functioning of markets nationwide and could deter customers outside Ohio from using the platform at all, imposing substantial burdens on interstate commerce.

92. All told, "the prospect of" an imminent enforcement action irreparably harms Polymarket US by putting it to an impossible choice: continue operations "and expose [itself] to potentially huge liability," on the one hand; or "suffer the injury of obeying the [preempted] law" on the other. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381–82 (1992); *see Coinbase*, 2026 WL 2969682, at *17 (prediction markets "must choose between ceasing business operations

and facing imminent civil and criminal penalties under laws that are likely preempted”). There is therefore “no adequate remedy at law.” *Id.*

COUNT I

Violation of the Commerce Clause

(42 U.S.C. § 1983)

93. Polymarket US incorporates the preceding paragraphs by reference.

94. Ohio’s threatened enforcement action, based on its underlying state-licensing regime, violates the U.S. Constitution’s Commerce Clause by discriminating against out-of-State commerce.

95. The Commerce Clause’s grant of authority to Congress “implicitly includ[es] a negative component forbidding certain state regulations,” at the “very core” of which “is an antidiscrimination principle.” *Energy Mich., Inc. v. Mich. Pub. Serv. Comm’n*, 126 F.4th 476, 486 (6th Cir. 2025).

96. Laws that discriminate against interstate commerce—“facially, purposefully, or in practical effect,” *id.* at 487, “face a virtually *per se* rule of invalidity,” *Granholm v. Heald*, 544 U.S. 460, 476 (2005) (internal quotation marks omitted).

97. Ohio insists that Polymarket US is “operating online sports gaming” and may not offer its event contracts to Ohioans “without a sports gaming license,” Ex. 1 at 1, but that sports gaming regime is discriminatory from beginning to end. Under Ohio law, the same conduct is criminal “bookmaking” when conducted without a license and lawful when conducted by a licensee, Ohio Rev. Code § 2915.02(A)(1), (C); Ex. 1 at 2, the only variable is the license, and the license turns on an applicant’s presence in Ohio.

98. Start with Ohio’s licensing restrictions. Online sports-gaming licenses are available only to proprietors that maintain “at least one operational place of business in this state” or operate a sports gaming facility in Ohio—with statutory preference for Ohio’s casinos, racinos, and professional sports organizations—or to operators acting on those in-State businesses’ behalf. Ohio Rev. Code §§ 3775.01(G)(1), (Z), 3775.04(A)(3), 3775.041(A), (C), 3775.05(E)(2). “Thus, physical presence in the state is the distinguishing factor that gives in-state [businesses] benefits that out-of-state [businesses] do not share,” making the licensing regime “facially discriminatory.” *Novartis Pharms. Corp. v. Griffin*, 833 F. Supp. 3d 956, 989–90 (E.D. Ark. 2026); *see Energy Mich.*, 126 F.4th at 487–88 (laws whose benefits or burdens are “territorially based” discriminate on their face). Indeed, Ohio law expressly contemplates “exchange wagering,” Ohio Rev. Code § 3775.01(O)(2), but its licensing scheme effectively excludes an exchange operated from outside the State.

99. The provision also discriminates against out-of-State business in practical effect. Imposing on out-of-State businesses the obligation to partner with an in-State business imposes costs on out-of-State businesses that in-State competitors need not bear—again, in violation of the Commerce Clause. *See, e.g., Granholm*, 544 U.S. at 474 (regulatory scheme was unconstitutional because it “require[d] all out-of-state wine, but not all in-state wine, to pass through an in-state wholesaler and retailer before reaching consumers”); *McNeilus Truck & Mfg., Inc. v. Ohio ex rel. Montgomery*, 226 F.3d 429, 442–43 (6th Cir. 2000) (Ohio licensing scheme that allowed out-of-State manufacturers to sell in Ohio only through agreements with in-State franchised dealers discriminated against interstate commerce in purpose and effect).

100. The only route Ohio offers an out-of-State operator is dependent on an Ohio proprietor’s willingness to contract with it. Ohio Rev. Code § 3775.05(A), (E)(2). But the

Commission has threatened that a decision to “associate, coordinate, or otherwise partner directly or indirectly with entities offering or facilitating the offering of sporting event contracts in Ohio” will bear on a proprietor’s “continued suitability” to hold a license and that the Commission “may take administrative action against any licensee that does.” Letter from Matthew T. Schuler, Exec. Dir., Ohio Casino Control Comm’n, to Sports Gaming Licensees (Aug. 25, 2025), at 56–59, *Schuler*, No. 2:25-cv-1165 (S.D. Ohio Oct. 7, 2025), Dkt. 1-5. In effect, Ohio has announced that national contract markets like Polymarket US *cannot* comply with Ohio’s scheme, short of becoming an Ohio-based company.

101. The State’s discriminatory licensing provisions are not “narrowly tailored to ‘advance a legitimate,’” “nonprotectionist” “local purpose.” *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 518, 539 (2019). Ohio law *separately* subjects every licensee to suitability, financial, integrity, and responsible-gaming requirements. Ohio Rev. Code §§ 3775.02(B)(6)–(8), (10)–(11), (D), (F)(2), (I)(1); *id.* §§ 3775.04(D)(3), 3775.10(A)(9), (B); Ohio Admin. Code 3775-16-10, 3775-16-17. And it is “mere speculation” to suppose that maintaining a place of business in Ohio or partnering with an Ohio casino or sports team is necessary—much less “narrowly tailored”—to advance some legitimate, nonprotectionist purpose. *Tenn. Wine*, 588 U.S. at 518, 539.

102. Ohio law imposes yet another unlawful physical-presence requirement. The obligation that “[t]he server responsible for accepting wagers through an online sports pool” “be located in a secure facility in this state,” Ohio Rev. Code § 3775.11(C); *see* Ohio Admin. Code 3775-9-02(C), compels an out-of-State business like Polymarket US that operates a single nationwide market from centralized infrastructure to build and operate a duplicate Ohio installation as the price of serving Ohio residents.

103. This is precisely the kind of restriction that the Supreme Court has long “viewed with particular suspicion”—a rule “requiring business operations to be performed in the home State that could more efficiently be performed elsewhere.” *Granholm*, 544 U.S. at 475.

104. Nor is this restriction necessary. The Commission’s own rules make clear that out-of-State storage and remote oversight are viable and compatible with whatever state interest the Commission might seek to advance. *See* Ohio Admin. Code 3775-9-02(C), 3775-16-01(D), 3775-9-03(C); *see also* Ohio Rev. Code § 3775.10(D) (permitting sports gaming proprietors to manage risk through “a liquidity pool in another jurisdiction”).

105. In addition to its unlawful physical-presence requirements, Ohio’s licensing regime erects a barrier to interstate commerce through its geofencing provisions: Licensees may accept bets from those present in Ohio—and nowhere else. Ohio Rev. Code § 3775.11(A). This kind of law—one that overtly blocks the flow of interstate commerce at a State’s borders—is, the Supreme Court has said, “[t]he clearest example” of unlawful protectionism. *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). By barring transactions that cross state lines, Ohio excludes out-of-State market participants from transactions that would otherwise occur in interstate commerce.

106. Ohio’s sports gaming laws therefore violate the Commerce Clause as applied to Polymarket US.

107.

COUNT II

Commodity Exchange Act Preemption

(42 U.S.C. § 1983; *Ex parte Young*)

108. Polymarket US incorporates the preceding paragraphs by reference.

109. The Supremacy Clause of the United States Constitution enshrines the “Laws of the United States” as “the supreme Law of the Land,” the “Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

110. “[U]nder the Supremacy Clause, from which our pre-emption doctrine is derived, any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (internal quotation marks omitted).

111. Courts “will give preemptive effect to federal law where (1) a federal statute expressly preempts state law, (2) a federal law impliedly preempts state law, or (3) federal law and state law actually conflict.” *Gibson v. Am. Bankers Ins. Co.*, 289 F.3d 943, 948–49 (6th Cir. 2002).

112. The CEA bars Ohio from purporting to regulate Polymarket US’s federally regulated offering of event contracts under each form of preemption.

113. Polymarket US brings this claim pursuant to 42 U.S.C. § 1983 and *Ex parte Young*, 209 U.S. 123 (1908), and seeks declaratory and injunctive relief preventing Defendants from enforcing Ohio law against Polymarket US in violation of federal law. As explained below, Ohio’s gaming laws are preempted by the CEA as applied to Polymarket US’s federally regulated exchange.

A. Express preemption bars Ohio regulation of Polymarket US’s exchange.

114. Congress expressly preempted state regulation of event-contract trading on designated contract markets.

115. Under the CEA’s express terms, the CFTC, not the Ohio Casino Control Commission, has “exclusive jurisdiction with respect to” all “accounts,” “agreements,” and “transactions involving swaps or contracts of sale of a commodity for future delivery” that are

“traded or executed on a contract market designated” by the CFTC. 7 U.S.C. § 2(a)(1)(A); *see Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 560–61 (6th Cir. 1998) (discussing pre-Dodd-Frank version of the Act).

116. Confirming as much, the very next sentence explains that the section does not “supersede or limit the jurisdiction” of “regulatory authorities under the laws of the United States or of any State,” “[e]xcept as hereinabove provided.” 7 U.S.C. § 2(a)(1)(A) (emphasis added).

117. The CFTC’s “exclusive jurisdiction” over trading on federally regulated event-contract exchanges, 7 U.S.C. § 2(a)(1)(A), therefore preempts Ohio’s supposed jurisdiction to police those exchanges. *See Minnesota*, 2026 WL 2150211, at *10 (“[C]ourts have recognized that § 2(a)(1)(A)’s ‘exclusive jurisdiction’ language has a preemptive effect on state regulation.”); *Flaherty*, 172 F.4th at 230 (observing that the CEA’s “text preempts state gambling laws that seek to regulate . . . event contracts traded on a [contract market]” under the CFTC’s exclusive jurisdiction); *R.R. Ventures, Inc. v. Surface Transp. Bd.*, 299 F.3d 523, 563 (6th Cir. 2002) (concluding it is “manifestly clear” that a statutory grant of “exclusive jurisdiction” “preempt[s] . . . state statutes”).

118. That conclusion holds even under the Sixth Circuit’s narrower reading of § 2(a)(1)(A). In *Schuler*, the court recognized that “the exclusive jurisdiction provision displaces direct enforcement and regulatory authority pertaining to the licensing and operation of [contract markets].” 2026 WL 2884087, at *21. And it held Ohio’s laws not preempted as applied to Kalshi only because, in its view, those laws “impose no restrictions on the designation or operation of contract markets as such,” but instead “regulate sports betting.” *Id.* at *22. The Commission’s letter to Polymarket US, however, does what *Schuler* says Ohio’s laws do not. It asserts “jurisdiction over all persons conducting or participating in the conduct of sports gaming,” treats

a Commission-issued “sports gaming license” as a condition for operating a federally designated exchange, and directs Polymarket US to cease “operating [a contract market] that offers sports event contracts to persons located in Ohio.” Ex. 1 at 1–2. That is direct regulation of the licensing and operation of a designated contract market.

119. Take, for example, Ohio law’s definition of “wager”: “to risk a sum of money or thing of value on an uncertain occurrence,” Ohio Rev. Code § 3775.01(DD).

120. That definition echoes the CEA’s definition of a swap, which includes “any . . . transaction . . . that provides for any . . . payment . . . that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial . . . consequence.” 7 U.S.C. § 1a(47)(A)(ii). When a transaction qualifies as a swap within the meaning of the CEA, the CFTC, not Ohio, has “exclusive jurisdiction.” *Id.* § 2(a)(1)(A). The CFTC—the agency Congress charged with administering the CEA—has now confirmed that reading. *See* NPRM; Interim Final Rule.

121. In addition, Section 13a-2 of the CEA bars Ohio from enforcing its gambling laws against a designated contract market. Congress defined the extent of state authority to proceed against conduct the CEA regulates. 7 U.S.C. § 13a-2. A State may sue a person who violates the CEA or CFTC regulations, but Congress expressly excluded “contract market[s]” from that authority. *Id.* § 13a-2(1). And Congress preserved only one category of state law actions, namely proceedings brought under a State’s “general civil or criminal antifraud statute.” *Id.* § 13a-2(7).

122. These two limitations foreclose Ohio’s threatened enforcement. *First*, Congress excluded contract markets by name. 7 U.S.C. § 13a-2(1). Congress withheld that authority to sue because “[p]lenary authority to register, regulate, and discipline the contract

markets” is “reserved to the Commission.” S. Rep. No. 95-850, at 25. Congress could not have intended to deny States authority to enforce the CEA against contract markets while simultaneously permitting them to achieve the same result through state gambling laws. *See Kelly*, 691 F.2d at 803 n.8. *Second*, Congress preserved only actions brought under “general civil or criminal antifraud statute[s].” 7 U.S.C. § 13a-2(7). When Congress specifically identifies the state law claims that may coexist with a federal regulatory scheme, the remainder are preempted. *See Fid. Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 163 (1982).

123. *Schuler* does not suggest otherwise. The Sixth Circuit did not address § 13a-2(1)’s exclusion of contract markets from state enforcement authority or the Sixth Circuit’s earlier discussion of § 13a-2 in *Kelly*. Rather, *Schuler* addressed only § 13a-2(7)’s preservation of state “general civil or criminal antifraud statute[s]”—the limited carve-out described above—and otherwise described § 13a-2 as “permit[ting] state officials to bring enforcement actions . . . relating to *off*-[contract-market] transactions.” 2026 WL 2884087, at *24 (emphasis added).

124. Ohio says that Polymarket US is offering “unlicensed sports gaming and bookmaking or facilitating bookmaking.” Ex. 1 at 2. That is not true. *See supra* ¶¶ 67–69. Moreover, the CEA’s Special Rule anticipates that certain “event contracts” will “involve . . . gaming” and authorizes the CFTC to ban the trading of those contracts. 7 U.S.C. § 7a-2(c)(5)(C). Thus, even if sports-event contracts *were* a form of gaming (they are not), they would remain within the CFTC’s exclusive jurisdiction and beyond the State’s regulatory reach.

B. Implied field preemption bars Ohio regulation of Polymarket US’s exchange.

125. Field preemption applies where Congress “indicates an intent to occupy exclusively an entire field of regulation,” an intent that may be inferred from a federal regulatory scheme “so pervasive as to make reasonable the inference that [it] left no room for the States to

supplement it.” *Bibbo*, 151 F.3d at 562 (internal quotation marks omitted). Through the CEA, Congress has done just that for event-contract trading on designated contract markets. “As the scope of the CEA and the long history of amendments to it make clear, Congress created ‘a comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex.’” CFTC Minn. Compl. ¶ 89 (quoting *Merrill Lynch*, 456 U.S. at 356).

126. “Congress created the CFTC and amended the Act to do away with the patchwork of state regulations and bring futures trading on [designated contract markets] under the exclusive jurisdiction of the CFTC.” *Flaherty*, 172 F.4th at 230. And through this “grant[of] exclusive jurisdiction to the Commodity Future[s] Trading Commission,” together with the “pervasive regulatory scheme established under the Commodity Exchange Act,” as amended, Congress achieved its goal of “preempt[ing] the field insofar as futures regulation is concerned.” *Gonzalez v. Paine, Webber, Jackson & Curtis, Inc.*, 1982 WL 1348, at *2 (S.D.N.Y. Nov. 10, 1982).

127. The field occupied by federal law expanded when the Dodd-Frank Act “amended the [CEA] to ‘establish a comprehensive new regulatory framework for swaps,’ and vested the [CFTC] with exclusive jurisdiction to implement that framework.” *In re Interest Rate Swaps Antitrust Litig.*, 261 F. Supp. 3d 430, 445 (S.D.N.Y. 2017) (footnote omitted) (quoting 78 Fed. Reg. 33476, 33477 (June 4, 2013)).

128. There is no room for state interference with this “comprehensive scheme.” *See CFTC v. British Am. Commodity Options*, 560 F.2d 135, 138 (2d Cir. 1977).

129. Enforcement of Ohio’s sports gaming or gambling laws against Polymarket US would impermissibly intrude on the CFTC’s exclusive authority to police trading on CFTC-

regulated exchanges. *See, e.g., Flaherty*, 172 F.4th at 228 (affirming that “at the very least[,] field preemption applies” to sports-related event contracts on a designated contract market).

C. Conflict preemption bars Ohio regulation of Polymarket US’s exchange.

130. Conflict preemption also prevents enforcement of these Ohio laws against Polymarket US because those laws stand “as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” in the CEA. *See Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372–73 (2000); *see also Flaherty*, 172 F.4th at 229 (“[C]onflict preemption also prohibits New Jersey from regulating sports-related event contracts on CFTC-licensed [contract markets].”).

131. Consider the State’s position that Polymarket US’s federally regulated sports-event contracts are unlawful “wagering products” and that, by offering those contracts to Ohioans, Polymarket US is “operating online sports gaming” and “engaged in bookmaking” in violation of state law. Ex. 1 at 1–2. That is not the State’s decision to make: the CEA grants the CFTC the authority to “determine[]” whether such contracts “involve . . . gaming” and, if so, whether they should be prohibited as “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C).

132. Common sense confirms all this. The Chicago Mercantile Exchange, for example, is not the MGM Grand, though a customer of either might end up losing money. But if States were free to regulate derivatives as gambling—subject to each State’s rigid-yet-idiosyncratic restrictions and licensing regimes—the modern financial system would cease to function. The CEA ensures that this cannot happen.

133. The CFTC has not invoked the Special Rule to prohibit Polymarket US from listing sports-event contracts. Therefore, Polymarket US’s sports-related event contracts evidence—by their very existence—the CFTC’s exercise of its discretion and implicit decision to

permit them. *See Flaherty*, 172 F.4th at 226 (“The Act preempts state laws that directly interfere with swaps traded on [contract markets].”).

134. More broadly, if Ohio attempts to ban Polymarket US’s event contracts that federal law and the CFTC have authorized, the State’s actions would plainly frustrate the CFTC’s exclusive authority to regulate its designated exchanges. As the Supreme Court has recognized, “[t]he purpose of the exclusive-jurisdiction provision” is, among other things, to “separate the functions of the [CFTC] from those of . . . other regulatory agencies.” *Merrill Lynch*, 456 U.S. at 386. As the Sixth Circuit has recognized, “the thrust of the [exclusive-jurisdiction] provision was to ensure that regulatory bodies other than the CFTC would not interfere.” *Curran v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 622 F.2d 216, 232 (6th Cir. 1980), *aff’d*, 456 U.S. 353 (1982). That is, “Congress intended to avoid a diversity of regulations between the C.F.T.C. and the states.” *Kelly*, 691 F.2d at 804 n.12; *cf.* 15 U.S.C. § 8325(a) (directing the CFTC to achieve “consistent *global* regulation of swaps” (emphasis added)). Permitting an Ohio enforcement action against Polymarket US would conflict with Congress’s goal to avoid subjecting regulated exchanges to multiple conflicting legal regimes—a conflict that becomes clearer still when one considers that nothing would stop the 49 other States and the District of Columbia from equally attempting to subject Polymarket US’s exchange to their own varying laws. “This state regulation is exactly the patchwork that Congress replaced wholecloth by creating the CFTC.” *Flaherty*, 172 F.4th at 230. The CFTC itself has found that state-level enforcement actions “imperil a nascent industry that Congress has entrusted to the ‘exclusive jurisdiction’ of a federal agency, the CFTC,” and that stripping the agency of exclusive jurisdiction over event contracts “threatens to wreak havoc on the operations of [contract markets] nationwide.” Interim Final Rule at 29.

135. Compliance with both regimes is also impossible in practice. Federal law requires a designated contract market to provide “impartial access to its markets and services” on a non-discriminatory basis, 17 C.F.R. § 38.151(b), and the CFTC has explained that a contract market that restricts access by geography in order to comply with state gambling laws violates that requirement, Second Circuit Br. 18. Ohio’s demand that Polymarket US stop “operating [a contract market] that offers sports event contracts to persons located in Ohio,” Ex. 1 at 2, would require Polymarket US to do exactly that. Although the Sixth Circuit in *Schuler* was “not persuaded” that the impartial-access rule required Kalshi to serve Ohio participants, 2026 WL 2884087, at *26, the agency that wrote and administers that rule reads it otherwise, and Polymarket US preserves the argument for further review.

136. In short, Ohio may not enforce against Polymarket US state laws that federal law preempts.

PRAYER FOR RELIEF

An actual controversy has arisen between the parties entitling Plaintiff to legal, declaratory, and injunctive relief.

WHEREFORE, Plaintiff Polymarket US respectfully requests that this Court enter the following relief:

A. A declaratory judgment, pursuant to 28 U.S.C. § 2201, 42 U.S.C. § 1983, and Rule 57 of the Federal Rules of Civil Procedure, that Ohio’s sports gaming and gambling laws, including Ohio Revised Code Chapters 2915, 3767, and 3775 and Ohio Administrative Code 3775-1-08, are unconstitutional as applied to Polymarket US and preempted under the CEA;

B. Preliminary and permanent injunctions, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendants from taking any steps to enforce Ohio Revised

Code Chapters 2915, 3767, or 3775, Ohio Administrative Code § 3775-1-08, or any other state law or regulation to the extent it discriminates against interstate commerce in violation of the U.S. Constitution's Commerce Clause, purports to regulate or prohibit Plaintiff's activities governed exclusively by federal law, or otherwise conflicts with federal law;

C. An award of Plaintiff's attorneys' fees and costs incurred in bringing this action, including attorneys' fees and costs under 42 U.S.C. § 1988 for successful 42 U.S.C. § 1983 claims; and

D. Any other relief within this Court's discretion that it deems just and proper.

Dated: October 16, 2026

Respectfully submitted,

/s/ Keith Shumate

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** Pro hac vice applications forthcoming*

*Attorneys for Plaintiff QCX LLC, d/b/a
Polymarket US*

EXHIBIT 1

OHIO CASINO CONTROL COMMISSION



Mike DeWine
Governor

Thomas J. Stickrath
Chair

October 2, 2026

PM US Tech (QC Tech LLC)
Attn: Legal
7251 W Palmetto Park Rd, Suite 102
Boca Raton, FL 33433
legal@polymarket.com

Sent Via Certified Mail and Email

Re: Cease and Desist from Offering Sports Event Contracts in Ohio

Dear PM US Tech (QC Tech LLC):

The Ohio Casino Control Commission (“Commission”) has jurisdiction over all persons conducting or participating in the conduct of sports gaming in the State of Ohio. R.C. 3775.02(A). The Commission is hereby putting you on notice that by offering “event contracts” on sporting events to persons located in the State of Ohio, without a sports gaming license, PM US Tech (QC Tech LLC) (“Polymarket”) is violating Ohio law. For the reasons set forth below, Polymarket must immediately cease and desist from offering these wagering products in Ohio.

Based on Polymarket’s online content, Polymarket is offering “event contracts” that give persons the option to enter contracts corresponding to one of two outcomes of an event. In a sporting event context, a person is entering a contract that reflects which team they believe will win or lose the matchup or that a team or player will meet certain performance statistics. The ultimate result is money being won or lost based on the outcome of a game or a team or player’s performance. Plainly stated, Polymarket is operating online sports gaming.

Sports gaming cannot be offered in Ohio without a license issued by the Commission. R.C. 3775.03(A). A person or business offers sports gaming when it accepts wagers on sporting events. R.C. 3775.01(O)(1). Sporting events include, but are not limited to, professional and collegiate athletic events and the individual performance statistics of athletes or participants in such events. R.C. 3775.01(N)(1). Further, the Ohio General Assembly defined wager as “to risk a sum of money or thing of value on an uncertain occurrence.” R.C. 3775.01(DD). Therefore, a person that accepts

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(855) 800-0058 toll-free
www.casinocontrol.ohio.gov

anything of value risked on the outcome of a sporting event without a valid license issued by the Commission is violating Ohio sports gaming laws.

It is a felony to operate sports gaming in the Ohio in a manner that does not comply with Chapter 3775 of the Ohio Revised Code. R.C. 3775.99(B)(9). Further, conducting or participating in the conduct of unlicensed sports gaming also constitutes bookmaking or facilitating bookmaking in violation of the Ohio Criminal Code. *See* R.C. Chapter 2915. Bookmaking is defined under Ohio law as “the business of receiving or paying off bets.” R.C. 2915.01(A). The Code defines “bet” as “the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk.” R.C. 2915.01(B). By offering sports event contracts to persons located in Ohio, Polymarket is clearly engaged in bookmaking or facilitating bookmaking in violation of Ohio civil and criminal law, exposing Polymarket to civil and criminal penalties. R.C. 2915.02, R.C. 3775.02, R.C. 3775.99.

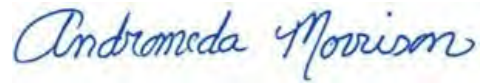
Moreover, Polymarket’s online content, including its website, constitutes a nuisance under Ohio law that is subject to abatement under R.C. Chapter 3767. R.C. 3775.99(B)(9). The Commission has the power to impose a civil penalty or fine, including for an amount equal to the money or value of the property that Polymarket has unlawfully obtained or retained by offering these event contracts on sporting events to persons located in Ohio. *See* R.C. 3775.02(H)(1)(a); R.C. 3772.04(B); and Ohio Adm.Code 3775-1-08. The Commission may also pursue additional civil and administrative remedies against Polymarket, its officers, directors, and holding or parent companies, as applicable.

Over approximately the past year-and-a-half, multiple designated contract markets (“DCMs”) and futures commission merchants (“FCMs”), who offer sports event contracts throughout the nation, have engaged in litigation with state regulators over the application of state gambling laws to sports event contracts. On September 25, 2026, the U.S. Court of Appeals for the Sixth Circuit held that the Commodity Exchange Act neither applies to these sports event contracts nor preempts Ohio’s sports gaming law. *See KalshiEx LLC v. Schuler*, No. 26-3196, 2026 U.S. App. LEXIS 29542 (6th Cir. Sep. 25, 2026). This decision makes clear that Ohio’s sports gaming laws apply to Polymarket’s sports event contracts.

Because Polymarket is offering unlicensed sports gaming and bookmaking or facilitating bookmaking in Ohio, the Commission demands that Polymarket cease and desist from offering, participating in offering, or facilitating those who offer sports event contracts in Ohio. This includes soliciting or accepting orders for sports event contracts listed on DCMs from persons located in Ohio, as well as operating an FCM or DCM that offers sports event contracts to persons located in Ohio. Polymarket shall notify the Commission in writing no later than fourteen (14) days following the date of this letter that it has complied with this cease-and-desist notice.

Polymarket’s failure to abide by this notice may result in the Commission pursuing all legal remedies and actions against Polymarket, including, but not limited to, administrative, civil, nuisance, or criminal actions pursuant to R.C. Chapters 2915, 3767, and 3775, and any rules adopted thereunder.

Sincerely,

A handwritten signature in blue ink that reads "Andromeda Morrison". The signature is written in a cursive, flowing style.

Andromeda Morrison
Interim Executive Director

EXHIBIT 2

As approved by the Commission
(subject to pre-publication technical corrections)

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038-AF81

Further Definition of “Swap” to Exclude Casino-Style Gambling Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rule; request for comments.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is adopting an interim final rule (“Interim Final Rule”) to codify its longstanding position that casino-style gambling products, including wagers placed on sportsbooks and casino games, are excluded from the “swap” definition.

DATES: *Effective Date:* This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Request for comment:* Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, specifically referencing “Further Definition of “Swap” to Exclude Casino-Style Gambling Products” and RIN 3038-AF81, by any of the following methods:

- **Regulations.gov:** Go to <https://www.regulations.gov> and press the “Search” button, then proceed as follows:

1. Under Refine Documents Results – check the box to “Only show documents open for comment”;

As approved by the Commission

(subject to pre-publication technical corrections)

2. Under Agency – select “See More” and check the box for “Commodity Futures Trading Commission,” then press the Apply button;
3. Identify this proposal in the list of CFTC documents open for comment, press the “Comment” button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on www.federalregister.gov, click the “Submit A Public Comment” button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to Regulations.gov.

- **Mail:** Send to – Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Address to – CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through Regulations.gov are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

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If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under FOR FURTHER INFORMATION CONTACT before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as – without limitation – obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this proposal, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Tyler S. Badgley, General Counsel; Aaron M. Levine, Deputy General Counsel for Regulation, rulemaking@cftc.gov, 202–418–5000, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

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Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) established a comprehensive regulatory framework for swaps.¹ Section 712(d)(1) of the Dodd-Frank Act provides that the Commission and the Securities and Exchange Commission (“SEC”), in consultation with the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”), shall jointly further define, among other terms, the term “swap.”² Pursuant to this requirement, in 2012, the Commission and the SEC, in consultation with the Federal Reserve Board, issued a final rule further defining the term “swap” and other terms.³ That rule addressed, among other topics, the treatment of certain traditional, non-derivatives products, agreements, contracts, and transactions that they concluded Congress did not intend to be regulated as swaps or security-based swaps, including insurance contracts and certain commercial and consumer transactions.

This Interim Final Rule arises in the context of the ongoing debate regarding the scope of the Commission’s jurisdiction under the Commodity Exchange Act (“CEA”), particularly as it relates to event contracts. The CFTC generally has found that many event contracts, including those based on sports-related events, are covered by the CEA’s

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376, 1641 (2010). The text of the Dodd-Frank Act is available at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

² Dodd-Frank Act sec. 712(d)(1), codified at 15 U.S.C. 8302(d)(1) (directing the CFTC and SEC to undertake joint rulemaking on covered topics). The CFTC shares jurisdiction over mixed swaps and security futures with the SEC, and the SEC has sole jurisdiction over security-based swaps. See CEA sec. 1a(44), 7 U.S.C. 1a(44) and secs. 3(a)(55) and 3(a)(68) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. 78c(a)(55) and 78c(a)(68). The Commission has consulted with the Federal Reserve Board by sharing this Interim Final Rule.

³ Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208 (Aug. 13, 2012) (“Further Definition Release”).

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swap definition.⁴ The CEA contains six definitions of “swap,” at least four of which are applicable to event contracts.

First, CEA section 1a(47)(A)(i) includes binary options and other commodity options in the “swap” definition by including “any agreement, contract, or transaction . . . that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind.”⁵

Second, CEA section 1a(47)(A)(ii) defines “swap” to include “any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”⁶

⁴ Event contracts might be structured as other instruments such as futures contracts, which are excluded from the statutory definition of “swap.” CEA section 1a(47)(B), 7 U.S.C. 1a(47)(B) (providing “exclusions” from the definition of “swap” under the CEA, including futures, options on futures, securities such as options on securities and indexes of securities, security-based swaps, and debt securities). Certain event contracts may be security-based swaps or other instruments subject to the SEC’s jurisdiction. *See* 7 U.S.C. 1a(47)(B) (providing “exclusions” from the definition of “swap” under the CEA, including for securities such as security based- swaps, certain options, and debt securities); *see also, e.g.*, 15 U.S.C. 78c(a)(68)(A) (defining “security-based swap” under the Exchange Act). This Interim Final Rule does not further define the term “security-based swap.”

⁵ 7 U.S.C. 1a(47)(A)(i). A binary option is thus a type of swap which is an “option whose payoff is either a fixed amount or zero.” *See* CFTC, *Futures Glossary*, available at <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm#B>.

⁶ 7 U.S.C. 1a(47)(A)(ii). The broad nature of clause (ii) of the swap definition is in keeping with the broad definition of the term “commodity” in the CEA. For example, the 1974 amendments to the CEA expanded the definition of the term “commodity” to encompass “all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.” *See* CEA sec. 1a(9), 7 U.S.C. 1a(9) (defining “commodity”). In 2000, Congress reaffirmed the broad scope of the commodity definition in adding the term “excluded commodity” to the CEA.

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Third, CEA section 1a(47)(A)(iv) includes in the “swap” definition “an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap.”⁷

Fourth, CEA section 1a(47)(A)(vi) makes clear that the “swap” definition includes “any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v)” of CEA section 1a(47)(A).⁸

In addition to the “swap” definitions provided by the statute, the Dodd-Frank Act included several provisions that give the Commission authority to further define “swap.” First, Dodd-Frank Act section 712(d)(2), 15 U.S.C. 8302(d)(1), directs the CFTC and SEC, in consultation with the Federal Reserve Board, to “further define” the term “swap.”⁹ Second, Dodd-Frank Act section 721(b), 15 U.S.C. 8321(a)(2), permits the CFTC to define any term included in an amendment to the CEA in Subtitle A of the Wall Street Transparency and Accountability Act of 2010, which includes the term “swap.” Third, Dodd-Frank Act section 721(b), 15 U.S.C. 8321(b), directs the CFTC to further define “swap” to include transactions and entities that have been structured to evade Subtitle A.

In recent months, many have expressed concern that a natural, plain-text interpretation of the “swap” definition would necessarily encompass casino-style

⁷ 7 U.S.C. 1a(47)(A)(iv).

⁸ 7 U.S.C. 1a(47)(A)(vi).

⁹ The CFTC and SEC, in consultation with the Federal Reserve Board, first further defined “swap” in a 2012 joint rulemaking. 77 Fed. Reg. 48208 (Aug. 13, 2012). In that rulemaking, the CFTC and SEC noted that, while “[t]he statutory definitions of the terms ‘swap’ and ‘security-based swap’ are detailed and comprehensive, . . . the definitions could be read to include certain types of agreements, contracts, and transactions that previously have not been considered swaps or security-based swaps, and nothing in the legislative history of the Dodd-Frank Act appears to suggest that Congress intended such agreements, contracts, or transactions to be regulated as swaps or security-based swaps.” The CFTC and SEC thus used their authority “to further clarify the treatment under the definitions of certain types of agreements, contracts, and transactions.” *Id.* at 48211.

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gambling products and, finding that consequence untenable, have diverged from the plain text of the statute. For example, the Sixth Circuit viewed sports event contracts as legally indistinguishable from casino-style sports wagers, and thus, it expressed concern that, if sports event contracts are swaps, *any* sports wager—including “every sports wager placed in a casino, on an online sports book, or between two friends at a bar”—would need to “take place on federal markets.”¹⁰ Indeed, the Sixth Circuit explained, a person would commit a felony by engaging in gambling off a designated contract market (“DCM”).¹¹ Thus, the Sixth Circuit believed that its atextual interpretation of the “swap” definition would avoid “attach[ing] criminal penalties to a breathtaking amount of commonplace gambling activity.”¹²

The Ninth Circuit similarly reasoned that sports event contracts and casino-style sports wagering are indistinguishable, finding that the “substance” of the sports event contracts at issue was “sports gambling, regardless of whether [the DCM] calls them swaps” (and, by inference, regardless of whether the CFTC regulates them as swaps).¹³ And because “there is not a difference under the CEA’s swap definition between sports betting on Kalshi and sports betting in Caesar’s Sportsbook, then every person placing a sports bet at Caesar’s Sportsbook (or anywhere else for that matter) is violating the CEA.”¹⁴ The court also expressed concern that “bingo games and pingpong matches” would fall under CFTC jurisdiction.¹⁵ For these and other reasons involving the court’s

¹⁰ *Schuler*, 2026 WL 2884087, at *14-15 (citation modified).

¹¹ *Id.* at *14.

¹² *Id.* (citation modified).

¹³ *Assad*, 2026 WL 2543846, at *10.

¹⁴ *Id.* at *11.

¹⁵ *Id.*

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understanding of the CEA’s “context” and “history,”¹⁶ the court ultimately “conclude[d] that these sports event contracts are likely not swaps under the CEA.”¹⁷

Exploiting this lack of clarity, certain states have asserted that event contracts traded or executed on a DCM should be state regulated (rather than federally regulated under the CEA). These states argue that if the Commission has jurisdiction over event contracts, that would necessarily subject casino-style sports wagers—traditionally regulated by the states—to the Commission’s jurisdiction, as well. For example, in response to a Commission proposed rulemaking, 40 states and the District of Columbia submitted a comment, arguing that sports event contracts are “indistinguishable from traditional sports betting.”¹⁸ The State of New Jersey recently argued to the United States Supreme Court that “[n]othing in the [CEA] gives the CFTC unprecedented authority to become the sole regulator of sports gambling in this country.”¹⁹ And the Commonwealth of Kentucky has claimed that determining that event contracts are swaps under the CEA amounts to “[t]ransferring every ounce of authority over sports wagering from the States to the CFTC.”²⁰

There also appears to be confusion within the gaming industry. The American Gaming Association has argued that if “sports wagers qualify as ‘swaps,’ the CEA would require *all* sports bets—including those placed on the Las Vegas Strip—to be traded on DCMs.”²¹ In its view, there is “no plausible statutory basis to distinguish retail sports bets

¹⁶ *Id.* at 9 (citation omitted).

¹⁷ *Id.* at 15.

¹⁸ Letter from Dave Yost, et al. to Michael Selig at 1 (Apr. 30, 2026);

<https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=115653&SearchText=yost>.

¹⁹ Brief for Petitioner, *Flaherty v. KalshiEX, LLC*, No. 26-299 (Sept. 2, 2026), 2026 WL 2658173, at *32.

²⁰ Memorandum of Law in Support of Motion to Dismiss or, in the Alternative, for Summary Judgment at 24, *United States v. Kentucky*, No. 3:26-cv-49 (E.D. Ky. Aug. 24, 2026).

²¹ Brief of Amicus Curiae American Gaming Association in Support of Defendants-Appellees and Affirmance, *KalshiEX LLC v. Schuler*, No. 26-3196, Dkt. No. 54 at 23 (6th Cir. June 11, 2026).

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from identical wagers placed on [a DCM]—if the latter are swaps, the former must be as well.”²²

As the above discussion demonstrates, there is widespread confusion regarding whether the definition of a swap includes casino-style gambling products, including wagers placed on sportsbooks and casino games, traditionally regulated at the state level. In this regard, many courts, states, and private businesses are currently operating under the erroneous premise that if event contracts are swaps, then casino-style gambling products must also be swaps subject to CFTC jurisdiction. That premise has led courts and states to deviate from the plain text of the “swap” definition and impose atextual limitations on the concept of an “event” that is “associated with a potential financial, economic, or commercial consequence.”²³

To address this misunderstanding, this Interim Final Rule affirms and codifies the Commission’s longstanding position that casino-style gambling products, including sports-wagering contracts entered into on a sportsbook and casino games, are not swaps and do not fall within the CFTC’s jurisdiction. This action is intended to remove regulatory ambiguity and clarify the boundaries between the Commission’s jurisdiction over the derivatives markets and State and Tribal jurisdiction over casino-style gambling.

The Commission notes that this approach is supported by a decision of the United States Court of Appeals for the Third Circuit, which held that “sports-related event contracts are traded on a CFTC-licensed DCM and depend on event outcomes associated with economic consequences” and therefore “fit within the Act’s definition of ‘swaps’

²² *Id.* at 23-24.

²³ *Schuler*, 2026 WL 2884087, at *11 (holding that “the [must] be one *inherently* associated with a ‘financial, economic, or commercial consequence’” (emphasis added)).

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subject to the CFTC’s jurisdiction.”²⁴ In response to the State’s concern that “anything from bingo games to pingpong matches will fall under the CFTC’s jurisdiction,” the court observed that “[i]n such far-fetched scenarios, Congress’s express delegation to the CFTC and the Securities and Exchange Commission to ‘further define’ swaps would prove useful,” and it cited the Commissions’ 2012 rulemaking excluding insurance contracts and consumer transactions.²⁵ Other courts have similarly recognized that the CEA applies to sports event contracts that “take[] the form of swaps,” even while the CEA “does not federalize all gambling, or even all sports gambling.”²⁶ This Interim Final Rule implements the Third Circuit’s suggested approach.

Statutory Authority

Section 712(d)(1) of the Dodd-Frank Act provides that the Commission and the SEC, in consultation with the Federal Reserve Board, “shall further define,” among other terms, the term “swap.”²⁷ Section 712(d)(2)(A) further empowers the Commission and the SEC, in consultation with the Federal Reserve Board, to “jointly adopt such other rules regarding such definitions as the [CFTC and SEC] determine are necessary and appropriate, in the public interest, and for the protection of investors.”²⁸

II. Interim Final Rule

²⁴ *KalshiEX, LLC v. Flaherty*, 172 F.4th 220, 228 (3d Cir. 2026).

²⁵ *Id.*

²⁶ *Coinbase Fin. Mkts., Inc. v. Raoul*, Nos. 1:25-cv-15406, 1:26-cv-03659, 1:26-cv-07363, 2026 WL 2969682, at *10 (N.D. Ill. Oct. 2, 2026).

²⁷ Dodd-Frank Act sec. 712(d)(1), codified at 15 U.S.C. 8302(d)(1) (directing the CFTC and SEC to undertake joint rulemaking on covered topics). This release adopts a rule of the CFTC that addresses matters within the exclusive jurisdiction of the CFTC. The SEC joins in adopting this rule in satisfaction of the statutory requirement in Section 712(d)(1). The Interim Final Rule does not address or otherwise relate to matters within the jurisdiction of the SEC.

²⁸ Dodd-Frank Act sec. 712(d)(2)(A), codified at 15 U.S.C. 8302(d)(2)(A).

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The Commission is issuing this Interim Final Rule to further define the term “swap” to explicitly exclude casino-style gambling products, including sports-wagering contracts entered into on a sportsbook, from the swap definition. By enacting this Interim Final Rule, the Commission seeks to reiterate its longstanding position that its oversight of federally regulated derivatives markets does not intrude upon the traditional State and Tribal regulation of casino-style gambling products.

Though Congress deliberately drafted a broad definition of a swap,²⁹ the CFTC’s jurisdiction is not boundless. The Commission has always acknowledged that certain instruments may, on their face, plausibly fit within the definition of “swap” in CEA Section 1a(47), but that the swap definition is best read to exclude that instrument in light of statutory context and a longstanding tradition of regulation by another regulator. Gambling products offered by state or tribe-licensed casino operators and sportsbooks fit this mold.

Insurance serves as a prime precedent.³⁰ On its face, prong (ii) of the “swap” definition could plausibly be read to encompass insurance contracts, because they make “payment” “dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”³¹ Given that potential ambiguity, when the Commission and the SEC jointly further defined the term “swap” in 2012, the agencies explicitly noted that they did not interpret prong (ii) of the swap definition³² “to mean that products historically

²⁹ CEA section 1a(47), 7 U.S.C. 1a(47).

³⁰ See Further Definition Release, 77 FR at 48210, 48212-48225.

³¹ 7 U.S.C. 1a(47)(A)(ii).

³² As described above, CEA section 1a(47)(A)(ii) defines “swap” to include “any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery (other than a dividend on an

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regulated as insurance products should be included.”³³ The Commission and the SEC further emphasized that nothing in the Dodd-Frank Act “suggest[ed] that Congress intended for traditional insurance products to be regulated as swaps.”³⁴

Consequently, the Commission and the SEC specifically carved out traditional insurance products from the swap definition by relying on core factual and structural differences to distinguish them from derivatives. A foundational distinction was whether the instrument is traded: the Commission and the SEC noted that “insurance products traditionally have not been entered into on or subject to the rules of an organized exchange nor traded in secondary market transactions (i.e., they are not traded on an organized market or over the counter),” whereas swaps are routinely traded on such venues.³⁵ Furthermore, the Commission and SEC emphasized that “all or part of swaps and security-based swaps are novated or assigned to third parties, usually pursuant to industry standard terms and documents.” In other words, swaps can be centrally cleared, unlike insurance contracts.³⁶

The Commission and the SEC also relied on the fact that insurance products are “provided by a person that is subject to supervision by the insurance commissioner (or similar official or agency) of any state or by the United States” and are “regulated as insurance under applicable state law or the laws of the United States.”³⁷ The agencies clarified, however, that other instruments providing substantially similar economic

equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. 1a(47)(A)(ii).

³³ 77 FR at 48212.

³⁴ *Id.*

³⁵ *Id.* at 48214; *see also* 17 CFR 1.3 (Swap)(4).

³⁶ 77 FR at 48208, 48214.

³⁷ 77 FR at 48220.

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exposure to an insurance contract—such as certain credit default swaps—remain within the swap definition and subject to the CFTC’s jurisdiction.³⁸

The Commission and the SEC took a similar approach to “consumer and commercial agreements that historically have not been considered swaps or security-based swaps” but nonetheless “may have attributes that could be viewed as falling within the swap or security-based swap definition.”³⁹ Examples included “acquisitions or sales of property (tangible and intangible), provisions of services, employment of individuals, and other matters that could be viewed as falling within the definitions.”⁴⁰ The Commission and the SEC excluded these contracts on the ground that they did “not believe Congress intended to include these types of customary consumer and commercial agreements, contracts, or transactions in the swap or security-based swap definition,” again highlighting the “key” point that such transactions are “not traded on an organized market or over-the-counter.”⁴¹ The Commissions adopted this interpretation to address, among other concerns, the possibility that customary consumer and commercial agreements, contracts, or transactions could be subject to the restriction in section 2(e) of the CEA on entering into swaps with persons who are not eligible contract participants (“ECPs”) other than on, or subject to the rules of, a DCM.

As explained above, similar concerns have recently arisen in connection with traditional gambling products offered by state-regulated gambling companies and tribes.

³⁸ *Id.* (comparing insurance products and credit default swaps). In this regard, the Commission and the SEC noted their “concern[] that certain agreements, contracts, or transactions that are swaps or security-based swaps might be characterized as insurance products to evade the regulatory regime under Title VII of the Dodd-Frank Act.” *Id.*

³⁹ *Id.* at 48,246.

⁴⁰ *Id.*

⁴¹ *Id.* at 48,246-48.

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To address this concern, the Commission seeks to further clarify through this Interim Final Rule that casino-style gambling products are not within Commission's jurisdiction. As explained below, the same concerns that led the Commission to exclude insurance contracts and consumer and commercial agreements from the "swap" definition are equally applicable to gambling products.

First, and most fundamentally, gambling products do not bear the structural characteristics of a CEA-regulated derivative. Gambling products are typically conducted as bilateral transactions between a casino or bookkeeper (a "house") and its customer rather than on an organized market.⁴² Prices are not set by market forces and are not subject to negotiation; rather, customers must accept the price set by the house. Because of these dynamics, gambling products are not inherently *tradeable*, which is a strong indicator that these products are not swaps or any other kind of derivative within the Commission's jurisdiction.⁴³

Tradability is a material consideration in determining whether a financial instrument has the legal status of a derivative, as the Commission and SEC emphasized with respect to insurance contracts and consumer transactions. Although the CEA's "swap" definition does not itself contain a tradability requirement, interpreters of statutory text nonetheless must be guided by "[t]he broader context provided by other sections of the statute."⁴⁴ The CEA's broader context repeatedly reinforces tradability as

⁴² Steven D. Levitt, *Why Are Gambling Markets Organised So Differently from Financial Markets?*, 114 Econ. J. 223, 223 (2004).

⁴³ While this Interim Final Rule addresses only casino-style gambling products offered pursuant to State or Tribal law, the exclusion provided herein is non-exclusive. There may be other gambling-style transactions that are not swaps given how those transactions are structured and whether they are tradable. Examples could include a casual bet between friends or a casino-style sportsbook illegally operating in a State that prohibits gambling.

⁴⁴ *Robinson v. Shell Oil Co.*, 519 U.S. 337, 345 (1997).

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an important consideration in whether a particular contract qualifies as a swap.⁴⁵ For example, CEA Section 2(e) makes it unlawful for any person, other than an ECP, to enter into a swap unless executed on, or subject to the rules of, a DCM.⁴⁶

Likewise, Section 2(a)(1) of the CEA confers exclusive jurisdiction on the CFTC with respect to “accounts, agreements . . . , and transactions involving swaps or contracts of sale of a commodity for future delivery,” to the extent they are “traded or executed on a [DCM] or a swap execution facility.”⁴⁷ Furthermore, the CEA provides that the transactions subject to the Commission’s exclusive jurisdiction serve 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.”⁴⁸ Only tradable instruments—i.e., those that are executed multilaterally or at least subject to negotiation—can serve those purposes.

The CEA’s Core Principles also presuppose that derivatives are tradable instruments. Core Principle 9 for DCMs requires exchanges to provide “a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market.”⁴⁹ Gambling products are not offered through “trading” on “centralized market[s],” and prices for gambling products are not set by “a competitive, open, and efficient market”—they are unilaterally dictated by the casino or sportsbook. Other Core Principles for DCMs and SEFs likewise presuppose the competitive trading of derivatives, which cannot be said of gambling

⁴⁵ Notably, courts have looked to the tradability of an instrument to determine whether it is a future or a forward contract. *See, e.g., CFTC v. Zelener*, 373 F.3d 861, 865-66 (7th Cir. 2004).

⁴⁶ 7 U.S.C. 2(e).

⁴⁷ 7 U.S.C. 2(a)(1)(A).

⁴⁸ 7 U.S.C. 5(a).

⁴⁹ 7 U.S.C. 7(d)(9).

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products.⁵⁰ For these reasons, gambling products are not derivatives subject to its jurisdiction.

Second, the CEA contemplates that a swap can be cleared. Section 2(h) of the CEA provides that “[i]t shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this chapter or a derivatives clearing organization that is exempt from registration under this chapter if the swap is required to be cleared.”⁵¹ Like insurance contracts, gambling products are not “cleared,” in that the wager obligation is not routinely transferred to a third party to eliminate counterparty credit risk and ensure contract fulfillment.

Third, there is no indication that “Congress intended to include [gambling products] in the swap ... definition.”⁵² To the contrary, Congress has long recognized a distinction between gambling products and derivatives contracts.⁵³ Furthermore, when Congress adopted the “swap” definition, it did so against a background of other federal statutory provisions regulating sports gambling, and the Commission does not presume Congress to have impliedly repealed those provisions.⁵⁴

⁵⁰ *E.g.*, *id.* 7(d)(7) (requiring the offeror of a derivative to have an “electronic matching platform” or “trade execution facility”); § 7(d)(8) (requiring daily publication of price and volume information “for actively traded contracts”); *id.* 7b-3(f)(4) (requiring SEFs to “monitor trading in swaps”).

⁵¹ 7 U.S.C. 2(h).

⁵² 77 FR at 48,246.

⁵³ 7 U.S.C. 16(e)(2) (preempting “any State or local law that prohibits or regulates gaming ... in the case of” certain “excluded” or “exempted” contracts); 31 U.S.C. 5362(1)(E) (distinguishing a “bet or wager” from “any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act”).

⁵⁴ 18 U.S.C. 1084(a) (“Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.”); 28 U.S.C. 3702(1) (“It shall be unlawful for--(1) a

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Fourth, just as insurance products and consumer transactions have traditionally been subject to a distinct regulatory framework governed by state law, casino-style gambling products have historically been, and are, offered by state-licensed gambling venues or tribes, and subject to a gambling-specific regulatory regime. Absent a more specific indication in the statutory text, the Commission does not presume that Congress intended to disrupt that federal-state balance.⁵⁵

Fifth, the “swap” definition also encompasses any “agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap.”⁵⁶ The Commission is unaware of any trade usage or market belief that gambling products are considered swaps in the derivatives industry. To the contrary, DCMs and industry groups have repeatedly emphasized to federal courts that gambling contracts are *not* swaps.⁵⁷

Event contracts differ from gambling products in all five respects. First, unlike gambling products, event contracts have the essential structural characteristics of a derivatives contract. By design, they are traded on CFTC-registered national exchanges at market-set prices through the interaction of bids or offers placed on a central orderbook,

governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.”), held unconstitutional in *Murphy v. National Collegiate Athletic Ass’n*, 584 U.S. 453 (2018).

⁵⁵ See *Bond v. United States*, 572 U.S. 844, 863 (2014).

⁵⁶ 7 U.S.C. 1a(47)(A)(iv).

⁵⁷ Opening Brief for Appellant KalshiEX LLC, *KalshiEX LLC v. Schuler*, No. 26-3196, Dkt. No. 28 at 51 (6th Cir. May 5, 2026) (“[T]hat Kalshi’s sports-event contracts are swaps does not mean that run-of-the-mill sports bets are also swaps.”); Appellant’s Opening Brief, *QCX LLC v. Nessel*, No. 26-1552, Dkt. No. 15 at 12 (6th Cir. Aug. 17, 2026) (“Sports-related event contracts are fundamentally different than sportsbook bets.”); Brief of Amicus Curiae the Coalition for Prediction Markets in Support of Plaintiff-Appellee and Affirmance, *KalshiEX LLC v. Orgel*, No. 26-5235 at 17-22 (6th Cir. June 24, 2026) (explaining legally significant distinctions between event contracts and gambling).

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not at prices unilaterally dictated by a “house.” The exchanges are neutral; they do not profit when the event contract settles one way versus another. Rather, they earn profit by charging transaction fees when a trade occurs, similar to any other derivatives trade.⁵⁸

Such contracts are subject to the comprehensive DCM and derivatives clearing organization (“DCO”) core principles that serve to, among other things, protect customers who are trading and clearing such contracts. The structure of gambling wagers and event contracts is materially different, and therefore subject to different regulatory regimes.⁵⁹

Second, event contracts traded on a DCM are centrally cleared by CFTC-registered clearinghouses to eliminate counterparty credit risk, just like other derivatives transactions. Thus, when a bid and offer match on a DCM’s central orderbook, the parties enter into a contract with one another, but that contract is then novated such that each party has a contractual relationship with a neutral, creditworthy clearinghouse.

Third, there is strong textual evidence that Congress intended for event contracts to be considered “swaps” under the CEA and to give the Commission authority to regulate them. The second prong of the “swap” definition is the most obvious illustration, as it specifically covers “contract[s]” based on “event[s].”⁶⁰ Additionally, when Congress created the “swap” definition, it also enacted a “Special rule for review and approval of *event contracts and swaps contracts*.”⁶¹ The Special Rule recognizes that “swaps in excluded commodities” can be “based upon the occurrence, extent of an occurrence, or

⁵⁸ The CFTC recently issued a letter to Commission-regulate entities to remind those entities of their obligation to display prices clearly and not to mislead customers into mistaking market-priced products with casino-style products. CFTC, *Misleading or Deceptive Practices* (Aug. 7, 2026), available at <https://www.cftc.gov/PressRoom/PressReleases/9278-26>.

⁵⁹ Additionally, while a sportsbook or other gambling venue may regularly exclude winners, a DCM is subject to an impartial access requirement that does not allow it to bar traders who have profited. *See* 17 CFR 38.151.

⁶⁰ 7 U.S.C. 1a(47)(A)(ii).

⁶¹ *Id.* § 7a-2(c)(5)(C) (emphasis added).

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contingency” that “involve[s],” among other things, “gaming.”⁶² The word “‘gaming,’ as used in the special rule, refers to playing games,” so “event contracts related to ... sporting events ... could implicate the gaming category.”⁶³ Congress expressly gave the Commission jurisdiction over those contracts, confirming their status as derivatives contracts.⁶⁴ Notably, Congress did *not* give the Commission authority over “gaming” products themselves, further confirming that gaming products like wagers fall outside the Commission’s jurisdiction but event contracts that involve games are within the Commission’s jurisdiction.⁶⁵

The Sixth Circuit expressed the view that “just because the CFTC may prohibit gaming-related event contracts does not mean [a DCM’s] sports-event contracts are *necessarily* swaps,” since event contracts can also be “agreements, contracts, [or] transactions” under the Special Rule.⁶⁶ But apart from “gaming,” the Special Rule only applies to event contracts that “involve” “activity that is unlawful under any Federal or State law,” “terrorism,” “assassination,” “war”, or “other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.”⁶⁷ It must be the case that a “swap” can “involve” at least one of these categories of activity, or else the word “swap” in the Special Rule is surplusage. Furthermore, even if a “gaming” contract is considered an “agreement,” “contract,” or “transaction,” the Special Rule still classifies that contract as being “in excluded commodities.”⁶⁸ And the swap definition covers

⁶² *Id.* § 7a-2(c)(5)(C)(i).

⁶³ *KalshiEX LLC v. CFTC*, 2024 WL 4164694, at *10 (D.D.C. Sept. 12, 2024).

⁶⁴ 7 U.S.C. § 7a-2(c)(5)(C)(ii).

⁶⁵ *KalshiEX*, 2024 WL 4164694, at *12 (rejecting interpretation of Special Rule that would give CFTC jurisdiction over any contract that “states define ... as ‘gambling’”).

⁶⁶ *Schuler*, 2026 WL 2884087, at *15.

⁶⁷ 7 U.S.C. 7a-2(c)(5)(C)(i)(I)-(IV), (VI).

⁶⁸ *Id.*

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binary options in excluded commodities which, as discussed below, includes event contracts.⁶⁹ In short, the Special Rule contemplates that “gam[es]” are “excluded commodities,” which reinforces that event contracts based on games are derivatives.

Fourth, event contracts have traditionally been regulated by the Commission, not the states. “Since 1992, Commission-regulated exchanges have listed for trading a variety of commodity futures and options contracts with payout terms based on” events “as diverse as regional insured property losses, the count of bankruptcies, temperature volatilities, corporate mergers, and corporate credit events,” and in subsequent years, event contracts encompassed “the accomplishment of certain scientific advances, world population levels, the adoption of particular pieces of legislation,” and even “the length of celebrity marriages.”⁷⁰ In 1993, the Commission issued a no-action letter to Iowa Electronic Markets, allowing the facility to list event contracts tied to U.S. and Canadian elections.⁷¹ In 2004, the CFTC designated the first DCM dedicated to listing contracts based on events that are excluded commodities.⁷² Initially, these contracts were structured as commodity options known as “binary options,” the cash settlement of which was based

⁶⁹ *Id.* 1a(47)(A)(i).

⁷⁰ 73 FR 25669, 25670-71 (May 7, 2008).

⁷¹ CFTC Staff Letter No. 93-66 (June 18, 1993), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/93-66.pdf>.

⁷² See CFTC Release No. 4894-04, *CFTC Designates HedgeStreet as a Contract Market and as a Registered Clearing Organization* (Feb. 20, 2004), and the related DCM Order of Designation for HedgeStreet, Inc. (Feb. 18, 2004), available at <https://www.cftc.gov/sites/default/files/opa/press04/opa4894-04.htm>. In 2009, HedgeStreet changed its name to North American Derivatives Exchange, Inc., or Nadex, and in 2025, Nadex transitioned to the Crypto.com platform. See summary of registration, available at <https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizations/34536>. It continues to list contracts on foreign exchange, equity indices, commodity prices, and digital assets.

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on whether a specified event had occurred.⁷³ Thus, while gambling is traditionally state-regulated, event contracts are traditionally federally regulated.

Fifth, as set forth in the separate Notice of Proposed Rulemaking proposing to further define “swap” to include event contracts, the Commission preliminarily believes that event contracts are known to the trade as “swaps.” Therefore, if certain event contracts do not qualify as swaps under the first or second prongs of the swap definition, they do qualify under the fourth prong. The same cannot be said of gambling products, for the reasons noted above.

In sum, the “swap” definition generally should not apply where a product has a longstanding history of being subject to a distinct regulatory framework and structurally does not lend itself to the requirements of the CEA, including its exchange-trading requirement and the core principles. As the Commission and SEC recognized in 2012, insurance contracts and consumer and commercial agreements are such examples. Today, the Commission clarifies that casino-style gambling products offered by casinos or sportsbooks likewise fit the exclusion.

The Commission acknowledges that a person can achieve similar economic exposure by either entering into a gambling wager or purchasing an event contract. However, that does not make the two products one and the same, nor does it require that the two be subject to identical regulatory frameworks. Indeed, there are many instances in which a person can achieve the same (or similar) economic exposure via structurally different products subject to distinct regulatory regimes. For example, as noted, insurance

⁷³ See e.g., Letter from HedgeStreet, Inc. to David Stawick, Sec’y, CFTC, *Re: Rule Certification: HedgeStreet’s listing of new Germany 30 Binary Hedgelet Contracts* (Oct. 30, 2008), available at <https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul103008hedgestreet001.pdf>.

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and credit default swaps can provide similar risk mitigation, but that does not mean the two are or must be regulated the same way. Likewise, a person can gain exposure to a crypto asset by purchasing the crypto asset itself, purchasing shares in a firm that holds the crypto asset, or by purchasing crypto asset futures, each of which has distinct regulatory consequences. The same is true in the context of event contracts and casino-style gambling products.

Based on this interpretation and to address the concerns referenced in Part I above, the Commission is adopting this Interim Final Rule to establish an exclusion confirming that traditional gambling products do not qualify as swaps under the CEA. Nothing herein implies or presumes that an agreement, contract, or transaction that does not meet any of the requirements of this exclusion is a swap. Such an agreement, contract, or transaction will require further analysis of the applicable facts and circumstances, including the form and substance of such agreement, contract, or transaction, to determine whether it is a gambling product, and thus not a swap.

Similar to the exclusions for insurance contracts and consumer transactions, the exclusion has two components: a test relating to the status of the party offering the agreement, contract, or transaction (the “Provider Test”) and a test relating to the terms of the agreement, contract, or transaction (the “Product Test”).

To satisfy the Provider Test, the relevant agreement, contract or transaction must be provided by a person that is subject to supervision by the gaming commissioner (or similar official or agency) of any State or by a Tribe, and such agreement, contract, or

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transaction is regulated as gaming or gambling under applicable State or Tribal law.⁷⁴

This requirement ensures that the Commission does not have jurisdiction over persons or products that have traditionally been the subject of State or Tribal regulation, particularly given the absence of an indication in Dodd-Frank that Congress intended the Commission to regulate these persons and transactions.

To satisfy the Product Test, the agreement, contract, or transaction must not be traded on a board of trade, an organized exchange, a swap execution facility, or any other market in which trades are executed multilaterally or subject to individual negotiation. For example, bets or wagers offered by a sports book or casino as principal to its customers, where the material terms of those bets or wagers are governed by standard “house rules” or similar standard terms, would satisfy the Product Test. In contrast, an agreement, contract, or transaction entered into on a trading facility,⁷⁵ including a DCM, or a SEF,⁷⁶ would not satisfy the Product Test because its price and other economic terms would be determined through the competitive interaction of multiple buyers and sellers

⁷⁴ The insurance exclusion is similarly limited (outside of the contexts of reinsurance and non-admitted insurance) to products offered by a person that is subject to supervision by the insurance commissioner (or similar official or agency) of any State or by the United States and requires that the agreement, contract, or transaction also must be regulated as insurance under applicable State law or the laws of the United States. *See* 77 FR at 48220. The consumer-transaction exclusion likewise contains limitations to agreements, contracts, and transactions entered into by consumers or commercial or non-profit entities for specified purposes. *See id.* at 48247.

⁷⁵ *See* 7 U.S.C. 1a(51) (defining a “trading facility,” in relevant part, to mean a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids or offers made by other participants that are open to multiple participants in the facility or system or through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm).

⁷⁶ *See* 7 U.S.C. 1a(50) (defining a “swap execution facility,” in relevant part, to mean a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system).

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on a multilateral basis, even though the other material terms of the agreement, contract, or transaction would be governed by standardized rules adopted by the facility.⁷⁷

Although there is not currently a practical overlap between the casino-style gambling products offered by State and Tribe-regulated entities (*i.e.*, bilateral and non-tradable) and swaps offered by CFTC-registered entities (*i.e.*, multilateral and tradable), the Product Test is designed to nonetheless acknowledge the functional distinction between the types of products and relationships that traditionally fall within the scope of derivatives regulation under the CEA from those traditionally addressed by State or Tribal gaming regulation.⁷⁸ By distinguishing agreements, contracts, or transactions entered into on a bilateral basis from those entered into on a multilateral basis, the Product Test recognizes that a principal purpose of the CEA is to establish a regulatory framework for price discovery on “liquid, fair and financially secure trading facilities”⁷⁹—that is, trading on multilateral execution venues such as DCMs and SEFs—whereas State and Tribal gaming regulation typically concerns bets or wagers in which the odds or “line” are set by a licensed gaming operator acting as principal with its customers on a bilateral basis. The Product Test thereby ensures that State and Tribal-regulated entities do not, in the future, begin offering products properly within the Commission’s jurisdiction, unless they do so consistent with the CEA and the Commission’s regulations.

Therefore, the Commission is adding section 1.3 (Swap)(7) to further define the term swap to not include any agreement, contract, or transaction that: (A) is offered or

⁷⁷ Thus, an agreement, contract, or transaction entered into by an ECP on a bilateral basis through individual negotiation with a bank or other swap dealer also would not satisfy the Product Test.

⁷⁸ The insurance exclusion similarly requires that a covered insurance product not be traded separately from its insurable interest, on an organized market or over-the-counter. 77 FR at 48217. The consumer transaction exclusion contains a similar limitation. *Id.* at 48247.

⁷⁹ 7 U.S.C. 5(a).

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entered into by a person that is licensed or otherwise authorized to offer gambling or gaming products, or accept wagers, under the law of a State or the law of a federally recognized Indian tribe pursuant to the Indian Gaming Regulatory Act,⁸⁰ is acting within the scope of that license or authorization, and such agreement, contract, or transaction is regulated as gaming or gambling under applicable state or Tribal law; and (B) is not traded on a board of trade, an organized exchange, a swap execution facility, or any other market in which trades are executed multilaterally or subject to individual negotiation. That section would also explicitly identify sports wagers, casino games, and other licensed games of chance as products that are not swaps subject to the Commission's jurisdiction.

Finally, the Commission reiterates that this Interim Final Rule does not further define the term "security-based swap" and that nothing in the Interim Final Rule should be read to imply or presume that an agreement, contract, or transaction that does not meet any of the requirements of this exclusion is necessarily a swap. Also as previously noted, there may be other types of unlicensed gambling transactions that do not meet this Interim Final Rule's exclusion but nonetheless are still not swaps subject to the Commission's jurisdiction.⁸¹

The classifications adopted in this Interim Final Rule are for purposes of the Commodity Exchange Act. Federal tax treatment and associated information reporting, withholding, registration, and payment obligations are determined under the Internal Revenue Code, applicable Treasury regulations, and IRS guidance.

⁸⁰ 25 U.S.C. 2701 *et seq.*

⁸¹ See *supra* note 43 for additional detail.

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II. Request for Comment

The Commission welcomes public comments from interested persons regarding any aspect of the Interim Final Rule. The Commission also seeks comment on the following specific questions. The Commission will take into consideration comments received and may modify the Interim Final Rule if warranted.

(1) This Interim Final Rule limits the exclusion to agreements, contracts, and transactions offered by a person that satisfies the Provider Test. Are there additional categories of providers that the Provider Test should cover beyond State-regulated gaming companies and Tribes, such as those discussed in note 43? If so, please explain the basis for including each additional category of qualifying provider.

(2) The Provider Test requires that the agreement, contract, or transaction be regulated as gaming or gambling under applicable State or Tribal law. Is it clear which agreements, contracts, or transactions are subject to these regulations? Are there better ways to define how State or Tribal gaming regulation should apply to agreements, contracts, or transactions covered by the exclusion? If so, please explain.

(3) The Product Test turns on whether the agreement, contract, or transaction is traded on a board of trade, an organized exchange, a swap execution facility, or any other market in which trades are either executed multilaterally or subject to individual negotiation. Are there better ways to draw an objective, functional distinction between swaps, on the one hand, and traditional gambling products, on the other hand? If so, please explain, including how any alternative or additional basis for a distinction would be consistent with the CEA, including the definitions of “swap,” “commodity,” and “excluded commodity” and the Special Rule.

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III. Related Matters

A. Administrative Procedure Act

1. Legal Standard

Agencies need not engage in notice-and-comment rulemaking “when the agency for good cause finds” that such “notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest.”⁸² In interpreting this “good cause” standard, courts have looked to the Administrative Procedure Act’s (“APA”) Senate Report, which explains that “[i]mpracticable’ means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rulemaking proceedings ‘Public interest’ supplements the term[] ‘impracticable’ . . . ; it requires that public rule-making procedures shall not prevent an agency from operating.”⁸³

“[T]here is a general consensus among the circuit courts that an agency’s invocation of the good cause exception [to notice-and-comment rulemaking] should . . . be upheld . . . where following the regular rulemaking procedure would result in serious or real harm.”⁸⁴ Absent traditional emergencies, courts have found good cause where notice-and-comment rulemaking would create “possible fiscal harm,” where “the agency’s prior regulations or guidelines had been invalidated by a court order, and thus,

⁸² 5 U.S.C. 553(b)(B).

⁸³ See, e.g., *National Nutritional Foods Ass’n v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978) (quoting S. Rep. No. 79-752, at 200 (1945)).

⁸⁴ *ITServe Alliance, Inc. v. Scalia*, No. 20-146604, 2020 WL 7074391, at 4 (D.N.J. Dec. 3, 2020) (collecting cases).

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immediate promulgation of a new regulation was needed to prevent harm to the public in the interim,”⁸⁵ and/or where such rulemakings are not intended to be permanent.⁸⁶

2. Rationale for Interim Final Rule

Recent developments require the Commission to exercise its statutory authority to further define the term “swap” to explicitly exclude casino-style gambling products, including sports-wagering contracts entered into on a sportsbook, from the swap definition. As a group of 39 States and the District of Columbia recently observed, “[f]ederal and state courts are hopelessly confused and divided over an issue of immense importance”—whether, among other things, the swap definition is broad enough to encompass casino-style gambling products, which would threaten, among other things, State regulatory authority and Tribal revenue.⁸⁷ For example, and as described above, the Commonwealth of Kentucky has claimed that determining that event contracts are swaps under the CEA amounts to “[t]ransferring every ounce of authority over sports wagering from the States to the CFTC.”⁸⁸ And the State of New Jersey recently argued to the United States Supreme Court that “[n]othing in the [CEA] gives the CFTC unprecedented authority to become the sole regulator of sports gambling in this country.”⁸⁹

⁸⁵ *Id.* at 5.

⁸⁶ *See, e.g., American Fed'n of Gov't Emps. v. Block*, 655 F.2d 1153, 1157 (D.C. Cir. 1981) (“Common sense suggests that any administrative action taken in a rare ‘emergency’ situation . . . , while perhaps necessarily ‘immediately effective,’ need only be temporary, pending public notice-and-comment procedures.”).

⁸⁷ Brief of Amici Curiae Ohio, 38 Other States, and the District of Columbia in Support of Petitioners at 1, *Flaherty v. KalshiEX, LLC*, No. 26-299 (U.S. Oct. 7, 2026); *see also id.* at 13 (“So if sports bets are swaps, they must be on DCMs and regulated by the CFTC, thus making the agency a national gambling czar and leaving the States with no power.”).

⁸⁸ Memorandum of Law in Support of Motion to Dismiss or, in the Alternative, for Summary Judgment at 24, *United States v. Kentucky*, No. 3:26-cv-49 (E.D. Ky. Aug. 24, 2026).

⁸⁹ Brief for Petitioner, *Flaherty v. KalshiEX, LLC*, No. 26-299 (Sept. 2, 2026), 2026 WL 2658173, at *32.

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One result of this confusion has been state actions and court decisions that threaten to expose large areas of hitherto uncontroversial CFTC jurisdiction to incursion by certain of the States.⁹⁰ This lack of nuance has already led to overreach that risks indiscriminate disruption—or the outright dismantling—of federally-regulated event contract markets, whether they purportedly offer casino-style gambling products or not.

In particular, the Ninth Circuit panel’s interpretation of the “swap” definition in Section 1a(47)(A)(ii)—which would deprive the CFTC of exclusive jurisdiction over most event contracts—threatens to wreak havoc on the operations of DCMs nationwide. That is particularly true in Arizona, where the State’s pending criminal case against a DCM—for offering event contracts of any kind—may be permitted to move forward.⁹¹ Arizona does not stand alone. The State of Minnesota has attempted to enact a criminal statutory ban on prediction markets; the State of New York has sought emergency injunctive relief that would prohibit a DCM from offering event contracts anywhere; and many more enforcement actions remain pending.⁹² These state-level actions imperil a nascent industry that Congress has entrusted to the “exclusive jurisdiction” of a federal agency, the CFTC.⁹³

⁹⁰ See, e.g., *United States v. Minnesota*, No. 26-cv-2661, ___ F. Supp. 3d ___, 2026 WL 2150211, at *1 (D. Minn. July 27, 2026) (granting the CFTC a preliminary injunction relating to “Minnesota lawmakers pass[ing] a law prohibiting the creation, operation, and advertising of prediction markets in the state”); *CFTC v. New York*, No. 26-cv-3404, ECF No. 120 (S.D.N.Y. July 30, 2026) (letter explaining that “New York seeks a temporary restraining order . . . prohibiting [a prediction market] from operating as a DCM registered with and regulated by the CFTC under the Commodity Exchange Act New York seeks to prohibit [the prediction market] from operating its business ‘within or from New York,’ which is where [the prediction market] is headquartered.”).

⁹¹ See *KalshiEX LLC v. Johnson*, 832 F.Supp.3d 954, 958 (D. Ariz. 2026) (prior to *Assad*, Arizona filed “a twenty-count criminal information” against the DCM).

⁹² See, e.g., *supra* note 88.

⁹³ 7 U.S.C. 2(a)(1)(A).

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The economic consequences of the shuttering of prediction markets on a state-by-state basis due to a lack of clear guidance, are of a type and magnitude well in excess of prior cases recognizing good cause to skip notice-and-comment rulemaking due to “possible fiscal harm.”⁹⁴ In one instance, “actuarial disarray [that] might have posed a serious threat to the financial stability of a [federal employee] benefit program” constituted “good cause” to dispense with notice-and-comment.⁹⁵ In another, market “confusion” and “economic harm and disruption” that would have resulted if the agency had been forced to use “antiquated [poultry processing] guidelines” rather than its interim rule constituted “good cause.”⁹⁶ Here, in contrast to the relatively limited economic harm envisioned in those cases, entire markets on which various individuals and businesses rely for hedging and/or financial, economic, or commercial planning purposes—with tens of billions of dollars of transactions—are at stake.⁹⁷ “A massive rush to . . . conduct ‘actual transactions’—*or avoid them*,” as would occur if any states succeeded in closing prediction markets, similarly constituted “good cause” where the Temporary Emergency Court of Appeals found that section 553(b)(B) was satisfied by price control regulations adopted without notice-and-comment.⁹⁸

“Good cause” is further demonstrated by the circumstances that gave rise to this Interim Final Rule. This is not a case where the CFTC seeks to circumvent the APA’s notice-and-comment requirement. Rather, like in cases where an “agency’s prior

⁹⁴ *Scalia*, 2020 WL 7074391, at *5.

⁹⁵ *Nat’l Fed’n of Fed. Emps. v. Devine*, 671 F.2d 607, 611 (D.C. Cir. 1982).

⁹⁶ *Block*, 655 F.2d at 1157.

⁹⁷ See, e.g., *Trading volume on prediction markets has soared in recent months*, Pew Research Center (May 27, 2026), <https://www.pewresearch.org/short-reads/2026/05/27/trading-volume-on-prediction-markets-has-soared-in-recent-months/> (noting \$24 billion in trading volume in April 2026 on two prediction markets).

⁹⁸ *DeRieux v. Five Smiths, Inc.*, 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1974) (emphasis added).

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regulations or guidelines had been invalidated by a court order, . . . immediate promulgation of a new regulation [is] needed [here] to prevent harm to the public” while the judiciary adjudicates the outer contours of one prong of the “swap” definition.⁹⁹ Just as a regulatory gap—leading to possible “confusion” and “irremedi[able] financial consequences”—would have resulted following a prior rule invalidation in *Mid-Tex Elec. Coop., Inv. v. FERC*,¹⁰⁰ so too do *Flaherty*, *Assad*, and other judicial decisions justify this Interim Final Rule. The “promulgation of emergency regulations by [an agency is] a reasonable and perhaps inevitable response to [some adverse] injunctive court order[s],” like certain of those at issue here.¹⁰¹

Indeed, regulators have used interim final rules in circumstances analogous to the confusion resulting in part from the emerging circuit split over the scope of the CEA’s “swap” definition in the context of event contracts. For example, after a district court issued a state law preemption opinion that was in tension with “the [Office of the Comptroller of the Currency (“OCC”)] and courts’ longstanding interpretation” of a statute, the OCC issued an interim final rule to stave off “regulatory confusion . . . and the potential consequences of such confusion.”¹⁰² Like the dangers posed by state regulatory overreach to national prediction (and other derivatives) markets, the state law in question would have “create[d] a complex and potentially unworkable [state]

⁹⁹ See *Scalia*, 2020 WL 7074391 at *5.

¹⁰⁰ 822 F.2d 1123, 1133-34 (D.C. Cir. 1987); see also *Block*, 655 F.2d at 1157 (“good cause” satisfied where “court granted . . . motion for preliminary injunction, declaring [existing] guidelines . . . null and void”); *United Farm Works v. U.S. Dep’t of Lab.*, 2026 WL 1345918, at *2 (E.D. Cal. May 14, 2026) (interim final rule “good cause” justified by agency after prior rule “had been vacated by . . . [a] final judgment” and even earlier version of the rule did not address “regulatory gap” that had emerged in the meantime; preliminary injunction challenging interim final rule denied on other grounds).

¹⁰¹ *Block*, 655 F.2d at 1157.

¹⁰² National Bank Non-Interest Charges and Fees, 91 FR 22989, 22992 (Apr. 29, 2026) (codified at 12 CFR 7).

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standard,” which “national banks may [have] take[n] drastic actions to avoid,” thereby leading to potential “economic harm and disruption and pos[ing] significant risks to the safety and soundness of national banks and the national banking system as a whole.”¹⁰³

For the reasons described above, the Commission also finds that good cause exists to make this rule effective immediately upon publication.¹⁰⁴

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”)¹⁰⁵ requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. However, the RFA does not apply when a general notice of proposed rulemaking is not required.¹⁰⁶ As explained above, the Commission has determined that this rule is exempt from the notice-and-comment requirements of the APA,¹⁰⁷ for “good cause.” Accordingly, the RFA’s requirements relating to an initial and final regulatory flexibility analysis do not apply to this rule.¹⁰⁸

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”)¹⁰⁹ imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any “collection of information,” as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a

¹⁰³ *Id.*

¹⁰⁴ 5 U.S.C. 553(d)(3).

¹⁰⁵ 5 U.S.C. 601 *et seq.*

¹⁰⁶ 5 U.S.C. 601, 603, and 604.

¹⁰⁷ *Id.* 5 U.S.C. 553(b).

¹⁰⁸ *See* 5 U.S.C. 603 (regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment).

¹⁰⁹ 44 U.S.C. 3501 *et seq.*

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collection of information unless it displays a currently valid control number from the Office of Management and Budget (“OMB”).¹¹⁰ The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the federal government.¹¹¹ The PRA applies to all information, regardless of form or format, whenever the federal government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.¹¹²

This Interim Final Rule would not impose any new collection of information requirements that require approval of OMB under 44 U.S.C. 3507(d), nor would it amend or otherwise revise any existing collection of information subject to the PRA. Consistent with the Commission’s jurisdiction, this Interim Final Rule clarifies the definition of “swap” excludes casino-style gambling products.

The Interim Final Rule does not establish any new reporting requirement under the CEA or the Commission’s regulations applicable to any Commission registrant or market participant; establish any new recordkeeping requirement beyond those already imposed under the CEA and the Commission’s existing regulations, which are currently approved by OMB under existing control numbers; impose any new third-party

¹¹⁰ See 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

¹¹¹ See 44 U.S.C. 3501.

¹¹² See 44 U.S.C. 3502(3).

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disclosure obligation; or modify the substantive scope, frequency, form, or content of any existing information collection of the Commission currently approved by OMB.

The Interim Final Rule does not alter the burden associated with existing collections currently approved by OMB. Any incremental activity that may occur as an indirect consequence of registrants electing to conduct business within the federal regulatory perimeter clarified by this Interim Final Rule reflects the application of existing, previously approved information collections to a new class of underlying transactions and does not itself constitute a new or revised collection of information within the meaning of the PRA.

Accordingly, the requirements of the Paperwork Reduction Act do not apply to this rulemaking.

D. Consideration of Benefits and Costs

1. Introduction

The Commission is mindful of the economic effects, including the benefits and costs, of the Interim Final Rule. Section 15(a) of the CEA requires the Commission to consider the benefits and costs of its actions before promulgating a regulation under the CEA or issuing certain orders.¹¹³ As required by section 15(a), the Commission evaluates these benefits and costs evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

¹¹³ 7 U.S.C. 19(a).

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The Interim Final Rule excludes casino-style gambling products from the definition of swaps. In promulgating the Interim Final Rule, the Commission would not change the legal rights or obligations of market participants under the CEA because the Commission already treats casino-style gambling products as outside its jurisdiction. Instead, consistent with the CEA, the Interim Final Rule will reduce interpretive uncertainty by codifying the Commission's understanding that regulation of casino-style gambling products is outside of the Commission's jurisdiction, affirming the long-standing regulatory authority of States and Tribes.

The Commission qualitatively discusses the benefits and costs of the Interim Final Rule below because it is not practicable to quantify the effect of greater regulatory certainty on market participant behavior.

2. Baseline

The baseline against which the benefits and costs of the Interim Final Rule are measured consists of the current regulatory framework and the current state of Commission-regulated markets.

The Commission has exclusive jurisdiction to regulate transactions involving swaps (other than security-based swaps).¹¹⁴ Under the plain language of the CEA, casino-style gambling products are not swaps or any other instrument that the Commission regulates and therefore, outside the scope of the Commission's jurisdiction. The Commission is not aware of any casino-style gambling products that are treated as Commission-regulated instruments or otherwise traded on Commission-licensed DCMs or SEFs.

¹¹⁴ See 7 U.S.C. 2(a)(1)(A).

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However, as discussed above, recent court decisions regarding whether sports-related event contracts are swaps and the breadth of the swaps definition under the CEA, including casino-style gambling products, has created legal uncertainty.¹¹⁵

3. Benefits

Because the Interim Final Rule does not change the legal rights or obligations of market participants under the CEA, the primary benefit of the Interim Final Rule is the immediate mitigation of regulatory and interpretive uncertainty triggered by recent, conflicting federal appellate court interpretations of the CEA's swap definition.

By expressly stating that traditional casino-style gambling products and sportsbook wagers do not constitute swaps, the Interim Final Rule could benefit gambling industry participants, State gaming commissions, and Tribal authorities. Insofar as industry participants and others are less likely to misapprehend the scope of the Commission's regulatory authority, they may benefit by allocating less capital to challenge or defend against Federal derivatives oversight, or to unnecessarily re-engineer their localized wagering infrastructures to meet incompatible Federal frameworks.

4. Costs

Because the Interim Final Rule codifies the Commission's long-standing operational baseline—that traditional casino-style gambling products reside outside its jurisdiction—it does not directly impose any new or incremental compliance costs under the CEA or the Commissions' regulations on derivatives market participants or retail gaming operators.

¹¹⁵ Compare *Flaherty*, 172 F.4th at 227, with *Assad*, 2026 WL 2543846.

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Codification of the exclusion of casino-style gambling products might slightly increase the incentive for certain entities to attempt to structure certain derivatives contracts as locally regulated gambling wagers to evade Commission jurisdiction. However, because the alternative to Federal regulation is compliance with a patchwork of State and Tribal regulatory frameworks (including outright prohibition in some jurisdictions), the risk of increased regulatory arbitrage is likely minimal. If entities nevertheless seek to evade Commission jurisdiction, the Commission understands that State and Tribal regulatory frameworks—although different than the Federal regulatory framework—would also offer some protection to industry participants and the public.

5. Section 15(a) Factors

Because the Interim Final Rule is consistent with existing law and market practice, it will have limited impact on protecting market participants and the public; efficiency, competitiveness, and financial integrity of the futures markets; price discovery; sound risk management practices; and other public interest considerations.

6. Regulatory Alternatives

Given the Interim Final Rule seeks only to clarify that casino-style gambling products are outside of the Commission's jurisdiction, the Commission has not identified any viable regulatory alternatives.

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA as well as the policies and purposes of the CEA, in issuing any order or adopting any Commission rule or regulation

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(including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.¹¹⁶

The Commission believes that the public interest protected by the antitrust laws is the promotion of competition. The Commission has considered whether the Interim Final Rule is anticompetitive and has identified no anticompetitive effects. The Commission also has not identified any less anticompetitive means of achieving the purposes of the CEA.

E. Executive Orders 12866, 13563, and 14192

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President’s priorities.

¹¹⁶ 7 U.S.C. 19(b).

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OMB has determined that this action is a significant regulatory action as defined under section 3(f) of Executive Order 12866 and therefore this action has been reviewed by OMB, consistent with Executive Order 14215.

This Interim Final Rule is not an Executive Order 14192 regulatory action, because it imposes no more than *de minimis* net costs.

F. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (“CRA”), generally provides for congressional review of agency rules. CFTC must submit a report to Congress and the Comptroller General when it issues a final rule, as defined in the CRA. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a “major rule.” OIRA has determined that this rule is not a “major rule” within the meaning of the relevant sections of the CRA. CFTC will also file appropriate reports with Congress and the Comptroller General so this rule may be reviewed.

List of Subjects in 17 CFR Part 1

For the reasons set forth in the preamble, the Commission is amending 17 CFR part 1 as follows:

PART 1 – General Regulations Under the Commodity Exchange Act

1. The authority citation for part 1 continues to read as follows: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a-1, 7a-2, 7b, 7b-3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24 (2012).

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2. In section 1.3, in the definition of the term Swap, add paragraph (7) to read as follows:

§ 1.3 Definitions.

* * * * *

Swap.

* * * * *

(7) *Casino-style gambling products.*

(i) The term *swap* as used in section 1a(47) of the Commodity Exchange Act does not include an agreement, contract, or transaction that:

(A) is offered or entered into by a person that is licensed or otherwise authorized to offer gambling or gaming products, or accept wagers, under the law of a State or the law of a federally recognized Indian tribe pursuant to the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*), is acting within the scope of that license or authorization, and such agreement, contract, or transaction is regulated as gaming or gambling under applicable State or Tribal law; and (B) is not traded on a board of trade, an organized exchange, a swap execution facility, or any other market in which trades are executed multilaterally or subject to individual negotiation.

(ii) Provided that the requirements of paragraph (i) are met, and without limiting the generality of paragraph (i), the following agreements, contracts, and transactions are excluded from the term *swap*:

(A) Sports Wagers. Any agreement, contract, or transaction in which a licensed sportsbook or sports wagering operator accepts a wager on the outcome of one or more sporting events;

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(B) Casino Games. Any agreement, contract, or transaction in which a licensed casino operator accepts a wager in connection with a casino table game, slot machine, or other electronic gaming device; and

(C) Other Licensed Games of Chance. Any agreement, contract, or transaction in which a licensed operator accepts a wager in connection with any other game of chance (such as bingo, pool wagering, lotteries, and raffles).

Issued in Washington, DC, on [DATE], by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

EXHIBIT 3

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BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038-AF82

Further Definition of “Swap” – Inclusions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Consistent with its jurisdiction over swaps, the Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to further define the term “swap” to explicitly include event contracts, including those based on sports-, politics-, cultural-, and weather-related events (the “Proposal”).

DATES: Comments must be received by [INSERT 30 DAYS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, specifically referencing “Further Definition of “Swap” – Inclusions” and RIN 3038-AF82, by any of the following methods:

- **Regulations.gov:** Go to <https://www.regulations.gov> and press the “Search” button, then proceed as follows:
 1. Under Refine Documents Results – check the box to “Only show documents open for comment”;
 2. Under Agency – select “See More” and check the box for “Commodity Futures Trading Commission,” then press the Apply button;

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3. Identify this proposal in the list of CFTC documents open for comment, press the “Comment” button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on www.federalregister.gov, click the “Submit A Public Comment” button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to Regulations.gov.

- **Mail:** Send to – Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- **Hand Delivery/Courier:** Address to – CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through Regulations.gov are encouraged. As required by the Administrative Procedure Act, a plain language summary of the rule is also available at Regulations.gov.¹

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without

¹ 5 U.S.C. 553(b)(4).

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removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under FOR FURTHER INFORMATION CONTACT before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as – without limitation – obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this proposal, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT:

Tyler S. Badgley, General Counsel; Aaron M. Levine, Deputy General Counsel for Regulation, rulemaking@cftc.gov, 202–418–5000, Office of the General Counsel,

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

SUPPLEMENTARY INFORMATION:

I. Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) established a comprehensive regulatory framework for swaps.² Section 712(d)(1) of the Dodd-Frank Act provides that the Commission and the Securities and Exchange Commission (“SEC”), in consultation with the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”), shall jointly further define, among other terms, the term “swap.”³ Pursuant to this requirement, in 2012, the Commission and the SEC, in consultation with the Federal Reserve Board, issued a final rule further defining the term “swap” and other terms.⁴

This Proposal seeks to clarify that event contracts, including those based on sports-, politics-, cultural-, and weather-related events, are swaps within the CFTC’s jurisdiction. The CFTC has historically recognized that many event contracts are covered by the Commodity Exchange Act’s (the “CEA”) swap definition.⁵ Under Section

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376, 1641 (2010). The text of the Dodd-Frank Act is available at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

³ Dodd-Frank Act sec. 712(d)(1), codified at 15 U.S.C. 8302(d)(1) (directing the CFTC and SEC to undertake joint rulemaking on covered topics). The CFTC shares jurisdiction over mixed swaps and security futures with the SEC, and the SEC has sole jurisdiction over security-based swaps. See CEA sec. 1a(44), 7 U.S.C. 1a(44) and secs. 3(a)(55) and 3(a)(68) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. 78c(a)(55) and 78c(a)(68). The Commission has consulted with the Federal Reserve Board by sharing this Proposal.

⁴ Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208 (Aug. 13, 2012) (“Further Definition Release”).

⁵ Event contracts might be structured as other instruments such as futures contracts, which are excluded from the statutory definition of “swap.” CEA section 1a(47)(B), 7 U.S.C. 1a(47)(B) (providing “exclusions” from the definition of “swap” under the CEA, including futures, options on futures, securities

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1a(47)(A) of the CEA, the term swap is defined “broadly.”⁶ As discussed further below, CEA section 1a(47)(A)(ii) defines “swap” to include “any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”⁷

The broad nature of clause (ii) of the swap definition is in keeping with the broad definition of the term “commodity” in the CEA. The 1974 amendments to the CEA expanded the definition of the term “commodity” to encompass “all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.”⁸ In 2000, Congress reaffirmed the broad scope of the commodity definition in adding the term “excluded commodity” to the CEA—which, despite the name, *is* a commodity.⁹ This term includes, among other indices and measures, any “occurrence, extent of an occurrence, or contingency” of financial, commercial, or economic consequence that is beyond the control of any party to the relevant derivatives contract and is not based on a

such as options on securities and indexes of securities, security-based swaps, and debt securities). Certain event contracts may be security-based swaps or other instruments subject to the SEC’s jurisdiction. *See* 7 U.S.C. 1a(47)(B) (providing “exclusions” from the definition of “swap” under the CEA, including for securities such as security based- swaps, certain options, and debt securities); *see also, e.g.*, 15 U.S.C. 78c(a)(68)(A) (defining “security-based swap” under the Securities Exchange Act of 1934). This Proposal does not propose to further define the term “security-based swap.”

⁶ *United States v. Phillips*, 155 F.4th 102, 113 (2d Cir. 2025).

⁷ 7 U.S.C. 1a(47)(A)(ii).

⁸ *See* CEA sec. 1a(9), 7 U.S.C. 1a(9) (defining “commodity”).

⁹ The definition of “excluded commodity” was adopted as part of an amendment to the CEA to exclude certain contracts based on financial commodities or commodities with an infinite supply from the requirement that contracts for the sale of a commodity for future delivery be traded on an exchange registered with the CFTC (the “exchange trading requirement”). *See infra*, note 70 and accompanying text. Still, the “excluded commodities” are within the definition of “commodity.” *See United States v. Wilkinson*, 986 F.3d 740, 745 (7th Cir 2021) (futures based on “excluded commodities” “remain ‘commodities’ under the Act as a whole”).

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change in the price, rate, value, or level of a physical commodity.¹⁰ Derivatives contracts based on these “excluded commodities” are subject to the Commission’s jurisdiction just as derivatives based on other commodities are.

The definition of “excluded commodity” makes clear that events that fall within the definition, including those related to sports, politics, culture, and weather, are themselves commodities.¹¹ The CFTC has a long history of regulating event contracts. “Since 1992, Commission-regulated exchanges have listed for trading a variety of commodity futures and options contracts with payout terms based on” events “as diverse as regional insured property losses, the count of bankruptcies, temperature volatilities, corporate mergers, and corporate credit events,” and in subsequent years, event contracts encompassed “the accomplishment of certain scientific advances, world population levels, the adoption of particular pieces of legislation,” and even “the length of celebrity marriages.”¹² In 1993, the Commission issued a no-action letter to Iowa Electronic Markets, allowing the facility to list event contracts tied to U.S. and Canadian elections.¹³ In 2004, the CFTC designated the first contract market (“DCM”) dedicated to listing contracts based on events that are excluded commodities.¹⁴ Initially, these contracts were

¹⁰ CEA sec. 1a(19), 7 U.S.C. 1a(19). Specifically, the statute provides that the term “excluded commodity” includes “an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence,” where “clause (i)” refers to the first clause of the definition. CEA sec. 1a(19)(iv), 7 U.S.C. 1a(19)(iv).

¹¹ See CFTC, *Statement of Commissioner Brian D. Quintenz on ErisX RSBLX NFL Contracts and Certain Event Contracts* (Mar. 25, 2021) (“When we think of commodities, we think of tangible things. . . . But what about an event? An election? Whether the Summer Olympics will occur in Japan? A . . . football game? Those, too, are commodities!”).

¹² 73 FR 25669, 25670-71 (May 7, 2008).

¹³ CFTC Staff Letter No. 93-66 (June 18, 1993), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/93-66.pdf>.

¹⁴ See CFTC Release No. 4894-04, *CFTC Designates HedgeStreet as a Contract Market and as a Registered Clearing Organization* (Feb. 20, 2004), and the related DCM Order of Designation for

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structured as commodity options known as “binary options,” the cash settlement of which was based on whether a specified event had occurred.¹⁵

Under the plain language of the CEA, event contracts are implicated by four clauses of the “swap” definition.

First, CEA section 1a(47)(A)(ii) defines “swap” to include “any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”¹⁶

Second, CEA section 1a(47)(A)(i) includes binary options and other commodity options in the “swap” definition by including “any agreement, contract, or transaction . . . that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind.”¹⁷

HedgeStreet, Inc. (Feb. 18, 2004), available at <https://www.cftc.gov/sites/default/files/opa/press04/opa4894-04.htm>. In 2009, HedgeStreet changed its name to North American Derivatives Exchange, Inc., or Nadex, and in 2025, Nadex transitioned to the Crypto.com platform. See summary of registration, available at <https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizations/34536>. It continues to list contracts on foreign exchange, equity indices, commodity prices, and digital assets.

¹⁵ See e.g., Letter from HedgeStreet, Inc. to David Stawick, Sec’y, CFTC, *Re: Rule Certification: HedgeStreet’s listing of new Germany 30 Binary Hedgelet Contracts* (Oct. 30, 2008), available at <https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul103008hedgestreet001.pdf>.

¹⁶ 7 U.S.C. 1a(47)(A)(ii).

¹⁷ 7 U.S.C. 1a(47)(A)(i). A binary option is thus a type of swap which is an “option whose payoff is either a fixed amount or zero.” See CFTC, *Futures Glossary*, available at <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm#B>.

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Third, CEA section 1a(47)(A)(iv) includes in the “swap” definition “an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap.”¹⁸

Finally, CEA section 1a(47)(A)(vi) makes clear that the “swap” definition includes “any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v)” of CEA section 1a(47)(A).¹⁹

In addition to the “swap” definitions provided by the statute, the Dodd-Frank Act included several provisions that give the Commission authority to further define “swap.” First, Dodd-Frank Act section 712(d)(2), 15 U.S.C. 8302(d)(1), directs the CFTC and SEC, in consultation with the Federal Reserve Board, to “further define” the term “swap.”²⁰ Second, Dodd-Frank Act section 721(b), 15 U.S.C. 8321(a)(2), permits the CFTC to define any term included in an amendment to the CEA in Subtitle A of the Wall Street Transparency and Accountability Act of 2010, which includes the term “swap.” Third, Dodd-Frank Act section 721(b), 15 U.S.C. 8321(b), directs the CFTC to further define “swap” to include transactions and entities that have been structured to evade Subtitle A.

In recent months, states have taken actions and courts have issued rulings that undermine the CFTC’s jurisdiction over event contracts. The State of Minnesota enacted

¹⁸ 7 U.S.C. 1a(47)(A)(iv).

¹⁹ 7 U.S.C. 1a(47)(A)(vi).

²⁰ The CFTC and SEC, in consultation with the Federal Reserve Board, first further defined “swap” in a 2012 joint rulemaking. 77 Fed. Reg. 48208 (Aug. 13, 2012). In that rulemaking, the CFTC and SEC noted that, while “[t]he statutory definitions of the terms ‘swap’ and ‘security-based swap’ are detailed and comprehensive, . . . the definitions could be read to include certain types of agreements, contracts, and transactions that previously have not been considered swaps or security-based swaps, and nothing in the legislative history of the Dodd-Frank Act appears to suggest that Congress intended such agreements, contracts, or transactions to be regulated as swaps or security-based swaps.” The CFTC and SEC thus used their authority “to further clarify the treatment under the definitions of certain types of agreements, contracts, and transactions.” *Id.* at 48211.

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a criminal prohibition on the operation or facilitation of a “prediction market,” which purports to make it a felony to offer event contracts on athletic events, elections, policymaking decisions, and a variety of other events.²¹ The State of Arizona filed a “twenty-count criminal information” against a DCM in Arizona Superior Court for offering event contracts on sports and elections in the state.²² The State of New York sought a temporary restraining order in state court that would prohibit a DCM from offering event “contracts relating to sports, culture, elections, and other events” “within or from New York or to persons in New York.”²³ Because that DCM is headquartered in New York, that relief threatens to prohibit it from offering event contracts nationwide. That same DCM has also been ordered by state trial courts to geofence its offering of sports-related event contracts in the States of Michigan, Washington, and Nevada.²⁴

To date, three federal courts of appeals have issued rulings concerning whether an event contract whose underlying is related to an outcome of a sporting event is a swap under CEA Section 1a(47)(A)(ii). In April 2026, a divided panel of the United States Court of Appeals for the Third Circuit held that because “sports-related event contracts are traded on a CFTC-licensed DCM and depend on event outcomes associated with economic consequences, they fit within the Act’s definition of ‘swaps’ subject to the CFTC’s jurisdiction.”²⁵ The dissenting judge also agreed that a “plain reading of the Act’s

²¹ *United States v. Minnesota*, __ F. Supp. 3d __, 2026 WL 2150211, at *4-5 (D. Minn. July 27, 2026) (citing Minn. Stat. 609.7615, subd. 1(e)).

²² *KalshiEX LLC v. Johnson*, 832 F. Supp. 3d 954, 958 (D. Ariz. 2026).

²³ *People of the State of New York v. KalshiEX LLC*, Index No. 453272/2026, Doc. 3 at 2 (N.Y. Sup. Ct. July 31, 2026); see *People of the State of New York v. KalshiEX LLC*, No. 1:26-cv-06550, Dkt. No. 1 (S.D.N.Y. July 31, 2026) (removed to federal court).

²⁴ *Nessel v. KalshiEX LLC*, No. 26-1087-CZ at 3-4 (30th Jud. Dist. Circuit Ct. June 29, 2026); *State of Washington v. KalshiEX, LLC*, No. 26-2-10264-3 SEA (King Cnty. Superior Ct. Aug. 12, 2026); *State of Nevada ex rel. Nevada Gaming Control Board v. KalshiEX, LLC*, No. 260000050-1B (1st Jud. Dist. Ct. Nev.).

²⁵ *KalshiEX, LLC v. Flaherty*, 172 F.4th 220, 228 (3d Cir. 2026) (citing 7 U.S.C. 2(a)(1)(A), 1a(47)(A)(ii)).

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text suggests that [] sports-event contracts fit comfortably within the statutory definition.”²⁶

In August 2026, the United States Court of Appeals for the Ninth Circuit adopted the opposite interpretation of CEA Section 1a(47)(A)(ii).²⁷ After acknowledging that “the CEA expressly preempts state law regulating swaps ‘traded or executed on’ a DCM,” the court rejected the “dictionary definitions” and “plain-language appeal” of the Third Circuit’s interpretation and concluded that, as used in the CEA, “event” means something different from “a thing that happens or takes place.”²⁸ The court stated that the “substance” of the sports event contracts at issue was “sports gambling, regardless of whether [the DCM] calls them swaps” (and, by inference, regardless of whether the CFTC regulates them as swaps).²⁹ It expressed concern that the plain-text interpretation of the definition swap would subject bingo games and ping-pong matches to the CFTC’s jurisdiction.³⁰ For these and other reasons involving the court’s understanding of the CEA’s “context” and “history,”³¹ the court ultimately “conclude[d] that these sports event contracts are likely not swaps under the CEA.”³² The Ninth Circuit did not address whether sports event contracts could qualify as swaps under other prongs of the CEA swap definition, including Sections 1a(47)(A)(i) and (iv). A petition for rehearing and rehearing en banc has been filed in that case.³³

²⁶ *Id.* at 223 (Roth, J., dissenting).

²⁷ *KalshiEX, LLC v. Assad*, No. 25-7516, ___ F.4th ___, 2026 WL 2543846, at *8-*15 (9th Cir. Aug. 28, 2026).

²⁸ *Id.* at 8. The court did not offer a competing definition of “event.”

²⁹ *Id.* at 10.

³⁰ *Id.* at 11 (quoting *Flaherty*, 172 F.4th at 228).

³¹ *Id.* at 9 (citation omitted).

³² *Id.* at 15.

³³ *KalshiEX LLC v. Assad*, No. 25-7516, Dkt. 206.1 (9th Cir. Sep. 9, 2026); Fed. R. App. P. 41(b) (mandate does not issue until 7 days after entry of an order denying timely petition for panel rehearing or rehearing en banc).

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In September 2026, a panel of the United States Court of Appeals for the Sixth Circuit also held that sports-related event contracts are not “swaps,” albeit for somewhat different reasons than the Ninth Circuit panel.³⁴ Unlike the Ninth Circuit, the Sixth Circuit acknowledged that “[d]ictionaries commonly define an ‘event’ to include an ‘outcome,’” and “nothing in the statutory text provides a clear indication that the event must be defined to exclude outcomes.”³⁵ Thus, “it would be reasonable to describe the Giants winning the Super Bowl” as an “event,” even if it is also “the outcome of the game.”³⁶ However, the court held that sports events are not “associated with a potential financial, economic, or commercial consequence,” explaining that the relevant event must be “*inherently* associated with a ‘financial, economic, or commercial consequence.’”³⁷

As the above discussion demonstrates, there is widespread confusion and disuniformity about the definition of swap. The Commission therefore proposes to exercise its statutory authority to “further define” swap and expressly clarify that event contracts, including those based on sports-, politics-, cultural-, and weather-related events, are swaps.

Statutory Authority

Section 712(d)(1) of the Dodd-Frank Act provides that the Commission and the SEC, in consultation with the Federal Reserve Board, shall jointly further define, among

³⁴ *KalshiEX LLC v. Schuler*, __ F.4th __, 2026 WL 2884087 (6th Cir. Sept. 25, 2026).

³⁵ *Id.* at *9.

³⁶ *Id.*

³⁷ *Id.* at *11 (emphasis added).

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other terms, the term “swap.”³⁸ Section 712(d)(2)(A) further empowers the Commission and the SEC, in consultation with the Federal Reserve Board, to “jointly adopt such other rules regarding such definitions as the [CFTC and SEC] determine are necessary and appropriate, in the public interest, and for the protection of investors.”³⁹

II. Proposed Rule

The Commission is proposing to further define the term swap in the context of event contracts. Specifically, the Commission proposes to add section 1.3 (Swap)(2)(i)(G) of the Commission’s Regulations. This proposed addition identifies as swaps event contracts, including, in a non-exhaustive list, those based on sports-, politics-, cultural-, and weather-related events.⁴⁰ As discussed in more detail below, event contracts, including those based on sports-, politics-, cultural-, and weather-related events, are financial instruments that are commonly known to the trade as swaps, structured as binary options, and/or structured to make payment dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence. It is the Commission’s view that the best reading of the statute is that event contracts based on sports-, political-, cultural-, or weather-related events qualify as swaps under each of

³⁸ Dodd-Frank Act sec. 712(d)(1), codified at 15 U.S.C. 8302(d)(1) (directing the CFTC and SEC to undertake joint rulemaking on covered topics). This release proposes a rule of the CFTC that addresses matters within the exclusive jurisdiction of the CFTC. The SEC joins in proposing this rule in satisfaction of the statutory requirement in Section 712(d)(1). The Proposal does not address or otherwise relate to matters within the jurisdiction of the SEC.

³⁹ Dodd-Frank Act sec. 712(d)(2)(A), codified at 15 U.S.C. 8302(d)(2)(A).

⁴⁰ As described above, event contracts might be structured as other instruments such as futures contracts, which are excluded from the statutory definition of “swap.” Additionally, certain event contracts may be security-based swaps or other instruments subject to the SEC’s jurisdiction. The event contracts at issue in this Proposal are those that are within the definition of “swap” subject to the CFTC’s jurisdiction, and not those that might be futures or SEC-regulated instruments. Furthermore, the proposed addition would not reach casino-style gambling products, which, as the Commission describes in a separate rulemaking, are not swaps subject to the Commission’s jurisdiction.

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these statutory prongs. In addition, the Commission’s exercise of its express statutory authority to “further define” the term “swap” provides an independent legal basis to deem these contracts as swaps.⁴¹

First, the Commission believes that event contracts, including those based on sports-, politics-, cultural-, and weather-related events are “commonly known to the trade as a swap” within the meaning of prong (iv) of the swap definition.⁴² The Commission understands the phrase “commonly known to the trade as a swap” as a residual, catch-all prong intended to cover instruments that, in the market’s view, are swaps.⁴³ The Commission further understands “the trade” in this context to mean those who participate in the derivatives markets, including the CFTC, its registrants, and traders, rather than some broader group, such as the general public.⁴⁴ Furthermore, the Commission notes that this standard does not require universal recognition—“commonly known” is not the same as “universally known.” In this regard, the scope of prong (iv) should be informed by the actual practice of market participants and the longstanding regulatory treatment of instruments by the CFTC.

For decades, the CFTC’s position has been that event contracts are derivatives subject to its jurisdiction, whether as “swaps” or as “binary options” (which are

⁴¹ *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 395 (2024) (“In a case involving an agency, of course, the statute’s meaning may well be that the agency is authorized to exercise a degree of discretion. . . . For example, some statutes ‘expressly delegate[]’ to an agency the authority to give meaning to a particular statutory term.” (quoting *Batterton v. Francis*, 432 U.S. 416, 425 (1977)); *id.* at 395 n.5 (citing examples)).

⁴² CEA sec. 1a(47)(A)(iv), 7 U.S.C. 1a(47)(A)(iv).

⁴³ See *Coinbase Fin. Mkts., Inc. v. Raoul*, No. 1:25-cv-15406, 1:26-cv-03659, 1:26-cv-07363, 2026 WL 2969682, at *7 (N.D. Ill. Oct. 2, 2026) (the CEA’s “[s]tructure elsewhere,” including the prong (iv) “clause includ[ing] contracts ‘known to the trade as a swap,’” “reinforce[] [the statute’s] breadth”).

⁴⁴ The Commission and the SEC said as much when they further defined the term “swap” to include non-deliverable forwards (“NDFs”). See Further Definition Release, *supra* note 3. That release noted that “at least some market participants view NDFs as swaps today, and thus NDFs also may fall within clause (A)(iv) of the swap definition” (emphasis added). at 48255, n. 537.

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themselves swaps).⁴⁵ The CFTC's 1993 no-action letter to Iowa Electronic Markets allowed the facility to list event contracts tied to U.S. and Canadian elections.⁴⁶ The CFTC issued a concept release in 2008 acknowledging its regulatory-oversight responsibility for event contracts.⁴⁷ It approved event contracts on box-office receipts in 2010.⁴⁸ The Commission also issued an Order penalizing Blockratize, Inc. (d/b/a Polymarket.com) for offering event contracts on various economic, political, and sports events without registering with the Commission, explaining that the event contracts "constitute swaps under the CFTC's jurisdiction."⁴⁹ Furthermore, the CFTC has filed civil-enforcement actions and obtained civil penalties against persons that engage in insider trading or manipulative activity around event contracts.⁵⁰ The United States has also brought commodity-fraud charges for insider trading of event contracts on the theory that event contracts are swaps under the CEA.⁵¹

⁴⁵ See *supra* notes 12-15 and accompanying text; 91 FR 35806, 35813-17 (June 12, 2026) (recounting history).

⁴⁶ CFTC Staff Letter No. 93-66 (June 18, 1993),

<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/93-66.pdf>.

⁴⁷ 73 FR 25670-73.

⁴⁸ Statement of the Commission approving certain MDEX contracts (June 14, 2010) (MDEX Statement) at 1, available at <https://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/mdexcommissionstatement061410.pdf>.

⁴⁹ CFTC, Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (Jan. 3, 2022).

⁵⁰ *CFTC v. Van Dyke*, No. 1:26-cv-3369 (S.D.N.Y.) (U.S. servicemember who used sensitive nonpublic information to trade event contracts related to the ouster of Venezuelan President Nicolás Maduro); *CFTC v. Spagnuolo*, No. 1:26-cv-4419 (S.D.N.Y.) (Google employee who used nonpublic information to trade event contracts related to Google's Year in Search list); CFTC, *Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions*, at 5 (July 31, 2026) (imposing penalties on former Congressman George Santos for manipulative activity around State of the Union event "contract that is commonly known to the trade as a swap"); CFTC, *Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions*, at 5 (Aug. 28, 2026) (imposing penalties on a former presidential teleprompter operator for insider trading presidential speech event "contracts that are commonly known to the trade as swaps").

⁵¹ *United States v. Van Dyke*, No. 1:26-cr-156 (S.D.N.Y.); *United States v. Spagnuolo*, No. 1:26-mj-02020 (S.D.N.Y.).

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Market participants have also overwhelmingly recognized that event contracts are swaps by complying with the CFTC’s swap regulatory regime just as they do when listing, clearing, or trading other swaps. For example, over the past several years, DCMs have self-certified thousands of event contracts based on sports, politics, cultural events, and weather to the Commission.⁵² This includes both new entrants into the market and longstanding exchanges like CME Group (“CME”), which has self-certified numerous event contracts based on sports and elections as swaps.⁵³ And in comments to the CFTC, CME has recognized that “event contracts and swaps are not new and have been subject to the existing regulatory scheme for years without issue,” and that the CEA’s “Core Principles[] provide[] the proper structure to regulate these products.”⁵⁴ Cboe Global Markets has likewise stated in comments that event contracts “generally fall within the CEA’s broad definition of ‘swap,’” absent a statutory exception.⁵⁵ Consistent with this commonly-held market view, such Commission registrants have not sought to register at the State level or offer products under State gambling laws. Instead, they offer event contracts for multilateral trading on a national, competitive market, just like other derivatives.

Other market participants likewise treat event contracts as swaps and trade them as they do other derivatives products. For example, institutional traders act as market makers on prediction markets—earning revenue by capturing the bid-ask spread directly from peer-to-peer trading volume, unlike traditional sports betting where centralized

⁵² See CFTC, Designated Contract Market Products, <https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts?>.

⁵³ *Id.*

⁵⁴ Letter from Jonathan Marcus to Christopher Kirkpatrick at 2 (Apr. 30, 2026).

⁵⁵ Letter from Patrick Sexton to Christopher Kirkpatrick at 3 (May 5, 2026), <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=115665&SearchText=cboe>.

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sportsbooks extract a static “vig” from fixed odds. Similar to how such firms provide liquidity in other financial markets, these participants support price discovery based on shifting supply and demand rather than odds manually adjusted by a bookmaker.⁵⁶ And a wide array of market participants⁵⁷ have looked to prediction markets to hedge various risks, including those related to sports, weather, and legislative outcomes.⁵⁸ Together, the Commission preliminarily concludes that this market practice provides compelling evidence that such event contracts are, in fact, commonly known to the trade as swaps, satisfying prong (iv).⁵⁹

Second, the Commission believes that event contracts, including those based on sports-, politics-, cultural-, and weather-related events, fall within prong (ii) of the swap definition, which encompasses any agreement, contract, or transaction whose underlying is an occurrence or contingency “associated with a potential financial, economic, or

⁵⁶ *Susquehanna Starts Trading Desk for Event Contracts on Kalshi*, Bloomberg Law (Apr. 3, 2024), <https://news.bloomberglaw.com/crypto/susquehanna-starts-trading-desk-for-event-contracts-on-kalshi>; *Citadel Securities Looks at Prediction Markets as Trading Scales*, Bloomberg (Apr. 16, 2026), <https://www.bloomberg.com/news/articles/2026-04-16/citadel-securities-looks-at-prediction-markets-as-trading-scales>.

⁵⁷ *E.g., Prediction Markets Take a Swing at Hedging for US Small Business*, Reuters (Aug. 28, 2026), <https://www.reuters.com/business/prediction-markets-take-swing-hedging-us-small-businesses-2026-08-28/>.

⁵⁸ *Goat herding hedge: How Susquehanna and Kalshi are helping this company offset a change in California law*, CNBC (Aug. 13, 2026), <https://www.cnbc.com/2026/08/13/how-a-california-goat-herding-company-is-hedging-against-risk-of-higher-wages.html>; *Insurer Uses Kalshi to Hedge \$3 Million LSU Coaching Bonus*, ProgramBusiness (Sept. 9, 2026), <https://programbusiness.com/news/insurer-uses-kalshi-to-hedge-3-million-lsu-coaching-bonus/>; *Kalshi and the Weather Co. join forces on climate trades*, Wall Street Journal (Aug. 27, 2026), <https://www.wsj.com/finance/kalshi-and-the-weather-co-join-forces-on-climate-trades-76b7e307?msocid=0138621f0143697837f9753100d168d7>.

⁵⁹ This industry position is reinforced by experts in the field, including scholars and financial trade publications, who refer to event contracts as swaps. See e.g., Klein, A., Lazarus, S. H., & Singh, S. (June 25, 2026). *Five highlights from Brookings' prediction market events*. The Brookings Institution. brookings.edu. See also Justin Wolfers & Eric Zitzewitz, *Prediction Markets*, 18 J. Econ. Persp. 107 (2004) (examining event contracts as financial instruments that function as contingent claims to aggregate information and forecast uncertain events); Anthony M. Diercks, Jared D. Katz & Jonathan H. Wright, *Kalshi and the Rise of Macro Markets*, Fed. Rsrv. Bd., Fin. & Econ. Discussion Series 2026-010 (Feb. 2026).

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commercial consequence.”⁶⁰ The Third Circuit’s *Flaherty* decision adopted this conclusion in the context of sports-related event contracts, and the reasoning applies more generally as well. Applying the plain text of the statute, the court held that “[t]he outcome of a sports event certainly can be associated with a potential financial, economic, or commercial consequence,” and that sports-related event contracts traded on a CFTC-licensed DCM “fit within the Act’s definition of ‘swaps’ subject to the CFTC’s jurisdiction.”⁶¹ In reaching that conclusion, the court expressly endorsed the district court’s identification of the broad range of economic stakeholders—including sponsors, advertisers, television networks, sports franchises, and local and national communities—whose financial interests are directly affected by sporting event outcomes, finding that identification of such stakeholders was sufficient to satisfy the “associated with a potential financial, economic, or commercial consequence” standard.⁶² Even the dissent conceded that a plain reading of the Act’s text suggests that sports-related event contracts fit comfortably within the statutory definition.⁶³ And the court confirmed that the Commission’s statutory authority to further define “swap” would be valuable in this area.

While the Sixth and Ninth Circuit panels took a different view of Section 1a(47)(A)(ii) of the CEA, their reasoning was substantially based on the concern that treating sports event contracts as swaps would also subject casino-style gambling to the CFTC’s jurisdiction.⁶⁴ As the Commission explains in a separate Interim Final Rule, the swap definition does not encompass casino-style gambling wagers, sports or otherwise.

⁶⁰ CEA sec. 1a(47)(A)(ii), 7 U.S.C. 1a(47)(A)(ii).

⁶¹ *Flaherty*, 172 F.4th at 227-228.

⁶² *Id.* at 227.

⁶³ *Id.*

⁶⁴ *Assad*, 2026 WL 2543846, at 11-12; *Schuler*, 2026 WL 2884087, at *14-15.

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Additionally, the Ninth Circuit relied on CFTC Rule 40.11 to conclude that “gaming-related contracts” are “bar[red]” from “being listed on a DCM.”⁶⁵ Even assuming that premise, the Commission notes that CFTC Rule 40.11 does not provide a basis to conclude that event contracts are not swaps or that event contracts could be subject to state gambling law. Indeed, as the concurrence and other courts have recognized, the statutory provision that undergirds CFTC Rule 40.11 affirmatively contemplates that event contracts are swaps subject to the CFTC’s exclusive jurisdiction.⁶⁶ Regardless, to the extent that the Ninth Circuit panel’s reasoning was based on a CFTC regulation, this Proposal would serve to clarify by federal regulation that event contracts are swaps. Accordingly, there would no longer be a valid basis to interpret CFTC regulations to conclude that event contracts are not swaps.

Third, the Commission believes that event contracts may independently satisfy the first prong of the swap definition. The Commission’s preliminary reasoning is based on a plain reading of Section 1a(47)(A)(i) of the CEA. Section 1a(47)(A)(i) explicitly defines a swap to include any agreement, contract, or transaction that is a “put, call, cap, floor, collar, or similar option of any kind” that is “based on the value[] of 1 or more . . . commodities . . . or other financial or economic interests or property of any kind.”⁶⁷ In this regard, the Commission notes that many event contracts are structured as binary options, meaning that the contract’s payout is a predetermined fixed amount (typically, one dollar) if the underlying condition is satisfied, and zero if it is not. Courts⁶⁸ and the

⁶⁵ *Id.* at *13; *see* 17 CFR 40.11.

⁶⁶ *Assad*, 2026 WL 2543846, at *19 (Lee, J., concurring); *see* 7 U.S.C. 7a-2(c)(5)(C).

⁶⁷ 7 U.S.C. 1a(47)(A)(i).

⁶⁸ *See, e.g., CFTC v. Banc de Binary*, No. 2:13-cv-00992, ECF No. 169-1 at 18 ¶ 65 (D. Nev. Feb 26, 2016) (Consent Order for Permanent Injunction) (noting that “Dodd-Frank defined an option as a swap” and that

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CFTC⁶⁹ have repeatedly affirmed that binary option event contracts are a type of swap subject to the Commission’s jurisdiction. Because, as described above, an event (such as a sports-, politics-, cultural-, or weather-related event) is an excluded commodity, a binary option event contract referencing such an event is a swap within the Commission’s jurisdiction.

The term “excluded commodity,” including “an occurrence, extent of an occurrence, or contingency . . . that is—(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence,” has long been interpreted broadly. This definition was added to the CEA by the Commodity Futures Modernization Act of 2000 (“CFMA”).⁷⁰ The CFMA provided for a near-complete exemption from the exchange trading requirement for swaps in an “excluded commodity” between institutional traders.⁷¹ In other words, these commodities are defined as “excluded” because the CFMA exempted swaps involving them from the exchange trading requirement.

However, swaps in excluded commodities remained within the jurisdiction of the CFTC. The CEA, as amended by the CFMA in 2000, provided that off-exchange swaps in “excluded commodities” between institutional traders would remain subject to CEA

“[t]he binary options offered by Banc de Binary are ‘commodity options.’”); *CFTC v. Trade Exchange Network Ltd.*, 117 F. Supp. 3d 29, 36 (D.D.C. 2015) (noting that “limited risk contracts based on a simple yes/no market proposition like will the markets go up by the end of the trading week . . . possess all the characteristics of contracts that are known to the trade as ‘binary options.’”).

⁶⁹ See, e.g., *In re Blockratize, Inc.*, CFTC Docket No. 22-08, at 4 (Jan. 3, 2022) (Order Instituting Proceedings) (noting that “[s]uch event contracts, each of which is composed of a pair of binary options, constitute swaps under the CFTC’s jurisdiction”), available at <https://www.cftc.gov/media/6891/enfblockratizeorder010322/download>; see also CFTC Letter No. 25-23 (July 22, 2025) (granting CME no-action relief from certain swap data reporting requirements for certain binary options), available at <https://www.cftc.gov/PressRoom/PressReleases/9099-25>.

⁷⁰ Pub. L. No. 106-554, app. E, 114 Stat. 2763A-365 (2000), available at <https://www.congress.gov/bill/106th-congress/house-bill/4577?s=4&r=1>. The definition of “excluded commodity,” CEA sec. 1a(19), 7 U.S.C. 1a(19), has remained unchanged since enactment.

⁷¹ 7 U.S.C. 2(d) (2000 Main Ed.).

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sections 5b and 12(e)(2).⁷² Notably, CEA section 12(e)(2) provided at that time that the CEA “shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of . . . (B) an agreement, contract, or transaction that is excluded from this chapter under section . . . 2(d) . . . of this title . . . (regardless of whether any such agreement, contract, or transaction is otherwise subject to this chapter).”⁷³ Thus, in 2000, Congress clarified that the CFTC’s exclusive jurisdiction preempted state law—even as to off-exchange transactions—by explicitly providing that state gaming laws would not apply to off-exchange swaps in excluded commodities between institutional traders.

The CFMA was driven by the November 1999 report of the President’s Working Group on Financial Markets, which was composed of the Secretary of the Treasury, and the Chairs of the CFTC, the SEC, and the Federal Reserve Board (“PWG Report”).⁷⁴ The PWG Report concluded, among other things, that off-exchange swaps between institutional traders should be excluded from the CEA, unless the swap involves a non-financial commodity with a finite supply.⁷⁵ The “excluded commodity” definition enacted in the CFMA was therefore intended to encompass all types of swaps except for those based on non-financial commodities with a finite supply.

⁷² 7 U.S.C. 2(d)(1) (2000 Main Ed.), referring to 7 U.S.C. 7a–1 and 7 U.S.C. 16(e)(2)(B).

⁷³ 7 U.S.C. 16(e)(2)(B) (2000 Main Ed.). The term “this chapter” refers to Chapter I of Title 7 of the U.S. Code, where the CEA is codified.

⁷⁴ Report of The President’s Working Group on Financial Markets, *Over-the-Counter Derivatives Markets and the Commodity Exchange Act*, 17 (Nov. 1999), available at <https://home.treasury.gov/system/files/236/Over-the-Counter-Derivatives-Market-Commodity-Exchange-Act.pdf>.

⁷⁵ *Id.* at 1.

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In 2010, the Dodd-Frank Act created a framework within the CEA for the on-exchange execution, clearing and reporting of the previously over-the-counter (“OTC”) swap markets. Among other things, the Dodd-Frank Act repealed the exclusion that had been added by the CFMA to CEA section 2(d),⁷⁶ and required retail swap transactions (i.e., transactions not between eligible contract participants (“ECPs”)) to be entered into on a DCM.⁷⁷

Finally, the Special Rule added by Dodd-Frank to the CEA clarifies that the CFTC has jurisdiction over “[e]vent contracts,” including event contracts based on non-financial commodities. The Special Rule provides that “[i]n connection with the listing of agreements, contracts, transactions, or *swaps* in *excluded commodities* that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i) of this title), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—(I) activity that is unlawful under any Federal or State law; (II) terrorism; (III) assassination; (IV) war; (V) gaming; or (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.”⁷⁸ This rule confirms that the term “excluded commodities” includes “occurrence[s]” that “involve” various non-financial events, including but not limited to terrorism, assassination, war, and gaming. It also confirms that “swaps” can be “based

⁷⁶ Dodd-Frank Act sec. 723(a)(1), codified at 7 U.S.C. 2 (striking and replacing CEA sec. 2(d)).

⁷⁷ CEA sec. 2(e), 7 U.S.C. 2(e). The term “eligible contract participant” is defined in CEA sec. 1a(18), 7 U.S.C. 1a(18).

⁷⁸ 7 U.S.C. 7a-2(c)(5)(C)(i) (emphases added).

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upon” such non-financial activities. Thus, the notion that the “event” referred to in the second prong of the “swap” definition must “be one inherently associated with a financial, economic, or commercial consequence” is incompatible with the text of the Special Rule.⁷⁹

The Special Rule has particular significance for sports-related event contracts. Applying the plain text of the statute, sports are a type of “gam[e].”⁸⁰ Accordingly, sports-related event contracts are “based upon” an “occurrence, extent of an occurrence, or contingency” that “involve[s]” “gaming.” Far from exempting sports-related contracts from the CFTC’s jurisdiction, this provision confirms that such instruments can be “swaps” in “excluded commodities” and that they are within the CFTC’s jurisdiction.⁸¹

Some courts and States have expressed the view that some, but not all, event contracts are swaps on the theory that certain underlying sports, political, cultural, or weather events are not associated with a potential financial, economic, or commercial consequence.⁸² This argument would at most affect the applicability of the first and second prongs of the “swap” definition, but it would not affect the fourth prong, *i.e.*, that the contracts are commonly known to the trade as a “swap.” Furthermore, to the extent there is uncertainty about whether particular underlying sports, political, cultural, or

⁷⁹ *Schuler*, 2026 WL 2884087, at *11.

⁸⁰ *KalshiEX LLC v. CFTC*, No. 23-cv-3257, 2024 WL 4164694, at *12 (D.D.C. Sept. 12, 2024).

⁸¹ *Flaherty*, 172 F.4th at 231 (“Congress gave the CFTC exclusive jurisdiction over trades on DCMs, provided for continued state regulation of trades conducted off DCMs, and recognized that while event contracts could involve gaming, the CFTC has discretionary power to review and prohibit those contracts.”); *Minnesota*, 2026 WL 2150211, at *13 (“In combination with the congressional decision to give the CFTC exclusive jurisdiction over swaps, allowing the CFTC to either permit event contracts in these categories or declare them contrary to the public interest suggests, at least preliminarily, that Congress intended DCM-based transactions over these prediction markets to be governed by the CFTC.”); *KalshiEX LLC v. Johnson*, 832 F. Supp. 3d 954, 965 (D. Ariz. 2026) (“By directing the CFTC to review event contracts and prohibit those contrary to the public interest, Congress placed event contracts under the CFTC’s exclusive authority.”); *Raoul*, 2026 WL 2969682, at *10 (The Special Rule “belies that the Commodity Exchange Act has nothing to do with” sports event contracts.”).

⁸² *E.g.*, *Minnesota*, 2026 WL 2150211, at *15.

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weather events have potential financial consequences, the Commission’s exercise of its power to further define “swap” confers on the Commission the authority to determine which contracts qualify as “swaps.”

The Commission also notes that it retains authority under the Special Rule to prohibit event contracts involving “gaming” that are contrary to the public interest, and that the Commission has proposed to consider whether a contract has utility for price discovery, hedging, and economic decisions in making public-interest determinations.⁸³ Indeed, that proposal distinguishes between sports event contracts “depend[ing] on the aggregate performance over an extended period of play”—which “may serve price discovery functions and provide meaningful information”—from “event contracts settling on the type of a specific play called for or executed by a specific player or team, the type or outcome of a specific pitch thrown by a specific pitcher, the outcome of a specific shot taken by a specific player, or whether a specific player or team commits a specific foul or penalty”—which, among other things, “do not provide meaningful information.”⁸⁴

The Commission also preliminarily believes there typically are potential financial, economic, or commercial consequences associated with underlying sports, political, cultural, and weather events that are the subject of event contracts. Importantly, the statute uses the word “potential,” which is broad.⁸⁵ So even if the financial consequences of a particular event are not felt right away—indeed, even if they never *actually* occur—an event contract remains a swap so long as there is potential for commercial

⁸³ 91 Fed. Reg. 35,806, 35,829-30 (June 12, 2026).

⁸⁴ *Id.* at 35,835-37.

⁸⁵ *Alabama Power Co. v. Costle*, 636 F.2d 323, 353 (D.C. Cir. 1979) (recognizing that “potential ... will always and inherently exceed actual”).

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ramifications.⁸⁶ For example, it may be difficult to empirically verify that there are financial consequences associated with a particular city reaching a temperature of 97 to 98 degrees on a given day, as opposed to 95 to 96 degrees. By inserting the word “potential” into the swap definition, Congress signaled that it did not wish for the Commission to engage in this exercise. Temperature has the potential to cause financial consequences for agriculture, energy usage, participation in outdoor activity, and more—event contracts based on temperature therefore satisfy the “potential financial, economic, or commercial consequence” requirement.

Sports events likewise can be associated with potential economic consequences. Most obviously, when a team succeeds in the postseason, that team is able to play more home games, which generates additional ticketing revenue for the franchise and economic opportunity for nearby businesses like restaurants and hotels.⁸⁷ For example, the New York Knicks’ 2026 championship-winning postseason run generated around \$380 million for New York City’s economy.⁸⁸ Similarly, after the Milwaukee Bucks won the 2021 NBA Finals, the City of Milwaukee estimated that the team’s postseason performance generated \$2.7 million in economic impact to the city in the first round, \$12.8 million in the second round, \$14.1 million in the third round, and \$28 million in the

⁸⁶ *Minnesota*, 2026 WL 2150211, at *12 (“The occurrence of the event in question does not have to ultimately result in a financial, economic, or commercial consequence to meet the definition. It is enough that such consequences are foreseeable future possibilities.”).

⁸⁷ For example, as the Northern District of Illinois recently recognized, “[a]t a financial level, sports [event contracts] can resemble credit default swaps” in their potential financial, economic, or commercial consequences. *Raoul*, 2026 WL 2969682, at *11. “Broadcasters depend on the total number of games played in a best-of-seven matchup like the NBA Finals and the World Series,” with a “difference in advertising revenue between a four-game series and a seven-game series . . . cost[ing] NBC between \$25 million and \$35 million,” and affecting “[a]rena and concession companies,” who “often get paid a percentage of sales during games, meaning their revenue correlates with the number of games, too. Meanwhile, sponsors’ returns on endorsements depend on players performing well.” *Id.*

⁸⁸ CNBC, Knicks’ postseason run brought \$380m in economic activity, says NYCEDC’s Jeanny Pak, (June 18, 2026), <https://www.cnbc.com/video/2026/06/18/knicks-postseason-run-brought-380m-in-economic-activity-says-nycedcs-jeanny-pak.html>.

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final round—thus, each time the Bucks won a round of the playoffs, there were concrete economic consequences for Milwaukee.⁸⁹ Postseason success also affects a sports team's valuation. Madison Square Garden Sports, the Knicks' parent company, doubled in market value over the course of a year because of the team's championship-winning performance.⁹⁰ At least at some level of generality, it is inescapably true that sports events are associated with potential economic consequences.

The result of single regular-season games are associated with potential economic consequences, too. Studies have verified that a single win in a college football game can result in millions of dollars in additional revenue to the program.⁹¹ And when a team wins a game, that has direct commercial consequences for businesses around the stadium, as fans are more likely to spend money at those establishments in celebration.

In-game events and contingencies are also associated with potential economic consequences. For example, a close game is more likely to have higher television viewership than a blowout, and thus, the spread of a game is associated with potential economic consequences.⁹² Player contracts often have bonuses associated with specific

⁸⁹ Visit Milwaukee, Economic Impact Data for Milwaukee Bucks Championship, Dec. 9, 2021, <https://www.visitmilwaukee.org/press-releases/post/2885682-economic-impact-data-for-milwaukee-bucks-championship/>.

⁹⁰ Jack Pitcher & Andrew Beaton, The Only Thing Hotter Than the Knicks Is Their Stock Price, Wall St. J. (June 8, 2026), <https://www.wsj.com/sports/basketball/knicks-nba-finals-msg-stock-b0f2dd31>.

⁹¹ Doug J. Chung, How Much is a Win Worth? An Application to Intercollegiate Athletics, Management Science 63, no. 2, pp. 548-565 (February 2017).

⁹² Austin Karp, *CFP First Round viewership falls 7% in second year amid blowouts, NFL doubleheader gains*, Sports Business Journal (Dec. 24, 2025), <https://www.sportsbusinessjournal.com/Articles/2025/12/24/cfp-first-round-viewership-falls-7-in-second-year-amid-blowouts-nfl-doubleheader-gains/>; *NFL's wild-card ratings tumble amid blowouts*, Reuters (Jan. 15, 2025) <https://www.reuters.com/sports/nfls-wild-card-ratings-tumble-amid-blowouts--flm-2025-01-16/>.

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statistical results, like the number of touchdowns scored or receptions made, so player performance within a game has potential economic consequences.⁹³

Business promotions can amplify these economic consequences. For example, a furniture store in Houston, Texas runs a regular promotion in which customers who spend a minimum amount will get their purchases refunded if the Houston Astros win the World Series, creating a direct link between the outcome of the World Series and financial consequences for numerous furniture purchasers in Houston.⁹⁴ Similarly, a New York bar promised free drinks to patrons if the Knicks won the first NBA Finals game, which also linked the outcome of the game to an economic consequence.⁹⁵ Businesses also structure promotions around whether particular events occur within a game. For example, when the Cincinnati Reds hit a home run in the 4th inning, ticketholders get a reward from Chick-fil-A,⁹⁶ when the Minnesota Vikings intercept a pass, Caribou Coffee offers a buy-one-get-one drink deal,⁹⁷ and Delta Air Lines' loyalty program customers earn one mile for each Seattle Seahawks passing yard in a season.⁹⁸

The list of examples could extend indefinitely. The salient point is that many sports-, politics-, cultural, and weather-related events are associated with potential

⁹³ Zach Kruse, *How Packers WR Christian Watson can make another \$15M in contract incentives*, Packers Wire (June 19, 2026), <https://packerswire.usatoday.com/story/sports/nfl/packers/2026/06/19/christian-watson-contract-packers-incentives-catches-yards-touchdowns-pro-bowl/90619346007/>.

⁹⁴ Chad Washington, 'Mattress Mack' uses a prediction market to wager on the Astros' postseason hopes, KTSN 9 News, <https://www.ktsn.com/news/state-news/mattress-mack-uses-a-prediction-market-to-wager-on-the-astros-postseason-hopes/amp/>.

⁹⁵ Catherina Gioino, *This NYC bar just covered everyone's tabs because the Knicks won, and used Kalshi to hedge their bets*, Fortune (June 3, 2026), <https://fortune.com/2026/06/03/nyc-bar-knicks-kalshi-win-prediction-market/>.

⁹⁶ Chick-fil-A Free Chicken Promotion, <https://www.mlb.com/reds/tickets/specials/chick-fil-a-runs> (last visited Sept. 22, 2026).

⁹⁷ BOGO Ball Presented by Caribou Coffee, <https://www.vikings.com/fans/promos/caribou-coffee-promo> (last visited Sept. 22, 2026).

⁹⁸ Delta News Hub, *First and 10: 12Status program kicks off a decade of awarding Seattle Seahawks fans*, <https://news.delta.com/first-and-10-12status-program-kicks-decade-awarding-seattle-seahawks-fans> (last visited October 1, 2026).

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economic consequences, and thus, event contracts that are predicated on those events are swaps subject to the Commission's exclusive jurisdiction. To the extent a sports-, politics-, cultural-, or weather-related event is not associated with a potential economic consequence and does not satisfy any other prong of the swap definition, the Commission retains authority to stay the listing of that contract.⁹⁹

For these reasons, the Commission is proposing to amend the "swap" definition to explicitly identify event contracts, including those based on sports-, politics-, cultural-, and weather-related events, as swaps within the Commission's jurisdiction. Specifically, the Commission proposes to add section 1.3 (Swap)(2)(i)(G) to provide that the term swap includes "[e]vent contracts, including those based on sports-, politics-, cultural-, and weather-related events." And, as set forth in a separate Interim Final Rule, the Commission does not intrude upon existing regulation of in-person and online casino-style gambling. Rather, the Commission proposes, consistent with its clear statutory mandate, to regulate only event contracts, including those based on sports-, politics-, cultural-, and weather-related events.

The classifications proposed here are for purposes of the Commodity Exchange Act. Federal tax treatment and associated information reporting, withholding, registration, and payment obligations are determined under the Internal Revenue Code and applicable Treasury regulations and IRS guidance.

III. Request for Comment

The Commission welcomes public comments from all interested persons regarding any aspect of the Proposal.

⁹⁹ See 17 C.F.R. 40.2(c)].

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IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act¹⁰⁰ (“RFA”) requires federal agencies, in proposing rules, to consider the impact of those rules on small entities, and to provide a regulatory flexibility analysis with respect to such impact.¹⁰¹ The regulations proposed herein would directly affect DCMs, swap execution facilities (“SEFs”), swap dealers, major swap participants, and eligible contract participants (“ECPs”). The Commission has previously determined that DCMs are not considered “small entities” for purposes of the RFA.¹⁰² Similarly, the Commission previously concluded that SEFs are not small entities for the purpose of the RFA.¹⁰³ The Commission has also previously stated its belief in the context of relevant rulemakings that SEFs’ market participants, which are all required to be ECPs¹⁰⁴ as defined in section 1a(18) of the CEA,¹⁰⁵ are not small entities for purposes of the RFA.¹⁰⁶ Likewise, the Commission has previously concluded that Swap Dealers and Major Swap Participants are not small entities for purposes of the RFA, due in part to the minimum capital and margin requirements applicable to such entities.¹⁰⁷

¹⁰⁰ 5 U.S.C. 601 *et seq.*

¹⁰¹ *See* 5 U.S.C. 603. The RFA applies to rules subject to notice-and-comment rulemakings issued pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), or any other law. *Id.*

¹⁰² *See* Policy Statement and Final Establishment of Definitions, 47 FR 18618 (Apr. 30, 1982).

¹⁰³ SEF Core Principles Final Rule, 78 FR 33476, 33548 (June 4, 2013) (citing 47 FR 18618, 18621 (Apr. 30, 1982) (discussing DCMs); and 66 FR 45604, 45609 (Aug. 29, 2001) (discussing registered DCOs)).

¹⁰⁴ 17 CFR 37.703.

¹⁰⁵ 7 U.S.C. 1(a)(18).

¹⁰⁶ Opting Out of Segregation Final Rule, 66 FR 20740, 20743 (Apr. 25, 2001) (stating that ECPs by the nature of their definition in the CEA should not be considered small entities).

¹⁰⁷ Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants Final Rule, 77 FR 20128, 20194 (2012).

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For these reasons, under section 3(a) of the RFA,¹⁰⁸ the Chairman, on behalf of the Commission, certifies that this Proposal will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment on this determination. This document serves as notification to the Small Business Administration of the Commission's certification of no effect.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")¹⁰⁹ imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any "collection of information," as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget ("OMB").¹¹⁰ The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the federal government.¹¹¹ The PRA applies to all information, regardless of form or format, whenever the federal government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical

¹⁰⁸ 5 U.S.C. 605(b).

¹⁰⁹ 44 U.S.C. 3501 *et seq.*

¹¹⁰ *See* 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

¹¹¹ *See* 44 U.S.C. 3501.

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questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.¹¹²

This Proposal would not impose any new collection of information requirements that require approval of OMB under 44 U.S.C. 3507(d), nor would it amend or otherwise revise any existing collection of information subject to the PRA. The Proposal clarifies the definition of “swaps” to, consistent with its jurisdiction, explicitly include event contracts, including those based on sports-, politics-, cultural-, and weather-related events.

The Proposal does not establish any new reporting requirement under the CEA or the Commissions’ regulations applicable to any Commission registrant or market participant; establish any new recordkeeping requirement beyond those already imposed under the CEA and the Commission’s existing regulations, which are currently approved by OMB under existing control numbers; impose any new third-party disclosure obligation; or modify the substantive scope, frequency, form, or content of any existing information collection of the Commission currently approved by OMB.

The Proposal does not alter the burden associated with existing collections currently approved by OMB. Any incremental activity that may occur as an indirect consequence of registrants electing to conduct business within the federal regulatory perimeter clarified by this proposed rule reflects the application of existing, previously approved information collections to a new class of underlying transactions and does not itself constitute a new or revised collection of information within the meaning of the PRA.

¹¹² See 44 U.S.C. 3502(3).

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Accordingly, the requirements of the PRA do not apply to this rulemaking. The Commission invites public comment on its determination that no additional recordkeeping or information collection requirements, or changes to existing collection requirements, would result from the Proposal.

C. Consideration of Benefits and Costs

1. Introduction

The Commission is mindful of the economic effects, including the benefits and costs, of the Proposal. Section 15(a) of the CEA requires the Commission to consider the benefits and costs of its actions before promulgating a regulation under the CEA or issuing certain orders.¹¹³ As required by section 15(a), the Commission evaluates these benefits and costs evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Proposal further defines the term “swap” under CEA section 1a(47) to include event contracts, including those based on sports-, politics-, cultural-, and weather-related events.¹¹⁴ It is the Commission’s preliminary belief that the Proposal would not change the legal rights or obligations of market participants under the CEA because the Commission already treats event contracts as swaps under existing law. Instead, the Commission preliminarily believes that the Proposal will reduce interpretive uncertainty and facilitate uniform nationwide treatment of event contracts under the exclusive jurisdiction of the Commission.

¹¹³ 7 U.S.C. 19(a).

¹¹⁴ See 7 U.S.C. 1a(47).

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The Commission qualitatively discusses the benefits and costs of the Proposal below because it is not practicable to quantify the effect of greater regulatory certainty on market participant behavior.

2. Baseline

The baseline against which the benefits and costs of the Proposal are measured consists of the current regulatory framework and the current state of the event contracts market.

a. Regulatory Baseline

The Commission has exclusive jurisdiction to regulate transactions involving swaps (other than security-based swaps, which the SEC regulates, and mixed swaps, over which it shares jurisdiction with the SEC).¹¹⁵ The Commission preliminary believes that under the plain language of the CEA, event contracts, including event contracts based on sports-, politics-, cultural-, and weather-related events, are swaps.¹¹⁶ For example, CEA section 1a(47)(A)(ii) defines “swap” to include “any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”¹¹⁷ It is the Commission’s preliminary belief that this comprehensive definition captures many event contracts, which are a type of swap where payment is triggered by “the occurrence, nonoccurrence, or the extent of the occurrence

¹¹⁵ See 7 U.S.C. 2(a)(1)(A).

¹¹⁶ See 7 U.S.C. 1a(47); *supra* section I; *see also, e.g., Flaherty*, 172 F.4th at 227 (holding that a “plain reading of the Act’s text suggests that Kalshi’s sports-event contracts fit comfortably within the statutory definition”). *But see Assad*, 2026 WL 2543846.

¹¹⁷ 7 U.S.C. 1a(47)(A)(ii); *see supra* note 16 and accompanying text. Other clauses in the statutory definition of the term “swap” are also relevant. *See supra* notes 17-19.

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of an event or contingency associated with a potential financial, economic, or commercial consequence,” such as a political election or a sporting event.¹¹⁸

Accordingly, it is the Commission’s preliminary belief that event contracts, including those based on sports-, politics-, cultural-, and weather-related events, are subject to federal law concerning swaps, including that retail participants may only trade swaps on a DCM.¹¹⁹ DCMs listing event contracts must comply with the substantive and procedural requirements that apply to a DCM’s listing of derivative contracts for trading.¹²⁰ In particular, these requirements include adherence to the Core Principles for DCMs, including listing only contracts that are not readily susceptible to manipulation, preventing market disruption, and protecting of markets and market participants.¹²¹

However, certain state regulators have asserted that certain event contracts—particularly those based on sports-related events—are subject to their laws regulating gaming and other matters. These other legal regimes have various, sometimes conflicting, requirements that states have purported to apply to event contracts.¹²²

b. Current Event Contract Markets

The number of DCMs listing event contracts and the volume of trading in such contracts have increased significantly in recent years. For example, as of September 1, 2026, at least seven DCMs registered with the CFTC offer contracts that include event

¹¹⁸ As described above, such contracts may also be swaps under other prongs of the definition.

¹¹⁹ See 7 U.S.C. 2(e) (requirement that persons other than eligible contract participants transact swaps on a DCM). The term “eligible contract participant” is defined in CEA sec. 1a(18), 7 U.S.C. 1a(18), and generally includes only institutional investors. In addition to DCMs, an SEF may make any swap, including an [event contract] that is a swap, available for trading. See CEA sec. 5h, 7 U.S.C. 7b–3. However, swap trading on an SEF is not available to the general public, but rather only to eligible contract participants.

¹²⁰ See generally CEA sec. 5, 7 U.S.C. 7. SEFs are subject to similar requirements. See CEA sec. 5h, 7 U.S.C. 7b–3.

¹²¹ See 7 U.S.C. 7(d).

¹²² Compare *Flaherty*, 172 F.4th at 227, with *Assad*, 2026 WL 2543846.

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contracts based on sports-related events to U.S. persons. More than fifteen pending DCM applications have been filed since 2025. Many of these newly designated DCMs and platforms with pending applications have stated they intend to offer contracts that could be considered event contracts. In August 2026, average monthly trading volume in event contracts was about \$1.5 billion across all DCMs reporting to the Commission.¹²³ Of that volume, approximately \$1.2 billion was in event contracts based on sports-related events; approximately \$11 million was in event contracts based on politics-related events, including elections-related event contracts; and approximately \$4 million was in event contracts based on weather-related events.¹²⁴

3. Benefits

Because the Commission does not expect the Proposal to change the legal rights or obligations of market participants under the CEA, it is the Commission's preliminary belief that the primary benefit of this Proposal would be added certainty that event contracts, including those based on sports-, politics-, cultural-, and weather-related events, are swaps that are subject to the exclusive jurisdiction of the CFTC. Although the extent of the benefit may be limited by the ongoing efforts of certain state regulators to assert their jurisdiction over certain event contracts, market participants—including DCMs listing event contracts— may benefit by spending less time and fewer resources determining which regulatory regime applies and by saving the costs of complying with various state regulatory regimes.

¹²³ Estimated based on nonpublic daily trade and reporting data reported by DCMs under rule 16.02. See 17 CFR 16.02; see also Kaitlyn Radde, *Trading Volume on Prediction Markets Has Soared in Recent Months*, Pew Research Center (May 27, 2026), available at <https://www.pewresearch.org/?p=306935>.

¹²⁴ Estimated based on nonpublic daily trade and reporting data reported by DCMs under rule 16.02.

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4. Costs

It is the Commission's preliminary belief that there should be negligible costs from codifying that event contracts, including those based on sports-, politics-, cultural-, and weather-related events, are swaps subject to the Commission's exclusive jurisdiction, as there would be no expected changes required of market participants under the CEA or the Commission's regulations.

However, the Proposal may result in indirect costs to the extent that market participants respond to the added certainty by shifting activity toward the CFTC swaps framework. For example, states might receive less fee and other revenue if entities choose to structure their business operations as DCMs instead of structuring their operations within state regulatory frameworks. It is also possible that costs could also result from the potential transition, generating short-term frictions. For example, market participants could incur reconciling costs where Federal and state regulatory regimes overlap during the transition, such as unwinding or maintaining state licenses in parallel with CFTC-regulated obligations during the transition.

5. Section 15(a) Factors

a. Protection of Market Participants and the Public

The Commission preliminarily believes that classification certainty provided by the Proposal may allow market participants to more readily operate within the federal swaps framework and its attendant protections. Insofar as this certainty leads to an increase in the number of event contracts listed on DCMs, the protection of market participants and the public may be advanced by application of the Core Principles to the market. However, certainty provided by the Proposal could be perceived as a safety signal by retail participants. This may raise risk appetite for certain categories of event

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contracts as retail market participants may update their beliefs about oversight of these products and under-weigh their inherent risk and increase their exposure to these products without parallel improvements in disclosure or education that could improve comprehension of risks related to event contracts based on sports-, politics-, cultural-, or weather-related events.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission preliminarily believes that the Proposal is unlikely to affect the efficiency or financial integrity of the futures markets, but there could be effects on the swaps market. To the extent that firms restructure their operations from state regimes to the federal swaps regime, the Proposal could facilitate direct competition between CFTC-regulated DCMs and state-regulated businesses. However, because the federal swaps regime requires infrastructure with fixed costs, certainty provided by the Proposal might favor incumbent DCMs with established infrastructure and customer bases. Furthermore, the Commission preliminarily believes that clarifying that event contracts are swaps may advantage exchanges already configured for federal compliance relative to state-licensed platforms, shifting costs unevenly where new entrants may face higher fixed costs to reach swaps compliance scale, potentially reducing competitive pressure on fees, service quality, and innovation diversity at the margin.

c. Price Discovery

The Commission preliminarily believes that price discovery for event contracts will not be materially affected because the Proposal does not alter trading rules, exchange requirements, or information-dissemination obligations for the contracts it covers, which the Commission already expects to trade on DCMs subject to existing Core Principles.

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d. Sound Risk Management Practices

The Commission preliminarily believes that risk management practices will not be materially affected because the Proposal does not alter the application of Commission requirements regarding risk management, including DCM risk-management Core Principles.

e. Other Public Interest Considerations

Codification of the Commission's understanding that event contracts, including those based on sports-, politics-, cultural-, and weather-related events, are swaps may improve legal predictability and administrability, consistent with the CEA's purpose of encouraging effective self-regulation of trading facilities, clearing systems, and market participants. The Commission preliminarily believes that the Proposal may reduce the resources market participants devote to complying with various, sometimes-contradictory state regulatory regimes.

But, insofar as the certainty provided by the Proposal increases the volume of event contracts listed on DCMs, the Commission preliminarily believes that retail market participants could be harmed because some event contract trading characteristics (such as outcomes occurring at unpredictable intervals, perception of skill-based decision making, near-miss experiences, and potential for loss-chasing behavior) can be associated with addictive potential. It is possible that these characteristics can lead to financial harm to participants who accumulate losses through high-frequency trading, allocate disproportionate resources to trading activity, and have trouble disengaging voluntarily.

6. Regulatory Alternatives

Given the Proposal seeks to articulate the Commission's existing jurisdiction over swaps, the Commission has not identified any viable regulatory alternatives.

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D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA as well as the policies and purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.¹²⁵

The Commission preliminarily believes that the public interest to be protected by the antitrust laws is the promotion of competition. The Commission has considered this Proposal to determine whether it is anticompetitive and has identified no anticompetitive effects. Having done so, it also has not identified any less anticompetitive means of achieving the purposes of the CEA.

E. Executive Orders 12866, 13563, and 14192

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or

¹²⁵ 7 U.S.C. 19(b).

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safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

OMB has determined that this action is a significant regulatory action as defined under section 3(f) of Executive Order 12866 and therefore this action has been reviewed by OMB, consistent with Executive Order 14215.

This Proposal, if finalized as proposed, is not expected to be an Executive Order 14192 regulatory action, because it imposes no more than *de minimis* net costs.

List of Subjects in 17 CFR Part 1

For the reasons set forth in the preamble, the Commission proposes to amend 17 CFR part 1 as follows:

PART 1 – General Regulations Under the Commodity Exchange Act

1. The authority citation for part 1 continues to read as follows: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a-1, 7a-2, 7b, 7b-3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24 (2012).
2. In section 1.3, in the definition of the term Swap, revise paragraphs (2)(i)(E) and (F) and add paragraph (2)(i)(G) to read as follows:

§ 1.3 Definitions.

* * * * *

Swap.

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* * * * *

(2) * * *

(i) * * *

(E) A forward rate agreement;

(F) A non-deliverable forward involving foreign exchange; and

(G) Event contracts, including those based on sports-, politics-, cultural, and weather-related events.

Issued in Washington, DC, on [DATE], by the Commission.

Christopher Kirkpatrick,
Secretary of the Commission.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

QCX LLC d/b/a Polymarket US

(b) County of Residence of First Listed Plaintiff New York County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Attachment to Civil Cover Sheet.

DEFENDANTS

Attorney General of Ohio, Andy Wilson, et al.

County of Residence of First Listed Defendant Franklin County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Andy Wilson, in his official capacity as Attorney General of
Ohio, et al.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983; Ex Parte Young

Brief description of cause:

Ohio sport-wagering laws violate the Commerce Clause and are federally preempted as applied to Plaintiff.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
0.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

Oct 16, 2026

SIGNATURE OF ATTORNEY OF RECORD

/s/ Keith Shumate

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Attachment to Civil Cover Sheet

Defendants' Addresses and Counties

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