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BY ELECTRONIC SUBMISSION

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Commodity Futures Trading Commission
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Re: Prediction Markets – RIN 3038–AF65

Andreessen Horowitz ("a16z") appreciates the opportunity to submit the below comments on the advance notice of proposed rulemaking on prediction markets ("ANPRM") issued by the Commodity Futures Trading Commission ("CFTC" or "Commission") on March 12, 2026. We applaud the CFTC's commitment to ensuring that its regulatory framework promotes the responsible development of prediction markets.

a16z is a venture capital firm that invests in seed, venture, and growth-stage technology companies, focused on AI, bio and healthcare, consumer, crypto, enterprise, fintech, games, infrastructure, and companies building toward American dynamism. As of 2026, a16z has more than $100 billion of regulatory assets under management across multiple funds, with more than $7.6 billion in committed capital for crypto funds. In crypto, we primarily invest in companies using blockchain technology to develop protocols that people will be able to build upon to launch Internet businesses, and we also invest in startups building prediction markets and related blockchain-based services.

a16z's comments focus on the following areas: (1) considerations in applying the statutory core principles for designated contract markets ("DCM") to prediction markets; (2) the "special rule" for event contracts involving certain activities; (3) manipulation, "insider trading," conflicts of interest, and related considerations regarding the types of event contracts that are appropriate for listing on a DCM; and (4) classification of event contracts as CFTC-regulated derivatives and the Commodity Exchange Act's ("CEA") preemption of state gaming laws with respect to prediction markets. In our response to each relevant question from the ANPRM, we provide the question number to facilitate the Commission's review.

1. Core Principles and Commission Regulations (ANPRM Section II.A)

A. Impartial Access (Question II.A.2.a)

As the Commission notes, CFTC Rule 38.151, adopted under DCM Core Principle 2, requires a DCM to provide market participants with "impartial access to its markets and services," including through "access criteria that are impartial, transparent, and applied in a

non-discriminatory manner."[1] We echo the federal court rulings and CFTC court filings, discussed below, that recognize that ongoing state actions to regulate or ban prediction markets impose a serious barrier to impartial access.

These state actions include legislation proposing to regulate, restrict, or ban prediction markets, as well as cease-and-desist letters, enforcement actions, and even criminal charges issued by state attorneys general and state gaming authorities against DCMs and futures commission merchants that offer trading in event contracts to state residents.[2]

In the adopting release for the rulemaking promulgating the DCM impartial access requirement ("Impartial Access Rulemaking"), the CFTC explained that DCM access criteria "should be based on the financial and operational soundness of the participant" and not on any other factors. Requiring a DCM to exclude users from trading in certain of its contracts based on their geographic location arguably requires the DCM to offer access to such contracts "in a discriminatory manner," i.e., based on factors other than a user's financial and operational soundness. Though the Sixth Circuit Court of Appeals has noted the Commission's intention that the impartial access requirement prevent DCMs from using access restrictions as a "competitive tool against certain participants,"[3] the Commission's broader concern was that such restrictions could pose "barriers to entry" impeding its efforts to foster open, competitive, liquid markets on DCMs.[4] Such efforts would likewise be hampered by requirements to exclude entire states' populations from a DCM.

A federal court recently recognized the Catch-22 these state actions create for DCMs, holding that Tennessee gaming law is preempted as applied to a DCM's offering of event contracts under, *inter alia*, "impossibility" conflict preemption.[5] The court rejected the state's arguments that DCMs could provide such impartial access by becoming licensed with the state's gaming authority, explaining that state law requiring gaming licensees to do business only in Tennessee would require the DCM to operate one exchange excluding all participants in the state and another exchange excluding all participants outside the state.[6] Other states' gaming laws contain similar restrictions.[7] The court opined that it could not see how DCMs "could allow impartial access nationwide" in compliance with such laws, or more generally "how a federally regulated nationwide derivatives exchange could function in this way."[8]

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[1] 17 C.F.R. § 38.151(b), (b)(1).
[2] *See, e.g.*, *State v. KalshiEX LLC,* No. CR2026-000173 (Ariz. Super. Ct. Maricopa Cnty. Mar. 17, 2026); *KalshiEx LLC v. Schuler*, No. 2:25-cv-01165, slip op. at 6–7 (S.D. Ohio Mar. 9, 2026) (summarizing ongoing federal litigations involving prediction market platforms); *see also, e.g.*, N.Y. State Senate Bill S8889 (proposing licensing requirement for operating a "prediction market," broadly defined as "any platform, electronic or physical, that allows participants to place wagers, trades, or financial positions on the outcome of future events, including but not limited to political, economic, weather, or other contingencies, where payouts are tied to event outcomes").
[3] *KalshiEx LLC v. Schuler*, Case No. 26-3196, slip op. at 12-13 (6th Cir. Apr. 24, 2026).
[4] *See* Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36612, 36624-25 (June 19, 2012).
[5] *KalshiEx LLC v. Orgel*, No. 3:26-cv-00034, slip op. at 19-20 (M.D. Tenn. Feb. 19, 2026).
[6] *Id.*
[7] *See, e.g.*, Mo. Const. art. III, § 39(g)12 (requiring wagering licensees to take steps to ensure individuals placing wagers are physically located within the state); Conn. Gen. Stat. § 12-863(b) (same); Ohio Rev. Code §§ 3775.11(A), 3775.12(A) (same).
[8] *Orgel*, No. 3:26-cv-00034, slip op. at 19-20.

Moreover, as the CFTC and federal appellate and district courts have explained, the state licensing requirement conflicts with the congressional intention to establish a uniform national regulatory framework for DCMs, and thereby eliminate the "total chaos" that ruled when DCMs were subject to a "patchwork" of state regulations, each with different requirements and prohibitions.[9]

In addition to harming state residents who lose access to markets in which they wish to trade, these state actions also harm the overall market. In the Impartial Access Rulemaking, the Commission explained that "granting impartial access to participants that satisfy a DCM's access requirements will likely enhance the DCM's liquidity and the overall transparency of the swaps and futures markets."[10] Conversely, being forced to deny impartial access to users in states that seek to license or prohibit certain event contracts will likely severely circumscribe available liquidity in those contracts, particularly given the large number of states involved.[11]

B. Contract Resolution (Question II.A.2.b)

In establishing and enforcing the terms and conditions of event contracts as required under Core Principle 2, and especially the resolution criteria for a particular contract, DCMs from time to time see disputes as to whether the event underlying a particular contract occurred.[12] To address this, DCMs have set forth detailed terms, conditions, and rules attempting to define the outcome clearly such that it is not susceptible to dispute. Yet the very uncertainty that drives demand for event contracts also makes it difficult to anticipate all the ways in which a contract's ultimate outcome may be ambiguous. Though the contracts subject to recent disputes have been resolved in accordance with exchange rules and the contract terms and conditions, these disputes illustrate the practical difficulties inherent to reducing a world of nearly infinite possible outcomes to a binary result.

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[9] *See, e.g.*, *KalshiEX LLC v. Flaherty*, No. 25-1922, slip op. at 5, 12-13 (3d Cir. Apr. 6, 2026); Complaint for Declaratory and Injunctive Relief ¶¶ 43–54, *United States v. Illinois*, No. 1:26-cv-03659 (N.D. Ill. Apr. 2, 2026); Brief for CFTC as Amicus Curiae Supporting Appellant, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 25-7187 (9th Cir. Feb. 17, 2026) ("CFTC Amicus Brief").

[10] 77 Fed. Reg. at 36624-25.

[11] Currently, at least twelve states are in litigation regarding the application of the state's gaming laws to CFTC registered entities or registrants. *See also, e.g.*, Brief of Amici Curiae of Nevada, Ohio, 32 Other States, District of Columbia, and Northern Mariana Islands Supporting Appellants, *KalshiEx LLC v. Flaherty*, No. 25-1922 (3d Cir. June 17, 2025) (*amicus* brief of 34 states, the District of Columbia, and the Northern Mariana Islands supporting the State of New Jersey in its appeal against KalshiEx).

[12] Examples of recent disputes regarding the outcome of event contracts include whether Ayatollah Khamenei's death should resolve a contract predicting he would be "out as Supreme Leader" of Iran to "Yes," and whether Cardi B dancing and appearing to lip synch at the Super Bowl halftime show should resolve to "Yes" a contract on whether she would "perform" there. *See, e.g.*, Kevin T. Dugan & Krystal Hur, *Bets on Fate of Iran's Khamenei Spark Uproar at Leading Prediction Markets*, WALL ST. J. (Mar. 1, 2026), https://www.wsj.com/world/middle-east/bets-on-fate-of-irans-khamenei-spark-uproar-at-leading-prediction-markets-045f093d?gaa_at=eafs&gaa_n=AWEtsqfXO9M9JGPoa_c3IJniQPf05lX8eO9u_Gnd5OonuTD33HJdbLoZw3gT&gaa_ts=69cf2410&gaa_sig=JuMR5m4DPQruhyOIGV5OKUY_qgHp97LTGbjeOS2LjtixUPg_OSpn0ObFwsPXpFKCLlzEQnEuUlXfA8typ6NLkA%3D%3D; Mary Cunningham, *Dispute Over Cardi B's Super Bowl Cameo Roils Prediction Markets,* CBS NEWS (Feb. 11, 2026), https://www.cbsnews.com/news/cardi-b-super-bowl-prediction-market-dispute/.

To address these concerns, the CFTC and DCMs may wish to look to the International Swaps and Derivatives Association's Determinations Committees ("DCs") for credit derivatives as a model. DCs are specialized bodies governed by experts in the credit derivatives industry.[13] Each regional DC's key function is to apply relevant definitions and other terms to specific cases to determine whether a particular event underlying the contract—i.e., a credit event, such as a failure to make a debt payment, or bankruptcy—has occurred.[14] There is broad support for DCs within the credit derivatives market; a recent independent report noted that their existence contributes to market confidence, indirectly enhances liquidity, and reduces transaction costs.[15] Prediction markets may benefit from a similar process by which, in doubtful cases, outcome determinations binding on all market participants can be made by a panel that includes experts in the subject matter of the contract. Different DCs may be appropriate for contracts referencing different event categories—e.g., sports, economics, and political and geopolitical developments—to take advantage of specialized expertise in each of these areas. This difference from existing DCs is appropriate given the wider universe of topics covered by prediction markets, as compared with the relatively limited scope of derivatives addressed by DCs today (i.e., credit derivatives).

Certain prediction market DCMs already have broadly similar arrangements in their rules for determining whether the events underlying their contracts have occurred, in the form of outcome review committees made up of members of the DCM's board, with independent directors comprising a majority.[16] The Commission may wish to encourage the use of such neutral adjudicating bodies to address cases of uncertainty—for example, through an addition to the Acceptable Practices for Core Principle 2 in Appendix B to Part 38. Encouraging or requiring publication of any such determinations, with appropriate redactions, could contribute to consistent interpretations of similar event outcomes across markets, which is critical to market confidence. This would also be generally consistent with the Commission's approach to other DCM trade reviews.[17]

C. Resistance to Manipulation (Question II.A.2.c)

Many event contracts appear to be highly resistant to manipulation—for example, those that resolve based on data from a federal or state government agency or a well-established index or benchmark based on observed data. However, we agree with CFTC Division of Market

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[13] Charter for the Credit Derivatives Governance Committee (Feb. 12, 2026), available at https://www.cdsdeterminationscommittees.org/documents/2026/03/gc-charter-february-2026-version.pdf/ ("…[I]t is intended that the Governance Committee be comprised of senior representatives of the credit derivatives market, including from such functions as operations, sales, trading, risk and other management positions.").
[14] *See* Credit Derivatives Determinations Committee, https://www.cdsdeterminationscommittees.org/ (last visited Apr. 16, 2026).
[15] *See* Linklaters LLP, Report for the International Swaps and Derivatives Association, Inc. on the Function, Governance and Membership of the Credit Derivatives Determinations Committees (Apr. 29, 2024), available at https://www.isda.org/a/lS1gE/DC-Review-Report-042924.pdf. The report also suggested certain enhancements to DCs and their governance, which DCMs may wish to consider as relevant to their markets.
[16] *See, e.g.*, KalshiEX Rules 2.7, 7.1; ForecastEx Rules 203(e), 415.
[17] *See, e.g.*, 17 C.F.R. § 38.157 (requiring trade price adjustments and cancellations to be transparent to the market and subject to publicly available standards).

Oversight staff[18] and Division of Enforcement Director David Miller[19] that contracts where the outcome—or the determination of the outcome—is within the control of a single individual or a small group of individuals acting in concert (an "Event Controller") may warrant additional safeguards against manipulation.

We address trading on inside information in the response to Question II.E.30 below. As discussed further therein, prohibited-trader lists are a helpful tool for promoting integrity, fairness, and market confidence in event contracts. To facilitate the creation of such lists, DCMs may run rigorous customer identification programs ("CIP") and know-your-customer ("KYC") checks, including trader self-certifications. DCMs may also coordinate with relevant governing bodies for the activity referenced by the contract (as discussed in our response to Question II.E.30 below) to confirm whether traders are Event Controllers for a given contract. DCMs should then use this information to review and reject trades by traders on the prohibited list for the contract. Leveraging blockchain technology can also help promote integrity and market confidence in event contracts. DCMs that interface with blockchain networks benefit from the auditability of on-chain transaction records, which can enable both regulators and market participants to monitor trading activity in real time. For this reason, we encourage the CFTC to work with DCMs to consider how incorporation of blockchain technology can be accomplished consistent with the Core Principles and CFTC Rules, as discussed in the response to Question II.A.2.h below.

For sports-related contracts, DCMs can also refer to league integrity standards or guidance when developing oversight programs, establish information-sharing arrangements with relevant sports integrity monitoring organizations, and cooperate with league-run investigations.

However, these guardrails alone may not provide sufficient protection. Even where an Event Controller does not trade in the relevant contract, manipulation risks may persist—for example, if that Event Controller is incentivized to alter the outcome, or assist others in influencing the outcome, to benefit persons who *are* trading in that contract.

Accordingly, the Commission may wish to encourage DCMs to prohibit traders from seeking to induce Event Controllers to sway the relevant outcome in a direction favorable to the trader. This is relevant for individuals whose actions are the subject of a contract (e.g., an athlete whose performance in a game is the subject of the contract) and related insiders, as well as personnel of source agencies providing the reporting or data used in the contract's resolution criteria (e.g., news reporters and employees of government agencies publishing statistics[20]). Such a prohibition would seem consistent with Core Principle 3's requirements for ensuring contract

[18] Div. of Mkt. Oversight, CFTC, Prediction Markets Advisory, CFTC Staff Letter No. 26-08 (Mar. 12, 2026), available at https://www.cftc.gov/csl/26-08/download.
[19] David Miller, Director, Division of Enforcement, CFTC, Remarks at NYU Law School: CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC (Mar. 31, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/opamiller1.
[20] Please see our response to Question II.E.32 for further discussion of appropriate restrictions on personnel of government agencies involved in publishing source data for event contracts.

resistance to manipulation,[21] and Core Principle 12's requirement that DCMs "establish and enforce rules . . . to promote fair and equitable trading on the contract market."[22]

Altering the outcome of a contract to benefit a third party's positions in that contract may separately constitute manipulation, as discussed in our response to Question II.E.30 below and the CFTC Division of Enforcement's recent advisory on prediction markets.[23] Inducing an Event Controller to take such an action may constitute manipulation, aiding and abetting manipulation, conspiracy, or other violations of the CEA and federal and state criminal laws. However, an express prohibition on such inducements in CFTC and exchange rules, establishing clear standards for identifying "Event Controllers," could be a helpful additional deterrent, particularly for individual non-professional traders who are new to commodity derivatives markets and may be less familiar with the law in this area.

Clear standards for determining whether an individual is an Event Controller are also important for assessing whether an event contract transaction executed by that person is a commodity derivative subject to the CEA and state-law preemption. As Question II.F.35 of the ANPRM notes, event contracts are generally classified as a swap on an "excluded commodity." However, the two relevant prongs of the "excluded commodity" definition require that the relevant event be outside the control of the parties.[24] If that element of these definitional prongs is not met because one of the parties to the contract is an Event Controller, this could call into question the regulatory classification of the transaction.[25]

D. Blockchain-Based Prediction Markets (Question II.A.2.h)

We support efforts to make blockchain-based prediction markets available in the United States, subject to an appropriate regulatory framework. Benefits of such markets may include ease of accessibility, generally low transaction costs, 24/7 availability, ability to use tokenized collateral for contracts in an automated fashion, potential for instantaneous and automated settlement, and self-custody to mitigate defalcation risk.[26] DCMs that interface with or otherwise

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[21] 17 C.F.R. Part 38, Subpart D.
[22] 17 C.F.R. § 38.650(b).
[23] Division of Enforcement, CFTC, Advisory on Enforcement Authority over Event Contracts (Feb. 25, 2026), https://www.cftc.gov/media/13351/Enf_AdvisoryKalshi022526/download ("CFTC Enforcement Advisory").
[24] 7 U.S.C. § 1a(19). The relevant prongs are: "(iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or (iv) 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."
[25] One might argue that the transaction is a swap even if it does not reference an excluded commodity—for example, because it still provides for a payment "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). Whereas other prongs of the "swap" definition expressly reference "commodities," this prong does not. To our knowledge, the CFTC and federal courts have not addressed this issue. Of note, the "special rule" in CEA Section 5c(c)(5)(C), discussed herein, applies only to event contracts in excluded commodities.
[26] *See, e.g.*, Michael S. Selig, Chairman, CFTC, *Remarks at 9th Annual DC Blockchain Summit* (Mar. 17, 2026), available at: https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig3; Paul S. Atkins, Chairman, Sec. & Exch. Comm'n, and Commissioner Hester M. Peirce, Sec. & Exch. Comm'n, *Number Go Down and Other Schadenfreude* (Feb. 18, 2026), available at: https://www.sec.gov/newsroom/speeches-statements/atkins-peirce-021826-number-go-down-other-schadenfreude;

use blockchain networks also benefit from enhanced transparency due to the inherent auditability of on-chain transaction records, which offers both regulators and market participants the ability to monitor trading activity on a continuous, real-time basis.

In order to better enable the use of blockchain infrastructure to facilitate market activity, the DCM Core Principles and certain other CEA provisions should be tailored to the realities of decentralized blockchain networks and protocols, where no person or group controls functionality or operations.[27] Conditional relief or other alternative paths for compliance that are workable in a decentralized context will need to be further explored. In this regard, we direct the Commission to our previous submission in response to the President's Working Group on Digital Asset Markets report, which outlines our recommendations to clarify the applicability of CEA requirements to decentralized derivatives trading protocols and front-end interfaces for such protocols.[28]

2. Public Interest Factors (Questions II.B.7-8, 10-11)

In conducting a public-interest analysis for event contracts that fall within one or more of the categories enumerated in the "special rule" under CEA Section 5c(c)(5)(C), it is appropriate to consider the public interests and statutory purposes enumerated in Section 3(a) of the CEA.

In particular, the Commission could consider whether market participants experience risks related to the underlying event that could be hedged using the relevant event contracts, thus potentially providing "a means for managing . . . price risks" under CEA section 3(a). In this regard and in response to Question II.B.10, event contracts can be useful hedging tools for a wide variety of risks. Event contracts related to geopolitical events, weather, inflation, GDP, and employment figures are common and well-established risk-management tools. And the Third Circuit Court of Appeals and the CFTC have acknowledged the potential financial, economic, and commercial risks of the contests underlying sports-related event contracts, indicating their utility for hedging price risk.[29] Similarly, political event contracts can allow a variety of companies to hedge risks to their businesses associated with potential policy changes resulting from election outcomes.

Another important public-interest consideration is whether a given contract could be a vehicle for "assuming price risk" (e.g., by speculators or liquidity providers offering contra interest for the hedgers discussed above) or for price discovery or price dissemination with respect to the contract's underlying, again as included in the public interests and statutory purposes set forth in Section 3(a) of the CEA. We believe that prediction markets' special

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Miles Jennings et al., *An Economic Analysis of Safe Harbor for Blockchain Applications*, a16zcrypto (Apr. 7, 2026), available at https://a16zcrypto.com/posts/article/economic-analysis-safe-harbor-blockchain-applications-defi/.

[27] *See, e.g.*, Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, 91 Fed. Reg. 13714, 13718 n.30 (Mar. 23, 2026) (defining a crypto system as "decentralized" if it "functions and operates autonomously with no person, entity, or group of persons or entities having operational, economic, or voting control of the crypto system").

[28] a16z, Response to Request for Input on All Recommendations for the CFTC in the President's Working Group on Digital Asset Markets Report, Comment No. 113958, CFTC (Nov. 28, 2025).

[29] Please see our responses to Questions II.C.21 and II.F.33 below for further discussion of this topic and the corresponding risk-management value of such event contracts.

mechanism for using pricing signals to aggregate and distribute information is a unique form of price discovery and price dissemination that helps to reveal probabilities for uncertain events of potential financial, economic, and commercial consequence, providing an important public benefit.[30]

The above considerations should be addressed by a DCM prior to listing a contract as part of the market research contemplated in Appendix C to Part 38, conducted to ensure the contract's "design meets the risk management needs of prospective users and promotes price discovery of the underlying commodity" and "will perform the intended risk management and/or price discovery functions."[31] In conducting a public interest determination under CEA Section 5c(c)(5)(C), the Commission could look in the first instance to the DCM's prior work to address the above considerations as part of the contract listing process.

The Commission's commitment to promoting responsible innovation consistent with the statutory purposes under Section 3(a) of the CEA may also prompt it to consider whether particular contracts may benefit if the listing DCM were to offer users configurable risk limits of the types identified in Question II.C.19.e. (separate from the mandatory limits a DCM imposes, e.g., to manage the risks of electronic trading). In addressing this question, the CFTC should take into consideration the DCM's reasoned analysis of what is appropriate for its current and expected participant base.

3. Activities Listed in CEA Section 5c(c)(5)(C) (ANPRM Section II.C)

A. Gaming (Question II.C.19)

The CFTC should not look to state law to define "gaming." State definitions of "gaming," "gambling," "wagering," and similar terms vary, with many definitions drawn so broadly as to include *any* event contract, not only the sports-related contracts that have recently drawn headlines. For example, Arizona and Connecticut law and regulation define a wager as risking a thing of value "*on an uncertain occurrence*,"[32] and Arizona law defines "event wagering" as "accepting wagers on sports events *or other events* . . . by any system or method of wagering, including in person or over the Internet through websites and on mobile devices."[33] Alabama and Alaska laws each define "gambling" as staking or risking a thing of value "upon the outcome of a contest of chance *or a future contingent event not under [the staking person's] control or influence*."[34] Idaho defines "gambling" as risking a thing of value "for gain contingent in whole or in part upon lot, chance, the operation of a gambling device *or the happening or outcome of an event, including a sporting event*."[35] Wyoming uses the same definition, except that like Alabama and Alaska it requires that the person taking the risk has no control over the event

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[30] *See, e.g.*, Scott Duke Kominers, Alex Tabarrok, & Sonal Chokshi, "Prediction Markets—Everything You Need to Know," a16z Crypto Show (Sept. 25, 2025), https://a16zcrypto.com/posts/podcast/prediction-markets-explained/.
[31] This guidance refers to "futures" because it was written before the CFTC was granted jurisdiction over swaps. However, much of it is relevant here given the similarities between futures and DCM-listed swaps.
[32] Ariz. Rev. Stat. § 5-1301(23)(a) (emphasis added); Regs. Conn. State Agencies § 12-865-1 (86).
[33] Ariz. Rev. Stat. § 5-1301(4)(a) (emphasis added).
[34] Ala. Code § 13A-12-20(4) (2025); Alaska Stat. § 11.66.280(3) (2025) (emphasis added).
[35] Idaho Code § 18-3801 (2025).

outcome.[36] As is clear from this survey, these statutory definitions are so broad that they could encompass everything from wagering on sports to investing in stocks to purchasing collectibles.

The use of state definitions is also inappropriate given the clear congressional intent to preempt state laws that purport to license or prohibit a DCM's operations within the state's borders (discussed in the response to Question II.F.33 below).

In drawing a distinction between gaming and other contests or similar activities associated with uncertain outcomes, the Commission may find the element of chance to be a useful lens. Whereas contests and similar events whose outcomes are determined primarily by chance should constitute gaming, events whose outcome is determined largely or primarily by the skills, other salient qualities, or actions of the relevant participants should not. The latter are analogous to the activities that underlie many well-established event contracts that do not involve gaming. For example, election outcomes are determined in large part by the skills and other salient qualities of the candidates and, as such, do not constitute or involve gaming.[37]

Moreover, returning to the public interest factors discussed above, contracts on outcomes resulting from chance are unlikely to provide the kind of information aggregation utility via price discovery that existing prediction markets offer. If an outcome is purely or primarily up to chance, there is no dispersed knowledge about factors affecting the outcome that could be aggregated through the incentives event contracts provide, and discovered by the market via contract pricing signals.

Regardless of the precise way in which the line between gaming and other activities is drawn for purposes of event contract regulation, the CFTC is better-positioned than the states to delineate this boundary, given the need for a uniform national standard for DCM-listed event contracts and the CFTC's exclusive jurisdiction over—and decades of history overseeing—event contracts.[38] And the discretion given to the CFTC in CEA Section 5c(c)(5)(C) indicates that Congress intended for the CFTC, rather than state legislators, to determine what constitutes "gaming" within the meaning of that section, as well as whether contracts involving gaming are in the public interest and therefore may be listed on a DCM (as discussed below).[39] DCMs in turn should have discretion in implementing any CFTC interpretations in this area in light of the wide variety of contracts that may be offered and consistent with the role of DCMs as self-regulatory "first lines of defense"[40] and the reasonable discretion that Section 5(d) of the CEA affords to DCMs in complying with applicable requirements.[41]

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[36] Wyo. Stat. Ann. § 6-7-101(a)(iii) (2025).

[37] *See KalshiEX LLC v. Commodity Futures Trading Comm'n*, 119 F.4th 58 (D.C. Cir. 2024) (holding that election event contracts do not involve gaming).

[38] *See, e.g.*, Michael S. Selig, Chairman, CFTC, Remarks: The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance (Jan. 29, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1 (noting that prediction markets "have operated within the CFTC's regulatory perimeter for more than two decades").

[39] *See, e.g.*, *Flaherty*, No. 25-1922, slip op. at 6 (explaining that CEA Section 5c(c)(5)(C) gives the CFTC "discretionary power" to review and prohibit contracts in the enumerated categories).

[40] *E.g.*, Miller, *supra* note 19.

[41] *See* 7 U.S.C. § 7(d)(1)(B).

B. Changes to Commission Rules Related to Section 5c(c)(5)(C) Activities (Question II.C.21)

The "special rule" for event contracts under CEA Section 5c(c)(5)(C) provides that the Commission "may determine" that event contracts on excluded commodities listed on a DCM or swap execution facility ("SEF") are contrary to the public interest if the contracts 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." If the Commission makes such a determination, then such contracts may not be listed on a DCM or SEF.

Thus, the "special rule" for event contracts in Section 5c(c)(5)(C) requires a two-step analysis: the CFTC first determines whether an event contract "involves" one of the activities in the enumerated categories. If it does, then the CFTC determines whether the event contract is contrary to the public interest (and thus prohibited).

As written, CFTC Rule 40.11 abdicates the CFTC's responsibility to make public interest determinations under the second step of the special rule. In its 2011 rulemaking promulgating Rule 40.11, the Commission prohibited all event contracts falling within the enumerated categories, without ever actually determining that all such event contracts *are* against the public interest, or otherwise explaining *why* it decided to enact this prohibition, beyond a single sentence quoting the relevant Senate Committee Chair's views on the need to prevent "gambling through supposed event contracts."[42] This action is inconsistent with Section 5c(c)(5)(C) and with Section 706 of the Administrative Procedure Act ("APA"),[43] which require clear and concrete public interest determinations and a reasonable explanation of the CFTC's actions, respectively.[44]

The CFTC further failed to explain why it believes that Section 5c(c)(5)(C) authorizes it to impose a blanket ban on all event contracts in the enumerated categories, rather than analyzing specific contracts or classes of contracts in terms of their individual public interest merits.

The CFTC's imposition of a blanket ban was particularly irrational because it applied prospectively to contracts that had not yet been developed and whose effect on the public interest thus could not possibly have been known. Subsequent developments proved the folly of such a far-reaching, inflexible prohibition: at the time Senator Lincoln made her statement, wagering on sports was illegal under federal law. Seven years later, this federal statutory ban was overturned in *Murphy v. National Collegiate Athletic Association*,[45] and sportsbooks that may benefit from

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[42] CFTC, Final Rule, Provisions Common to Registered Entities, 76 Fed. Reg. 44776, 44785-86 (July 27, 2011) (quoting Senator Blanche Lincoln, Chair, Senate Committee on Agriculture, Nutrition, & Forestry).
[43] 5 U.S.C. § 706(2)(A).
[44] *See, e.g.*, *Cboe Futures Exch., LLC v. SEC*, 85 F.4th 574 (D.C. Cir. 2023) (vacating inadequately explained SEC action as arbitrary and capricious); *see also FCC v. Prometheus Radio Project*, 592 U.S. 414 (2021) ("The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained.").
[45] 584 U.S. 453 (2018).

the ability to hedge betting exposures have since proliferated, raising new public-interest considerations that will never be addressed under the current version of Rule 40.11.[46]

Indeed, the 2011 rulemaking did not even appear to recognize that the step-two public interest determination is *required*. In the proposed rulemaking and the final rulemaking, the Commission stated that Section 745 of the Dodd-Frank Act authorized it to prohibit contracts in the enumerated categories and that it had determined to do so, but never acknowledged that such a prohibition is only authorized *if* the CFTC determines that the contracts are contrary to the public interest.[47] Indeed, the CFTC's only mention of the public interest in this context was a quotation of a colloquy in the *Congressional Record* by Senator Lincoln regarding the need to "protect the public interest from gaming and other events [sic] contracts." But this reliance on apparent congressional views of the public interest—to the extent they can be gleaned from a single statement by a single Senator, even the relevant Committee Chair[48]—is backwards. Section 5c(c)(5)(C) makes clear that Congress intended for the CFTC to determine whether contracts in one of the enumerated categories are against the public interest. Had Congress wished for its own views on the public interest to control, it would have simply prohibited (or permitted) these contracts outright, rather than providing for the CFTC to make its own public interest determination in order to prohibit the contracts.

The Commission should revise Rule 40.11 to provide for a robust and clearly articulated, case-by-case public interest determination. Given the proliferation of event contracts, in certain cases it may be appropriate for the Commission to conduct its determination with respect to a clearly defined group or class of contracts, particularly if the contracts were listed pursuant to a single parameterized self-certification. For example, if a DCM were to list multiple contracts, each on whether a different state lottery's winning ticket would be above or below a given number, it may be reasonable for the Commission to make a single determination for all such contracts, rather than analyzing each state's lottery individually.

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[46] In 2020, DCM ErisX submitted a (since-withdrawn) self-certification of RSBIX NFL Futures Contracts, which were intended for hedging by users with commercial exposure to sporting activity. Multiple stakeholders filed supportive comments recognizing this hedging utility and the market-integrity benefits of listing such contracts on a CFTC-regulated exchange, including gaming industry associations, tribal entities, and professional sportsbooks. For example, Seneca Gaming Corporation supported the contracts as "serv[ing] an important economic purpose for our industry by allowing regulated sportsbooks to better manage economic risk . . . allow[ing] our industry access to the same kinds of valuable hedging tools that are used by many other industries." Seneca Gaming Corporation, Comment on Industry Filing 20-004 (Comment ID 64023) (Jan. 13, 2021). Similarly, the Casino Association of New Jersey expressed strong support for the contracts as a means to promote responsible risk management by state-regulated sportsbooks with imbalances in wagering exposures. Casino Association of New Jersey, Comment on Industry Filing 20-004 (Comment ID 64013) (Jan. 20, 2021). Whether or not these specific entities support the current suite of event contracts available to all traders for both hedging and price discovery purposes, these comments underscore event contracts' potential risk-management use cases, an important public-interest consideration that will never be addressed under Rule 40.11 as currently written.

[47] Another CFTC rulemaking from the same era was overturned for a similar failure to make a statutorily required finding. *See Int'l Swaps & Derivatives Ass'n v. Commodity Futures Trading Comm'n*, 887 F. Supp. 2d 259 (D.D.C. 2012) (vacating CFTC position limits rule on derivatives tied to physical commodities for failure to make a finding required by the CEA).

[48] *See, e.g., Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012) (explaining that "the views of a single legislator, even a bill's sponsor, are not controlling"); *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc*., 447 U.S. 102 (1980) (same).

4. Inside Information (ANPRM Section II.E)

A. Control and Influence (Questions II.E.30-31)

As noted in our response to Question II.A.2.c above, certain DCMs have prohibited trading in event contracts by persons who control, directly or indirectly influence, or otherwise have certain forms of "inside" non-public knowledge regarding the contract's outcome. As the CFTC's Division of Enforcement highlighted, these prohibitions were recently enforced in disciplinary actions brought by KalshiEx[49]—to the benefit of the market. Establishing and enforcing these types of prohibitions is an important safeguard, and a means of fostering confidence in market integrity, fairness, and regulatory clarity.

Please see our response to Question II.A.2.c. above for a discussion of uncertainties regarding the "swap" classification of event contract transactions entered into by an Event Controller. But assuming such a transaction *is* a derivative under CFTC jurisdiction, an Event Controller entering into the transaction based on his or her *own* material non-public information ("MNPI") is arguably not engaged in misappropriation of confidential information in breach of a duty to the source, meaning that there is no "insider trading" under CFTC Rule 180.1.[50] It is appropriate to recognize this distinction between commodity derivatives and securities when it comes to the law of insider trading.[51] But as the CFTC Division of Enforcement noted in the context of a political candidate trading on his own candidacy, such a person nevertheless may potentially be found to have engaged in fraud or fraud-based manipulation in violation of Rule 180.1 (or engaged in other violations of CFTC Rules, CEA provisions, or criminal laws).[52] This may particularly be the case if the person altered the outcome of the event, or the perceived likelihood of a particular outcome prior to expiry, in order to benefit positions held in the contract.[53]

Even where an insider does not take action that affects the contract outcome or expected outcome, their participation in the market may undermine the market's perceived fairness and deter others from trading on the platform. Establishing and enforcing prohibited-trader lists and similar guardrails would help to mitigate these concerns, as discussed above, and would seem consistent with the requirement under Core Principle 12 that DCMs "establish and enforce rules . . . to promote fair and equitable trading on the contract market."[54]

Where a person is trading in an event contract based on MNPI that is *not* his or her own, an enforcement action under CFTC Rule 180.1 is appropriate if such information was

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[49] CFTC Enforcement Advisory, *supra* note 23.
[50] *See, e.g.*, Miller, *supra* note 19 ("[I]n our markets, you are absolutely entitled to trade on MNPI that you rightfully own. You are not breaching a duty to the source of the information.").
[51] *See, e.g.*, CFTC, Final Rule, Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41398, 41403 (July 14, 2011) ("The Commission recognizes that unlike securities markets, [commodity] derivatives markets have long operated in a way that allows for market participants to trade on the basis of lawfully obtained material nonpublic information.").
[52] *See* CFTC Enforcement Advisory, *supra* note 23.
[53] This is broadly comparable to the LIBOR manipulation cases, in which LIBOR panel banks were found to have manipulated the benchmark through their panel submissions in order to benefit interest rate swap positions (in addition to engaging in false reporting).
[54] 17 C.F.R. 38.650(b).

misappropriated, i.e., used in breach of a duty of trust and confidence to the information's source.[55] As CFTC Enforcement Director Miller noted, the CFTC has brought multiple such actions in "traditional" markets, and the rule applies equally with respect to prediction markets.[56]

Exchange disciplinary measures may be appropriate as an alternative or supplement to CFTC action, as in the recent Kalshi action against a social media channel video editor who traded on his advance knowledge of the content of forthcoming videos that determined the outcome of Kalshi contracts.[57]

Accordingly, as discussed in our response to Question II.A.2.c above, we support CFTC Division of Market Oversight staff's recommendation to engage with sports leagues on prohibited trader lists and believe similar engagement with other institutions that oversee or are responsible for the event underlying other contracts likewise may be appropriate, depending on the underlying and subject to DCMs' reasonable discretion to determine the safeguards most beneficial for the integrity of their markets.

We would also encourage the Commission to consider the potential for cross-market manipulation as flagged in the ANPRM, both across multiple DCMs listing similar contracts and across DCMs and other financial markets.

For example, a market participant may engage in manipulative behavior in one contract in order to affect pricing in a similar contract on a different DCM, in the hope that inter-market surveillance arrangements and the CFTC's market surveillance capabilities will fail to notice the cumulative impact. Though this is a concern any time DCMs list contracts with similar or correlated underlyings, as a practical matter, cross-market manipulation may be more difficult to police in prediction markets simply because of the sheer number of event contracts listed, as well as the multiplicity of the existing DCMs and applicants for designation that may list similar event contracts.[58] It may therefore be advisable for DCMs to consider how to ensure effective

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[55] *See, e.g.*, *CFTC v. EOX Holdings L.L.C.*, Civil Action No. H-19-2901, 2021 WL 4482145, at *22 (S.D. Tex. Sept. 30, 2021) ("Thus, to succeed on either of its two theories of liability for [violations of 7 U.S.C. § 9(1) and CFTC Rule 180.1(a)], [the CFTC] must establish that Gizienski (1) misappropriated confidential information in breach of a preexisting duty of trust and confidence to the source of the information; (2) intentionally or recklessly, i.e., with scienter; (3) in connection with a contract for sale or purchase of a commodity in interstate commerce; (4) for personal benefit."); Consent Order, *CFTC v. Clark*, No. 4:22-cv-00365, Doc. No. 41 (S.D. Tex. Jan. 29, 2026) (settling charges under CFTC Rule 180.1 for tipping information misappropriated "in breach of a pre-existing duty of trust and confidence to the source of the information").

[56] *See, e.g.*, Complaint, *CFTC v. Clark*, No. 4:22-cv-00365 (S.D. Tex. Feb. 3, 2022); *In re Trafigura Trading LLC*, Comm. Fut. L. Rep. (CCH) ¶35,391 (CFTC Jun. 17, 2024); *In re Arya Motazedi,* Comm. Fut. L. Rep. (CCH) ¶ 35,599 (CFTC Dec. 2, 2015); *In re Jon P. Ruggles*, Comm. Fut. L. Rep. (CCH) ¶ 33,872 (CFTC Sept. 29, 2016).

[57] *See* CFTC Enforcement Advisory, *supra* note 23; Kalshi Exch., Notice of Disciplinary Action, File No. KDA-2026-0001 (Feb. 25, 2026), https://kalshi-public-docs.s3.amazonaws.com/regulatory/notices/Notice%20of%20Disciplinary%20Action%20(2.25.2026)%20(1).pdf. We support the CFTC Division of Enforcement's stated intention to coordinate with DCMs on enforcement and disciplinary actions to avoid both gaps and duplicative efforts.

[58] *See* Commodity Futures Trading Comm'n, *Fiscal Year 2027 President's Budget and Overview* (Apr. 2026), at 33. This budget request describes the recent applications for new DCMs, many planning to offer event contracts, as "historically high," and explains that the number of actively traded contracts on CFTC-regulated exchanges more than doubled from the previous year, with the increase almost entirely driven by the growth of event contracts.

cross-market surveillance via regular coordination with the CFTC and with one another, through the Inter-Market Surveillance Group or a similar coordination body.

Also of concern is the possibility that a market participant may seek to use trading in event contracts to affect the price of related instruments in another financial market—for example, by taking on large "Yes" positions in a contract on whether a company will have an initial public offering by a given date in order to drive up that company's stock price and benefit a long position, or taking on large "No" positions if an investor is short the company's stock. The CFTC and the SEC should work together under their recently signed Memorandum of Understanding[59] to coordinate cross-market surveillance to address these concerns.

B. Prohibition on "Insider Trading" by Government Officials and Employees (Question II.E.32)

Many event contracts reference official government data publications as the "source agency" for the resolution of the contract. This is generally a desirable protection against manipulated or erroneous contract outcomes, but this protection is eroded if personnel at government agencies providing the data have an incentive to alter it, whether to benefit their own trading or at the inducement of third parties. Additionally, for many event contracts, a particular government action is the underlying event or otherwise satisfies a payout criterion, making government personnel involved with the action potential Event Controllers and making other personnel with advance knowledge of the action privy to MNPI as a result of their position of trust within the government.

The prohibitions cited in Section 4c(a) of the CEA are therefore critical safeguards for event contract integrity.[60] To foster confidence in market integrity and in a fair and equitable trading environment on the platform, the Commission may wish to encourage DCMs to prohibit trading in an event contract by employees of a government agency that is a source agency for the contract. This would be consistent with Core Principle 12.

To support compliance with these prohibitions, the CFTC and DCMs should consider working with relevant agencies to assist them in incorporating discussion of restrictions on prediction markets trading into their ethics training policies and programs.

5. Types of Event Contracts and Other Issues (ANPRM Section II.F)

A. Swap Classification and Preemption (Question II.F.33)

Event contracts may meet one or more prongs of the statutory "swap" definition, depending on the contract structure and underlying.

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[59] Memorandum of Understanding between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Harmonization in Areas of Common Regulatory Interest (Mar. 11, 2026), available at https://www.sec.gov/files/mou-sec-cftc-2026.pdf.

[60] *See, e.g.*, Complaint, *CFTC v. Van Dyke*, No.1:26-cv-03369 (S.D.N.Y. Apr. 23, 2026) (charges under Section 4c(a) for misusing government information to trade in event contracts).

First, an event contract may be an option "based on the value[ ] of 1 or more . . . indices, quantitative measures, or other financial or economic interests or property of any kind."[61] Examples of indices and quantitative measures underlying event contracts include CPI, GDP, national employment figures, and severe weather indices, among many others.

Second, event contracts may also qualify as "any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery . . . 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."[62]As the Third Circuit Court of Appeals recently confirmed, "the outcome of a sports event certainly can be associated with a potential financial, economic, or commercial consequence."[63] For example, sponsors, advertisers, television networks, franchises, sportsbooks, concessionaires, sports apparel and memorabilia merchants, arenas and the businesses surrounding them, the hospitality industry, and broader local and national communities each face potential financial and commercial risks and benefits from a sports team's performance.[64] The profits of food and merchandise vendors at and surrounding stadiums are largely dependent on stadium attendance.[65] The economy of a city as a whole can benefit or be harmed.[66] The same is true of tours and other performances by major musical acts.[67]

As the CFTC explained in its *amicus* brief in *North American Derivatives Exchange v. Nevada* and as the Third Circuit acknowledged in *Flaherty*, the statute requires only a "potential" financial, economic, or commercial consequence—Congress did not require definitive proof of such a consequence in order for a transaction to meet this prong of the swap definition.[68] The dissent in *Flaherty* contends that this prong should not be construed according to its plain meaning because to do so "would likely encompass virtually every kind of wager that could exist," including "even a bet over the outcome of a friendly neighborhood ping pong match [because it] may have a 'potential financial . . . consequence' because one of the bettors would reap a financial reward based on the match's outcome."[69] But although Congress did not define the term "potential financial, economic, or commercial consequence," it seems clear that the

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[61] 7 U.S.C. § 1a(47)(A)(i).
[62] 7 U.S.C. § 1a(47)(A)(ii).
[63] *Flaherty*, No. 25-1922, slip op. at 7–8 (affirming preliminary injunction and holding that sports-related event contracts are "swaps"); *but see KalshiEx LLC v. Schuler*, No. 2:25-cv-01165 (S.D. Ohio Mar. 9, 2026) (holding to the contrary).
[64] *See, e.g.*, *Flaherty*, No. 25-1922, slip op. at 8.
[65] *See, e.g.*, Jabari Young, *Crypto.com Buys Naming Rights to Lakers' Staples Center in a $700 Million Deal*, CNBC (Nov. 17, 2021), https://www.cnbc.com/2021/11/17/cryptocom-buys-naming-rights-to-lakers-staples-center-in-a-700-million-deal-.html.
[66] *See, e.g.*, *id.* (noting that the Intuit Dome was expected to generate approximately $260 million annually for Inglewood, California's economic activity)*;* Curtis Dubay, *How the Super Bowl Creates Economic Impact Across the Country,* U.S. CHAMBER (Feb. 6, 2025), https://www.uschamber.com/economy/how-the-super-bowl-creates-economic-impact-across-the-country (noting that the 2024 NFL Super Bowl had an estimated impact of $1 billion for the city of Las Vegas).
[67] *See, e.g.,* Sachi Gosal, *The Economic Impact of "The Eras Tour"*, MICH. J. ECON (Jan. 11, 2026), https://sites.lsa.umich.edu/mje/2026/01/11/the-economic-impact-of-the-eras-tour/ (noting Taylor Swift's shows in Los Angeles during *The Eras Tour* had a total economic impact of approximately $320 million).
[68] *See Flaherty*, No. 25-1922, slip op. at 8; CFTC Amicus Brief, *supra* note 9, at 19.
[69] *Flaherty*, No. 25-1922, slip op. at 23 (Roth, J., dissenting).

potential "consequence" must be for persons *other than* those transacting in the contract. Otherwise, *every* contract with an event-based payout would be "associated with a potential financial consequence," as every such contract provides for a financial reward to contract participants who correctly predict the outcome. Had Congress intended to include every contract with an event-based payout in the definition of "swap," it would have simply ended the sentence after the word "contingency" in prong (ii) of the definition, omitting the entirety of the phrase "associated with a potential financial, economic, or commercial consequence." The dissent's interpretation is therefore contrary to the rule against surplusage, which generally obliges a court to give effect to every word in a statute.[70]

Third, an event contract may be a swap under the "catch-all" definition of "an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap."[71] For years the CFTC has made clear in rulemaking and staff no-action letters that it views binary option event contracts as swaps. For example, in its 2012 rulemaking further defining the term "swap," the Commission noted that "the statutory swap definition explicitly provides that commodity options are swaps[.]"[72] The Commission reaffirmed this view in a 2022 enforcement action related to event contracts: "[B]inary options . . . constitute swaps under the CFTC's jurisdiction, and therefore can only be offered on a registered exchange in accordance with the Act and Regulations."[73] And the derivatives industry has adopted this view: over a period of years, many DCMs have sought and obtained no-action relief from swap data reporting requirements for event contracts on the understanding that they are swaps.[74] DCM and FCM risk disclosures and other documentation likewise refer to these contracts as swaps.[75]

As swaps, these contracts are subject to the CFTC's "exclusive jurisdiction" under Section 2 of the CEA.[76] We agree with the CFTC's arguments—articulated in recent lawsuits against states seeking to apply their gaming laws to DCMs—that Congress expressly preempted state law with respect to DCM-listed swaps.[77] This includes state gaming law.

State laws are also subject to "field" preemption. We agree with *Flaherty* and the CFTC that the appropriate "field" here is regulation of commodity derivatives trading—the subject of

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[70] *E.g.*, *Duncan v. Walker*, 533 U.S. 167, 174 (2001).
[71] 7 U.S.C. § 1a(47)(A)(iv).
[72] *See* Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208, 48236 (Aug. 13, 2012).
[73] *In re Blockratize, Inc. d/b/a Polymarket.com*, CFTC Dkt. No. 22-09, at 2, 7 (Jan. 3, 2022).
[74] *See, e.g.*, CFTC Letter No. 26-01, at 3 n.13 (Jan. 8, 2026), https://www.cftc.gov/csl/26-01/download (listing numerous CFTC staff no-action letters providing conditional relief from swap data reporting requirements for event contracts executed on DCMs).
[75] *See, e.g.*, Robinhood Derivatives, LLC, *Event Contracts Risk Disclosure*, https://cdn.robinhood.com/assets/robinhood/legal/Event_Contracts_Risk_Disclosure.pdf (last visited Apr. 6, 2026).
[76] Even if certain event contracts are futures rather than swaps (as the ANPRM acknowledges may be the case), those contracts nevertheless would be subject to the CFTC's exclusive jurisdiction under the same sentence of Section 2 of the CEA.
[77] *E.g.*, Complaint for Declaratory and Injunctive Relief ¶ 70, *United States v. Illinois*, No. 1:26-cv-03659 (N.D. Ill. Apr. 2, 2026). *But see Schuler*, Case No. 26-3196, at 8-9 (describing Kalshi's express-preemption arguments as "debatable" and stating that Congress's use of the word "preempt" in the CEA in certain contexts suggests state laws are not expressly preempted in other CEA contexts).

the federal statute.[78] Similarly, though the dissent argues that the presumption against preemption "applies with special force here because gambling has traditionally been regulated by the states,"[79] we believe the relevant "traditionally regulated activity" is not gambling but derivatives trading on a DCM—again, the subject of the relevant federal statutory provisions. States have no ongoing tradition of regulating derivatives trading on DCMs precisely *because* Congress removed their ability to do so over fifty years ago when it granted the CFTC exclusive jurisdiction in this area.[80]

As detailed in *Flaherty* and in an *amicus* brief filed in the Ninth Circuit by a former CFTC Chairman and other experts on CFTC jurisdiction supporting the prediction market Crypto.com, DCMs are subject to a comprehensive regulatory framework under the CEA and CFTC rules thereunder.[81] This framework "occupied the field" of DCM regulation, leaving no room for state law.[82] Indeed, as noted above, this broad preemption was a congressional reaction to the "total chaos" that reigned when exchanges were subject to the "vagaries" of the laws of 50 states, the District of Columbia, and various territories, creating a "patchwork" of different regulatory approaches and requirements.[83]

"Conflict" preemption also applies, as discussed in our response to Question II.A.2.a above.

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[78] *See, e.g.*, *Flaherty*, No. 25-1922, slip op. at 11; Complaint for Declaratory and Injunctive Relief ¶¶ 71-72, *United States v. Illinois*, No. 1:26-cv-03659 (N.D. Ill. Apr. 2, 2026); CFTC Amicus Brief, *supra* note 9, at 22.
[79] *Id.* at 21-22 (Roth, J., dissenting).
[80] *See, e.g.*, CFTC Amicus Brief, *supra* note 9, at 8-9. Section 12(e)(1)(B) of the CEA, added in 1982 and since amended to address swaps, foreclosed the preemption of state law solely as to *off-exchange* swaps.
[81] *See Flaherty*, No. 25-1922, slip op. at 5-6, 9-12; Brief for Former Federal Government Officials and Experts on the Scope of CFTC Jurisdiction as *Amici Curiae* Supporting Appellant, at 5-14, *N. Am. Derivatives Exch., Inc. v. State of Nevada*, No. 25-7187 (9th Cir. Feb. 3, 2026).
[82] *Flaherty*, No. 25-1922, slip op. at 11-12.
[83] *See Flaherty*, No. 25-1922, slip op. at 23 ("Congress created the CFTC and amended the Act to do away with the patchwork of state regulations and bring futures trading on DCMs under the exclusive jurisdiction of the CFTC."); CFTC Amicus Brief, *supra* note 9; Complaint for Declaratory and Injunctive Relief, *United States v. Connecticut*, No. 3:26-cv-00498 (D. Conn. Apr. 2, 2026); Complaint for Declaratory and Injunctive Relief, *United States v. Illinois*, No. 1:26-cv-03659 (N.D. Ill. Apr. 2, 2026); Complaint for Declaratory and Injunctive Relief, *United States v. Arizona*, No. 2:26-cv-02246 (D. Ariz. Apr. 2, 2026). In *Schuler*, the Sixth Circuit Court of Appeals cited *American Agriculture Movement, Inc. v. Board of Trade of the City of Chicago* for the proposition that "Congress did not intend to occupy the field of futures trading." 977 F.2d 1147, 1155 (7th Cir. 1992). However, contrary to *Schuler*, that case held that state laws governing trading on DCMs are preempted, and precisely because of the congressional desire for national uniformity in DCM regulation articulated in *Flaherty*–though the Seventh Circuit characterized this as "conflict" rather than "field" preemption. 977 F.2d at 1156-57.

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We greatly appreciate the opportunity to provide comments on these important matters, and we welcome engagement with the CFTC on these issues.

Sincerely,

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