

PREDICTION MARKETS AND THE PUBLIC INTEREST: GUIDING PRINCIPLES FOR THE CFTC, THE STATES, AND THE COURTS

By Harry Crane¹

1. Introduction

Exchanges regulated by the Commodity Futures Trading Commission (the Commission, CFTC) traded more than \$25 billion in event contracts in 2025, nearly 10 times their 2024 volume, and roughly \$74 billion in the trailing 12 months (TTM) ending April 30, 2026. Offshore platforms traded a further \$85 billion over the same TTM period, a substantial share of which originated in the United States (Crane, 2026c).. The size and projected growth of these markets have magnified two core regulatory and legal questions.

- First, for the regulators: What standards should guide the listing of event contracts on CFTC-regulated prediction markets? How will regulations be enforced to ensure the integrity of these markets and protect the public interest?
- Second, for the courts: What authority, if any, do states have over prediction market regulation? In particular, does either the states or the federal government have exclusive authority to regulate prediction markets?

Both categories of question are the subject of current debate and litigation.

The first category of questions is under active consideration by the Commission. In June 2026 the Commission proposed to rewrite Regulation 40.11, which implements the “Special Rule” of the Commodity Exchange Act (CEA) under which the Commission may review and prohibit event contracts that involve unlawful activity, terrorism, assassination, war, or gaming (so called “Enumerated Activities”) and are contrary to the public interest.² The proposal defines “gaming” explicitly, sets out public interest factors, and replaces the current regulation’s categorical prohibition (from rules written in 2011) of event contracts involving these categories with a contract-by-contract review protocol. The Commission has also convened an Innovation Advisory Committee, whose inaugural meeting on August 20, 2026 addressed these and other matters, including federal and state authority over prediction markets, listing standards, surveillance, and customer protection.³

The second category of questions is under active litigation in the courts. As of early September 2026, more than thirty states contend that sports event contracts are sports bets, and therefore are subject to state gambling law. In April 2026, the Third Circuit held that the CEA likely preempts such laws as applied to contracts traded on a designated contract market (DCM).⁴ In August 2026, the Ninth Circuit held that it likely does not, reasoning that the contracts “are in substance gaming contracts.”⁵

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The aim of this note is to clarify the major issues underlying these questions and also recommend core guiding principles for regulators and the courts as they navigate these matters.

1.1 Executive Summary and Outline

The states' predominant argument is that sports event contracts are akin to sports bets, and that states have exclusive authority to regulate and legislate gambling and sports betting. The limit to this argument is that it equates sports-related prediction markets to sports betting on the basis that such markets are currently regulated as sports betting under state authority. But the fact that states have previously regulated such products as gambling does not mean that such products can only be regulated as such. In fact, the states' choice to regulate sports betting as gambling reflects a limitation of state authority: the law permits states to regulate sports betting as gambling, not as commodities or financial markets as they are under federal authority. The states' argument assumes away the possibility that sports-related prediction markets could be regulated and operated as financial markets instead of a recreational gambling product.

In 2022 Jim McIngvale, owner of Gallery Furniture, hedged his company's \$50 million liability from a marketing promotion tied to the outcome of the 2022 World Series. Under the promotion, Gallery Furniture would provide customers substantial refunds if the Houston Astros were to win the 2022 World Series. McIngvale hedged this risk by placing the offsetting bets at licensed sportsbooks (Crane, 2025; Porterfield, 2022). Legally, McIngvale's hedges were sports bets under state law. But financially they were a hedge of real business risk, and it was the opportunity to hedge on the sports books that made the promotion economically feasible for McIngvale's company. As this case demonstrates, the way in which sports betting is regulated (in this case, as gambling) may differ from how sports betting products are used (in this case, for hedging). Moreover, it demonstrates the existence of

sports-related risk and justifies a *bona fide* financial use case of sports-related prediction markets.

Some argue that many participants use CFTC-regulated prediction markets for gambling, and therefore prediction markets should be regulated as gambling. This argument is, essentially, the "duck argument": if it walks like a duck and talks like a duck, it's probably a duck. But the duck test is undercut by the combination of the Gallery Furniture example (a clear non-gambling use case) and the fact that state-regulated sportsbooks were previously the only regulated mechanism for such activity. Essentially, prediction markets "look like a duck" to the states because "ducks" are the only available comparator under state law. In other words, in a world consisting only of ducks, a goose also looks, walks, and talks like a duck, but isn't a duck.

The motivations of specific market participants do not change the legal or regulatory status of the associated market. In McIngvale's case the product was regulated as gambling while being used for hedging. McIngvale's use of sports bets to hedge risk does not change the fact that state sports betting is regulated as gambling. In the same vein, the fact that some participants use traditional financial markets for stocks, bonds, options, and futures for gambling does not change the regulatory or legal status of those markets, and most certainly does not empower states to regulate the stock market as gambling. The same holds for prediction markets. That market participants may choose to speculate in a market does not alter the market's regulatory classification nor infringe on a federal regulator's authority to regulate the market.

Beyond the legal and regulatory technicalities, the products offered under state and federal frameworks are different in substance, even when their underlying events are the same or similar. State-regulated sports betting and federally regulated prediction markets can and should be offered in parallel, under distinct regulatory frameworks. That states license gambling products

on sporting events does not preclude a federal regulator from overseeing commodity contracts on the same or similar events.

Below are some recommended guiding principles for approaching the above matters.

- (i) The Special Rule authorizes contract-by-contract review, not a categorical ban of all event contracts involving the Enumerated Activities. The declaration within the Commission's 2026 proposal that certain categories are "highly likely" contrary to the public interest undercuts the contract-by-contract review protocol and is likely to be misread as a categorical prohibition by the courts and future commissions (Section 2).
- (ii) Contracts on war, terrorism, and related events have clear hedging and informational value. The sensitivity to offering markets on such events does not justify outright prohibition, but instead emphasizes the importance of careful contract design and thoughtful regulation in order to offer useful markets without harming the public interest (Section 3).
- (iii) Gaming should be defined in terms of its common sense English usage, as an event designed for the sole or primary purpose to facilitate frivolous gambling. The Commission's proposed definition of gaming as any event involving a game does not agree with common English usage and should be revised accordingly (Section 4).
- (iv) Many sporting events carry significant economic consequences that exist whether or not there is a prediction market relating to the event. Sports-related markets, therefore, do not involve gaming, by the previous point, and also have a clear public interest use case (Section 5).
- (v) Settlement criteria for event contract products should be faithful to the underlying event, with minimal edge cases and special rulings. The farther the event contract definition strays from the underlying event, the less useful the corresponding market is for both hedging and informational purposes. Such instances undermine common public interest arguments made in favor of event contract markets (Section 6).
- (vi) Insider trading and market manipulation regulation must focus on market integrity, and must be careful not to meddle or substantially impact the outcomes of the events that underlie event contracts listed on regulated platforms (Section 7).
- (vii) Important customer protections that distinguish financially motivated prediction markets from gambling oriented sportsbooks should be codified into CFTC regulations (Section 8).

I discuss each of these principles in turn.

2. The Special Rule and Regulation 40.11: Prohibition Is Not Prevention

Under the CEA Special Rule, the Commission "may determine" that an event contract involving an Enumerated Activity is contrary to the public interest, in which case the contract "shall not" be listed on a regulated exchange. The 2011 version of Regulation 40.11 interpreted the Special Rule as an outright prohibition on any contract that "involves, relates to, or references" terrorism, assassination, war, gaming, or unlawful activity, without any contract-specific public interest determination.⁶ The Commission's 2024 proposal would have extended the same prohibition to elections and awards by declaring them gaming. As I discussed in response to the 2024 proposal, the CEA Special Rule does not authorize the Commission to prohibit markets by category, but rather calls for a two-step protocol for reviewing individual contracts, by

which (i) first an event contract is determined to involve one of the enumerated activities and (ii) then the Commission determines whether listing the contract is contrary to the public interest (Crane, 2024).

The 2026 proposal brings the rule back in line with the statute, and it adopts the two-step protocol described above. The proposal replaces “shall not” with “may determine,” defines what it means for a contract to “involve” an Enumerated Activity, and states plainly that the Special Rule does not make such contracts contrary to the public interest *per se* and that categorical determinations are not permitted under the structure of the Act. Its public interest procedure is the two-step protocol of my April 2026 comment, with one additional threshold step added to confirm that the instrument under review is an event contract at all.⁷ The 2026 proposal correctly restores the default to listing new markets rather than prohibiting them.

The empirical evidence further shows that prohibition does not lead to prevention, and instead pushes technological innovation and economic activity offshore, outside the reach of U.S. regulators. A recent study estimates that \$11-34 billion in offshore volume between May 2025 and April 2026 originated in the United States (Crane, 2026c). While some offshore activity is likely to continue despite legalization, the proportion of offshore activity originating in the U.S. will likely decrease substantially on events for which an accessible regulated market exists.

In addition to contract-by-contract review, the proposal states that “all event contracts involving terrorism, assassination, and war are highly likely to be against the public interest,” and makes substantially similar comments about contracts involving unlawful activity and games of pure chance.⁸ In my comment to the CFTC Innovation Advisory Committee following its inaugural meeting, I recommended that this language be removed (Crane, 2026b). Rather than provide regulatory clarity, the proposed language does the opposite, as it will likely be misinterpreted by operators,

courts, and future Commissions as a generic restriction of contracts on these categories. The proposed commentary about the likely public interest determination of these markets may be true of the current Commission’s stance, but should not be part of the codified CFTC rules. Inclusion in the rules may influence the courts, bias future Commissions, and discourage operators from proposing markets in these categories, none of which serves the public interest and all three of which undercut the current Commission’s initiative of promoting innovation.

3. War, Terrorism, and Assassination: Balancing Market Value with Public Interest Concerns

Contracts on the occurrence, duration, or intensity of armed conflict have clear and substantial hedging uses. Airlines, shippers, insurers, multinational manufacturers, and governments all carry material risk from war that is difficult to hedge by other means, and private individuals with family, property, or business in a conflict zone carry personal risk that cannot be hedged at all. An airline that flies between the United States and China, Russia, Eastern Europe, and the Middle East is exposed at all times to the political situation in each of those regions. Over the past decade, some adverse event has occurred in each of these regions, including visa restrictions, airspace closures, and armed conflict. The same concerns exist for manufacturers that source from Taiwan, shippers that rely on the Strait of Hormuz, and insurers with exposure in Eastern Europe. Without event contract markets on the adverse event, these businesses can only hedge by proxy, e.g., in oil, currencies, and defense equities, whose prices correlate imperfectly with the underlying risk exposure and which may introduce new incidental risk exposures in the process. Event contracts on the conflict itself enable direct hedging against that risk in a way that traditional financial products do not.

The same markets provide valuable information about consequential events for which information is otherwise controlled by official sources and often

subject to misinformation and propaganda. Governments naturally oppose markets that inform the public about topics they would prefer to filter through official channels. That these markets publish assessments that official sources will not highlights the markets' value to the public interest.

Common objections against these markets are that they create an incentive to commit a harmful act, that they incentivize the leakage of sensitive information, and that manipulation of their prices may mislead authorities.⁹ Though each is a legitimate concern in isolation, none is eliminated by prohibiting related event contracts from regulated exchanges. The financial incentive already exists in traditional markets at a scale orders of magnitude larger than any prediction market. Conflict in the Middle East moves oil prices predictably, but oil futures are not prohibited on public interest grounds, nor should they be. Moreover, any perverse incentive an event contract might add is marginal compared to the incentives that already exist in traditional markets, and deterring the underlying acts is the role of law enforcement, for which ample deterrents are already codified in the law. Terrorism and assassination are crimes whether or not a market on them exists. Leakage of confidential information breaches a duty that exists independently of the market, and the one documented case of a soldier trading on classified knowledge of a military operation was detected and prosecuted even though the trade was placed on an offshore platform.¹⁰ As for misleading authorities, there are already regulations in place to guard against markets that are readily susceptible to manipulation. And given the government's access to sophisticated intelligence and surveillance information, it is much more likely that authorities will benefit from market price signals than be misled by them.

The remaining objection is not about incentives but about legitimacy and decency: that a regulated U.S. exchange should not create the opportunity to profit from death and atrocity. But the objection applies only to specific contracts, not to the entire category. A

contract on whether a named individual is killed before a given date raises obvious concerns and warrants Commission review. A contract on whether a ceasefire holds, whether a strait stays open, or whether a leader remains in office does not raise the same concerns. The sensitivity of these events is a reason for careful contract design, not a reason to prohibit the entire category.

4. Gaming: Define as Frivolous Gambling

The CEA Special Rule, and the two-step protocol of Regulation 40.11 that implements it, is a public interest provision. The Enumerated Activities under the CEA are singled out because of their potential public interest concerns. War, terrorism, assassination, and unlawful activity pose potential threats to national security and public safety, and therefore warrant further review under the CEA's public interest provisions.

The remaining Enumerated Activity, "gaming," is left undefined in the statute and is the source of ongoing litigation between the states and federally regulated exchanges. The 2026 proposal defines "gaming," essentially, as an activity that involves the playing of a game, and states that the definition is drafted to capture professional sports.¹¹ First, as to the public interest motivation behind the Special Rule, the playing of a game, whether a sporting event or otherwise, does not pose the same public interest questions or concerns as war, terrorism, assassination, and unlawful activity. The public interest concern over "gaming" that warrants its inclusion in the Special Rule is not a concern about sporting events, but over the proliferation of frivolous activity on CFTC-regulated markets (Crane, 2026a). Second, the proposed definition is incompatible with ordinary usage. In common and statutory usage, "gaming" refers to the wagering, not to the contest wagered on. No one watching a baseball game would describe what the players are doing as "gaming." The Commission's definition seeks to attach the label to the game itself, which is how it comes to reach profes-

sional sports, but neither the statute nor the English language support it.

Alternatively, “gambling” as a generic definition of gaming does not work, because it includes everything. Prediction market activity involves risk by its very nature, and so does every other regulated market. If gaming is to mean “gambling,” then every event contract would be subject to review under the Special Rule, and the same logic would apply to all other regulated financial markets. The district court that vacated the Commission’s 2024 order on election contracts held that “any definition of ‘gaming’ that could be read to subject all event contracts to the special rule just cannot be right.”¹²

So the statute’s concern with “gaming” cannot be distilled to either the element of risk or the act of playing a game in isolation. Neither of these agrees with common everyday usage of the term “gaming,” nor does either plausibly reflect the underlying public interest concern implicit in the statutory grouping of “gaming” alongside the other Enumerated Activities. Rather, the public interest concern with gaming is driven by event contracts that exist solely for the purpose of frivolous risk taking. I suggest that a workable standard for what constitutes “frivolous” in this context is whether or not the event underlying the contract exists for reasons other than to facilitate gambling on the event. An event whose primary purpose is to facilitate gambling is “frivolous.” This standard captures the contracts that seem obviously questionable, such as contracts on the outcome of casino games, without reaching events for which genuine public interest value exists.

Professional and collegiate sporting events exist independently of any associated gambling activity, and their results have consequences beyond the outcome on the field. LeBron James’s 2026 free agent decision moved hundreds of millions of dollars of economic activity between cities and Gallery Furniture’s promotion created a \$50 million business exposure from the

outcome of the World Series; see Section 5 for further discussion. Sports-related event contracts settle on real world events for which there are economic and societal consequences independently of the event contract itself. The same is true for elections, award shows, natural disasters, and many other consequential events for which event contracts are traded. This is not true for casino games or other contrived events that exist or are defined solely for the purpose of gambling.

A roulette spin, a hand of blackjack, or a roll of the dice has no connection to any event outside the casino. A contract on such an outcome is a quintessential example of frivolous risk taking (i.e., gaming). There are some exceptions when the organized event is closer to a sporting event than a game of chance, such as a hand dealt in an organized contest of skill and which exists whether or not anyone bets on it (e.g., the final table of the World Series of Poker).

The frivolity standard proposed here is not confined to casino games. It reaches any event contract whose defined event lacks real world significance and whose primary purpose is frivolous risk taking, even when that event is defined from a real world occurrence. A binary market on whether bitcoin’s price is higher or lower five minutes from now settles on a real price, and a trader with a position may have reason to hedge it. But at what point, if any, does the potential economic use case deteriorate? If the window were shortened to one second intervals, would the corresponding event contract not essentially be a coin toss generated by the naturally occurring bitcoin price feed? An event constructed from a naturally occurring source of randomness, such as a reading of cosmic background radiation, would also seem frivolous by this definition. These are edge cases, not definitive cases of gaming or of markets that are contrary to the public interest. But they are cited here to illustrate the clear difference between gaming defined as “frivolous gambling” and gaming defined as “playing a game.” Under the two-step protocol of Regulation 40.11, these edge cases would be subject to a public interest review. The Com-

mission should remain open to revising its view of any such market when evidence of real world significance or public interest benefit appears.

The definition of gaming proposed above accords with its common English usage, and also clarifies that the Special Rule and Regulation 40.11 do not apply to sports-related event contracts. A sporting event is beyond the control of the parties to the contract and is associated with financial, commercial, and economic consequences, which is all the CEA requires of an excluded commodity; and an event contract that does not involve an Enumerated Activity is not subject to the Special Rule at all.¹³ Such a contract is listed by self-certification and is subject to the same core principles and the same Commission oversight as every other DCM-listed event contract. The Ninth Circuit read the current Regulation 40.11 as a standing prohibition on gaming contracts and cited the 2026 proposal as confirmation,¹⁴ and a definition of gaming that does not reach sporting events takes that ground away. CFTC-regulated platforms would list such contracts under the ordinary provisions of the CEA, without contradicting state authority over sports betting. CFTC-regulated platforms are regulated as financial markets under the CEA, while state-regulated sports betting platforms are regulated as gambling under state law, as the states have been free to do since the Supreme Court struck down PASPA in 2018.

5. Sports Contracts: Economic and Informational Value

Under the CEA, only event contracts involving one of the Enumerated Activities are subject to the public interest test (Regulation 40.11). Contracts on all other events are not subject to a public interest determination and can be listed on a regulated platform under the ordinary provisions of the CEA.

With the clarified definition of “gaming” from Section 4, sports-related contracts are no longer subject to Commission review under Regulation 40.11, and the Special Rule no longer places the Commission in

conflict with state regulators over sports markets. Sports betting may continue to be regulated under state gambling law, while sports-related event contracts are regulated by the CFTC under the same provisions that permit other categories of event contracts. This is the clearest interpretation of “gaming” in the CEA and the most logically consistent basis for the Commission’s oversight of sports-related prediction markets.

Sporting event contracts provide the same public interest benefits as many other admissible event contracts. The U.S. sports economy generates \$1.21 trillion per year (Best and Howard, 2025), and the financial risk associated with sporting outcomes reaches far beyond the teams and leagues involved in the matches. The sports economy also impacts the travel, restaurant, and hospitality industries, small businesses, and individual citizens. McIngvale’s \$50 million exposure on a company marketing promotion is one example cited above. A professional team that promises every player a \$1 million bonus for winning a championship carries an exposure of potentially \$50 million or more should the event occur. Such incentives align the interests of ownership, players, and fans, but insurers are reluctant to price a loss of that size on so niche an event, and without a liquid market to hedge it the team either bears the full exposure or forgoes the incentive. A restaurant or hotel that staffs up months in advance for a playoff run carries the risk that the team does not make the playoffs, and restaurants and hotels in every other city with a contending team carry the offsetting risk, which a nationwide exchange lets them hedge against one another (Crane, 2025). When LeBron James signed with the Philadelphia 76ers in July 2026, after weeks of uncertainty among the handful of cities in contention, the first-year economic impact on Philadelphia was estimated at \$250 to \$430 million (Boyd, 2026) and the cheapest ticket to the first pre-season home game rose within an hour of James’s decision from a prior-season average of \$68 to

\$283 (TickPick, 2026). Fans of the 76ers as well as arena-adjacent businesses in Philadelphia and in each

losing city carried exposure to James's decision. Event contracts on the decision provide timely information with real economic consequences for individuals and businesses in the competing cities.¹⁵

6. Fidelity to the Event: Contracts Should Settle on the Event They Reference

The farther a contract's resolution criterion strays from the underlying event, the less useful the market is for hedging and for information signaling. On February 28, 2026, Iran's Supreme Leader was killed in a military strike, and a CFTC-regulated market on whether he would be out of office by a specified date settled at a price of \$0.09 under a death carveout in the contract's terms, not the \$1.00 that a Yes contract usually pays when the event occurs.¹⁶ Individuals and institutions who purchased event contracts to hedge exposure to a leadership change in Iran were not protected. Instead, their risk was compounded, resulting in a loss on the initial exposure and a loss on the contract intended to hedge it (Crane, 2026b).

The above example represents a market failure that would be codified into CFTC regulations under the 2026 proposal. Under the Commission's proposed "multiple causal pathways" analysis, an event contract on whether a leader remains in office involves assassination unless its terms settle only on "electoral defeat, resignation, constitutional removal, negotiated departure, or natural death."¹⁷ This proposed rule contradicts claims that such markets serve a real-world hedging purpose. Event-related risk that would be hedged through an event contract is generally driven by *what* happens (i.e., the event), not by how or why it happened. For example, exposure to a leader's leaving office does not typically depend on the manner in which the leader leaves. The same reasoning, carried to second- and third-order effects, would rule out many regulated markets, since almost any contract can be construed as having an indirect link to some kind of harm (Crane, 2026b). A carve-out that excludes one way an event can occur diminishes the hedging and in-

formational value of the contract without mitigating any harm.

7. Insider Trading and Manipulation: Preserve Market Integrity Without Meddling in the Event

Information advantage. The ability to trade on informational advantages is central to any properly functioning market. A prediction market aggregates information effectively only if participants are incentivized to trade based on informational advantages they have. Without this, market liquidity dries up and prices fail to accurately reflect the best available information about their corresponding event. To preserve market integrity, regulations should be clear that participants who have access to private information, but who cannot affect the event outcome and owe no duty to the source of the information, cannot be prosecuted for insider trading.

Insider trading in prediction markets. Insider trading rules cannot be ported from securities laws, which are structured for insiders who are identified in advance and who agree to trading restrictions based on their privileged position. Event contracts do not have insiders in the same sense. A referee of a sporting event, an awards committee member, and a chief executive speaking on an earnings call all have a privileged position with respect to events that could be traded on event contract platforms. But they do not, in general, agree to conduct themselves in accordance with any given market's rules, and the mere listing of an event contract related to an activity that they are incidentally involved in should not constrain their behavior or impose obligations on them. For to do so would mean that the listing of event contract markets on such events could itself impact the resolution of the event, creating a feedback loop that undermines market function.

The listing of a contract on a regulated exchange cannot, on its own, constrain a private individual's ability to access a market, to trade on what they know, or to share what they know with others. If there are to

be such constraints or obligations, they should originate elsewhere, such as through formal exchange membership, a pre-existing duty to the source of the information, or by statute, and they must exist independently of any market or event contract. The contrary view, that a market on an event creates obligations for the participants in the event, is a claim of jurisdiction over the event itself, a line that the Commission should be careful not to cross.

In general, insider trading concerns on prediction markets should reflect a breach of duty that exists independently of the market. For example, a government official who uses confidential information to profit on a prediction market is breaching a duty not to use confidential information for personal gain. Penalizing this behavior should be treated as a matter of law enforcement, not of regulatory enforcement, though regulators and platforms can aid law enforcement efforts through appropriate surveillance measures.

Market manipulation. Manipulation concerns fall into two categories: price manipulation and outcome manipulation. *Price manipulation* matters less for the settlement of event contracts than for conventional derivatives, because event contracts have definitive settlement values based on the event outcome. Manipulated prices may temporarily distort public perception about an event, but such distortions tend to be short-lived, and the price is guaranteed to reflect the true outcome after a pre-determined resolution period.

Outcome manipulation is a problem of event integrity that has a downstream impact on market integrity. Though these instances create market integrity concerns, they are matters for the rules of the event itself and for law enforcement, not for platforms or regulators, whose role is limited to surveillance and referral. For example, the Commission's first manipulation order in a prediction market concerned a former congressman who traded a contract on his own attendance at the State of the Union while making misleading public statements about whether he would attend.¹⁸ The

exchange's rulebook prohibits members from trading on events over which they have "any influence, direct or indirect,"¹⁹ and the Commission's order applied its general anti-manipulation authority to a participant who controlled the outcome. But the scope of individuals covered by this rule on any given event is not clearly defined, as every athlete, official, staffer, and family member has some influence over some event. Such a rule invites strained, though technically justifiable, interpretations. For example, a spectator at a sporting event, through mere attendance, could be construed as having an indirect influence on the outcome and therefore be barred from trading a contract on it. The bigger problem is that the enforcement of such a rule imposes a restriction on the conduct of the people in the event. Operators and regulators should be careful not to meddle in affairs that could affect the outcome of the events that underlie listed contracts, as such meddling is itself an interference with the event and raises critical market integrity concerns.

8. Customer Protection

In the eight years since *Murphy v. NCAA*, state-licensed sportsbooks have banned or limited winning customers to trivial stakes, targeted losing customers with personalized inducements to bet more, and voided winning bets after the fact on claims of "obvious error" (Crane, 2026b). The signature product innovation of the period, the same-game parlay, holds 17.7 percent of every dollar wagered against 4.8 percent for a traditional bet, an innovation designed to extract profit from customers rather than serve them. These practices have become the norm at state-regulated sportsbooks, and they reflect the inherent conflict of interest of sportsbook operators, who serve as both the platform and the counterparty for customer wagers.

The Commission ought to establish customer protection standards that address the specific abuses of the state model (Crane, 2026b).

- (1) *Impartial access.* An exchange may not limit, suspend, or terminate a customer for profit-

ability, skill, or trading success, only for a violation of law, a violation of a clearly defined exchange rule, or a risk control applied uniformly to every customer, and the Commission's Part 9 review of access denials should extend to customer limitations so that a limited trader has a formal right to appeal such decisions.

- (2) *Uniform terms and no retroactive changes.* Terms of service are public, filed with the Commission, and applied to every customer alike. Amendments are dated, archived, and only apply to future transactions after the amendment has been enacted.
- (3) *Final and impartial settlement.* Contract terms and resolution sources are fixed before trading begins, resolution criteria match the event as faithfully as the event permits (Section 6), and a settled contract is final absent demonstrable error or fraud under standards specified in advance.
- (4) *Affiliated market makers.* Any affiliation between an exchange and a market maker is disclosed and filed. The affiliate receives no rebate, priority, order flow, or customer information that is not available to every participant on identical terms. If anything, requirements of affiliated market makers should be more onerous than a typical exchange participant.
- (5) *Marketing standards.* Promotions are offered uniformly to every customer. No promotion may be targeted at customers identified as unprofitable or conditioned on sustained losses.

9. Conclusion: Serve and Protect

The preceding sections make a number of specific recommendations to the Commission, with three main takeaways.

The states v. federal fight rests on a false

equivalence. The states' case is that many event contracts listed on federally regulated prediction markets resemble products that have traditionally been regulated under state gambling law. The resemblance is used to argue that the prediction market version, therefore, is gambling and should be regulated by the states as well. Sports event contracts look like sports bets because contracts on sporting events have only ever been offered under state gambling law, but not because gambling is an inherent attribute of those contracts any more than it is of stocks, options, or futures. How a market is used does not determine how it is regulated, and the Commission's authority over event contracts does not depend on the motives of the people who trade them or on the way in which states may regulate similar products.

Define gaming correctly and the Special Rule drops out of the sports dispute. The Special Rule is a public interest provision aimed at war, terrorism, assassination, and unlawful activity, and "gaming" belongs on that list because of concerns that markets will be designed to facilitate frivolous gambling (i.e., "gaming"). Defined this way, sporting event contracts do not involve any Enumerated Activity, and therefore fall outside the two-step protocol of the Special Rule and Regulation 40.11. The states may continue to regulate sports betting as gambling under state law, while the Commission regulates sports event contracts under the Commodity Exchange Act.

The Commission and its operators must steer clear of meddling in the events when enforcing insider trading and manipulation cases. The Commission's enforcement should be careful to focus on matters of market integrity, not of event integrity. Even though event integrity has a downstream impact on market integrity, it is important that the Commission and its licensees refrain from any appearance that they are impacting the outcomes of events that underlie listed contracts.

One principle should guide regulators and courts

alike. Serve the public with markets that hedge real risk and aggregate useful information, and protect the public by enforcing the integrity of those markets and the fair treatment of those who use them.

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- [9] Porterfield, C. (2022). Mattress Mack Wins Record \$75 Million Sports Betting Payout After Astros Win World Series. *Forbes*, November 6, 2022.
- [10] TickPick (2026). Ticket pricing data reported in *Yahoo Sports*, “LeBron James’ Arrival Expected To Generate Up To \$430 Million For Philadelphia,” August 2026. <https://sports.yahoo.com/articles/lebron-james-arrival-expected-generate-142102971.html>

ENDNOTES:

²Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806 (June 12, 2026) (NPRM), RIN 3038-AF65. The Special Rule is CEA § 5c(c)(5)(C), 7 U.S.C.A. § 7a-2(c)(5)(C).

³Remarks of Chairman Michael Selig, Innovation Advisory Committee, Aug. 20, 2026; Notice of Meeting, 91 Fed. Reg. 51697 (Aug. 11, 2026). The author is a member of the Committee.

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

⁵*KalshiEX, LLC v. Assad*, No. 25-7516 (9th Cir. Aug. 28, 2026). The Fourth and Sixth Circuits have heard argument. For a survey, see ElHachem (2026).

⁶17 C.F.R. § 40.11(a)(1) (2011).

⁷NPRM, 91 Fed. Reg. at 35810-11 & n.54 (citing Letter from Harry Crane, Rutgers University (Apr. 30, 2026), and noting that “[t]hose commenters treated the second and third steps below as the two steps required”); *id.* at 35811, 35815, 35841 (no *per se* prohibition; categorical determinations impermissible).

⁸NPRM, 91 Fed. Reg. at 35834 (terrorism, assassination, and war), 35835 (“it would be highly likely that event contracts involving games that depend entirely on random chance would be found to be con-

trary to the public interest”), and app. F (“it is highly likely that event contracts involving activity that is unlawful under federal law will be found contrary to the public interest”).

⁹NPRM, 91 Fed. Reg. at 35832-34.

¹⁰CFTC Press Release No. 9217-26 (Apr. 23, 2026).

¹¹Proposed § 40.11(b)(1) defines gaming as “any activity that: (i) one or more participants typically engage in for purposes of recreation or to entertain others; (ii) is governed by rules; and (iii) includes measurable occurrences or outcomes that depend on the participants’ luck, skill, or athletic ability during the activity.” NPRM, 91 Fed. Reg. at 35825-26.

¹²*KalshiEX LLC v. Commodity Futures Trading Commission*, 2024 WL 4164694 at *8 (D.D.C. 2024), stay pending appeal denied, 119 F.4th 58 (D.C. Cir. 2024) and dismissed, 2025 WL 1349979 (D.C. Cir. 2025), quoted in NPRM, 91 Fed. Reg. at 35824.

¹³7 U.S.C.A. § 1a(19)(iv); CEA § 5c(c)(5)(B), 7 U.S.C.A. § 7a-2(c)(5)(B).

¹⁴*Assad*, No. 25-7516, slip op. at 35-36.

¹⁵The 2026 proposal recognizes as much, observing that “a prediction market about one sporting event is about more than just that sporting event” and identifying contracts on overall outcomes, tournament advancement, and statistical performance as categories that “may serve price discovery functions.” NPRM, 91 Fed. Reg. at 35830, 35835-36.

¹⁶T. Chepkova, “‘Khamenei Out’ Market Becomes Legal Headache for Kalshi,” *Finance Magnates*, Mar. 4, 2026.

¹⁷NPRM, 91 Fed. Reg. at 35824; app. F(c)(5).

¹⁸CFTC Press Release No. 9276-26 (July 31, 2026).

¹⁹Kalshi Rulebook (2026).