COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 40

RIN 3038–AF65

Prediction Markets; Public Interest Determinations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing amendments to its rules concerning event contract derivatives. The markets for these event contracts are commonly referred to as ''prediction markets.'' In particular, the Commission is proposing amendments to further specify the types of event contracts that may be subject to a determination that they are contrary to the public interest, such that they may not be listed for trading or accepted for clearing on or through a CFTC-registered entity, as provided in the Commodity Exchange Act (CEA). The proposed amendments set out factors the Commission would apply in that determination and conform the process by which the determination would be made to the CEA. The Commission also is proposing amendments to the procedure for the Commission's determination to enhance clarity and organization, as well as a definition of the term ''gaming'' and a rule regarding when event contracts ''involve'' an underlying activity.

DATES: Comments must be in writing and received by July 27, 2026.

ADDRESSES: You may submit comments, identified by ''Prediction Markets; Public Interest Determinations'' and RIN 3038–AF65, by any of the following methods:

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

1. Under Refine Documents Results—check the box to ''Only show documents open for comment'';

2. Under Agency—select ''See More'' and check the box for ''Commodity Futures Trading Commission,'' then press the Apply button;

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

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

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

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

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

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

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

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

Pursuant to the APA, 5 U.S.C. 553(b)(4), a plain language summary of the proposed rule is available at *regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Andrews, Deputy General Counsel for Regulation, 771–210–7915, *rulemaking@cftc.gov,* or Mark Fajfar, Senior Assistant General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Prediction Markets

Prediction markets, on which ''event contract'' derivatives are traded, are rapidly increasing in popularity with the American public both as a financial asset class and as a source of reliable information for news media, sports leagues, financial institutions, and everyday Americans.[1] Participants may buy or sell event contracts to manage price risks around whether events stated in the contracts will occur. The Commission preliminarily believes that event contracts also provide economically useful or otherwise meaningful information and are a source of responsible financial innovation.

Parties have sought CFTC staff guidance concerning prediction markets since the early 1990s, and the Commission first designated a prediction market as a designated contract market (DCM) in 2004.[2] The Commission has recently observed a significant increase in the number of event contracts listed for trading on prediction markets, as well as in the diversity of events underlying such contracts. And, in 2025, the total trading volume across CFTC-registered prediction markets exceeded $25 billion. While growing, this is still a small share of the overall futures market regulated by the Commission, which had a notional value of around $31 trillion in 2025.[3] As a result, the Commission and its staff have taken affirmative steps to address this proliferation and growth of prediction markets.

The CEA identifies derivatives transactions as affecting a national public interest by ''providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information,'' which requires a comprehensive federal regulatory scheme.[4] The CEA directs the CFTC to execute that regulatory scheme. Prediction markets and event contracts are but one example of such derivatives transactions.

The underlying price for an event contract is determined by market participants' continuous buying and selling reaching an equilibrium through a quote-based system.[5] The market-established prices therefore offer informational value as to the probability of the event underlying the contract occurring,[6] yielding forecasts (*i.e.,* event contract prices) that may rapidly incorporate new information and ''allocate probability mass in ways that may reflect the range of plausible . . . outcomes better than traditional financial derivative or survey-based forecasts.'' [7] These findings conform with research that highlights the informational value of retail trading behavior.[8]

In addition to their information aggregation, price discovery, and price dissemination functions, prediction markets allow market participants to hedge exposure to a wide array of events for which no traditional financial instrument otherwise exists, ranging from events concerning macroeconomics,[9] politics, weather, and climate conditions, to cultural trends and ''sporting events . . . that generate billions of dollars in economic activity

[1] While the term ''event contract'' is not a defined term in the CEA or the Commission regulations thereunder, the CFTC has used this term to describe commodity derivative contracts, often with a binary payoff structure, based on the outcome of an underlying occurrence or event since at least 2008. *See* Concept Release on Appropriate Regulatory Treatment of Event Contracts, 73 FR 25669 (May 7, 2008) (2008 Concept Release); *see also* CFTC, *Contracts & Products: Event Contracts,* available at *https://www.cftc.gov/IndustryOversight/ContractsProducts/index.htm.*

[2] *See* CFTC Press Release No. 4894–04, CFTC Designates HedgeStreet as a Contract Market and as a Registered Clearing Organization (Feb. 20, 2004) and the related DCM Order of Designation for HedgeStreet, Inc. (Feb. 18, 2004), available at *https://www.cftc.gov/sites/default/files/opa/press04/opa4894-04.htm. See also infra* section I.C.1 (discussion of early staff actions).

[3] *See* CFTC, *FY 2025 Agency Financial Report* 4 (2026), available at *https://www.cftc.gov/media/13096/2025AFR/download.*

[4] CEA sec. 3, 7 U.S.C. 5.

[5] Karl E. Schneider and Rena S. Miller, Cong. Research Serv., IF13187, Prediction Markets: Policy Issues for Congress (2026), available at *https://www.congress.gov/crs-product/IF13187.*

[6] This market structure is inapposite to that of legalized sports gambling, where the gaming company typically controls and adjusts the gambling odds.

[7] Anthony M. Diercks, Jared Dean Katz, and Jonathan H. Wright, *Kalshi and the Rise of Macro Markets,* Finance and Economics Discussion Series No. 2026–010, Washington: Board of Governors of the Federal Reserve System, available at *https://doi.org/10.17016/FEDS.2026.010.*

[8] *Id.* at 6 (''While early research often emphasized behavioral biases, recent studies show that retail trading can enhance market efficiency.''). *See also* Snowberg et al., *Prediction Markets for Economic Forecasting,* National Bureau of Economic Research (2012), available at *https://www.nber.org/papers/w18222.*

[9] *See id.*

and materially affect both regional and national markets.'' [10]

As explained further in the next section, Congress vested the Commission with ''exclusive jurisdiction'' over ''transactions involving swaps'' and ''contracts of sale of a commodity for future delivery,'' or futures contracts.[11] The statutory definition of commodity under the CEA is extremely broad and includes practically all goods, articles, services, rights, and interests, except onions and motion picture box-office receipts.[12] The specific, enumerated definitional exclusions from the broad statutory definition demonstrate that when Congress sought to limit the Commission's exclusive jurisdiction over commodity futures (other than security futures) and swaps,[13] it did so expressly, and not by inviting courts or states to create implied carve-outs from the CEA.

Under the plain language of the CEA, certain event contracts are implicated by the ''swap'' definition.[14] An event contract may also be structured in other ways, including as a futures contract.[15] A prediction market that offers event contracts in the form of swaps or futures contracts for trading by the general public must register with the CFTC as a DCM and comply with the substantive and procedural requirements that apply to the listing for trading of the event contracts.[16]

B. Statutory Authority

1. CFTC Jurisdiction Over Prediction Markets

The CFTC is charged with administering and enforcing the CEA. Congress created the CFTC in 1974 to establish a uniform national system for regulating trading of futures contracts after concluding that the existing patchwork of state-by-state regulation had critically impaired the development and functioning of national commodities markets.[17] ''[T]ransactions subject to [the CEA] are entered into regularly in interstate and international commerce and are affected with a national public interest,'' including in ''liquid, fair and financially secure trading facilities.'' [18]

Congress vested the CFTC with ''exclusive jurisdiction'' to protect that national interest by overseeing the regulation of futures contracts and options on futures contracts on federally regulated exchanges.[19] An exchange on which futures contracts and options on futures contracts are traded is formally known as a board of trade, and such an exchange must be designated by the Commission as a contract market, *i.e.,* a DCM.[20] Since its enactment in 1974, the CEA has required that futures contracts and options on futures contracts be transacted on or subject to the rules of a DCM; this is known as the exchange trading requirement.[21]

The CFTC's jurisdiction ''supersedes State as well as Federal agencies'' because commodity derivatives markets require nationally uniform rules governing the listing, trading, clearing, settlement, surveillance, and enforcement of financial instruments traded in these markets.[22] Prompted by the evolution of national financial markets and repeated conflicts with a patchwork of state laws, Congress granted the CFTC exclusive jurisdiction in the CEA to regulate the commodity derivatives markets through a comprehensive federal regulatory framework that expressly preempts state laws that attempt to regulate the operation of, or transactions on, CFTC-registered exchanges.[23] State regulation of developing event contracts markets would impose additional regulations on event contracts that, as discussed below in section I.B.3., have long been traded uncontroversially on CFTC-registered DCMs, like contracts on the weather or agricultural production. Subjecting those markets to a patchwork of 50 state regulations is precisely what Congress sought to avoid with the CEA.[24]

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[10] Brief of CFTC as Amicus Curiae in Support of Appellant, *North American Derivatives Exchange, Inc. D/B/A Crypto.com* v. *State of Nevada,* No. 25–7187 (9th Cir. 2026), available at *https://www.cftc.gov/media/13261/amicusbrief_02172026/download*.

[11] *See* CEA sec. 2a(1)(A), 7 U.S.C. 2(a)(1)(A) (expressly extending the CFTC's ''exclusive jurisdiction'' to encompass ''transactions involving swaps or contracts of sale of a commodity for future delivery . . . traded or executed on a contract market designated pursuant to [CEA sec. 5, 7 U.S.C. 7] . . . .'').

[12] *See* CEA sec. 1a(9), 7 U.S.C. 1a(9).

[13] The CEA includes a savings clause providing that the CFTC's jurisdiction does not apply to securities, other than security futures. *See, e.g.,* CEA sec. 2a(1)(A) and (H), 7 U.S.C. 2(a)(1)(A) and (H). Thus, the CFTC's exclusive jurisdiction does not extend to security-based swaps or other securities, and the CFTC shares jurisdiction with the Securities and Exchange Commission (SEC) over security futures.

[14] CEA sec. 1a(47)(A)(i), 7 U.S.C. 1a(47)(A)(i) defines the term ''swap,'' in relevant part, to include ''any agreement, contract, or transaction . . . that is a[n] . . . option of any kind that is for the purchase or sale, or based on the value, of 1 or more . . . quantitative measures, or other financial or economic interests or property of any kind,'' and CEA sec. 1a(47)(A)(ii), 7 U.S.C. 1a(47)(A)(ii) defines swap to include ''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.''

[15] *See* CEA sec. 2a(1)(A), 7 U.S.C. 2(a)(1)(A) (CFTC exclusive jurisdiction over commodity futures contracts).

[16] *See infra,* notes 41 to 45 and accompanying text. With respect to security futures, such offerings are also subject to registration with and regulation by the SEC.

[17] *See* H.R. Rep. No. 93–975, at 51 (1974); S. Rep. No. 93–1131, at 36 (1974), reprinted in 1974 U.S.C.C.A.N. 5843, 5885. *See also KalshiEX, LLC* v. *Flaherty,* 172 F.4th 220, 230 (3d Cir. 2026) (''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.'').

[18] CEA sec. 3, 7 U.S.C. 5.

[19] CEA sec. 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A) (vesting the Commission with ''exclusive jurisdiction,'' except as otherwise expressly provided by Congress, over all ''accounts, agreements. . ., and transactions involving swaps or contracts of sale of a commodity for future delivery''). The CEA ''preempts the application of state law.'' *Leist* v. *Simplot,* 638 F.2d 283, 322 (2d Cir. 1980). ''Express preemption occurs when a federal statute explicitly states that it overrides state or local law.'' *Hoagland* v. *Town of Clear Lake,* 415 F.3d 693, 696 (7th Cir. 2005). The CFTC and the SEC share jurisdiction over security futures and options on security futures. Preemption was the primary goal of the ''exclusive jurisdiction'' provision. Indeed, potentially limiting language was stricken from the statute ''to assure that Federal preemption is complete.'' 120 Cong. Rec. 30464 (1974) (Statement of Sen. Curtis).

[20] *See* CEA sec. 5, 7 U.S.C. 7. The Board of Trade of the City of Chicago (also called the Chicago Board of Trade, or CBOT), the first cash grain market exchange in the U.S., was created in 1848 by grain merchants and received its charter in 1859. *See* Philip McBride Johnson et al., Derivatives Regulation sec. 6.03 (last updated Jan. 2026).

[21] CEA sec. 4(a)(1), 7 U.S.C. 6(a)(1). This section of the CEA also refers to transactions in futures contracts and options on a derivatives transaction execution facility, but there are no such facilities currently in operation.

[22] *See* S. Rep. No. 93–1131 (1974), reprinted in 1974 U.S.C.C.A.N. 5848. The Constitution's Supremacy Clause mandates that ''[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'' U.S. Const. art. VI, cl. 2.

[23] *See KalshiEX,* 172 F.4th at 227 (the CEA ''grants the CFTC exclusive regulatory authority over event contracts. . . .''). Where Congress makes ''a single sovereign responsible for maintaining a comprehensive and unified system'' of regulation, allowing states to regulate the same field '' 'detract[s] from the ''integrated scheme of regulation'' created by Congress.' '' *Arizona* v. *U.S.,* 567 U.S. 387, 401–02 (2012) (quoting *Wisconsin Dept. of Indus.* v. *Gould Inc.,* 475 U.S. 282, 288–89 (1986)).

[24] Preemption of state law was necessary because, for decades, states had attempted to apply state gambling laws to derivatives trading. By the mid-nineteenth century, commodity exchanges in major trading hubs like New York and Chicago had organized trading to facilitate price discovery (information exchange), risk management (hedging), and speculation. Congress recognized the need for uniform, nationwide regulation of futures and options markets because concurrent regulation by the states could lead to ''total chaos.'' *See* Commodity Futures Trading Act of 1974: Hearings Before the S. Comm. on Agriculture & Forestry on S. 2485, S. 2578, S. 2837, H.R. 13113, 93d Cong., 2d Sess. 685 (1974) (statement of Sen. Clark), available at *https://catalog.hathitrust.org/Record/010373491*.

The 1990s saw the growth of a new type of derivative financial product—swaps.[25] The Futures Trading Practices Act of 1992, authorized the CFTC to exempt certain off-exchange (*i.e.,* over-the-counter or OTC) swap transactions from the exchange trading requirement.[26] The swap market grew rapidly, and in 1999 a Presidential Working Group Report concluded that ''under many circumstances, the trading of financial derivatives by eligible swap participants should be excluded from the CEA'' in order to avoid legal uncertainty and unnecessary regulatory burdens.[27] Spurred by the 1999 report, the Commodity Futures Modernization Act of 2000 (CFMA) exempted or excluded swap transactions from the exchange trading requirement.[28]

In the wake of the 2008 financial crisis, Congress created a framework within the CEA for the on-exchange execution, clearing and reporting of vast portions of the previously OTC swap markets. The Wall Street Transparency and Accountability Act of 2010 (Dodd-Frank Act) expressly extended the CFTC's ''exclusive jurisdiction'' to encompass ''transactions involving swaps.'' [29] Among other things, the Dodd-Frank Act also:

- added a new definition of the term ''swap'' to the CEA; [30]
- directed the CFTC and the SEC to jointly adopt a rulemaking to further define the term ''swap'' (among other terms) in consultation with the Federal Reserve; [31]
- required retail swap transactions (*i.e.,* transactions not between eligible contract participants) to be entered into on a DCM; [32]
- created a new type of trading facility—a swap execution facility (SEF)—where eligible contract participants can transact swaps; [33] and
- adopted CEA section 5c(c)(5)(C), a ''Special Rule for review and approval of event contracts and swaps contracts,'' [34] which is discussed in detail below.

In sum, under current law, futures contracts, options on futures contracts and retail swaps must be transacted on DCMs, and the CFTC oversees DCMs and SEFs and trading in these instruments. In this document, the term ''prediction market'' refers to a CFTC-registered DCM or SEF that offers event contracts in the form of swaps or futures contracts for trading. Depending on their underlying events, other event contracts may be security-based swaps or other instruments subject to the jurisdiction of the SEC.[35]

CEA section 1a(47)(A)(ii) defines ''swap'' to include ''any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.'' [36] Also, CEA section 1a(47)(A)(i) defines the term ''swap'' to include ''any agreement, contract, or transaction . . . that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind.'' [37] Event contracts traded as swaps under CEA section 1a(47)(A)(i) are sometimes referred to as binary options, a type of swap which is an ''option whose payoff is either a fixed amount or zero.'' [38]

The definition of what constitutes a futures contract is not set out in the CEA but rather has been developed in court decisions.[39] Event contracts structured as futures contracts would have the key characteristics of futures contracts such as standardization, futurity, fungibility, and offset.[40]

Because of CEA section 2(e) and the exchange trading requirement, respectively, a prediction market that offers event contracts for trading by the general public in the form of swaps or futures contracts must register with the

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[25] In 1989, the Commission adopted a policy statement describing when it would not take action against swaps as illegal futures contracts. *See* Policy Statement Concerning Swap Transactions, 54 FR 30694 (July 21, 1989).

[26] Public Law 102–546, sec. 502(a)(2), 106 Stat. 3590, 3629 (1992), adding section 4(c) to the CEA, including CEA sec. 4(c)(5)(B), 7 U.S.C. 6(c)(5)(B).

[27] Report of The President's Working Group on Financial Markets, *Over-the-Counter Derivatives Markets and the Commodity Exchange Act* (Nov. 1999) at 1 (footnote omitted), available at *https://home.treasury.gov/system/files/236/Over-the-Counter-Derivatives-Market-Commodity-Exchange-Act.pdf.* In addition to participating in this working group, the Commission also prepared a framework for deregulation of DCMs and exclusions from the CEA for OTC transactions. *See* Report of the Commodity Futures Trading Commission Staff Task Force, *A New Regulatory Framework* (2000), available at *https://www.cftc.gov/sites/default/files/files/opa/oparegulatoryframework.pdf. See also* Derivatives Regulation sec. 2.04[B].

[28] Public Law 106–554, App. E, sec. 103, 114 Stat. 2763A–365, 2763A–377 (2000), adding CEA sec. 2(d), which at that time exempted off-exchange swaps in an ''excluded commodity'' entered into by ''eligible contract participants.'' *See* 7 U.S.C. 2(d) (2000 Main Ed.).

The CFMA also introduced definitions of the terms ''eligible contract participant'' and ''excluded commodity.'' See CEA sec. 1a(18) and (19), 7 U.S.C. 1a(18) and (19), respectively. The definition of ''excluded commodity'' is in effect unchanged today and is discussed further below. The definition of ''eligible contract participant'' has been subject to only technical amendments.

The CFMA restructured CEA sec. 5, 7 U.S.C. 7, applying a principles-based regulation philosophy to set out designation criteria and core principles with which a DCM must comply, rather than prescribing strict requirements. *See* CFMA sec. 110, 114 Stat. at 2763A–384.

Last, the CFMA added CEA sec. 5c, 7 U.S.C. 7a–2, which introduced a provision for DCMs to list a contract for trading by providing to the Commission a certification that the contract complies with the CEA (including Commission regulations thereunder). *See* CFMA sec. 113, 114 Stat. at 2763A–399. CEA sec. 5c will be discussed in detail below.

[29] *See* Public Law 111–203, sec. 722(a)(1), 124 Stat. 1376, 1672 (2010), amending CEA sec. 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A). This CEA section expressly extends the CFTC's ''exclusive jurisdiction'' to encompass ''transactions involving swaps or contracts of sale of a commodity for future delivery . . . traded or executed on a contract market designated pursuant to [CEA sec. 5, 7 U.S.C. 7] . . . .'' The CFTC shares jurisdiction over mixed swaps and security futures with the SEC, and the SEC has sole jurisdiction over security-based swaps. *See* CEA sec. 1a(44), 7 U.S.C. 1a(44) and secs. 3(a)(55) and 3(a)(68) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78c(a)(55) and 78c(a)(68). *See also KalshiEX,* 172 F.4th at 226 (''The Dodd-Frank Act of 2010 amended the Act again, . . . expanding the CFTC's exclusive jurisdiction 'with respect to accounts, agreements . . . and transactions involving swaps or contracts of sale of a commodity for future delivery . . . traded or executed on a [DCM.]' 7 U.S.C. 2(a)(1)(A).'').

[30] CEA sec. 1a(47), 7 U.S.C. 1a(47).

[31] Dodd-Frank Act sec. 712(d)(1), codified at 15 U.S.C. 8302(d)(1) (directing the CFTC and SEC to undertake joint rulemaking on covered topics). *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208 (Aug. 13, 2012).

[32] CEA sec. 2(e), 7 U.S.C. 2(e). The term ''eligible contract participant'' is defined in CEA sec. 1a(18), 7 U.S.C. 1a(18), and generally includes only institutional investors.

[33] CEA sec. 5h, 7 U.S.C. 7b–3. A SEF may make any swap available for trading to eligible contract participants.

[34] 7 U.S.C. 7a–2(c)(5)(C).

[35] *See* 7 U.S.C. 1a(47)(B) (providing ''exclusions'' from the definition of ''swap'' under the CEA, including for securities such as security based-swaps, certain options, and debt securities); *see also, e.g.,* 15 U.S.C. 78c(a)(68)(A) (defining ''security-based swap'' under the Exchange Act).

[36] 7 U.S.C. 1a(47)(A)(ii).

[37] 7 U.S.C. 1a(47)(A)(i).

[38] *See* CFTC, Futures Glossary, available at *https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm#B.*(last visited May 18, 2026).

[39] *See CFTC* v. *Co Petro Marketing Group, Inc.,* 680 F.2d 573 (9th Cir. 1982), *Transnor (Bermuda) Ltd.* v. *BP N. Am. Petroleum,* 738 F. Supp. 1472 (S.D.N.Y. 1990), and *Salomon Forex, Inc.* v. *Tauber,* 8 F.3d 966 (4th Cir. 1993). *See also In re Stovall,* [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) 20,941 (CFTC Dec. 6, 1979), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrceacases/documents/ceacases/stovall-dec1979-decision-13.pdf.*

[40] Since futures contracts are specifically excluded from the statutory definition of ''swap,'' these event contracts are not swaps. CEA sec. 1a(47)(B), 7 U.S.C. 1a(47)(B), provides that ''[t]he term 'swap' does not include—(i) any contract of sale of a commodity for future delivery (or option on such contract) . . . .''

CFTC as a DCM.[41] These prediction markets must comply with the substantive and procedural requirements that apply, more generally, to the listing for trading by a DCM of derivative contracts.[42] Further, a prediction market registered as a DCM or SEF is subject to statutory requirements to only list or permit trading in derivative contracts that are not readily susceptible to manipulation;[43] to enforce compliance with contract terms and conditions;[44] and to monitor trading on the exchange in order to prevent manipulation, price distortion, and disruption of the settlement process through market surveillance, compliance, and enforcement practices and procedures.[45]

2. CEA Section 5c(c)(5)(C)

In 2000 the CFMA added CEA section 5c, which introduced a provision for DCMs to list a contract for trading by providing to the Commission a certification that the contract complies with the CEA and Commission regulations.[46] This document refers to event contracts which a prediction market certifies to be in compliance with the CEA and Commission regulations as ''self-certified event contracts'' and to this process as ''self-certification.'' The Dodd-Frank Act revised CEA section 5c(c) in 2010 to include a new paragraph (5)(C), under which the Commission is authorized to prohibit CFTC-registered exchanges and clearinghouses from listing for trading or making available for clearing particular types of event contracts, if the Commission determines that such contracts are contrary to the public interest.[47] This document refers to CEA section 5c(c)(5)(C) as the Special Rule.

Specifically, clause (i) in the Special Rule provides that, ''[i]n connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities[48] that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in [CEA] section la(2)(i)),[49] by a [DCM] or [SEF], the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—(I) activity that is unlawful under any Federal or State law; (II) terrorism; (III) assassination; (IV) war; (V) gaming; or (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.''[50]

Clause (ii) in the Special Rule provides that ''[n]o agreement, contract or transaction[51] determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.''[52]

It is notable that the Special Rule applies *in addition to* the other requirements applicable to event contracts traded on a prediction market. That is, the Special Rule is not the only way in which a prediction market could be prohibited from listing an event contract and the Special Rule applies only if the event contract is certified to be in compliance with all other requirements (because an event contract can be listed only if it is certified to be in compliance).[53] The Commission therefore preliminarily believes that, in general, the Special Rule should have only a limited application in cases where the listing, trading, and clearing of event contracts that would be otherwise in compliance with all applicable requirements should be prohibited because the event contracts involve an activity enumerated in clause (i) of the Special Rule and are contrary to the public interest.

The Commission preliminarily interprets the Special Rule to require the Commission to engage in a three-step inquiry before it may determine an event contract is prohibited thereunder.[54] First, the Commission

[41] *See* CEA sec. 2(e), 7 U.S.C. 2(e) (requirement that persons other than eligible contract participants transact swaps on a DCM) and CEA sec. 4(a), 7 U.S.C. 6(a) (requirement to transact futures contracts on a DCM). The term ''eligible contract participant'' is defined in CEA sec. 1a(18), 7 U.S.C. 1a(18), and generally includes only institutional investors. In addition to DCMs, a SEF may make any swap, including an event contract that is a swap, available for trading. *See* CEA sec. 5h, 7 U.S.C. 7b–3. However, swap trading on a SEF is not available to the general public, but rather only to eligible contract participants.

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

[43] *See* Core Principle 3 for DCMs, CEA sec. 5(d)(3), 7 U.S.C. 7(d)(3), and Core Principle 3 for SEFs, CEA sec. 5h(f)(3), 7 U.S.C. 7b–3(f)(3).

[44] *See* Core Principle 2 for DCMs, CEA sec. 5(d)(2), 7 U.S.C. 7(d)(2), and Core Principle 2 for SEFs, CEA sec. 5h(f)(2), 7 U.S.C. 7b–3(f)(2).

[45] *See* Core Principle 4 for DCMs, CEA sec. 5(d)(4), 7 U.S.C. 7(d)(4), and Core Principle 4 for SEFs, CEA sec. 5h(f)(4), 7 U.S.C. 7b–3(f)(4).

[46] *See* 7 U.S.C. 7a–2 (2000 Main Ed.). Before 2000, the CEA required that a DCM obtain the Commission's prior approval before listing a contract for trading. *See infra,* note 60. CEA section 5c, as added by the CFMA, also includes a provision for a DCM to seek prior approval of a contract; however, it is not mandatory. *See* 7 U.S.C. 7a–2(c)(4).

[47] 7 U.S.C. 7a–2(c)(5)(C), amended by Dodd-Frank Act, Public Law 111–203, sec. 745(b), 124 Stat. 1376, 1735 (2010).

[48] The term ''excluded commodity'' is defined in CEA section 1a(19), 7 U.S.C. 1a(19), as: ''(i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure; (ii) any other rate, differential, index, or measure of economic or commercial risk return, or value that is—(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or (II) based solely on one or more commodities that have no cash market; (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 (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence.''

[49] There is no ''section 1a(2)(i)'' in the CEA. The Commission believes that the reference in CEA section 5c(c)(5)(C)(i) to ''section 1a(2)(i)'' is a typographical or drafting error.

[50] CEA sec. 5c(c)(5)(C)(i), 7 U.S.C. 7a–2(c)(5)(C)(i).

[51] CEA sec. 5c(c)(5)(C)(i) applies in connection with the listing of agreements, contracts, transactions, or swaps by a DCM or SEF. 7 U.S.C. 7a–2(c)(5)(C)(i). The Commission notes that similar phrases both later in CEA sec. 5c(c)(5)(C)(i) and in CEA sec. 5c(c)(5)(C)(ii) refer only to ''agreements, contracts, or transactions . . . .'' The Commission interprets either phrase to encompass derivative contracts listed for trading on or through DCMs or SEFs, and for simplicity refers to ''agreements, contracts, transactions or swaps'' as ''event contracts'' herein.

[52] CEA sec. 5c(c)(5)(C)(ii); 7 U.S.C. 7a–2(c)(5)(C)(ii). The term ''registered entity'' includes a DCM, a SEF, and a derivatives clearing organization registered with the CFTC. *See* CEA sec. 1a(40); 7 U.S.C. 1a(40).

[53] In the self-certification process, the prediction market bears the burden to assess and certify compliance of event contracts with the CEA and Commission regulations. If the prediction market certifies that the event contracts are in compliance, the prediction market can list the event contracts for trading on the next business day. *See* 17 CFR 40.2(a)(2). *See also infra,* note 58.

Apart from the Special Rule, the Commission has limited authority to prohibit a prediction market from listing self-certified event contracts. If Commission staff identify concerns with a self-certified event contract submission (*e.g.,* concerns that a contract may be readily susceptible to manipulation), the Commission could, pursuant to § 40.2(c), stay the listing of the event contracts during either the pendency of Commission proceedings for filing a false certification or during the pendency of a petition to alter or amend the event contract terms and conditions. *See* 17 CFR 40.2(c). The Commission could also initiate an enforcement action alleging that the prediction market failed to comply with part 40 requirements or applicable core principles (*e.g.,* failure to comply with the prediction market's obligation to list only contracts that are not readily susceptible to manipulation).

[54] Several commenters on the Commission's Advance Notice of Proposed Rulemaking on Prediction Markets, *see infra* note 154, wrote that the Special Rule requires a two-step inquiry. *See, e.g.,* Letter from CME Group, Inc. 9 (Apr. 30, 2026); Letter from Harry Crane, Rutgers University, 2 (Apr. 30, 2026). Those commenters treated the second and third steps below as the two steps required; the Commission simply notes here that an additional initial step is to determine if the agreements, contracts, transactions, or swaps are event contracts. The letters are available on the Commission's website. *See infra* note 155.

must assess whether agreements, contracts, transactions, or swaps in an excluded commodity are based upon an occurrence, extent of an occurrence, or contingency and therefore qualify as ''event contracts.'' [55] Second, the Commission must determine whether the event contracts ''involve'' an activity enumerated in paragraph (i) of the Special Rule (each, an Enumerated Activity) or other similar activity as determined by the Commission by rule or regulation (similar activity). Third, if the Commission determines that the event contracts involve such activity, the Commission may block a contract from being listed if it undertakes a public interest analysis and determines the event contract is affirmatively against the public interest. The Commission interprets the Special Rule to provide that the event contract may not be listed or made available for clearing or trading by a prediction market if the Commission affirmatively finds that (i) the contract is an event contract, (ii) the event contract involves an Enumerated Activity or similar activity, and (iii) the event contract is contrary to the public interest.

The Commission also notes that the Special Rule does not provide that event contracts involving Enumerated Activities are contrary to the public interest *per se.* Rather, if event contracts involve an Enumerated Activity, the Commission ''may'' determine that they are contrary to the public interest and prohibited from trading.[56]

In 2011, the Commission adopted final rules under part 40 of the Commission's regulations, including new Regulation 40.11.[57] The Commission adopted Regulation 40.11 to implement the Special Rule as part of broader changes to the Commission's part 40 regulations.[58]

3. Past Provisions for Contract Approval and History of the Current Text of the Special Rule

The Special Rule provides that the Commission may determine that certain event contracts are ''contrary to the public interest.'' [59] In understanding this provision, it is useful to review the prior application of a public interest standard to a DCM's listing of a contract for trading, and the legislative history of the Special Rule. The Commission preliminarily believes that the following precedents and legislative history indicate that the public interest standard to be applied in the Special Rule is different from the public interest standard previously applied prior to enactment of the CFMA in 2000.

As noted above, prior to the CFMA, CEA section 5(7) required that a DCM demonstrate that each futures contract it listed ''will not be contrary to the public interest.'' [60] The legislative history of this provision, from 1974 when the CEA was enacted, indicated that an ''economic purpose'' test was incorporated into the public interest requirement.[61] Based on this, prior to 2000 the Commission took the position that every proposed futures contract must satisfy an economic purpose test and, in addition, a broader public interest test.[62]

Although the combined public interest/economic purpose test was applied by the Commission from 1974 to 2000 and retained the support of Congress through the various amendments to the CEA during that period, it was not without criticism.[63] In 1976, a Commission-established Advisory Committee endorsed an approach where listing a contract for trading would not require an affirmative conclusion that the contract served an economic purpose.[64] The Advisory Committee noted that futures contract prices guide economic decisions, and therefore any actively traded futures contract would provide economic benefits, unless it is flawed.[65] By

[55] Event contracts in certain excluded commodities are not subject to the Special Rule. *See infra* section II.B.

[56] CEA sec. 5c(c)(5)(C)(i); 7 U.S.C. 7a–2(c)(5)(C)(i). In the two instances where the Commission applied the Special Rule, it made an affirmative finding that the event contracts in question were contrary to the public interest. *See infra* sections I.C.5 and I.C.7.

[57] Provisions Common to Registered Entities, 76 FR 44776 (July 27, 2011).

[58] Part 40 of the Commission's regulations, more generally, implements the contract and rule submission requirements for registered entities set forth in CEA section 5c(c). For example, § 40.2 sets forth the general process by which a DCM or SEF may list a new derivative contract for trading by providing the Commission a self-certification that the contract complies with the CEA, including the CFTC's regulations thereunder. 17 CFR 40.2; *see also* CEA sec. 5c(c)(1), 7 U.S.C. 7a–2(c)(1). The Commission must receive the DCM's or SEF's self-certification at least one business day before the contract's listing. 17 CFR 40.2(a)(2). Rule 40.3 sets forth the general process by which a DCM or SEF may elect voluntarily to seek prior Commission approval of a derivative contract that the DCM or SEF seeks to list for trading. 17 CFR 40.3; *see also* CEA sec. 5c(c)(4)–(5), 7 U.S.C. 7a–2(c)(4)-(5). Amendments to an existing derivative contract also must be submitted to the Commission either by way of self-certification or for prior Commission approval. 17 CFR 40.5, 40.6.

[59] CEA sec. 5c(c)(5)(C)(i), 7 U.S.C. 7a–2(c)(5)(C)(i).

[60] 7 U.S.C. 7(7) (1994 Ed. and Supp. V). At that time, a DCM was required to obtain from the Commission a designation as a contract market for each futures contract that it listed for trading. *See* Derivatives Regulation sec. 6.04[C.2.c.iii].

[61] *See id.* The Derivatives Regulation authors explain that in connection with the adoption of the CEA in 1974, the House of Representatives proposed to explicitly require a DCM to demonstrate that its contracts could be used by commercial businesses for price discovery or to hedge the risk of price fluctuations, but the Senate instead required a DCM to demonstrate ''that transactions for future delivery in the commodity for which designation as a contract market is sought will not be contrary to the public interest,'' which is the provision that was added to the CEA. *Id.* (citing H.R. Rep. No. 975, 93d Cong., 2d Sess. 103 (Apr. 4, 1974) and S. Rep. No. 1131, 93d Cong., 2d Sess. 72 (Aug. 29, 1974)). However, the Conference Committee report stated that the ''broader language of the Senate provision would include the concept of the 'economic purpose' test provided in the House bill subject to the final test of the 'public interest.' '' H.R. Rep. No. 1383, 93d Cong., 2d Sess. 14 (Sept. 27, 1974).

[62] The Commission adopted ''Guideline No. 1'' to assist DCMs in preparing applications for product approval. *See* Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 FR 25849 (June 19, 1975). Guideline No. 1 stated that DCMs should make an affirmative showing that a proposed futures contract was ''reasonably expected to serve, on more than occasional basis,'' as a price discovery or hedging tool for commercial users of the underlying commodity. Subsequently, the Commission revised Guideline No. 1, publishing it as appendix A to part 5 of the Commission's regulations. *See* 47 FR 49832 (Nov. 3, 1982). As revised in 1982, Guideline No. 1 was updated to address proposed innovations in the trading of futures contracts, including futures contracts on financial instruments and on various indexes and cash-settled futures contracts. Guideline No. 1 was again revised in 1992. 57 FR 3518 (Jan. 30, 1992). The 1992 revisions, among other things, eliminated the guideline that a DCM provide a further, separate justification that the proposed contract would be quoted and disseminated for price basing, or used as a means of hedging against possible loss through price fluctuation on more than an occasional basis, noting that ''the economic purpose of a contract is often implicit, or encapsulated, in the exchange's demonstration that the terms and conditions of the proposed contract meet the criteria of the Guideline [No. 1].'' 57 FR at 3521–22, note 9. Finally, Guideline No. 1 was further revised and streamlined in 1999. 64 FR 29217 (June 1, 1999). When former CEA section 5(7) was repealed by the CFMA, Guideline No. 1 was withdrawn by the Commission.

[63] For example, prior to CFTC reauthorization in 1982, some DCMs proposed a repeal or amendment of the public interest test. *See* CFTC Reauthorization: Hearings before the Subcomm. on Conservation, Credit, and Rural Development of the Comm. on Agriculture, House of Representatives, 97th Cong., 2d Sess., on H.R. 5447, Feb. 23, 24, and 25, 1982, at 269 (testimony of Lee Berendt, Comex, that contract approval ''could be left to free market forces''), 309 (statement of Clayton Yeutter, Chicago Mercantile Exchange, that ''the marketplace should be allowed to decide whether a contract proposed by an exchange is useful and beneficial so long as that contract is not in violation of any provision of'' the CEA or regulations thereunder), and 353 (statement of Alvin Donahoo, Minneapolis Grain Exchange, that the contract approval process ''is very costly and time consuming for the Exchange''), available at *https://catalog.hathitrust.org/Record/002757479*. But Congress did not make the suggested changes to the CEA.

[64] *See* Report of the CFTC Advisory Committee on the Economic Role of Contract Markets 8 (1976), available at *https://catalog.hathitrust.org/Record/000751730*.

[65] *Id.* (''The Committee endorses the Commission's demonstrated approach to this evaluation of the public interest—that a futures contract should only be denied designation if a finding is made that the trading would be against the public interest. . . . [F]utures markets

Continued

contrast, requiring an affirmative showing of economic purpose would be difficult to apply and, given that futures contracts can undergo revision, would ''hamper the industry's development and even its current effectiveness by hampering innovation and adaptation to change.'' [66]

The public interest/economic purpose test did not prevent the Commission from approving an increasing variety of futures contracts in the 1980s and 1990s. These included futures contracts based on: interest rates derived from the securitization of mortgages,[67] rates of return on Eurodollar deposits,[68] equity indices,[69] the consumer price index,[70] corporate bond indices,[71] catastrophe insurance,[72] barge freight rates,[73] corn harvest yields in specific regions,[74] and temperature indices.[75]

The Commission preliminarily believes that this history demonstrates that the public interest/economic purpose test, despite its longevity, was controversial and difficult to apply. And experience showed that the public interest/economic purpose test was of limited relevance to deciding whether a futures contract should be prohibited, because no standard for finding that a futures contract does not serve an economic purpose has ever been applied to prohibit any futures contract.

As noted above, in 2000 the CFMA repealed CEA section 5(7) and added CEA section 5c, which among other things introduced a provision for DCMs to list a contract for trading by providing to the Commission a certification that the contract complies with the CEA and Commission regulations.[76] Following the enactment of the CFMA, the Commission was no longer required to find that a contract is not contrary to the public interest before listing of the contract.

The Special Rule was added to the CEA by section 745(b) of the Dodd-Frank Act, which amended the requirements for contract and rule submission by adopting a new version of CEA section 5c(c).[77] The only discussion of the Special Rule in the legislative history of the Dodd-Frank Act is a short colloquy on the Senate floor between the late Senator Diane Feinstein and Senator Blanche Lincoln, then-Chair of the Senate Committee on Agriculture, Nutrition, and Forestry.[78] In this colloquy, the two Senators appear to be talking about two different types of derivatives contracts, and Senator Lincoln (the author of the Special Rule) never expressly adopts Senator Feinstein's reasoning.

Senator Feinstein describes a broad swath of speculative derivatives, saying, ''[s]ince 2000, derivatives traders have bet billions of dollars on derivatives contracts that served no commercial purpose at all and often threaten the public interest,'' before expressing that the Special Rule should authorize the CFTC to ''determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to a hedging or economic use.'' [79] The Commission preliminarily believes that Senator Feinstein is suggesting that the activity of ''gaming'' in the Special Rule would encompass ''billions of dollars'' of contracts—*i.e.,* the derivative contracts that she believes contributed to the 2008 crisis.[80]

Senator Lincoln, on the other hand, says the purpose of the Special Rule is ''to prevent the creation of futures and swaps markets that would allow citizens to profit from devastating events and also prevent gambling through futures markets.'' [81] That is, in contrast to Senator Feinstein's reference to past contracts, Senator Lincoln looked at types of event contracts that could potentially be developed in the future.

The Commission preliminarily believes that the colloquy between Senators Feinstein and Lincoln does not indicate an intent to revive the public interest/economic purpose test that applied before the CFMA.[82] The ''billions of dollars on derivatives contracts that served no commercial purpose at all and often threaten the public interest'' to which Senator Feinstein refers would not be subject to the Special Rule, and arguably would not be prohibited under the pre-CFMA test. And Congress was aware of the history surrounding the economic purpose test but chose not to incorporate it into the text of the Special Rule. In any case, the Commission notes that a floor colloquy is not a definitive source of Congressional intent.[83] For these reasons, and in addition to the generally limited value of legislative history,[84] the Commission preliminarily

ordinarily provide economic benefits through hedging and price discovery. Futures prices guide production, storage, and consumption decisions which help the economy function more smoothly. . . . Thus, a futures contract which is likely to be actively traded on an organized futures market can be expected to provide economic benefits—unless it has a flaw.'').

[66] The Advisory Committee concluded that ''[i]f a newly drawn contract succeeds, it can produce substantial benefits for the economy. Lack of success generally means simply that the contract is not traded.'' *Id.*

[67] *See* 1975 approval of GNMA CDR Mortgage Backed Certificate futures contract, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/255*.

[68] *See* 1981 approval of Eurodollar Time Deposit Rate futures contract, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/326*.

[69] *See* 1982 approval of Value Line Stock Index futures contract, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/455*.

[70] *See* 1985 approval of CPI–U futures contract, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/445*.

[71] *See* 1987 approval of Long Term Corporate Bond Index futures contract, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/231*.

[72] *See* 1992 approval of Catastrophe Insurance futures contract, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/223*.

[73] *See* 1992 approval of Barge Freight Rate Index futures contract, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/295*.

[74] *See* 1995 approval of North Dakota Spring Wheat Yield Insurance futures contract, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/737*.

[75] *See* 1999 approval of Atlanta Degree Days Index futures contract, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/1032*.

[76] *See* 7 U.S.C. 7a–2 (2000 Main Ed.).

[77] 7 U.S.C. 7a–2(c), amended by Dodd-Frank Act section 745(b), 124 Stat. 1376, 1735 (2010). The new section 5c(c) was added relatively late in the process of drafting the Dodd-Frank Act. It first appears in the ''Dodd-Lincoln Substitute Amendment'' on April 29, 2010, where its text is the same as in the final law. *See* Amendment No. 3739 to S.3217, Calendar No. 349, at 728, available at *https://www.congress.gov/111/bills/s3217/BILLS-111s3217as.pdf*. Notably, a new section 5c(c) does not appear in the April 15, 2010 Dodd draft of S.3217, available at *https://www.congress.gov/111/bills/s3217/BILLS-111s3217pcs.pdf*. The new section 5c(c) also is not mentioned in S. Rep. No. 111–176, The Restoring American Financial Stability Act of 2010 (April 30, 2010), available at *https://www.congress.gov/committee-report/111th-congress/senate-report/176/1?outputFormat=pdf*.

[78] 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (''Event Contracts''), available at *https://www.congress.gov/111/crec/2010/07/15/CREC-2010-07-15-senate.pdf* (Feinstein-Lincoln Colloquy).

[79] *Id.*

[80] Given the precedents for approval of a wide variety of futures contracts under the public interest/economic purpose test described above, it is unlikely that this test would have led the Commission to prohibit the contracts to which Senator Feinstein refers.

[81] Feinstein-Lincoln Colloquy.

[82] That is, and for clarity, the Commission preliminarily believes that the reasoning in a Commission order in 2012 prohibiting certain political event contracts was incorrect. *See* section I.C.5.

[83] *See, e.g., NLRB* v. *SW Gen., Inc.,* 580 U.S. 288, 307 (2017) (contradictory statements of two Senators are ''a good example of why floor statements by individual legislators rank among the least illuminating forms of legislative history''); *Rhode Island* v. *Narragansett Indian Tribe,* 19 F.3d 685, 699 (1st Cir. 1994) (rule that individual legislators' statements do not have controlling effect ''applies fully to the special case of statements by those members of Congress most intimately associated with a bill: its floor manager and its sponsors'') (citing *Weinberger* v. *Rossi,* 456 U.S. 25, 35 n.15 (1982) (''The contemporaneous remarks of a sponsor of legislation are certainly not controlling in analyzing legislative history.'')).

[84] *See, e.g., Exxon Mobil Corp.* v. *Allapattah Services, Inc.,* 545 U.S. 546, 568 (2005) (''Not all

believes that the colloquy is of limited usefulness to understanding the purpose of the Special Rule. Thus, the Commission preliminarily believes that the Special Rule contemplates a new type of public interest test.[85]

Senator Lincoln continued the colloquy by saying, ''[t]he Commission needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed 'event contracts.' It would be quite easy to construct an 'event contract' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling.'' Senators Feinstein and Lincoln then conclude the colloquy by saying that the Special Rule ''will also'' authorize the Commission to prevent trading in event contracts relating to national security events such as terrorism and war.[86]

The Commission preliminarily believes that the colloquy between Senators Feinstein and Lincoln establishes that Congress was aware that event contracts based on ''sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament'' could potentially be submitted under CEA section 5c(c), but Congress chose not to prohibit event contracts involving those sorts of events. Instead, the Special Rule confirms the CFTC's jurisdiction over event contracts and sets out a process by which the CFTC ''may'' find such event contracts to be contrary to the public interest. Notably, the statute does not authorize the Commission to impose a *per se* prohibition on the listing of such event contracts independent of a public interest determination.

The Commission has carefully considered the floor statement of Senator Lincoln, expressing concern that event contracts on sporting events might ''not serve any real commercial purpose'' and ''would be used solely for gambling.'' [87] The Commission preliminarily shares the underlying concern that the Special Rule should prevent the use of prediction markets as venues for event contracts that have neither commercial utility nor informational value. This proposal's framework operationalizes that concern through contract-specific application of the public interest factors set forth in proposed § 40.11(a)(5) and (a)(6), rather than through a categorical prohibition based on the identity of the underlying event. Former Senator Lincoln's own comment in response to the Commission's Advance Notice of Proposed Rulemaking on Prediction Markets supports the appropriateness of this approach.[88] Senator Lincoln explained that ''[s]ome contracts genuinely should be prohibited—direct references to specific acts of terrorism, named-individual assassinations, military operations,'' while ''[o]ther contracts that help users manage real economic exposure should not be prohibited.'' [89] Senator Lincoln specifically identified ''the Super Bowl'' as an example of a sporting event with ''strong commercial value'' because of its ''major impacts on advertising, apparel sales and the hospitality industry.'' [90] The framework proposed herein reflects these considerations.

C. Commission History With Prediction Markets

1. Staff Actions

The Commission's Division of Market Oversight has issued staff no-action positions which provide that, subject to specified terms, the Division will not recommend to the Commission enforcement action with respect to two small-scale, not-for-profit markets that offer trading in political and economic indicator event contracts for educational and research purposes.

The first no-action position, issued in 1992, involves the Iowa Electronic Markets (IEM), an online electronic trading facility ''where contract payoffs are based on real-world events such as political outcomes, companies' earnings per share (EPS), and stock price returns. The market is operated by University of Iowa Henry B. Tippie College of Business faculty as an educational and research project.'' [91] The staff no-action position limits the number of traders who can access the market at any one time and the maximum amount any single trader can risk.[92]

The other no-action position, issued in 2014, involves an online electronic market for political and economic indicator event contracts called *PredictIt.org*, ''a project of Prediction Market Research Consortium, a not-for-profit organization, for educational purposes.'' [93] The staff no-action position limits the maximum amount any single trader can risk, and states that the market ''is restricted to political events, such as contracts related to the outcomes of elections and other significant political questions not involving war, terrorism, or assassination,'' and also economic indicator contracts.[94]

2. 2008 Concept Release

Prompted by the Commission's receipt of a substantial number of requests for guidance related to application of the CEA to prediction markets, in 2008 the Commission published a concept release (2008 Concept Release) requesting input from interested persons, and those with expertise, on the appropriate regulatory treatment of prediction markets.[95] In the 2008 Concept Release, the Commission acknowledged that event contracts may not have a direct price basing or hedging purpose; rather, it described event contracts as ''information aggregation vehicles.'' [96] Specifically, the Commission stated that ''[i]n general, event contracts are neither dependent on, nor do they necessarily relate to, market prices or broad-based measures of economic or commercial activity.'' [97] The Commission elaborated as follows:

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extrinsic materials are reliable sources of insight into legislative understandings, however, and legislative history in particular is vulnerable[.]''); *Conroy* v. *Aniskoff,* 507 U.S. 511, 519 (1993) (Scalia, J., concurring) (''The greatest defect of legislative history is its illegitimacy.'').

[85] *See* Derivatives Regulation sec. 6.04[C.2.c.iv] (the Special Rule is ''a different type of public interest standard'' as compared to the pre-CFMA standard).

[86] Feinstein-Lincoln Colloquy.

[87] *Id.*

[88] Letter from Blanche Lincoln, Lincoln Policy Group (Apr. 30, 2026). The letter is available on the Commission's website. *See infra* note 155.

[89] *Id.*

[90] *Id.*

[91] *See* IEM home page, available at *https://iem.uiowa.edu/iem/* (last visited May 18, 2026).

[92] *See* CFTC Staff Letter No. 93–66 issued to the University of Iowa (June 18, 1993), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/93-66.pdf.* This no-action position superseded the operative terms of a more limited no-action position issued in 1992.

The CFTC staff no-action position did not extend to EPS or stock price returns. The University of Iowa did not request a no-action position as to stock price returns, and the CFTC staff referred the matter of EPS to the SEC staff. *See* CFTC Staff Letter No. 93–66 at 5. *See also* Letter from Erik Sirri, Director of Trading and Markets, SEC (Sept. 3, 2008), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/frcomment/08-004c028.pdf.*

[93] *See* ''What is PredictIt?'' available at *https://www.predictit.org/support/what-is-predictit* (last visited May 18, 2026).

[94] *See* CFTC Staff Letter No. 25–20 issued to Victoria University of Wellington, New Zealand (Victoria University) and the Prediction Market Research Consortium, Inc. (PMRC) (Jul. 14, 2025) at 2, available at *https://www.cftc.gov/csl/25-20/download.* The 2025 letter amended CFTC Staff Letter 14–130 issued to Victoria University (Oct. 29, 2014), available at *https://www.cftc.gov/csl/14-130/download,* to allow Victoria University to transfer operation of the market to PMRC, a US-based not-for-profit corporation.

[95] 2008 Concept Release, *supra* note 1, 73 FR at 25670, 25673.

[96] *Id.* at 25670.

[97] *Id.* at 25669.

''Since 2005, the Commission's staff has received a substantial number of requests for guidance on the propriety of offering and trading financial agreements that may primarily function as information aggregation vehicles. These event contracts generally take the form of financial agreements linked to eventualities or measures that neither derive from, nor correlate with, market prices or broad economic or commercial measures.'' [98]

Because event contracts differ from other derivatives in this regard, the 2008 Concept Release sought comment on ''[w]hat public interests are served by event contracts that are designed and will principally be traded for information aggregation purposes and not for commercial risk management or pricing purposes?'' [99]

3. 2010 Approval of Event Contracts on Box Office Receipts

In March 2010, prior to enactment of the Dodd-Frank Act, Media Derivatives, Inc. (MDEX), a DCM, requested prior Commission approval under CEA section 5c(c)(2) and § 40.3 of Opening Weekend Motion Picture Revenue futures and binary option contracts on the motion picture ''Takers.'' [100] In June 2010, the Commission approved the contracts, finding that ''the contracts are based on commodities, are not readily susceptible to manipulation and serve an economic hedging purpose.'' [101]

In finding that box office receipts are a commodity, the Commission reasoned that DCMs list for trading many contracts ''where the underlying commodity is a non-price-based measure of an economic activity, commercial activity or environmental event.'' [102] Moreover, where ''there is no cash market for the commodity, but the commodity reflects some measure of economic activity or event that can be used for a hedging purpose when incorporated into a futures or options contract[,] . . . [t]he Commission has found that such commodity is a right or interest'' within the CEA definition of the term ''commodity.'' [103] The Commission also noted that while the ''term 'event' contract has no meaning under the [CEA]'' the ''statutory definition of 'commodity' does not suggest that an 'event' cannot underlie a futures or options contract.'' [104]

In finding that the contracts are not readily susceptible to manipulation, the Commission noted that the data on box office receipts underlying the contracts would be collected by an independent third party with an incentive to maintain accurate data.[105] In order to address fair and equitable trading and false reporting concerns, MDEX's rules provided that entities and individuals that hold a large position in contracts on a particular film's box office receipts and also control the film's marketing budget, release date or opening screen number must inform MDEX regarding such decisions.[106] Also, movie studios and distributors that trade contracts on their films' box office receipts were required to adopt and enforce firewall procedures, and their employees involved with compiling box office receipt data were prohibited from trading.[107]

Noting that the earlier economic purpose test had been repealed by the CFMA, the Commission did not apply an economic purpose test to the contracts on movie box office receipts. However, ''in light of the comments raised by the studios, the Commission evaluated MDEX's proposed contracts to determine whether they would provide some reasonable means for managing risks associated with box office revenues'' and ''found that the contracts can perform hedging and price discovery purposes'' because movie industry ''profit and losses have a clear and direct relationship to box office revenues.'' [108]

Even before the Commission had approved the futures and binary option contracts on box office receipts that MDEX had submitted, MDEX's application had drawn the attention of Congress.[109] The Dodd-Frank Act, adopted one month after the Commission approved the contracts, amended the CEA definition of the term ''commodity'' to explicitly exclude ''motion picture box office receipts (or any index, measure, value, or data related to such receipts).'' [110] Congress thus recognized that the CFTC correctly determined these to be a commodity and that the economic purpose test was not required. Accordingly, the MDEX box office receipts contracts were never traded.

4. 2011 Adoption of § 40.11

In 2011, the Commission adopted § 40.11 to implement the Special Rule as part of broader changes to the Commission's part 40 regulations.[111]

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[98] *Id.* at 25670. More specifically, the 2008 Concept Release noted that: (1) event contracts based on environmental measures (such as the volatility of precipitation or temperature levels) or environmental events (such as a specific type of storm within an identifiable geographic region) will ''not predictably correlate to commodity market prices or other measures of broad economic or commercial activity;'' and (2) event contracts based on general measures (such as the number of hours that U.S. residents spend in traffic annually or the vote-share of a particular candidate) ''do not quantify the rate, value, or level of any commercial or environmental activity,'' and that contracts on general events (such as whether a Constitutional amendment will be adopted) ''do not reflect the occurrence of any commercial or environmental event.'' *Id.* at 25671.

[99] *Id.* at 25673. The Commission received 31 comments in response to the 2008 Concept Release but ultimately did not take further action at that time. The comments are available at *https://www.cftc.gov/LawRegulation/PublicComments/08-004.html.*

[100] *See* Statement of the Commission approving certain MDEX contracts (June 14, 2010) (MDEX Statement) at 1, available at *https://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/mdexcommissionstatement061410.pdf.* MDEX later changed its name to Trend Exchange, Inc.

Two weeks after approving the MDEX futures and binary option contracts, the Commission also approved an application by the Cantor Futures Exchange to list a futures contract on Domestic Box Office Receipts of the motion picture ''The Expendables.'' The approval is available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/19296.*

[101] MDEX Statement at 2. Regarding an economic hedging purpose, the Commission noted that it had not found that a contract is required to serve an economic hedging purpose in order to be approved. Rather, the Commission staff undertook a review of the contracts' economic hedging purpose due to concerns raised by the public about the contracts. *Id.* at note 2.

[102] *Id.* at 3.

[103] *Id.* The Commission cited as examples ''Company-Specific Earnings Per Share; Eurozone Index of Consumer Prices; Consumer Price Index; Nonfarm Payrolls; Retail Sales Data; Unemployment Claims; Company-Specific Merger and Acquisitions; State-Specific and National Crop Yields; Location-Specific Heating and Cooling Degree Days; Location-Specific Snowfall; and Regional Wind Indices.'' *Id.*

[104] *Id.*

[105] *Id.* at 5–7.

[106] *Id.* at 7.

[107] *Id.* at 8.

[108] *Id.* at 10.

[109] *See* Hearing to Review Proposals to Establish Exchanges Trading ''Movie Futures'': Hearing before the Subcomm. on Gen. Farm Commodities and Risk Mgmt. of the H. Comm. on Agric., 111th Cong., 2d Sess. (2010), available at *https://www.govinfo.gov/content/pkg/CHRG-111hhrg56431/html/CHRG-111hhrg56431.htm.*

[110] CEA sec. 1a(9), 7 U.S.C. 1a(9). The Dodd-Frank Act also amended 7 U.S.C. 13–1 to prohibit DCMs from listing futures contracts based on motion picture box office receipts (or any index, measure, value, or data related to such receipts).

[111] Part 40 of the Commission's regulations, more generally, implements the contract and rule submission requirements for registered entities set forth in CEA sec. 5c(c). For example, § 40.2 sets forth the general process by which a DCM or SEF may list a new derivative contract for trading by providing the Commission with a written certification—a ''self-certification''—that the contract complies with the CEA, including the CFTC's regulations thereunder. *See also* CEA sec. 5c(c)(1), 7 U.S.C. 7a–2(c)(1). The Commission must receive the DCM's or SEF's self-certified submission at least one business day before the contract's listing. 17 CFR 40.2(a)(2). Rule 40.3 sets forth the general process by which a DCM or SEF may elect voluntarily to seek prior Commission approval of a derivative contract that the DCM or SEF seeks to list for trading. *See also* CEA sec. 5c(c)(4)–(5), 7 U.S.C. 7a–2(c)(4)–(5). Amendments to an existing derivative contract also must be submitted to the Commission either by way of self-certification or for prior Commission approval. 17 CFR 40.5, 40.6.

Rule 40.11(a)(l) provides that a registered entity shall not list for trading or accept for clearing on or through the registered entity an agreement, contract, transaction, or swap based upon ''an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law.'' [112]

Rule 40.11(a)(2) provides that a registered entity shall not list for trading or accept for clearing on or through the registered entity an agreement, contract, transaction, or swap based upon an excluded commodity, as defined in CEA section 1a(19)(iv), that involves, relates to, or references an activity that is similar to an activity enumerated in § 40.11(a)(1), and that the Commission determines, by rule or regulation, to be contrary to the public interest.[113] To date, the Commission has not made any such determinations regarding any similar activity.

Pursuant to § 40.11(c), when a contract submitted to the Commission by a registered entity may involve, relate to, or reference an activity enumerated in § 40.11(a)(1) or (2), the Commission is authorized to commence a 90-day review of the contract.[114] If the Commission opts to undertake a public interest review, the Commission must issue an order approving or disapproving the contract by the end of the 90-day review period or, if applicable, at the conclusion of any extended period agreed to or requested by the registered entity.[115] Rule 40.11(c)(1) requires the Commission to request that the registered entity suspend the listing or trading of the contract during the 90-day review period.[116] The Commission also must post on its website a notification of the intent to carry out a 90-day review.[117]

The adopting release for § 40.11 does not specifically discuss the public interest standard in the Special Rule. It bases § 40.11 on the Dodd-Frank Act's amendment of CEA section 5c to include the Special Rule, stating that ''the Commission has determined to prohibit contracts based upon the activities enumerated in Section 745 of the Dodd-Frank Act and to consider individual product submissions on a case-by-case basis under § 40.2 or § 40.3.'' [118]

The Commission also did not define any of the Enumerated Activities.[119] The Commission acknowledged, in the adopting release, a comment on the rule proposal that stated that the term ''gaming,'' in particular, should be further defined in order to enhance clarity regarding the scope of the prohibition set forth in § 40.11(a)(1).[120] The Commission expressed agreement with the interest to further define ''gaming'' for purposes of the prohibition, and noted that the 2008 Concept Release discussed the issue.[121] The Commission stated that it might issue a future event contracts rulemaking that, among other things, addressed the appropriate treatment of event contracts involving gaming.[122]

The Commission has consistently applied § 40.11 to operate a discretionary review framework rather than a self-executing *per se* prohibition, because the opposite interpretation would violate the statute.[123] As discussed in the next section and further below, when the Commission applied the Special Rule and § 40.11 to prohibit certain event contracts, the Commission made an explicit, affirmative finding that the specific event contracts were contrary to the public interest; it did not simply apply a self-executing *per se* prohibition.[124]

The 2011 adopting release contemplated that registered entities could receive a definitive resolution of any questions concerning the applicability of § 40.11(a)(1) by submitting a contract for Commission approval under § 40.3, and that, upon completion of a § 40.11(c) review, the Commission would be required to issue an order finding either that the contract violated, or did not violate, the prohibitions in § 40.11(a)(1)–(2). The text of § 40.11(c) reflects the same understanding. It provides for review of contracts that ''may involve'' an enumerated activity, which presupposes that whether a particular contract involves such an activity is a question the Commission resolves through review rather than a determination made on the face of § 40.11(a)(1). This understanding is necessary to keep § 40.11(a) within the bounds of the Commission's statutory authority. The Special Rule provides that the Commission ''may determine'' that an event contract involving an Enumerated Activity is contrary to the public interest. That language confers discretion to determine that a particular event contract is, or is not, contrary to the public interest. Interpreting that ''may'' as a *per se* prohibition would conflict with the requirements of the statute.

5. 2012 Nadex Disapproval

In 2012, the Commission commenced a 90-day review, under § 40.11(c), of certain event contracts on election outcomes (the Nadex Contracts) that had been self-certified by the North American Derivatives Exchange (Nadex).[125] On April 2, 2012, the Commission issued an order (the Nadex Order) prohibiting the contracts from

[112] 17 CFR 40.11(a)(1). Notably, the current text of § 40.11(a)(1) does not explicitly refer to a finding that the contract is contrary to the public interest.

The Special Rule applies with respect to agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i)). There is no ''section 1a(2)(i)'' in the CEA, and the Commission believes the reference to this provision in the Special Rule is a typographical or drafting error. In adopting § 40.11(a)(1) and (2), as well as § 40.11(c), the Commission interpreted the Special rule to apply with respect to the excluded commodities defined in CEA sec. 1a(19)(iv). *See* discussion in section II.B., *infra.*

[113] 17 CFR 40.11(a)(2).

[114] 17 CFR 40.11(c). Rule 40.11(c) states that the 90-day review period shall commence from the date the Commission notifies the registered entity of a potential violation of § 40.11(a).

[115] 17 CFR 40.11(c)(2).

[116] 17 CFR 40.11(c)(1).

[117] *Id.*

[118] Provisions Common to Registered Entities, 76 FR 44776, 44785 (July 27, 2011).

[119] The Commission noted that a registered entity could receive a definitive resolution of any questions concerning the applicability of § 40.11(a)(1) by submitting a particular contract for Commission approval under § 40.3: if the submitted contract was approved by the Commission, the registered entity would have assurance that the Commission had reviewed and did not object to the submission based on the prohibitions in § 40.11(a). *Id.* at 44785–86. The Commission noted that, alternatively, a registered entity could self-certify a contract under § 40.2 and, if the Commission determined during its review of the contract ''that the submission may violate the prohibitions in § 40.11(a)(1)–(2), the Commission may request that the registered entity suspend the trading or clearing of the contract pending the completion of a 90-day . . . review.'' *Id.* at 44786. The Commission stated that, upon completion of that review, the Commission would be required to issue an order finding either that the contract violated, or did not violate, the prohibitions in § 40.11(a)(1)–(2). *Id.*

[120] *Id.* at 44785.

[121] *Id.*

[122] *Id.*

[123] *See supra* text accompanying notes 55 to 56.

[124] *See infra* sections I.C.5. and I.C.7.

[125] *See* CFTC Press Release No. 6163–12, CFTC Commences 90-day Review of NADEX's Proposed Political Event Derivatives Contracts (Jan. 5, 2012), available at *https://www.cftc.gov/PressRoom/PressReleases/6163-12.* Nadex self-certified cash-settled, binary contracts on whether there would be a Democratic majority in the U.S. House of Representatives (House); whether there would be a Republican majority in the House; whether there would be a Democratic majority in the U.S. Senate (Senate); and whether there would be a Republican majority in the Senate. The contracts settled based on whether the named party held the majority of seats in the identified chamber of Congress on the expiration date. Nadex also self-certified ten cash-settled, binary contracts on the upcoming Presidential election. Each contract was based on one of the leading candidates for President and paid according to whether that candidate won the Presidency.

being listed or made available for clearing or trading, finding that the contracts involved the Enumerated Activity of gaming and were contrary to the public interest.[126]

In the Nadex Order, the Commission interpreted the Special Rule. First, the Commission stated that the legislative history of the Special Rule ''indicates that the relevant question for the Commission in determining whether a contract involves one of the activities enumerated in [the Special Rule] is whether the contract, considered as a whole, involves one of those activities.'' [127] Second, the Commission said that the legislative history indicated that Congress intended ''to restore, for the purposes of that provision, the economic purpose test that was used by the Commission to determine whether a contract was contrary to the public interest'' prior to the CFMA.[128]

The Commission also analyzed the Nadex Contracts. The Commission reasoned that the terms ''gaming''—which it equated with the term ''gambling''—is linked to betting on elections which, in turn, is analogous to taking a position in the Nadex Contracts, and that the Nadex Contracts are premised on the outcome of a contest between electoral candidates.[129] The Commission also stated that the unpredictability of the specific economic consequences of an election mean that the Nadex Contracts cannot reasonably be expected to be used for hedging and that the Nadex Contracts have no price basing utility.[130] Last, the Commission believed that the Nadex Contracts could be used in a way that could potentially adversely affect the integrity of elections.[131] On these bases, the Commission found that the Nadex Contracts involve gaming and are contrary to the public interest, as contemplated by the Special Rule.[132]

6. 2021 ErisX Withdrawal

On December 15, 2020, the CFTC received a self-certification filed by ErisX under § 40.2 for the listing of event contracts based on National Football League (NFL) games which would track the moneyline, point spread, and total points sports bets offered by sports bookmakers (NFL Contracts).[133] ErisX proposed to limit trading in the NFL Contracts to certain eligible contract participants with a commercial connection to NFL games.[134]

According to ErisX, the NFL Contracts would ''permit Licensed Sportsbooks to manage commercial risk by hedging their exposure [to imbalances in their books],'' and are ''tailored to address the unique risks of Licensed Sportsbooks.'' [135] ErisX also claimed that stadium owners and vendors would be able ''to hedge the commercial risk associated with lower game attendance or fewer home games resulting from poor performance of the team that plays at the sports stadium or arena.'' [136]

On December 23, 2020, the Commission informed ErisX that it had determined that the NFL Contracts '' 'may involve, relate to, or reference an activity enumerated in [Rule] 40.11(a)' including but not limited to 'gaming, or an activity that is unlawful under any Federal or State law' '' and it would begin a review under § 40.11(c).[137] On March 22, 2021, one day before the expiration of the 90-day review period, ErisX withdrew its certification.[138] One Commissioner later said in a statement that the Commission staff had prepared a draft order that would have prohibited the NFL Contracts because they involved gaming and were contrary to the public interest.[139]

7. 2023 Kalshi Disapproval and Court Decision

In June 2023, KalshiEX LLC (Kalshi) filed a certification of congressional control political event contracts (the Kalshi Contracts) under § 40.2.[140] The Commission determined that the Kalshi Contracts may involve, relate to, or reference an Enumerated Activity, requested that Kalshi suspend the listing and trading of the Kalshi Contracts during the review period, and opened a public comment period.[141] On September 22, 2023, the Commission issued an order (the Kalshi Order) prohibiting the Kalshi Contracts from being listed or made available for trading or clearing, finding that the contracts involved the Enumerated Activities of gaming and activity that is unlawful under State law, and were contrary to the public interest.[142]

Similar to the Nadex Order, the Kalshi Order interpreted the Special Rule. The Commission found that the ''choice of the broader term 'involve' means that [the Special Rule] can capture both contracts whose underlying activity *is* one of the Enumerated Activities, and contracts with a different connection to one of the Enumerated Activities,'' and that ''the question for the Commission in determining whether a contract 'involves' one of the [Enumerated Activities] . . . is whether the contract, considered as a whole, involves one of those activities.'' [143]

The Commission also found that ''gaming'' includes wagering on elections, reasoning that (i) ''gaming'' means gambling; (ii) gambling involves ''a person staking something of value upon the outcome of a game, contest, or contingent event;'' and (iii) to wager on elections is to ''stake something of value upon the outcome of contests of others.'' [144] Similarly, the Commission found that the Kalshi Contracts involved activity that is unlawful under State law because taking a position in the Kalshi Contracts would constitute wagering on

[126] *See* Order Prohibiting the Listing or Trading of Political Event Contracts (Apr. 2, 2012), available at *https://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf.*

[127] Nadex Order at 2.

[128] *Id.* at 3.

[129] *Id.*

[130] *Id.*

[131] *Id.* at 4.

[132] *Id.*

[133] ErisX, CFTC Regulation 40.2(a) Certification (Dec. 14, 2020) (ErisX Certification), available at *https://www.cftc.gov/sites/default/files/filings/ptc/20/12/ptc121520erisdcmdcm005.pdf.* The ErisX Certification described the NFL Contracts as event contracts, and like many event contracts the NFL Contracts had a binary payoff structure. *Id.* at 4–6.

[134] *Id.* at 4.

[135] *Id.* at 6.

[136] *Id.*

[137] Letter from Christopher Kirkpatrick, Secretary of the Commission, to Chief Executive Officer, ErisX (Dec. 23, 2020), available at *https://www.cftc.gov/sites/default/files/filings/documents/2020/orgdcmerissignedletter201223.pdf.* The CFTC requested that ErisX suspend any listing and trading of the contracts during the pendency of a 90-day review period beginning on that date.

The CFTC sought public comments on a number of questions related to the certification and received 25 comment letters in response. *See* Questions on the Eris Exchange, LLC (ErisX) RSBIX NFL Futures Contracts for Public Comment (Dec. 23, 2020), available at *https://www.cftc.gov/sites/default/files/filings/documents/2020/orgdcmerisquestionsre201223.pdf.* Comments in response are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=5203.*

[138] *See* notation of withdrawal, available at *https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts/45226.*

[139] *See* Statement of Commissioner Brian D. Quintenz on ErisX RSBIX NFL Contracts and Certain Event Contracts (Mar. 25, 2021), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement032521. See also* Statement of Commissioner Dan M. Berkovitz Related to Review of ErisX Certification of NFL Futures Contracts (Apr. 7, 2021), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement040721.*

[140] *See* Order In the Matter of the Certification by KalshiEX LLC of Derivatives Contracts with Respect to Political Control of the United States Senate and United States House of Representatives (Sept. 22, 2023) available at *https://www.cftc.gov/sites/default/files/filings/documents/2023/orgkexkalshiordersig230922.pdf* (Kalshi Order). The Congressional Control Contracts are cash-settled, binary (yes/no) contracts based on the question: ''Will <chamber of Congress> be controlled by <party> for <term>?'' *Id.* at 2.

[141] *Id.* at 1.

[142] *Id.* at 23.

[143] *Id.* at 7 (emphasis in original).

[144] *Id.* at 8–9.

election results, which is contrary to many State laws.[145]

Regarding the public interest test under the Special Rule, the Commission found that the legislative history of the Special Rule indicates Congressional intent for the Commission to consider, among other factors, a form of the economic purpose test that was applied prior to the CFMA.[146] The Commission also found that while control of a chamber of Congress may have economic effects, it does not, in and of itself, have sufficiently direct economic consequences such that the Kalshi Contracts have hedging utility, and the hedging utility of the Kalshi Contracts is also undermined by their binary payoff structure and infrequent settlement every two years.[147]

Last, the Commission found that the Kalshi Contracts ''could potentially be used in ways that would have an adverse effect on the integrity of elections, or the perception of integrity of elections,'' and ''conduct designed to artificially affect the electoral process could also, intentionally or otherwise, manipulate the market in the [Kalshi Contracts], or that [that market] . . . could be manipulated to influence elections or electoral perceptions. In particular, . . . [the Kalshi Contracts] could incentivize the spread of misinformation by individuals or groups seeking to influence perceptions of a political party or a party candidate's success.'' [148]

Following issuance of the Kalshi Order, Kalshi filed suit challenging the Commission's decision as arbitrary, capricious, and otherwise not in accordance with the law under the Administrative Procedure Act (APA).[149] In September 2024, the Honorable Jia M. Cobb of the U.S. District Court for the District of Columbia (D.D.C.) granted summary judgment to Kalshi and vacated the Kalshi Order, ruling that the Kalshi Contracts ''d[id] not involve activity that is unlawful under any Federal or State law, nor do they involve gaming.'' [150] In May 2025, the CFTC's motion to dismiss its appeal of the District Court's decision was granted and the case was closed.[151]

8. 2024 Event Contract Proposal and 2026 Withdrawal

In 2024, the Commission proposed rules to further specify the types of event contracts that fall within the scope of CEA section 5c(c)(5)(C) and are contrary to the public interest.[152] In 2026, the Commission withdrew the proposed rules to reconsider them ''in light of various forms of state regulatory actions and litigation concerning the Commission's exclusive jurisdiction over event contract derivatives listed on [DCMs] and the proper application of the swap and excluded commodity definitions under the [CEA].'' [153]

9. 2026 ANPRM

To assist the Commission in considering issues, and potentially adopting regulations, related to prediction markets the Commission published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** on March 16, 2026.[154] The Commission explained that the ANPRM was issued in light of the recent increase in the number of applications for DCM registration, largely from entities that are interested primarily, or exclusively, in operating prediction markets, and to seek information about significant issues that have come to light since the 2024 proposal. The comment period for the ANPRM closed on April 30, 2026.

In response to the ANPRM, the Commission received approximately 3,500 comments addressing issues relevant to prediction markets and potential rulemakings from a wide range of commenters.[155] Of these, approximately 300 submissions provided detailed comments and recommendations. The remaining submissions were either duplicative of points made in other submissions or non-substantive. The comments came from individuals, prediction markets and firms applying for designation as a prediction market, firms using event contracts, trade associations, public advocacy organizations, academics and researchers, members of Congress, federal agencies, tribal governments, state governments and others. Relevant commenter feedback is interwoven throughout this proposed rule.

The comments expressed varying views on a wide variety of topics, including the proper scope of the Special Rule, whether § 40.11 properly effects the Special Rule, the scope of activities that are encompassed in the Enumerated Activities, when an event contract should be considered to ''involve'' an Enumerated Activity, the role that an economic purpose test should play in the Special Rule, and the public interest factors that the Commission should consider in applying the Special Rule. The Commission has reviewed the comments received, and the staff of the Commission has met with market participants and other interested parties to discuss prediction markets.[156]

II. Proposed Amendments to Part 40

The statutory text of the Special Rule provides that ''[i]n connection with the listing'' of certain event contracts, ''the Commission may determine'' that the event contracts are contrary to the public interest.[157] The Commission preliminarily interprets this provision to mean that the Commission's public interest determination must follow the submission of one or more event contracts for listing. The Commission also preliminarily believes that it would be helpful for prediction markets and the general public to know which factors the Commission will apply in determining whether particular event contracts are subject to the Special Rule, and the factors it will apply in its public interest determination. Therefore, the Commission is proposing to amend part 40 to, among other things, lay out these factors and the process by which the Commission may determine that specified event contracts are contrary to the public interest (the Proposal).

As discussed below, the Commission preliminarily believes that the Proposal's explanation of the factors the Commission would apply in its public interest determinations would support efforts by prediction markets to ensure compliance with the CEA and to make more informed decisions about event contract design, thereby supporting responsible innovation. By clearly identifying the factors the Commission

[145] *Id.* at 11–13.

[146] *Id.* at 13 (citing the Feinstein-Lincoln Colloquy and CEA sec. 3, 7 U.S.C. 5).

[147] Kalshi Order at 15–18. For similar reasons, the Commission also found that the Kalshi Contracts do not serve a price-basing function. *Id.* at 18–19.

[148] *Id.* at 20–22. The Commission also noted that it was not equipped or well-suited to investigate election-related activities. *Id.* at 22–23.

[149] *See KalshiEX LLC* v. *CFTC,* No. 23–cv–3257, 2024 WL 4164694, 2024 U.S. Dist. LEXIS 163925, at *18 (D.D.C. Sept. 12, 2024), *appeal dismissed by KalshiEX LLC* v. *CFTC,* No. 24–5205, 2025 U.S. App. LEXIS 11094 (D.C. Cir. May 7, 2025).

[150] *Id.* at *39. The court did not consider whether the Kalshi Contracts were contrary to the public interest. *Id.*

[151] *See KalshiEX LLC* v. *CFTC,* No. 24–5205, 2025 U.S. App. LEXIS 11094 (D.C. Cir. May 7, 2025).

[152] Event Contracts; Proposed Rule, 89 FR 48968 (June 10, 2024).

[153] Event Contracts; Withdrawal of Proposed Regulatory Action, 91 FR 5386 (Feb. 6, 2026).

[154] *See* Prediction Markets; Advance Notice of Proposed Rulemaking, 91 FR 12516 (Mar. 16, 2026).

[155] Copies of all comments received by the CFTC on the ANPRM are available on the CFTC's website, located at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7654.*

[156] Information about meetings that CFTC staff have had with outside organizations regarding prediction markets is included in the list of comments on the ANPRM at the link in the previous note. The views expressed in the comments in response to the ANPRM and at such meetings are collectively referred to as the views of ''commenters.''

[157] CEA sec. 5c(c)(5)(C)(i), 7 U.S.C. 7a–2(c)(5)(C)(i).

will apply in its public interest determination, the Proposal is also expected to reduce the frequency of submissions that raise potential public interest concerns, improving the efficiency of Commission and staff resources by reducing the need to conduct individualized event contract reviews.[158] Greater clarity may also help prediction markets avoid expending resources on event contracts that the Commission may ultimately determine cannot be listed or cleared.

The Commission acknowledges that, if the Special Rule is interpreted to require the Commission's public interest determination to follow the submission of event contracts for listing, and does not require the prediction market to suspend trading of the event contracts while the Commission conducts its review, it is likely that the Commission would find that event contracts are contrary to the public interest and cannot be traded or cleared *after* trading of the event contracts has begun.[159] The Commission preliminarily believes that this is the inevitable result of the statutory structure, and acknowledges that this means that some event contracts that are contrary to the public interest may be traded during the period of time required for the Commission's review. The Proposal, like existing § 40.11(c)(1), includes a provision for the Commission to request that the prediction market suspend listing or trading of event contracts under review, and the Commission anticipates that some prediction markets will abide by such requests, but there is no statutory provision requiring the prediction market to do so.

The Commission believes that the Proposal is authorized by its authority in the CEA, and, in particular, CEA sections 3, 5, 5c(c), 5h and 8a(5).[160] In describing the Proposal, the discussions in this document of ''commercial utility,'' ''derivatives,'' ''gaming,'' ''price discovery,'' and ''public interest'' are for purposes specific to the CEA and the CFTC's jurisdiction, as described herein. Therefore, the Proposal and the discussion herein have no bearing on any statutory regime other than the CEA, including without limitation the treatment of any contract, activity, receipt, or expense under the Internal Revenue Code.

The Commission requests comment on all aspects of the Proposal.

A. Overview of Proposed Changes to Part 40

As noted above, the principal difference between the current § 40.11 and the Proposal is that § 40.11(a) would more clearly follow the plain language of the Special Rule by stating that ''[t]he Commission may determine'' that event contracts subject to the Special Rule are contrary to the public interest.[161] Correspondingly, proposed § 40.11(e)(1) provides for the Commission to issue an order finding that certain event contracts are contrary to the public interest prior to the end of the review period established in clause (iv) of the Special Rule. The Commission preliminarily believes that this change will remove uncertainty under the current text of § 40.11(a) regarding whether a finding that event contracts are contrary to the public interest is necessary to prohibit the trading and clearing of the event contracts.[162]

As explained above, the Commission preliminarily interprets the Special Rule to require that the Commission determine that event contracts may involve an Enumerated Activity to begin the 90-day review process. The Commission is therefore proposing to add § 40.11(a)(4) which sets out the factors that the Commission will apply in determining whether event contracts involve an Enumerated Activity and are therefore within the scope of the Special Rule.

The Commission preliminarily believes that two terms in the Special Rule—''involve'' and ''gaming''—are particularly important. Therefore, the Commission is proposing to adopt in § 40.11(a)(3) a statement of when event contracts ''involve'' an activity, and in § 40.11(b) a definition of the term ''gaming.'' The Proposal states that event contracts ''involve an activity if their settlement is determined by an occurrence, extent of an occurrence, or contingency in the activity.'' The Proposal 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.''

The Proposal states that in determining whether event contracts within the scope of the Special Rule are contrary to the public interest, the Commission will apply the factors set out in proposed §§ 40.11(a)(5) and 40.11(a)(6). That is, these are the factors that the Commission would apply prior to issuing an order under proposed § 40.11(e)(1) finding that certain event contracts are contrary to the public interest. The Commission notes that it preliminarily interprets the Special Rule to apply *after* the prediction market certifies that the event contract complies with the CEA (notably, the Core Principles in CEA sections 5 and 5h) and the Commission's regulations thereunder. Proposed §§ 40.11(a)(5) and 40.11(a)(6) therefore include factors that may raise public interest concerns particularly relevant to the types of event contracts that are subject to the Special Rule.

The Commission preliminarily believes that its public interest determination should be focused and understandable to prediction markets in designing event contracts and to the general public. The Commission also notes that the 90-day deadline for Commission action in clause (iv) of the Special Rule does not allow for a wide-ranging inquiry into the public good, but rather a focused inquiry subject to set processes. And, as noted above, the Commission preliminarily believes that the legislative history of the Special Rule does not indicate Congressional intent for the Commission to apply the economic purpose test that was applied prior to the CFMA. Therefore, the

[158] Due to the high volume of event contract submissions and the wide potential scope of the public interest review, the Commission has attempted to propose factors that are clear and direct, along with various illustrative examples. The Commission preliminarily believes that prediction markets will be guided by the factors, and by any early determinations that event contracts are contrary to the public interest, in understanding the boundaries around which event contracts may be listed for trading and thereby limit the number of public interest reviews.

[159] Thus, market participants who transacted in the event contracts would have their positions closed out. Since the event contracts are contrary to the public interest, the Commission preliminarily believes this is the appropriate result.

[160] 7 U.S.C. 5, 7, 7a–2(c), 7b–3 and 12a(5).

[161] The Commission notes that the Nadex Order and the Kalshi Order both included specific findings that the event contracts in question were contrary to the public interest. *See* Nadex Order at 4, Kalshi Order at 23.

[162] Commenters on the ANPRM expressed varying views on what the Special Rule requires in this regard and what the Commission's regulations should require. *Compare* Letter from the Pechenga Band of Indians 7 (Apr. 29, 2026) (CEA expressly bars listing of event contracts that involve Enumerated Activities, current § 40.11 implements this statutory mandate and should not be amended) and Letter from eight U.S. Senators including Senator Jeffrey A. Merkley 2 (Apr. 30, 2026) (event contracts involving elections, war, military actions, terrorism, and sports should be categorically prohibited pursuant to the CFTC's existing authority) *with* Letter from Susquehanna International Group, LLP 3 (Apr. 30, 2026) (Commission should revise § 40.11 to replace categorical ''shall not'' with a provision for authority to prohibit event contracts that are contrary to the public interest while avoiding blanket prohibitions) and Letter from the Coalition for Prediction Markets 2 (Apr. 30, 2026) (to interpret § 40.11(a) to categorically prohibit event contracts involving Enumerated Activities is overly prescriptive and beyond the authorization of the Special Rule, which requires a specific public interest determination).

Commission has included in proposed §§ 40.11(a)(5) and 40.11(a)(6) factors that relate to specific public interest concerns that would support a finding that event contracts within the scope of the Special Rule are contrary to the public interest.

The Commission has observed a marked increase in the number of event contracts that prediction markets have self-certified for listing under § 40.2. The Commission preliminarily believes that in some circumstances (i) it would be impractical to review separately each submission of similar event contracts; and (ii) if the Commission finds that a number of similar event contracts are contrary to the public interest, prediction markets and the general public would benefit from the issuance of a single order (rather than multiple orders) covering all such similar event contracts. Therefore, proposed § 40.11(c)(4) provides that the Commission may consolidate review of multiple event contracts that involve the same underlying event or a substantially similar set of underlying events, in which case the determination to begin the review would include a description of the consolidated group. Correspondingly, proposed § 40.11(e)(1)(i) provides that the Commission may issue an order finding that a group of event contracts that are subject to review are contrary to the public interest. The Commission preliminarily anticipates that issuing an order covering a group of event contracts would reduce the number of future submissions, as prediction markets would better understand which types of event contracts the Commission is likely to find contrary to the public interest.

The Commission is also proposing to amend § 40.11 to establish a procedural framework governing the Commission's exercise of its discretionary authority under the Special Rule to determine that agreements, contracts, transactions, or swaps involving an Enumerated Activity are contrary to the public interest. Under the proposed framework, the Commission may commence a review by making a written determination that there is a basis to believe event contract(s) that are self-certified or submitted for Commission approval both involve an Enumerated Activity and may be contrary to the public interest under the factors in proposed §§ 40.11(a)(5) and 40.11(a)(6). A written determination initiating the review identifying the event contract(s), the Enumerated Activity(ies), the contract terms at issue, and the factors warranting review must be provided to the prediction market(s) making the submission(s). Issuance of the determination commences the 90-day review.[163] The review must commence within 10 days of the date of the event contract's listing.

Under the proposed framework, by day 90, the Commission may issue an order finding the contract contrary to the public interest. Such an order must be supported by written findings that identify and analyze the factors in proposed §§ 40.11(a)(5) and 40.11(a)(6) on which the Commission relied, weigh the relevant factors, and explain the determination's consistency with prior Commission decisions or provide a reasoned justification for any departure. Proposed § 40.11(e)(1)(ii) includes a specific statement that if the Commission does not issue an order at the end of a review period, the event contracts subject to review may be, or continue to be, listed for trading and accepted for clearing and the review shall be deemed concluded. The Commission preliminarily believes that this provision would allow for a more streamlined process by not requiring that the Commission issue an order of approval and provide certainty in cases where the Commission does not take any action at the end of the review period.

This proposed framework reflects the Commission's preliminary view that a determination under the Special Rule that event contracts are contrary to the public interest has significant consequences, and that the Commission's procedures should be calibrated accordingly. Such a determination forecloses listing, trading, and clearing of the event contracts, imposes sunk compliance costs on the submitting prediction market, and eliminates the hedging, price-discovery, and information-aggregation functions the event contracts might have served, along with the reliance interests of market participants. In light of these consequences, the proposed framework establishes procedural rights designed to ensure that the prediction market's position is fully presented and considered before the Commission acts. The Commission also preliminarily believes that these procedures will also enhance the quality of decision-making by ensuring that the record before the Commission includes the prediction market's substantive response, if any, to the Commission's reasoning.

In addition, the Commission is proposing to make certain amendments to § 40.11 to further align the language of the regulation with the statutory text of the Special Rule, and to make certain technical amendments to the regulation to enhance clarity and organization. Proposed § 40.11(a)(2) includes a reference to CEA section 1a(19)(i) because the Commission preliminarily believes this is the correct cross reference to describe event contracts that are not subject to the Special Rule. Proposed § 40.11(a)(2) also uses the word ''involve'' to reference the Enumerated Activities, to more closely track the text of the Special Rule. Proposed § 40.11(a)(2)(vi) reflects how the Commission preliminarily believes it may determine that activities are similar to the Enumerated Activities. For clarity, proposed § 40.11(c)(3) specifically provides for the Commission to notify the prediction market of the commencement of a 90-day review. Throughout proposed § 40.11, the text refers to agreements, contracts, transactions, or swaps in the plural to match the text of the Special Rule.

Finally, the Commission is proposing to add a provision to § 40.7(a) that delegates to the Director of the Division of Market Oversight, or the Director's designee, the authority to perform ministerial and record-development functions under § 40.11, including service of notices, written determinations, and statements and the development of staff recommendations.

The Commission requests comment on all aspects of its proposed amendments to §§ 40.7 and 40.11.

B. Event Contracts Within the Scope of the Special Rule

The text of the Special Rule states that it applies with respect to ''agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i) of [the CEA]).'' [164] The Commission preliminarily believes in understanding the scope of the Special Rule, it is helpful to understand the

[163] Under the proposed framework, within the 90 days, the Director of the Division of Market Oversight shall provide to the prediction market a written statement of concerns by day 15. By day 30, the prediction market may then submit a written response, including proposed contract modifications and/or mitigating safeguards. The Director of the Division of Market Oversight, with the concurrence of the General Counsel, may submit a recommendation to the Commission by day 60, provided simultaneously to the prediction market. The prediction market may submit a response to the recommendation by day 70. Under the proposed framework, extensions are available only at the request of, or with the agreement of, the prediction market.

[164] CEA sec. 5c(c)(5)(C)(i); 7 U.S.C. 7a–2(c)(5)(C)(i).

origin and scope of the term ''excluded commodity.''

The definition of ''excluded commodity'' was adopted in the CFMA as part of provisions to permit off-exchange trading of swaps based on financial commodities or commodities with an infinite supply.[165] The reasoning behind this change in the CFMA was that trading should not be permitted in swaps based on agricultural commodities, certain metals which had historically been subject to price manipulation, and physical commodities for which the cash market is dependent on the futures market for price discovery.[166] But apart from these categories, swap trading should be permitted for institutional investors within the definition of ''eligible contract participant,'' which was also adopted in the CFMA.

The definition of ''excluded commodity'' in CEA section 1a(19) has four clauses. Clause (i) includes rates, instruments, indices and measures commonly understood to be financial commodities.[167] Clause (ii) includes any other index or measure of economic or commercial risk, return, or value that is based on such financial commodities; based on the value of a broad group of physical commodities; or based on a commodity with no cash market.[168] Clause (iii) includes any index that qualifies as ''economic or commercial'' and is beyond the control of any party to the relevant derivatives contract.[169] Last, clause (iv) includes any ''occurrence, extent of an occurrence, or contingency'' of financial, commercial, or economic consequence that is beyond the control of any party to the relevant derivatives contract and is not based on a change in the price, rate, value, or level of a ''commodity not described in clause (i).'' [170] The effect of the cross-reference to clause (i) is that, for example, a change in crude oil prices is not an occurrence which constitutes an excluded commodity because crude oil is not described in clause (i); on the other hand, clause (iv) means that a change in exchange rates is an occurrence which constitutes an excluded commodity because exchange rates are listed in clause (i).

The Commission preliminarily believes that the increasing generality of clauses (i) to (iv) of the excluded commodity definition indicates a Congressional intent to include a very wide variety of measures and occurrences in the definition. Clause (i) starts with financial commodities, clause (ii) adds ''any other rate, differential, index, or measure of economic or commercial risk, return, or value'' that is not based in substantial part on a ''narrow group'' of physical (*i.e.,* non-financial) commodities, clause (iii) adds any ''economic or commercial index'' that is not under the control of a party to the relevant derivatives contract, and clause (iv) brings in any event that is beyond the control of any party to the relevant derivatives contract and has financial, commercial or economic consequence (with the exception for physical commodity price changes noted above). In particular, the Commission notes that clauses (ii) and (iii) of the definition are limited to ''economic or commercial'' measures or indices, but clause (iv) uses the broader phrase ''financial, commercial or economic consequence.'' Thus, the definition of excluded commodity is clearly not limited to economic or commercial indices.

In adopting § 40.11 in 2011, the Commission interpreted the ''excluded commodities'' falling within the scope of the Special Rule to be those set forth in CEA section 1a(19)(iv), and accordingly referenced CEA section 1a(19)(iv) in § 40.11(a)(1)–(2) and § 40.11(c).[171] The Commission preliminarily does not see any reason to limit the scope of the Special Rule in this way, as the statutory text is not limited to only clause (iv) of CEA section 1a(19).

Instead, proposed § 40.11(a)(2) refers to all excluded commodities based upon the occurrence, extent of an occurrence, or contingency, with the exception of any change in the price, rate, value, or levels of a commodity described in CEA section 1a(19)(i). The Commission preliminarily believes that this exception gives effect to the language in the Special Rule which excepts ''a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i) of [the CEA]).'' [172] There is no ''section 1a(2)(i)'' in the CEA, and the Commission preliminarily believes the reference to this provision in the Special Rule is a typographical or drafting error.[173] Rather, the Commission preliminarily believes that the reference to ''section 1a(2)(i)'' was intended by Congress to refer to the excluded commodities described in CEA section 1a(19)(i), namely, an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure. This interpretation carves out from the scope of the Special Rule event contracts based on a change in the price, rate, value, or levels of these measures, indices, and instruments.[174]

The measures, indices, and instruments described in CEA section 1a(19)(i) served as underliers for a range of derivative contracts that were broadly traded on CFTC-registered exchanges at the time of enactment of the Special Rule.[175] As such, the Commission believes that it is unlikely that Congress

[165] While the CFMA does not have any official legislative history, commentators generally agree that the excluded commodity definition adopted in the CFMA was intended to implement a recommendation in the Report of The President's Working Group on Financial Markets, Over-the-Counter Derivatives Markets and the Commodity Exchange Act, *supra* note 27 (PWG Report). *See* Derivatives Regulation § 2.02[7.C.ii].

[166] *See* PWG Report at 16–17 (recommending that large financial market participants be permitted to engage in bilateral swaps, so long as the swap does not involve ''a non-financial commodity with a finite supply'').

[167] CEA sec. 1a(19)(i), 7 U.S.C. 1a(19)(i) (''an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure'').

[168] CEA sec. 1a(19)(ii), 7 U.S.C. 1a(19)(ii) (''(ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or (II) based solely on one or more commodities that have no cash market;'').

[169] CEA sec. 1a(19)(iii), 7 U.S.C. 1a(19)(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'').

[170] CEA sec. 1a(19)(iv), 7 U.S.C. 1a(19)(iv) (''an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence.''). ''[C]lause (i)'' refers to CEA sec. 1a(19)(i).

[171] While the adopting release did not discuss the basis for this interpretation, it is likely that the Commission assumed that Congress intended to incorporate the statutory language of the ''excluded commodity'' definition set forth in CEA sec. 1a(19)(iv), since the Special Rule tracks the language of CEA sec. 1a(19)(iv) to a large extent.

[172] CEA sec. 5c(c)(5)(C)(i); 7 U.S.C. 7a–2(c)(5)(C)(i).

[173] CEA sec. 1a(2), 7 U.S.C. 1a(2), defines an ''appropriate Federal banking agency,'' which is not relevant to the excluded commodity definition.

[174] The Commission understands that the phrasing in CEA sec. 1a(19)(iv), which removes from the excluded commodity definition any ''change in the price, rate, value, or level of a commodity *not* described in clause (i)'' introduces some confusion. The point, as noted above, is that changes in prices of commodities described in clause (i) *are* excluded commodities, while changes in prices of other commodities (*e.g.,* physical commodities) *are not* excluded commodities. Since physical commodity price changes are not excluded commodities, they did not have to be excluded from the scope of the Special Rule. On the other hand, because financial commodity price changes are excluded commodities, it was necessary to exclude them from the scope of the Special Rule. That is why it is appropriate for the exception in the Special Rule to refer to changes to prices that *are* described in the cross-referenced clause.

[175] *See supra* notes 67 to 71.

intended the heightened authority granted to the Commission in the Special Rule to apply with respect to event contracts based on changes in the price, rate, value or levels of these measures, indices, and instruments.[176]

Last, the Commission notes two aspects of the Special Rule that relate to its scope. First, the Special Rule encompasses ''agreements, contracts, transactions, or swaps,'' meaning that it includes event contracts that are listed as futures contracts, as well as event contracts that are listed as swaps. Second, the Special Rule covers such event contracts that are ''based upon the occurrence, extent of an occurrence, or contingency.'' Since an event is the definitive characteristic of a contract that is subject to the Special Rule, the Commission preliminarily believes that in determining the scope of the Special Rule, the focus should be on the event that underlies the event contract, as will be discussed in the next section.

The Commission requests comment on all aspects of its preliminary views on the scope of event contracts that are subject to the Special Rule.

C. Contracts That ''Involve'' an Enumerated Activity

The Special Rule applies to agreements, contracts, or transactions ''that are based upon the occurrence, extent of an occurrence, or contingency'' and that ''involve'' any of the Enumerated Activities. The Commission preliminarily interprets the term ''involve'' in the Special Rule to require that the settlement of the event contracts be determined by an occurrence, the extent of an occurrence, or a contingency in one of the Enumerated Activities.[177] Therefore, the Proposal includes the following text in proposed § 40.11(a)(3): ''For purposes of paragraph (a)(2) of this section, agreements, contracts, transactions, or swaps involve an activity if their settlement is determined by an occurrence, extent of an occurrence, or contingency in the activity.''

This interpretation follows from the three-step sequence set out in the Special Rule that must occur before agreements, contracts, transactions, or swaps are prohibited:

1. As discussed above, the agreements, contracts, transactions, or swaps must be ''based upon the occurrence, extent of an occurrence, or contingency;''
2. As discussed in this section, the agreements, contracts, transactions, or swaps must ''involve'' any of the Enumerated Activities; and
3. As discussed below, the Commission must determine that the agreements, contracts, transactions, or swaps are contrary to the public interest.

The role of the Enumerated Activities in this sequence is to filter which event contracts are potentially subject to a public interest determination. The Special Rule does not require the Commission to determine whether the contract itself is or equates to an Enumerated Activity. As noted earlier, it is the underlying activity that is the subject of ''involve.''

The application of this test can be illustrated through several examples. An event contract that settles on whether a specified terrorist attack occurs at a specified location during a specified period involves terrorism within the meaning of the Special Rule, because the event contract's settlement is determined by an occurrence within the terrorism activity. An event contract that settles on whether a particular foreign head of state is killed during a specified period involves assassination for the same reason. An event contract that settles on whether Iran initiates armed conflict in the Strait of Hormuz, or whether a specified non-state actor conducts an attack on shipping in the Strait, would involve war or terrorism, because in those event contracts the settlement-determining occurrence is within the Enumerated Activity itself. By contrast, an event contract that settles on whether a specified volume of crude oil transits the Strait of Hormuz during a specified period does not involve war or terrorism, even though the amount of oil flows through the Strait could change based on military conditions, because the settlement-determining occurrence is a measurement of commercial shipping activity rather than an occurrence within a war or terrorism activity.

The Commission's proposed reading avoids surplusage. The Special Rule's ''based upon'' and ''involve'' language describe complementary aspects of a single event-focused concept: the event contract is based upon an occurrence, and that occurrence must be in an Enumerated Activity. An interpretation that treats ''involve'' as applying to the event contract itself (as distinct from the underlying occurrence) would render ''based upon'' superfluous.

The Commission's proposed interpretation is also consistent with the reasoning of the District Court for the District of Columbia, which held that the term ''involve'' in the Special Rule refers to ''the event being offered and traded'' under an event contract, not the event contract itself.[178]

The Commission preliminarily believes that the Nadex Order erred in this regard. Rather than examining whether the underlying event fell within the Enumerated Activity, the Nadex Order interpreted the Special Rule to apply when ''the contract, considered as a whole, involves one of those [the enumerated] activities'' and therefore considered whether the contract itself was gaming.[179] The Nadex Order concluded that trading in the contract constituted gaming, but it did not find that the event on which the contract was based was an occurrence within a gaming activity. In doing so, the Nadex Order reasoned that ''taking a position in a Political Event Contract fits the plain meaning of a person staking 'something of value upon a contest of others,' '' which is an element of what the Nadex Order considered to be gaming.[180] But that reasoning examines the nature of the trading—not the nature of the underlying event. Therefore, the Commission preliminarily believes that the Nadex Order misapplied the Special Rule, which, by its terms, requires the Commission to determine whether the event contracts *involve* an Enumerated Activity, not whether trading in the event contracts *is* an Enumerated Activity.

The approach in the Nadex Order is contrary to the structure of the Special Rule. Consider especially the Enumerated Activities of terrorism, assassination and war. If the statute's ''involve'' requirement were satisfied only when trading in the event contracts *is* or *equates to* terrorism, assassination or war, then the Special Rule would never apply to contracts involving those activities, because trading in event contracts does not constitute terrorism, assassination, or war.[181] As a corollary,

[176] Consistent with the Commission's view that the reference to ''section 1a(2)(i)'' in the Special Rule was intended by Congress to refer to the excluded commodities described in CEA section 1a(19)(i), section 201(b) of the proposed CFTC Reauthorization Act of 2019 included, as a technical correction to the CEA, the replacement of the reference to ''section 1a(2)(i)'' with a reference to ''section 1a(19)(i).'' CFTC Reauthorization Act of 2019, H.R. 6197, 116th Cong. (2d Sess. 2020).

[177] For the avoidance of doubt, and as discussed in this section, the Commission preliminarily believes that the Nadex Order and Kalshi Order were incorrect in reasoning that event contracts involve an Enumerated Activity when the event contracts viewed as a whole relate to, or equate to, an Enumerated Activity.

[178] *KalshiEX,* 2024 U.S. Dist. LEXIS 163925, at *29.

[179] *See* Nadex Order at 2.

[180] *Id.* at 3.

[181] *See KalshiEX,* 2024 U.S. Dist. LEXIS 163925, at *30 (''[S]tandard principle[s] of statutory construction provide[ ] that identical words and

Continued

if one asserted that the Special Rule applied because the event contract *itself* was ''gaming,'' then the terrorism, assassination and war categories would be surplusage. The only coherent question—and the only question the statute asks—is whether the occurrence, extent of an occurrence, or contingency on which the contract is based is an occurrence, extent of an occurrence, or contingency *in* terrorism, assassination, or war activities.

The Nadex Order's approach also leads to illogical results. As discussed below in relation to the definition of the term ''gaming,'' if the Special Rule's application were interpreted to depend on whether trading in an event contract *is* or *equates to* gaming, the Special Rule could potentially apply to any event contract because gaming could be interpreted to include the staking of money on a contingency.[182] Similarly, because some states prohibit the staking of money on a contingency,[183] trading in the event contract would appear to be illegal under those laws—except that such state laws are preempted by the CEA as applied to event contracts traded on CFTC-registered entities.

Last, a wide-ranging inquiry into whether anything about event contracts ''involves'' one of the Enumerated Activities (as opposed to an inquiry focused on the event underlying the contract) would greatly expand the inquiry under the Special Rule and be vulnerable to arbitrary and inconsistent application.

The Commission preliminarily believes that the better approach is to avoid an interpretation of the statute that is inconsistent with its structure and would produce overbroad or illogical results. Interpreting the Special Rule to apply when the event contracts' settlement is determined by an occurrence, extent of an occurrence, or contingency within an Enumerated Activity aligns with the structure of the statute and properly limits scope for the Special Rule to the circumstances Congress intended it to govern.

The Commission requests comment on all aspects of its preliminary views on the scope of activities that event contracts ''involve.''

D. Determining the Scope of Enumerated Activities

The Commission preliminarily believes that it would be helpful for prediction markets and the general public to know which factors the Commission will apply in determining whether particular event contracts are subject to the Special Rule. In other words, these factors would describe the scope of activities that are encompassed within each of the Enumerated Activities. The Commission is therefore proposing to add § 40.11(a)(4) which sets out the factors that the Commission will apply in determining whether event contracts involve any Enumerated Activity and are therefore within the scope of the Special Rule. The Commission notes that event contracts involving more than one Enumerated Activity would also be within the scope of the Special Rule.

In the case of the Enumerated Activity of ''gaming,'' the Commission also preliminarily believes it would be useful to adopt a rule to define the term ''gaming'' because it requires further clarification.

The Commission notes that a prediction market would be able to receive a definitive resolution of any questions concerning the applicability of § 40.11(a)(1) by submitting a contract for Commission approval under § 40.3. CFTC staff also may, at its discretion and upon a request from a prediction market, review a draft contract submission or proposal and provide guidance concerning the contract's compliance with the CEA and CFTC regulations, including § 40.11(a)(1).[184]

1. Activity That Is Unlawful Under any Federal or State Law

The Commission preliminarily does not believe that it is necessary to adopt a rule to define ''activity that is unlawful under any Federal or State law'' at this time. Instead, proposed § 40.11(a)(4)(i) provides that the Commission would consider the relevant laws and whether the occurrence, extent of an occurrence, or contingency on which an event contract is based occurs in an activity that is unlawful under any Federal or State law. Additionally, proposed appendix F to part 40 describes how the Commission would consider the relevant factors in determining whether event contracts involve this Enumerated Activity.

The proposed factors explain that in circumstances where there is a question regarding whether an event contract submitted to the Commission involves activity that is unlawful under any Federal or State law, the Commission would survey the relevant law. Where an activity is illegal under the laws of some States, but not others, the Commission would consider whether the discrepancy relates to any of the factors that would apply in determining if the event contract is contrary to the public interest. For example, if an activity is illegal under the laws of some States, and the relevant factors suggest that event contracts involving that activity would be found to be contrary to the public interest, then the Commission would be more likely to find that the event contract involves unlawful activity and is within the scope of the Special Rule.[185]

The Commission notes that the Kalshi Order evaluated whether the subject event contracts involved an activity that is unlawful under Federal or State law, and found that betting or wagering on elections is prohibited by statute or common law in many states.[186] For the reasons discussed above, the Commission preliminarily believes that the Kalshi Order's reasoning on this point was incorrect. The Kalshi Order asked whether the act of trading the event contract equated to an activity unlawful under State law. The Commission believes that the relevant question under the Special Rule, however, is whether the occurrence, extent of an occurrence, or contingency on which an event contract is based occurs in an Enumerated Activity. Under that reading, the event contracts at issue in the Kalshi Order would not involve activity that is unlawful under Federal or State law, because the occurrence, extent of an occurrence, or

phrases within the same statute should normally be given the same meaning' and effect''; citing *Powerex Corp.* v. *Reliant Energy Servs., Inc.,* 551 U.S. 224 (2007)).

[182] As discussed in connection with the proposed definition of ''gaming,'' the Commission preliminarily believes that gaming does not include all activities that constitute the staking of money on a contingency, but rather only such activities that are games—*i.e.,* have a recreational or entertainment purpose. *See infra* notes 199 to 202 and accompanying text.

[183] *See, e.g.,* N.H. Rev. Stat. Ann. sec. 647:2(II)(d), available at *https://www.gencourt.state.nh.us/rsa/html/lxii/647/647-2.htm* (last visited May 19, 2026) (banning gambling and defining it as, ''to risk something of value upon a future contingent event not under one's control or influence . . .'').

[184] The Commission notes, however, that staff's guidance concerning drafts and proposals is preliminary and non-binding. CFTC staff formally reviews contracts only at such time as a compliant submission is provided to the Commission pursuant to § 40.2 or § 40.3.

[185] The Commission acknowledges that many state codes include laws prohibiting certain activity that, while not repealed, are generally considered archaic and are not enforced. The Commission believes that it is unlikely that a prediction market would seek to list for trading or accept for clearing an event contract involving such a law. To the extent that a prediction market does make a submission to the Commission regarding a contract that may involve such a law, the Commission believes that it may be appropriate to commence a review of the contract pursuant to § 40.11(c) to evaluate whether, in light of the relevant facts and circumstances, it is appropriate to recognize the contract as involving ''activity that is unlawful under any . . . State law'' for purposes of § 40.11(a)(1).

[186] Kalshi Order at 11–12.

contingency on which the subject event contracts were based (outcomes of political elections) did not occur in an Enumerated Activity (activity unlawful under State law).

The application of this interpretation can be illustrated through several examples. An event contract that settles on whether an individual will murder someone involves an activity that is unlawful under State law, because the settlement-determining occurrence—the murder—is itself within unlawful activity. Such an event contract presents the precise concerns that animate the Special Rule's inclusion of unlawful activity. By contrast, an event contract that settles on whether Bernard Madoff is convicted of securities fraud by a specified date does not involve activity that is unlawful within the meaning of the Special Rule. The settlement-determining occurrence is the entry of a judgment of conviction by the court, which is a lawful judicial act. Although the underlying conduct alleged in the indictment—the operation of a multi-decade Ponzi scheme that caused tens of billions of dollars in investor loss—would, if proven, constitute unlawful activity, the event contract's settlement is determined by the court's judgment rather than by the underlying conduct itself. The same analysis applies to an event contract settling on whether a defendant in a specified federal securities-fraud prosecution is sentenced to a term of imprisonment exceeding a specified threshold, or whether a specified judgment of conviction is affirmed on appeal by a specified court. Such event contracts may have meaningful commercial and informational utility, including for participants seeking to hedge price exposure to the resolution of large financial-fraud proceedings that affect counterparty risk, claims against bankruptcy estates, and the timing of recovery distributions to victims.

2. Terrorism, Assassination, and War

The Commission preliminarily does not believe that it is necessary to adopt a rule to define ''terrorism,'' ''assassination,'' or ''war'' at this time. Instead, proposed § 40.11(a)(4)(ii) provides that the Commission would consider the extent to which the event contracts involve violent or destructive activities occurring outside the United States with an element of coercion or intimidation and some relationship to political or social groups or ideologies, intentional killing of an individual outside the United States, or belligerent military activities and violent activities by organized groups, respectively. Additionally, proposed appendix F to part 40 describes how the Commission would consider these factors in determining whether event contracts involve these Enumerated Activities.

Generally, the Commission preliminarily intends to interpret these terms broadly and without making distinctions based on criteria under international law, such as whether a war has been formally declared. The Commission also notes that terrorism and assassination would be unlawful under Federal or State law, and the Commission generally interprets these Enumerated Activities to encompass events occurring outside the United States, including against non-U.S. persons.[187]

The Commission notes that common definitions of terrorism include the use of violence to coerce or intimidate in order to obtain demands or with political aims.[188] The proposed factors to define terrorism would not require identification of a specific aim or demand, or identification of a specific responsible group. Rather terrorism would include all violent or destructive activities occurring outside the United States with an element of coercion or intimidation and some relationship to political or social groups or ideologies. The Commission preliminarily believes that terrorism encompasses cyberterrorism and other forms of attack that cause substantial destruction or disruption through non-physical means, where the attack is conducted with an element of coercion or intimidation and bears a relationship to political or social group or ideologies. Since unlawful activity inside the United States is an Enumerated Activity, it is irrelevant whether a particular unlawful activity in the United States constitutes domestic terrorism.

Accordingly, an event contract that settles on whether the Islamic State conducts an armed attack causing more than ten civilian deaths in Baghdad during June 2026 involves terrorism within the meaning of the Special Rule. The settlement-determining occurrence is the attack itself, which is within the terrorism activity. An event contract that settles on whether a coordinated cyberattack attributed by the United States Cybersecurity and Infrastructure Security Agency to a state-sponsored or politically motivated actor causes the operational shutdown of electricity transmission in New York for more than twenty-four hours sometime in 2026 involves terrorism. By contrast, an event contract that settled on whether the Transportation Security Administration implements enhanced screening procedures at certain airports does not involve terrorism, because the settlement-determining occurrence is a governmental administrative action, which is a lawful exercise of agency authority, rather than any act of terrorism.

The factors to define assassination focus on whether the target of the attack is a prominent person and whether there is some relationship to a political or social motive.[189] The Commission preliminarily believes that any person who is the subject of an event contract should be considered to be prominent, and that the relationship to a political or social motive should be interpreted broadly. Therefore, the Commission proposes that event contracts involving any intentional killing of an individual outside the United States would involve assassination.

Examples illustrate this definition. An event contract that settles on whether Nicolás Maduro dies as a result of an attack by an organized political or military faction by December 31, 2026, involves assassination. The settlement-determining event—his death—is an occurrence within the assassination activity. By contrast, an event contract that settles on whether Maduro will lose an election does not involve assassination, war, or any other Enumerated Activity.

The Commission preliminarily intends that the factors to define war would encompass all belligerent military activities and violent activities by organized groups.[190] That is, this Enumerated Activity is not limited to declared wars and would include the

[187] For clarity, the Commission notes that event contracts involving more than one Enumerated Activity would be subject to the Special Rule.

[188] *See* Oxford English Dictionary, ''terrorism'' (n.) (''The unofficial or unauthorized use of violence and intimidation in the pursuit of political aims; . . . (now usually) such practices used by a clandestine or expatriate organization as a means of furthering its aims.'') (last modified Sept. 2025), available at *https://doi.org/10.1093/OED/7593421629; Merriam-Webster.com Dictionary*, ''terrorism'' (n.) (''the systematic use of terror especially as a means of coercion'') and ''terror'' (''violence or the threat of violence used as a weapon of intimidation or coercion''), available at *https://www.merriam-webster.com/dictionary/terrorism* (last visited May 17, 2026).

[189] *See* Oxford English Dictionary, ''assassination'' (n.) (''murder of a person (esp. a prominent public figure) in a planned attack, typically with a political or ideological motive, sometimes carried out by a hired or professional killer'') (last modified Sept. 2025), available at *https://doi.org/10.1093/OED/5671820672; Merriam-Webster.com Dictionary*, ''assassination'' (n.) (''murder by sudden or secret attack often for political reasons''), available at *https://www.merriam-webster.com/dictionary/assassination* (last visited May 17, 2026).

[190] By referring to belligerent military activity, the Commission does not intend to include any non-belligerent military activities, such as routine deployments, training or disaster relief assistance.

belligerent activities of both government and civil militias. It would also include civil wars and civil unrest by organized groups. Because the Special Rule is applied to particular event contracts, the Commission preliminarily believes that it is not appropriate to apply a temporal or quantitative threshold to determine if belligerent military or violent activities constitute ''war.'' For example, if event contracts were certified about a single belligerent military activity, it would not be appropriate to examine whether that activity was isolated or rather a part of a campaign over a certain time.[191] Instead, the proposed factors explain that event contracts about a single belligerent military or organized violent activity would involve war.

Several examples again illustrate this definition. An event contract that settles on whether the Russian Federation conducts a missile or drone strike against a target within the city limits of Kyiv during the second quarter of 2026 involves war within the meaning of the Special Rule, because the settlement-determining occurrence is itself a military activity within the war activity. An event contract that settles on whether the People's Republic of China conducts a naval or amphibious military action against the territory of Taiwan likewise involves war, regardless of whether such action is characterized as a declared war or a more limited military operation, because the event contract's settlement turns on the occurrence of a belligerent military activity by an organized armed force.

By contrast, an event contract that settles on whether the front-month Brent crude oil futures contract on the Intercontinental Exchange closes above $120 per barrel on any trading day during the second quarter of 2026 does not involve war within the meaning of the Special Rule, even though oil prices are sensitive to military and geopolitical conditions. The settlement-determining occurrence is the published settlement price of an exchange-traded futures contract, which is a measurement produced by a registered futures exchange.

The foregoing analysis addresses event contracts whose settlement-determining occurrence falls within an Enumerated Activity on the face of the event contract's terms. A separate question arises when an event contract's settlement-determining occurrence is facially neutral—that is, when the occurrence on which settlement turns can be reached through multiple causal pathways, at least one of which falls within terrorism, war, or assassination. In such cases, the Commission would understand the event contract to involve the Enumerated Activity unless the event contract's terms specify the qualifying settlement pathways with sufficient detail to exclude the Enumerated-Activity pathway. An event contract drafted at a level of generality that permits settlement on the basis of an act of terrorism, war, or assassination would be treated as involving that activity. This approach reflects the Commission's preliminary view that the Special Rule's protective purpose would be undermined if prediction markets could avoid its application by drafting settlement conditions broadly enough to encompass Enumerated-Activity pathways alongside non-Enumerated ones.

A few examples again illustrate the principle. An event contract that settles on whether Maduro is out of office by a certain date, without further specification of the qualifying mechanisms, involves assassination within the meaning of the Special Rule because assassination is among the pathways by which the settlement condition can be satisfied. The same event contract, redrafted to settle only on whether the named individual ceases to hold office ''by reason of electoral defeat, resignation, constitutional removal, negotiated departure, or natural death,'' would not involve assassination, because the event contract's terms specify the qualifying pathways and exclude the Enumerated Activity pathway. Similarly, an event contract that settles on whether Iran's uranium enrichment facilities remain functional as of a certain date would involve war, because an activity of war is among the pathways by which the facility could cease to remain standing; the same event contract, redrafted to settle only on whether the facility is demolished pursuant to a government order, or to negotiated terms of a diplomatic deal, would not.

3. Gaming

Neither the CEA nor the Commission's rules define the term ''gaming.'' In the preamble to the adoption of § 40.11, the Commission acknowledged that ''the term 'gaming' requires further clarification,'' and said that the Commission may issue a future rulemaking concerning event contracts that involve ''gaming.'' [192]

The Commission preliminarily agrees with the District Court for the District of Columbia that ''the word 'gaming' in the statute carries its ordinary, plain meaning and involves playing a game.'' [193] '' 'When a term goes undefined in a statute, [courts] give the term its ordinary meaning.' . . . To discern that meaning, courts often begin with a survey of dictionaries. . . . Dictionaries define gaming' as 'the practice or activity of playing games for stakes' and 'the practice or activity of playing games.' . . . [There is] no reason to stray from the ordinary definitions of 'gaming,' which are 'the practice or activity of playing games' and 'playing games for stakes.' '' [194]

The Commission acknowledges that it previously advanced a far broader definition of ''gaming'' to the District Court for the District of Columbia. Specifically, the Commission argued that ''gaming'' is synonymous with ''gambling''—that is, '' 'the practice or activity of betting' without any limitation of what is being bet on.'' [195] But in that view, the District Court concluded, ''all event contracts would be subject to review under the special rule because they all involve purchasing (and thus risking money on) some contingent event with the hope of receiving a payoff.'' [196] And ''[g]iven that the CEA authorizes the CFTC to review event contracts only if they involve specific, enumerated activities, any definition of 'gaming' that could be read to subject all event contracts to the special rule just cannot be right.'' [197] The Commission's proposed definition does not repeat its previous error and instead implements the more natural interpretation described by the District Court.

In interpreting ''gaming,'' the Commission preliminarily considers it important to recognize what the Special Rule's other Enumerated Activities describe. Terrorism, assassination, war, and unlawful activity each describe activities that happen in the world: wars are fought, assassinations are carried out, crimes are committed. The term ''gaming'' must play the same

[191] The Commission notes that some definitions of ''war'' refer to a series of actions over time. *See, e.g.,* Oxford English Dictionary, ''war'' (n.) (''Armed conflict . . . typically characterized by a campaign or series of campaigns conducted over a period of time'') (last modified Mar. 2026), available at *https://doi.org/10.1093/OED/1011940408.* However, at the time an event contract is certified it may not be clear whether the underlying event relates to a military campaign (*e.g.,* it may be the first event in a campaign).

[192] *See* Provisions Common to Registered Entities, 76 FR 44776, 44785 (July 27, 2011).

[193] *KalshiEX,* 2024 U.S. Dist. LEXIS 163925, at *20.

[194] *Id.* at *22 (citations omitted). *See also, e.g.,* 25 CFR part 502 (defining categories of ''gaming'' for purposes of the Indian Gaming Regulatory Act in terms of various games such as bingo, card games, casino games, sports games and lotteries).

[195] *KalshiEX,* 2024 U.S. Dist. LEXIS 163925, at *8.

[196] *Id.*

[197] *Id.*

grammatical and functional role in the statute. ''Gaming'' is the game itself, the activity that occurs.

This matters for two reasons. First, this structural reading is essential to giving effect to the Special Rule's operative text. As discussed above in connection with the term ''involve,'' the Commission interprets the Special Rule as asking whether event contracts' settlements are determined by an occurrence in an Enumerated Activity. That inquiry presupposes a distinction between the event contract and the underlying activity to which it refers. Enumerated Activities must therefore be activities in the world that event contracts can reference.

A definition that characterizes ''gaming'' as a property of the event contract itself (for example, ''the act of risking something of value, especially money, for a chance to win a prize'') cannot coherently be applied because it has no limiting principle. Under such a definition, every event contract would involve ''gaming'' by definition, because every event contract stakes value on a contingent outcome. The ''involve'' inquiry would collapse into a tautology: the event contract involves gaming because the event contract *is* gaming. The Special Rule's requirement of a distinction between the event contract and the underlying activity would be erased, contrary to the canon against surplusage. Likewise, the other Enumerated Activities—activity that is unlawful under any Federal or State law, terrorism, assassination, war, and other similar activity determined by the Commission to be contrary to the public interest—would be surplusage if every event contract involved gaming by definition.

Some commenters on the ANPRM suggested that ''gaming'' should be defined in terms of elements associated with gambling.[198] The Commission preliminarily believes, however, that a wagering- or gambling-centered definition of gaming is overbroad.[199] Ordinary definitions of ''gambling'' include ''the act of risking something of value, especially money, for a chance to win a prize.'' [200] If this definition of gaming built around wagering were implemented, some could argue that the definition should apply to all event contracts and render the Special Rule's ''gaming'' category limitless.[201] Therefore, that definition of gaming is incompatible with the Special Rule's structure.[202] The Commission preliminarily believes the coherent reading is the one the ordinary meaning of the word naturally supplies: gaming is the game itself—the activity in which occurrences, the extent of occurrences, or contingencies determine settlement.[203]

Under this approach, the word ''gaming'' derives from ''game,'' which in turn is a word with many nuances and meanings.[204] The Commission preliminarily believes that the meaning of ''game'' relevant to the Special Rule encompasses the activities that are games in common parlance—sports games, athletic competitions and recreational games including games of chance. Rather than simply listing examples of games or describing this category using a multifactor approach, the Commission proposes to adopt a specific definition of the term ''gaming'' in § 40.11.

The Commission intends that this definition will capture conceptually these types of games and preliminarily believes that a rule defining the term ''gaming'' will be useful in the future because, as new event contracts reference different activities, prediction markets, market participants and Commission staff will need an easily applied standard to determine if those activities constitute gaming. The Commission's definition of the term ''gaming'' in the Proposal is limited to the Special Rule context and does not purport to interpret or displace any other federal or state statutory regime using the same or a related term.

Proposed § 40.11(b) sets out the following definition: ''*Gaming* means 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.''

The Commission derived this definition from dictionary definitions of the term ''game'' to mean ''a physical or mental competition conducted according to rules with the participants in direct opposition to each other'' and ''activity engaged in for diversion or amusement,'' [205] or ''an activity which provides amusement or fun'' and ''a contest or competition, governed by rules of play, according to which victory or success may be achieved through skill, strength, or good luck.'' [206]

As noted above, the Commission aims to capture the activities that are games in common parlance. To do so, the purposes for which participants typically engage in the activity must be an element of the definition.[207] The Commission intends that the first clause of the proposed definition—a typical purpose of ''recreation or to entertain others''—will reflect the dictionary definitions' reference to amusement and also capture professional sports, which are commonly understood to be games. By looking to the typical purpose of the activity, the proposed definition acknowledges that there may be atypical circumstances where participants have different purposes for engaging in an activity that is a game in common

[198] *See, e.g.,* Letter from Kalshi, Inc. 20 (Apr. 30, 2026); Letter from Amadeus Brandes 1–2 (Apr. 13, 2026); Letter from Better Markets 7–8 (Apr. 30, 2026).

[199] The Commission acknowledges that in some dictionaries, the primary definition of the term ''gaming'' is playing games for stakes, *i.e.,* gambling. *See Merriam-Webster.com* Dictionary, ''gaming'' (n.) (''1. the practice or activity of playing games for stakes, 2. the practice or activity of playing games (such as board games, card games, or video games''), available at *https://www.merriam-webster.com/dictionary/gaming* (last visited May 17, 2026); Oxford English Dictionary, ''gaming'' (n.), (''1.a. The action of engaging in games or entertainments; merrymaking; sport. Now *rare.* 1.b. The action or practice of playing games, as cards, dice, etc., for stakes. 1.c. The playing of war-games or role-playing games. 1d. The playing of computer (video, etc.) games.'') (last modified Mar. 2026), available at *https://doi.org/10.1093/OED/1195200884.* However, the Commission also notes that these definitions include a variety of activities and do not directly equate gaming with gambling. For example, if the dictionary definitions were followed strictly, e-sports, in which individuals play video games competitively on a professional basis, would be an Enumerated Activity, but professional sports played athletically would not—a distinction which does not have any apparent basis.

[200] Black's Law Dictionary, ''gambling'' (12th ed. 2024).

[201] This is the position of the District Court in the *Kalshi* case. *See supra* note 197 and accompanying text.

[202] The Nadex Order equated gaming with gambling, reasoning that the terms ''are used interchangeably in common usage, dictionary definitions and several state statutes.'' Nadex Order at 2; *see also* Kalshi Order at 8–9 (applying essentially the same reasoning to equate gaming with gambling). The Commission preliminarily believes that this interpretation was incorrect, for reasons discussed here.

[203] Also, the Commission preliminarily believes that interpreting the term ''gaming'' to mean only wagering by individuals on the outcome of games would be cumbersome to apply. It would be difficult to define and validate individuals' actions in order to base event contracts on the wagering activity.

[204] The Commission notes that the *Merriam-Webster.com* Dictionary definition of the noun ''game'' has 20 categories and subcategories of meaning. The Oxford English Dictionary definition has 22 categories.

[205] Merriam-Webster.com Dictionary, ''game'' (n.), available at *https://www.merriam-webster.com/dictionary/game* (last visited May 17, 2026).

[206] Oxford English Dictionary, ''game'' (n.), (last modified Mar. 2026), available at *https://doi.org/10.1093/OED/3374114774.*

[207] The Commission notes that, as discussed further below, a definition of ''gaming'' to encompass any competition with rules and measurable outcomes depending on skill, without considering the purpose of the activity, would be very broad and contrary to the common understanding of games.

parlance, but the activity should still be encompassed in ''gaming.''

The Commission intends that the term ''recreation'' in the definition would include many elements, such as when participants engage in the activity for the simple pleasure of the activity, the personal satisfaction of meeting a challenge, and the enjoyment of competing against others. And to the extent professional participants are not engaged in recreation, they are engaged in gaming to entertain others.[208] The proposed definition encompasses a mix of recreational and entertainment purposes, as well as the variety of purposes subsumed within ''recreation.'' [209]

That ''gaming'' must be governed by rules simply conveys what the Commission believes to be the commonsense understanding of a game and conforms to the dictionary definitions cited above.

To be covered by the Special Rule, the Commission preliminarily believes that the activity must have measurable occurrences or outcomes. These occurrences in the game or outcomes at the end of a game would be the potential bases for event contracts. And, in keeping with the recreational or entertainment purpose of the activity, the occurrences or outcomes must depend on luck, skill or athletic ability during the activity. Thus, gaming includes all games of chance (*e.g.,* roulette), games requiring skill (*e.g.,* chess), and games of mixed chance and skill (*e.g.,* poker). The definition includes both skill and athletic ability to be clear that gaming includes all sports, including e-sports and sports where judges rank participants based on their skill or athletic ability during the activity.

On the other hand, if the outcome of the activity depends on other factors such as judges' evaluation of the participants' merit or qualifications on a broader basis than a certain activity, it is not gaming.[210] The requirements that gaming have a recreational or entertainment purpose, and that the occurrences or outcome of the activity depend on the participants' luck, skill, or athletic ability *during the activity,* distinguish gaming from other competitive activities. This Proposal uses the term ''contest'' to refer to an activity where participants compete for a prize, honor, award or position based on their qualifications or merit displayed in general or over an extended period. These contests are not gaming.

Political elections illustrate the distinction between gaming, as defined in the Proposal, and contests.[211] Elections typically serve the purpose of selecting political leadership, not recreation or entertainment. Their outcomes do not turn on the participants' luck, skill, or athletic ability during the election itself, but rather on voters' judgment regarding who should hold office, informed by considerations beyond the discrete election period.[212] Thus, political elections are not gaming.

The District Court for the District of Columbia reached the same conclusion, reasoning that an event contract on whether a chamber of Congress will be controlled by a specific party in a given term involves ''elections, politics, Congress, and party control'' and does not ''bear any relation to any game—played for stakes or otherwise.'' [213]

Similarly, contests like the Nobel Prize and the Academy Awards are not gaming. The outcome of these contests depends on electors' judgment on who should receive an award based on a range of considerations beyond the participants' luck, skill, or athletic ability displayed during the contest. Because the award turns on evaluative judgments, *not on measurable occurrences dependent on the participants' skill or athletic ability in the activity itself,* it is a contest, not gaming.

Mere association with athletic performance does not change this analysis. For example, the Cy Young Award, which is presented annually by the Baseball Writers' Association of America to the two best baseball pitchers, is not gaming.[214] Although players are recognized for their athletic performance during the season, the outcome is ultimately determined by the judgment of a panel of voters, who assess overall performance without being strictly limited to occurrences in any game or games. On the other hand, an event contract on which baseball pitcher will record the most strikeouts in a season is gaming. Its outcome depends on a measurable outcome of the participants' skill and athletic ability in games—*i.e.,* who records the most strikeouts.

The Commission also notes that under the proposed definition, if an activity is not gaming as defined above, the mere fact that gambling occurs in relation to that activity does not make it gaming. For example, if gambling occurs on who will win the Nobel Prize, that gambling does not change the fact that the Nobel Prize contest is not gaming, and event contracts based on who will win the Nobel Prize would not be subject to the Special Rule.[215] In other words, the Commission preliminarily believes that the definition of gaming in § 40.11 should be limited to activities that are games.

The Commission's proposed definition focuses on the gaming activity itself. Whether event contracts involve gaming turns on the ''involve'' analysis discussed above; an event contract involves gaming if its settlement is determined by the occurrence, extent of an occurrence, or contingency in a gaming activity. The outcome of a game is an occurrence in a game. Accordingly, gaming includes events happening in games but does not include events occurring in connection with or around games. An event contract on whether a football player

[208] The Commission understands that professional athletes are paid or receive monetary compensation and are therefore motivated by the opportunity to earn an income. Nonetheless, the Commission preliminarily believes it is accurate, and in accordance with common understanding, to say that the purpose of the participants in a professional sporting activity is typically to entertain an audience (and also to gain personal satisfaction through achievement). The salary or compensation that the participants receive is a result of fulfilling the entertainment purpose.

[209] The Commission notes that a recreational or entertainment purpose is not contrary to the activity having financial or economic consequences. Recreation and entertainment are large parts of the U.S. economy.

[210] For example, a figure skating competition is gaming because the skaters—the participants in the activity—are doing so for recreation and to entertain others. Under the rules of the game, judges rank the participants based on an evaluation of their skill and athletic ability displayed in the competition. On the other hand, an award of ''figure skater of the year'' based on a vote or panel of judges is a contest, not gaming, if its purpose is to honor the person who the judges assess to have displayed the best overall figure skating ability over the past year.

The same distinction would apply whether the judges are individual people or algorithms developed by the organizers of the event. If the outcome is decided by algorithms based only on skill and ability during the activity, it would be gaming. If the algorithm considers other factors, it would not be gaming.

[211] For clarity, and as discussed in this section, the Commission preliminarily believes that the Nadex Order and the Kalshi Order were incorrect to find that event contracts involving political elections were event contracts that involve gaming.

[212] It would be cynical, at best, to say that a person won a political election because they got lucky or were more skillful at convincing voters to vote for them.

[213] *KalshiEX,* 2024 U.S. Dist. LEXIS 163925, at *38–39.

[214] *See* Baseball Reference, *Cy Young Award,* available at *https://www.baseball-reference.com/bullpen/Cy_Young_Award* (last visited May 19, 2026).

[215] The Commission notes that the contrary interpretation would be illogical and difficult to apply. That is, if bets were initially not offered on the Nobel Prize contest, then it would not be gaming, but as soon as bets were offered, the activity would ''become'' gaming. The Commission believes that whether an activity is gaming should depend on the activity itself, not on other things occurring around or in connection with the activity.

will score a certain number of touchdowns in a game involves gaming: settlement is determined by an occurrence in the football game. An event contract on attendance at the football game does not involve gaming: settlement is determined by ticket-purchasing decisions by prospective attendees, not by an occurrence in the game itself. Similarly, an event contract on whether a particular athlete will win a gold medal at the Olympic Games involves gaming: settlement is determined by a contingency in the Olympic athletic event itself. An event contract on which city will host future Olympic Games does not involve gaming: settlement is determined by the International Olympic Committee's host-selection decision, which is a political and economic decision rather than occurrence in any gaming activity. The ''involve'' analysis, together with the definition of gaming, distinguishes event contracts that the Special Rule addresses from event contracts that it does not.

The Commission requests comment on its proposed definition of gaming. Commenters are invited to address whether the Commission should provide its views regarding whether other activities constitute ''gaming.'' For example, should game shows, reality show competitions, pageants and similar events be considered to be ''gaming''? The Commission notes that game shows are typically subject to varying standards intended to promote impartiality and fair competition. Other competitions may allow departure from such standards to enhance their entertainment value. Music and talent competitions often have similarities to elections. How, if at all, should the Commission consider these characteristics in the context of event contracts involving these activities?

The Commission also invites comment on an alternative proposed definition of gaming. The Commission sought to define gaming by reference to activities that are colloquially known as games. The Commission considered an alternative formulation grounded in the structural features that distinguish games from other activities. Under this alternative, ''gaming'' would mean ''an activity created by its rules, in which (1) all participants whose conduct determines the outcome operate within the activity itself, and (2) those participants, in their capacity as participants, have purposes that are defined by and internal to the activity itself.''

The Commission preliminarily believes that this alternative may better capture the structural features of gaming and presents it for comment. Each element of this formulation reflects a structural feature that, in the Commission's preliminary view, identifies the activities that ordinary speakers would recognize as games.

Activity created by its rules. The threshold element of the formulation requires that the activity be one created by its rules—that is, an activity that does not exist apart from the rules that constitute it. This element captures a structural feature that distinguishes games from other rule-governed conduct. Many activities are governed by rules without being created by them. Driving, commerce, professional practice, parenting, and warfare are all subject to elaborate rule structures, but none of these activities exist *because* of its rules. The rules constrain pre-existing activity that have independent existence. Games are different. Football does not exist independently of football's rules; the activity of playing football came into being when its rules were developed and would cease to exist if those rules were abandoned. The same is true of chess, of poker, of baseball—of every activity that ordinary usage recognizes as a game.

All participants whose conduct determines the outcome operate within the activity itself. The first numbered inquiry concerns the structural locus of the participants whose conduct resolves the activity. In a game, the participants who determine the outcome are drawn from the same population as the participants whose conduct generates the inputs the activity is resolving.

This element identifies what distinguishes a game from an evaluative or selective process that may have rule-governed structure but that depends on judgment external to the underlying activity. An award conferred by a voting body, a prize awarded by a panel of judges, a hiring decision made by a committee, an honor bestowed by an institution—each of these may involve elaborate rules and rule-governed deliberation, but each is structurally distinct from a game because the participants who determine the outcome (the voters, judges, committee members, institutional officers) operate outside the underlying activity being evaluated, selected from, or recognized. The conduct that generates the inputs (the candidate's performance, the work being judged, the credentials being assessed) is produced by one set of participants; the conduct that determines the outcome is produced by a different set of participants who observe, assess, or select from the inputs but who are not themselves engaged in the underlying activity.

Purposes defined by and internal to the contest itself. The second numbered inquiry concerns the teleological structure of participation—the relationship between the participants' purposes and the activity in which they participate. A participant's purpose is internal to the contest when it is intelligible only within the rules that constitute the contest and would not exist apart from those rules. A purpose is external when it pre-exists the activity and would persist whether or not the contest occurred.

In a game, the participants' purpose in their role as participants are internal to the activity. A poker player's purpose in drawing to a flush exists only because poker exists; the purpose has no content outside the rules that define what a flush is, how cards may be drawn, and what winning a poker hand means. A quarterback's purpose in completing a pass exists only because football exists; the purpose has no content outside the rules that define what completing a pass is, what it accomplishes, and why it matters. These purposes are not pursued *through* the game in service of ends that exist outside of it; they are constituted by the game itself and have no existence apart from it.

This element identifies what distinguishes a game from an activity that may have rule-governed structure, but whose participants are pursuing ends that exist independently of any contest. A candidate seeking office pursues purposes (governing, advancing policy preferences) that exist independently of any electoral contest and would persist under any system of selecting officeholders. A trader executing a transaction pursues purposes (profit, hedging, capital allocation) that exist independently of any market structure and would persist in any economic system that permitted the exchange of value. In each case, the activity is a vehicle for ends that transcend it. The contest, if there is one, is not the source of the participants' purposes but a forum in which independently existing purposes are pursued.

The ''in their capacity as participants'' qualifier. The qualifier is essential to the second inquiry's operation. Most participants in any serious activity have motivational structures that combine internal purposes with external purposes. A professional athlete pursues internal purposes (winning, performing, executing the play) and external purposes (compensation, career advancement, public recognition) simultaneously. The relevant inquiry is not whether participants have any

external purposes—which would be true of virtually every activity in which people engage seriously over time—but whether their purpose *in their role as participants* in the activity is constituted by and internal to the activity.

The Commission presents this alternative definition of ''gaming'' described above for comment.

4. Illustrative Examples of Event Contracts Not Within Scope

The Commission preliminarily believes that prediction markets and market participants would benefit from the Commission providing examples of the types of event contracts that, in the Commission's view, fall outside of the scope of the Special Rule and, by extension, § 40.11.[216] The Commission believes that, among other things, this will assist prediction markets, as well as applicants for registration, in making informed business decisions with respect to product design, thereby supporting responsible innovation. The Commission believes that this also will support the more efficient use of CFTC staff resources in connection with the review of event contract submissions.

While the Commission cannot anticipate every contract design, the Commission believes that event contracts based on the following would generally fall outside of the scope of the Special Rule and § 40.11: [217]

- Rates, measures or levels of economic indicators, including the CPI and other price indices; the U.S. trade deficit with another country; measures related to GDP, jobless claims, or the unemployment rate; and U.S. new home sales.[218]
- Rates, measures or levels of financial indicators, including the federal funds rate; total U.S. credit card debt; fixed-rate mortgage averages (*e.g.,* the 30-year fixed-rate mortgage interest rate); and the values for broad-based stock indexes at particular times.
- Rates, measures or levels of foreign exchange rates or currencies.
- Results of political elections and outcomes or occurrences of political activities, such as legislative votes, enactments of laws or appointments of people to political offices.
- Results or outcomes of honor and award contests, or occurrences during those contests, such as who will win or be nominated for a particular award, or when or if an award will be granted.

The Commission requests comment on all aspects of its proposed approach to determine whether event contracts involve the Enumerated Activities.

E. Adoption of Factors To Determine Whether Contrary to Public Interest

As discussed above, the Commission preliminarily interprets the Special Rule to require the Commission to engage in a three-step inquiry. In the third step of this inquiry, the Commission would have to assess whether event contracts that involve an Enumerated Activity are contrary to the public interest. Specifically, the Special Rule provides that, ''[i]n connection with the listing'' of event contracts by prediction markets, the Commission may determine that certain event contracts are ''contrary to the public interest'' if the event contracts involve one of the five Enumerated Activities or other similar activity.[219]

The Special Rule does not define the term ''public interest.'' As discussed above, prior to the enactment of the CFMA, the Commission used an economic purpose test as part of determining the public interest test when evaluating contracts, but that test was controversial and difficult to administer, and the CEA provision for that test was repealed. Currently, the public interests underlying the CEA are described in CEA section 3, which provides the statutory findings and purposes of the Act.[220] Section 3(a) states that ''[t]he transactions subject to [the CEA] . . . are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.'' [221]

Further, CEA section 3(b) provides that to foster the public interests described in subsection (a), the purposes of the CEA include ''to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to [the CEA] and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among [DCMs], other markets and market participants.'' [222]

While CEA section 3 guides the Commission's consideration of whether a contract is contrary to the public interest, it is not the Commission's exclusive consideration. Neither CEA section 3 nor the Special Rule limits the Commission's ability to consider additional public interest factors beyond CEA section 3 and traditional hedging or price-discovery functions.

The Commission observes that by limiting the application of the Special Rule to Enumerated Activities—activity that is unlawful under any federal or state law, terrorism, assassination, war, and gaming—Congress specified the areas that are of particular public interest concern. Congress did not simply say that any event contract which is contrary to the public interest considerations in CEA section 3 (*e.g.,* hedging and price-basing utility) should be prohibited. Rather, the Commission preliminarily believes that the Special Rule is an instruction to apply a particular, focused public interest analysis to specific types of event contracts. That is, the Commission should consider how the public interest purposes of the CEA (and other public interest factors) may be particularly implicated in the context of event contracts involving Enumerated Activities. The discussion in this section includes an explanation of when the Commission preliminarily believes it should apply these public interest factors in a more focused manner than the same factors would be applied to other event contracts that do not involve Enumerated Activities and are not subject to the Special Rule.

Further, the Commission preliminarily believes the public interest factors should be articulated in a manner that is clear, focused, and readily applied both by prediction markets in designing event contracts and by Commission staff in reviewing submissions. The review should focus on specific, potential harms, rather than a broad or indeterminate inquiry into the ''public good.'' The relevant question is whether particular event contracts that otherwise satisfy all applicable requirements nonetheless raise public interest concerns.

[216] For the avoidance of doubt, with respect to these types of event contracts, a prediction market or clearinghouse still must comply with the substantive and procedural requirements that apply, more generally, to the listing for trading or acceptance for clearing of derivative contracts, including, for DCMs and SEFs, the statutory requirement to ensure that such contracts are not readily susceptible to manipulation.

[217] For the avoidance of doubt, these event contracts remain subject to the statutory and regulatory requirements for listing and trading of event contracts.

[218] The rates, measures, and levels in the first three items of this list are outside the scope of the Special Rule and § 40.11 for the reasons described in section II.B., *supra.*

[219] CEA sec. 5c(c)(5)(C)(i), 7 U.S.C. 7a–2(c)(5)(C)(i).

[220] 7 U.S.C. 5.

[221] 7 U.S.C. 5(a).

[222] 7 U.S.C. 5(b).

1. Overview of Proposed Amendments

Proposed §§ 40.11(a)(5) and 40.11(a)(6) set out the factors that the Commission would apply in determining whether event contracts subject to the Special Rule are contrary to the public interest. Proposed § 40.11(a)(5) sets out factors that apply to all event contracts subject to the Special Rule, and § 40.11(a)(6) sets out factors specific to particular Enumerated Activities. Additionally, proposed appendix F to part 40 describes how the Commission would apply these factors.

The Commission notes that this determination is made after a prediction market self-certifies that particular event contracts comply with the requirements of the CEA, including the Core Principles; the Special Rule is not the only way in which a prediction market could be prohibited from listing an event contract. Therefore, the Commission preliminarily believes that the public interest inquiry under the Special Rule encompasses considerations in addition to compliance with the Core Principles and other requirements under the CEA.

Given the range of the Enumerated Activities and potential breadth of event contracts that could be listed, the Commission preliminarily believes it is appropriate to consider a series of factors when determining whether an event contract that involves an Enumerated Activity is contrary to the public interest, instead of relying on a single, static public interest test. The Special Rule contemplates a review that considers the public interest, including the public interests underlying the CEA, in a holistic manner to determine whether the event contracts in question raise the potential for harms to the public interest that outweigh any utility or public interest value of the event contracts. The Commission preliminarily believes that evaluating whether an event contract is contrary to the public interest through multiple factors, rather than a single static test, is beneficial because it allows the Commission to account for the diversity and complexity of event contracts that could fall within the Enumerated Activities.

A multifactor approach enables the Commission to weigh different dimensions of potential harm or public benefit—including the event contract's hedging or price-basing utility or potential to encourage illicit behavior—while also accommodating novel event contract designs and market developments and supporting innovation. This flexibility would help ensure that the Commission's analysis remains consistent, transparent, and adaptable across a wide range of event contracts, rather than constrained by an overly rigid or underinclusive test. The Commission notes that no single public interest factor discussed below would be dispositive as the Commission would apply a range of public interest considerations when determining whether an event contract is contrary to the public interest. The Commission also notes that the factors that inform a public interest determination, and the weight given to each such factor, are likely to vary depending on the particular characteristics of the event contract and Enumerated Activity being evaluated.

2. Public Interest Factors Applicable to All Enumerated Activities

To provide a consistent and transparent framework for evaluating event contracts subject to a public interest review under the Special Rule, the Commission has developed a set of public interest factors that it proposes to apply to all such event contracts. As discussed in greater detail below, the proposed factors are:

- whether the event contracts serve the public interest by providing meaningful hedging or price basing utility consistent with CEA section 3, yielding information that is economically, financially, or commercially useful or otherwise meaningful, or promoting responsible innovation and fair competition;
- whether, in the context of the focused review required by the Special Rule, the event contracts present a particular risk of manipulation or market disruption, exhibit settlement integrity deficits arising from the event contracts' particular characteristics, or create particular risks of information leakage or exploitation of material non-public information by insiders; and
- whether trading or clearing of the event contracts would challenge the prediction market's self-regulatory tools or compliance infrastructure because of the event contracts' involvement of Enumerated Activities.

The Commission preliminarily believes these factors would be generally applicable to event contracts involving any of the Enumerated Activities and would serve as the Commission's initial criteria for assessing whether such event contracts are contrary to the public interest. In addition to these general considerations, the Commission would also apply more specific public interest factors tailored to the specific Enumerated Activity which a given event contract involves, as discussed further in section II.E.3 below. The Commission notes that no single factor is dispositive as the Commission would weigh the various factors on balance.

(a) Price Discovery and Information Aggregation Utility

As discussed above, the public interests underlying the CEA are stated in CEA section 3 as ''findings'' that hedging and price formation are the public purpose of CFTC-regulated markets and are in the public interest. The Commission preliminarily believes that event contracts subject to the Special Rule, like other event contracts, can play a role in ''managing and assuming price risks, discovering prices, or disseminating pricing information'' as contemplated by CEA section 3(a).[223] Also, prediction markets ''function as information aggregation vehicles'' because event contract prices reflect the market participants' aggregate beliefs regarding whether the events will occur.[224] Another purpose of the CEA is to promote responsible innovation and fair competition.[225]

The Commission preliminarily believes that these public interests underlying the CEA, relevant to all derivatives under the CFTC's jurisdiction, should be included in the Commission's review under the Special Rule. Therefore, when reviewing event contracts involving an Enumerated Activity, the Commission would consider whether the event contracts can facilitate these functions.

Meaningful hedging or price basing utility. The Commission notes that the test specifically focused on whether a derivative contract serves an economic purpose was removed from the CEA by the CFMA in 2000, and as explained above, the Commission preliminarily does not believe that the Dodd-Frank Act reinstated the economic purpose test in the Special Rule.[226] Therefore, the Commission preliminarily believes it is not necessary to demonstrate that event contracts have a reasonable potential for a hedging or pricing function to avoid a finding that the event contracts are contrary to the public interest. Still, event contracts' reasonable potential for a hedging or pricing function would be a significant factor against a finding that they are contrary to the public interest. As part

[223] 7 U.S.C. 5(a).

[224] ANPRM, 91 FR at 12517.

[225] CEA sec. 3(b), 7 U.S.C. 5(b).

[226] Some commenters on the ANPRM argued that the economic purpose test should be reinstated and applied to event contracts. *See, e.g.,* Letter from Jeromee Johnson 3 (Apr. 2, 2026) (CEA should not apply to purely speculative contracts which cannot serve any hedging purpose).

of this inquiry, the Commission would consider whether the event contracts can meaningfully facilitate risk transfer and price discovery.

Use of information in economic decisions. The Commission preliminarily believes that price discovery and the connection between prices and economic decisions become more complex as information is used in economic decision-making in ever more sophisticated ways. In 1976, a CFTC Advisory Committee wrote:

> ''Futures prices guide production, storage, and consumption decisions which help the economy function more smoothly. . . . Thus, a futures contract which is likely to be actively traded on an organized futures market can be expected to provide economic benefits—unless it has a flaw.'' [227]

Now, a half-century later, derivatives markets serve this same purpose in more complex ways. Economic modeling uses inputs from a multitude of sources to guide decision-making on a variety of topics that are not necessarily directly tied to a specific commodity market. For example, prices in the corn futures market, which represent a collective assessment of future price trends, can be one input (along with others such as interest rate futures as an indicator of future interest rates) to guide a farm equipment manufacturer in planning its production of corn harvesters. At the next level of removal from the corn market, an investor could use the prices of corn futures, interest rate futures and certain securities in deciding whether to invest in farm equipment manufacturers. This is a simple example. But it illustrates how the prices in a derivatives market should not be viewed in isolation but rather as one thread in a fabric of information. The corn futures market is about more than just corn.

The Commission preliminarily believes the same is true of prediction markets. Whether event contracts have a potential price discovery function depends not just on whether the price of a particular event contract can be used, alone, to make economic decisions. Instead, the event contracts' role in price discovery can arise from how the prices of a variety of event contracts can be factored into decision-making processes.[228] Event contracts can serve as a collective assessment of not only the likelihood of events, but also the level of the market's or the public's attention to various issues and their assessment of the importance of that issue.

The collective assessment reflected in event contract pricing has economic value, which, in turn, would be a factor in the Commission's assessment of event contracts' price discovery functionality. For example, event contracts that involve sporting events can be used for price discovery in a variety of ways. Sports teams are economic enterprises and sports stadiums are regional economic anchors that generate economic activity and materially affect both regional and national markets.[229] For these reasons, it is economically useful to know not only how a sports team is likely to perform in upcoming games, but also how the public *believes* that the sports team will perform in upcoming games.[230] Thus, the price discovery utility of an event contract on whether a team will win a game this weekend arises not simply from whether the information about that particular game can be directly tied to a specific economic decision. Rather, the price discovery usefulness of all event contracts about a team may arise from other analyses, such as how their pricing and trading volume change over time, how trading in event contracts about one team compares to trading in event contracts about other teams, and so forth. Anyone interested in that team as an economic enterprise can use information derived from those event contracts as one factor in economic decision-making on a variety of topics. Just as the corn futures market is about more than just corn, a prediction market about one sporting event is about more than just that sporting event.

The Commission preliminarily believes that three fundamental points are especially pertinent here. First, the price discovery function of event contracts is not limited to how the market participants buying and selling event contracts use the prices as guides to how likely events are to occur. Rather, so long as there is a sufficient volume of event contracts about an underlying event or issue, they can serve as price discovery tools by indicating what the market or the general public thinks about the underlying events or issues (*i.e.,* market sentiment). Second, the usefulness of event contracts for price discovery, as compared to other tools such as surveys to measure market sentiment, arises from the fact that market participants are spending money, even in nominal amounts, to support their beliefs. Thus, event contracts may be a more accurate indicator than surveys of how strongly those beliefs are held. Third, whether event contracts can be used *directly* for hedging is of limited importance in the public interest determination; rather, the question is whether the information derived from event contract pricing can be used to guide hedging decisions.[231]

In short, to take just one example, the price discovery value of event contracts on how many points a basketball player will score in a game depends on more than whether the event contracts can be used to hedge the purchase price of a ticket to the game. In some circumstances, the prices of those contracts could also, along with other information including the prices of many other event contracts, be factored into models used for commercial forecasting or audience-demand analysis, which are economic questions.

For these reasons, the Commission preliminarily believes it would be more likely to find that the event contracts involving an Enumerated Activity are contrary to the public interest where the event contracts lack the potential to inform any economic, commercial or financial decisions. This includes event contracts that settle based on purely random events, such as the spin of a roulette wheel or the outcome of a random-number generator.[232] As

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[227] *See* Report of the CFTC Advisory Committee on the Economic Role of Contract Markets, *supra* note 64.

[228] Commenters on the ANPRM noted this use of event contracts. *See, e.g.,* Letter from Daniel Cavero 1 (Apr. 27, 2026) (event contracts aggregate knowledge into a single probability that is directly usable in operational decision-making, even when they are not used as traditional hedging instruments); Letter from FanLabel Music Markets, LLC 3 (Apr. 23, 2026) (the market-implied probabilities implied in prediction market prices are themselves an information good).

[229] *See, e.g.,* Ryan Grandeau, *Securing the Best Odds: Why Congress Should Regulate Sports Gambling Based on Securities-Style Mandatory Disclosure,* 41 Cardozo L. Rev. 1229, 1247 (2020); *Los Angeles Mem'l Coliseum Comm'n* v. *NFL,* 726 F.2d 1381, 1397 (9th Cir.1984) (discussing claim that a professional sporting team's presence generates local business activity); and *Pennsylvania* v. *Nat'l Collegiate Athletic Ass'n,* 948 F.Supp. 2d 416, 433 (M.D. Pa. 2013) (summarizing the Commonwealth's allegations that sanctions would cause a loss of football-related hospitality revenue for surrounding businesses).

[230] This information could be useful, for example, to hotels adjusting their pricing models, restaurants making staffing decisions to accommodate increased demand, vendors increasing supply orders, and cities allocating resources to accommodate projected crowds.

[231] For example, even if a real estate firm does not use event contracts involving a sports team to hedge its investment in property near the team's stadium, it could nonetheless use the event contract prices as a factor in its decisions about how to use other financial instruments to hedge its property investment.

[232] It is important to distinguish random events from unpredictable events. The outcome of a game of skill may be unpredictable at times, but it is not random because the outcome depends on the players' actions in the game, which are under the players' control. A game of pure chance, such as roulette, is structured to be random and outside any individual's control. As noted above, many games and other activities mix skill and chance, and are

discussed further in section II.E.3(c)(i), market participants buying and selling such event contracts cannot, by definition, have any insight into whether the events will occur. Therefore, the prices of the event contracts cannot be used to understand market sentiment about any potential economic, financial or commercial consequence.

Information aggregation. The Commission acknowledged in the 2008 Concept Release that ''innovative event markets have the capacity to facilitate the discovery of information, and thereby provide potential benefits to the public.'' [233] For many years, event contract markets have been used for educational insights, research, and accurate forecasting of events, among other uses.[234] Many prediction markets have become reliable and accurate information sources, in part, by harnessing the wisdom of crowds—market participants who are incentivized to avoid financial loss when taking a position in a particular contract. There are also many documented cases where prediction markets outperform traditional polling sources or other forecasting methods.[235] In that context, and as discussed in the previous section, information gleaned from prediction markets can help guide economic decision-making.

The Commission preliminarily believes that event contracts are more likely to be contrary to the public interest when any meaningful information about whether the underlying event will occur is unavailable to the broader market. This includes events that are entirely random or where insight into the underlying event is highly concentrated—in a single individual, for example, or only individuals legally prohibited from transacting—and relevant information is necessarily concealed from the public. In such cases, the Commission would consider whether buyers and sellers have any basis to form a meaningful view on the underlying event, and whether the resulting prices can reasonably be expected to reflect informed market sentiment. This factor could also apply where the only market participants with insight into the underlying event would be legally prohibited from transacting in the event contract. Thus, this factor is closely related to the previous factor about whether the event contract can be used for price discovery, and the factor below regarding inside information.

For example, event contracts settling on where a military attack will occur or on the officiating calls made by referees in a specific game may present this concern. The individuals with genuine insight into such event—military personnel or referees—are typically subject to fiduciary duties or confidentiality obligations that would prevent them from lawfully transacting in the event contract. In some instances, other market participants would lack any comparable basis for forming an informed view on the event, with the result that resulting prices would not reflect aggregated informed sentiment about the underlying event.

The Commission also preliminarily believes that in determining whether event contracts can convey meaningful information, event contracts should generally be considered in the aggregate. As described in the previous section, the prices and volumes of event contracts over time can indicate public sentiment, especially when event contracts on related topics are compared with each other. So, if a small group of event contracts do not appear to convey any meaningful information, the Commission would still consider whether the event contracts convey meaningful information when combined with or compared to other event contracts.

Therefore, when reviewing event contracts involving an Enumerated Activity, the Commission proposes to consider whether the event contracts have any utility as information aggregation vehicles—meaning whether the event contracts provide any meaningful information that is useful to making economic, financial or commercial decisions. The Commission would consider the absence of any information aggregation utility as a factor in favor of finding the event contracts to be contrary to the public interest.

Innovation and fair competition. Another ''purpose'' of the CEA is to ''promote responsible innovation and fair competition among [DCMs], other markets and market participants.'' [236] Responsible innovation and fair competition are critical to the healthy functioning of the derivatives markets, particularly given the substantial increase in the trading of event contracts and the growing demand for these products by market participants seeking information regarding, or to hedge exposure to, variables for which no traditional financial instrument exists. This expansion underscores a clear market need and sustained demand for prediction markets as a means of managing novel and otherwise unaddressed risks. The public therefore has an interest in ensuring that these markets retain the space to innovate and develop responsibly so they can continue to meet the evolving needs of market participants while maintaining appropriate regulatory safeguards.

The Commission observes that market participants have demonstrated demand for event contracts addressing categories of risk for which traditional financial instruments either do not exist or provide only imperfect hedges with substantial basis risk. For example, event contracts referencing the timing or content of legislative, regulatory, and policy actions, such as whether a certain bill will become law, or whether a specified tariff or trade measure will be in force at a given time, likewise address exposure that businesses face but cannot meaningfully hedge through equity, rates, or commodity markets. Indications that event contracts support responsible innovation and fair competition would accordingly weigh against a finding that the event contracts are contrary to the public interest.

In assessing this factor, the Commission proposes to also consider the competitive implications of restricting access to event contracts. Particularly where demand for the event contract is strong, a determination barring its listing on a CFTC-registered prediction market is unlikely to eliminate the activity; rather, it may divert trading to offshore or otherwise less transparent and less supervised markets. Such migration would diminish the Commission's oversight of these markets, deprive the public of the transparency and market integrity safeguards afforded by the CEA, and undermine the public benefits associated with responsible innovation occurring within the U.S.

Accordingly, the likelihood that prohibiting an event contract would push trading activity into less transparent and less regulated foreign markets is a factor that weighs against finding that the event contract is contrary to the public interest.

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therefore not ''purely random.'' *See supra* section II.D.3.

[233] 2008 Concept Release, *supra* note 1, 73 FR at 25672.

[234] *See* CFTC Staff Letter No. 93–66 issued to the University of Iowa (June 18, 1993), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/93-66.pdf; see also* IEM Research Page, available at *https://iemweb.biz.uiowa.edu/about-iem/research/* (last visited May 29, 2026).

[235] *See* Joyce E. Berg et al., Prediction Market Accuracy in the Long Run, 24 Int'l J. Forecasting 285 (2008), available at *https://www.sciencedirect.com/science/article/pii/S0169207008000320.*

[236] CEA sec. 3(b), 7 U.S.C. 5(b).

(b) Potential Threats to Market Integrity

Susceptibility to manipulation or market disruption. Another ''purpose'' of the CEA is to ''deter and prevent price manipulation or any other disruptions to market integrity.'' [237] As a general matter applicable to all swaps and futures contracts traded on their platforms, DCMs and SEFs have a statutory obligation to ensure that the contracts they list for trading are not readily susceptible to manipulation.[238] But in its public interest analysis of event contracts subject to the Special Rule, the Commission preliminarily believes that, as discussed above, it should also consider how the public interest purposes of the CEA are particularly implicated. The Commission therefore proposes to distinguish its evaluation of whether a particular risk of manipulative activity may raise public interest concerns for purposes of the Special Rule, from the review that all DCMs and SEFs must undertake to evaluate whether a contract complies with this statutory obligation. Thus, the use of the factors outlined below in determining whether event contracts are contrary to the public interest is beyond and separate from a DCM's or SEF's analysis of a contract's compliance with the CEA and applicable regulations.

In the same way, the Commission also proposes to apply a particular analysis of whether event contracts involving Enumerated Activities can be settled based on objective, publicly verifiable criteria within a reasonable timeframe in determining whether the event contracts are contrary to the public interest, and whether such event contracts raise a particular potential for improperly obtained non-public information to be exploited by insiders.[239] To the extent particular concerns arise with respect to event contracts subject to the Special Rule, such factors would weigh in favor of finding the event contracts to be contrary to the public interest.

The factors outlined below address risks that inhere in the event contracts themselves—their terms, their underlying subject matter, and the criteria on which settlement turns—and that may be present regardless of the prediction market's compliance capabilities. In contrast, the factors in section II.E.2(c) below will address whether the event contracts raise any public interest concerns in light of the prediction market's compliance capabilities.

Settlement integrity. Prediction markets are statutorily required to ''establish, monitor, and enforce compliance with . . . the terms and conditions of'' contracts traded on the prediction market.[240] The Commission preliminarily believes that in the context of its public interest analysis under the Special Rule, it is particularly important that the criteria on which event contracts involving Enumerated Activities settle are clear, objective, and publicly verifiable, and that the contracts identify the triggering events and the means by which it is determined whether those events have occurred transparently and in a manner that clearly identifies the triggering events and how it is determined whether or not those events have occurred. It is also important that the settlement mechanism and the data upon which it relies are suitable to the event contracts under review. The Commission acknowledges that a variety of data sources may be appropriate for the settlement of event contracts and does not intend to overly restrict prediction markets' flexibility to determine which sources should be used in settlement.

Vulnerability to settlement integrity deficits—*e.g.,* a lack of clarity about exactly how event contracts involving Enumerated Activities will be resolved—undermines market function and is indicative of event contracts that are likely to be contrary to the public interest. Therefore, when reviewing event contracts involving an Enumerated Activity, the Commission proposes to consider whether the criteria for settlement of the event contracts are clear, objective, and publicly verifiable. Event contracts whose conditions or resolution criteria are ambiguous, overly complex, or potentially misleading to market participants raise settlement integrity concerns under this factor.

Information leakage and misuse of confidential information. Commission Rule 180.1 makes it unlawful for any person to employ any device, scheme, or artifice to defraud or attempt to defraud any person or manipulate the price of any futures contract listed on a DCM or any swap, including the misappropriation of confidential information in breach of a pre-existing duty of trust or confidence to the source.[241]

The Commission preliminarily believes that certain event contracts involving Enumerated Activities may create unique incentives for information leakage or misuse of material nonpublic information—for example, by encouraging individuals with privileged access to disclose or act upon such information, by incentivizing the unlawful acquisition of additional sensitive information, or by enabling third parties to pressure, solicit, or bribe such individuals to obtain it. These incentives may present significant public interest concerns for event contracts involving Enumerated Activities, particularly where the information is highly sensitive and closely guarded, and meaningful insight into the underlying event is concentrated among a small number of individuals.

The Commission preliminarily believes that these concerns are especially acute for contracts involving national-security matters, where relevant information is tightly held, highly sensitive, and subject to strict confidentiality obligations.[242] In such settings, an event contract may create improper incentives to leak or misuse sensitive information, or to attempt to obtain such information illicitly. For example, event contracts settling on the occurrence, timing, or specifics of intelligence activities could create financial incentives for individuals with security clearances or other access to classified information to disclose or trade upon such information in violation of their obligations, and could similarly incentivize foreign intelligence services or other third parties to target cleared personnel for the purpose of extracting tradeable information.

Where the structural features of an event contract—the sensitivity of the underlying information, the concentration of insight among a small number of individuals, or the nature of the activity to which the contract refers—give rise to identifiable concerns regarding the leakage, misuse, unlawful acquisition, or third-party exploitation of privileged information, and where a

[237] *Id.*

[238] *See* Core Principle 3 for DCMs, CEA sec. 5(d), 7 U.S.C. 7(d)(3), and Core Principle 3 for SEFs, CEA sec. 5h(f)(3), 7 U.S.C. 7b–3(f)(3).

[239] *See infra* note 241 and accompanying text.

[240] *See* CEA sec. 5(d)(2)(A)(ii), 7 U.S.C. 7(d)(2)(A)(ii) (DCMs); *see also* CEA sec. 5h(f)(2), 7 U.S.C. 7b–3(f)(2) (SEFs).

[241] *See* 17 CFR 180.1 and 180.2. *See* CFTC Press Release No. 9185–26, CFTC Enforcement Division Issues Prediction Markets Advisory (Feb. 25, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9158-26* (reiterating the Commission's full authority to police illegal trading practices occurring on any DCM, including those related to prediction markets).

[242] That is, beyond the broad prohibition noted above, *see id.,* the Commission preliminarily believes that these concerns are of special importance when it reviews event contracts involving an Enumerated Activity.

prediction market has not implemented adequate safeguards, those concerns would weigh in favor of finding the event contracts contrary to the public interest.[243]

(c) Compliance and Self-Regulatory Challenges Arising From the Prediction Market's Capacity to Administer the Contracts

Prediction markets have self-regulatory obligations to ensure proper surveillance and oversight of trading in all of the event contracts that they list, accounting for the particular characteristics and attributes of each event contract.[244] In the context of the Special Rule and the analysis of whether event contracts involving Enumerated Activities are contrary to the public interest, the Commission proposes to consider whether the event contracts would be difficult to administer or challenge the prediction market's compliance obligations. This factor addresses a question distinct from the contract-design concerns identified in the prior section: whether the prediction market, given its existing compliance, surveillance, and dispute-resolution infrastructure, can discharge its statutory self-regulatory obligations with respect to the event contracts. These types of challenges would weigh in favor of a finding that such event contracts are contrary to the public interest. Conversely, the Commission preliminarily believes that the existence of guardrails reasonably designed to address the specific risks the event contracts present is a factor weighing against a finding that the contract is contrary to the public interest.

Among the considerations relevant to this factor, the Commission would consider whether the prediction market's dispute resolution processes are suitable to resolving potential disputes about the resolution of the event contracts. The Commission would consider the absence of settlement criteria and dispute resolution procedures that are suitable for event contracts involving Enumerated Activities as a factor in favor of finding the event contracts to be contrary to the public interest.

The Commission would also consider whether a prediction market has adopted effective guardrails against the spread or misuse of non-public information, such as prohibiting certain categories of traders likely to have access to inside information from trading in certain event contracts, and maintaining a robust surveillance and customer identification policy. Such mitigating measures would weigh against a finding that the event contracts are contrary to the public interest.

The Commission preliminarily believes that public interest concerns are likely to arise when uncertainties about the circumstances influencing the underlying events mean that the prediction market's surveillance program may not be able to detect whether or not insiders would have an information advantage.

The Commission invites comment on all aspects of the proposed public interest factors applicable to all Enumerated Activities. Are there any additional general factors that should be considered in the Commission's public interest determinations?

3. Public Interest Factors Specific to the Enumerated Activities

The Commission proposes to evaluate all event contracts subject to review under the Special Rule under the public interest factors set out in the previous section, and also to apply additional factors applicable to event contracts involving each type of Enumerated Activity, as discussed in this section. The following factors specific to each type of Enumerated Activity supplement the general factors in the previous section. Thus, for event contracts involving each type of Enumerated Activity, the Commission proposes to apply both the general factors above and the relevant specific factors below in determining whether the event contracts are contrary to the public interest.

(a) Activity That Is Unlawful Under Any Federal or State Law

In determining whether event contracts involving activity that is unlawful under any federal or state law are contrary to the public interest, the Commission proposes to consider the following factors, in addition to the general factors in section II.E.2.

First, the Commission preliminarily believes that there may be a distinction between event contracts involving an overall rate of unlawful activity, and event contracts involving more specific unlawful actions. For example, event contracts based on crime rates in a general area over extended periods may have price basing or information utility in matters such as insurance or other economic planning.

In contrast, the Commission preliminarily believes that event contracts based on more specific unlawful activity raise concerns under the general public interest factors described above. To the extent that trading in such event contracts would yield meaningful information about specific criminal actions, that information should be shared confidentially with the appropriate authorities—it would be contrary to the public interest for such information to be revealed in a public market because it could compromise law enforcement efforts. Trading in such event contracts could also incentivize criminal behavior,[245] and, if the event contracts are based on potential actions of individuals or small groups, would be subject to manipulation and insider trading concerns.

Public interest considerations particular to federal and state law are described below.

Activity that is unlawful under any federal law. The Commission exercises the authorities granted to it by Congress under the CEA to help ensure that U.S. derivatives markets operate with integrity. The Commission preliminarily believes that it is likely contrary to the public interest to permit trading, in the financial markets that the Commission is mandated by Congress to oversee, in event contracts that involve activity that Congress has determined to be illegal under federal law.[246]

The Commission recognizes, however, that not all references to unlawful activity present public policy concerns. In particular, event contracts that involve aggregate crime rates in a geographic area over extended periods generally do not create incentives to engage in specific unlawful acts. Instead, they reflect broad, statistical measures used for economic, demographic, or public-policy analysis. Because these event contracts do not encourage or reward criminal conduct—and instead reference generalized, population-level data—the Commission preliminarily believes they do not raise the same public policy concerns.

Accordingly, under the Commission's proposed factors, it would be highly likely that event contracts involving activity that is unlawful under federal law would be found contrary to the

[243] *See also infra* the discussion of event contracts involving war in section II.E.3(b).

[244] *See, generally,* CEA sec. 5(d), 7 U.S.C. 7(d) (DCMs), and CEA sec. 5h(f), 7 U.S.C. 7b–3(f) (SEFs).

[245] Also, public attention to such event contracts could lead to ''copycats,'' *i.e.,* individuals engaging in the criminal behavior because of the publicity about it.

[246] The Commission notes that, as discussed *supra* in section II.C., the issue here is whether the activity on which the event contracts are based is unlawful under federal law. If *trading* in the event contracts was unlawful under federal law or facilitated unlawful activity (*e.g.,* if trading in the event contracts facilitated money laundering), then the event contracts could not be certified to be in compliance with the CEA. *See* CEA sec. 5c(c)(1), 7 U.S.C. 7a–2(c)(1).

public interest, except where the event contracts reference generalized crime rates over time in a manner that does not incentivize specific criminal conduct.

Activity that is unlawful under any state law. The Commission preliminarily believes that event contracts that involve activity that is illegal under state law likely raise public interest concerns. Legislative bodies generally bar or prohibit activity that they recognize as causing, or posing, public harm. Judges and judicial bodies, applying statutes and developing common law, also establish the illegality of activity that is recognized as causing, or posing, public harm. The Commission thus preliminarily believes that event contracts that involve activity that is unlawful under state law would likely undermine important state interests, expressed in state statutes and common law, in protecting the public good.

The Commission notes that there are variations across state law in the specific activities that are recognized as unlawful. In assessing whether event contracts are contrary to the public interest, the Commission preliminarily believes it would need to account for variations in state laws and in how states define the underlying activity; consider any relevant judicial precedent that may bear on the Commission's analysis; review a survey of state statutes to understand the extent to which jurisdictions have determined the activity to be unlawful; and consider whether the underlying activity is generally considered as causing, or posing, public harm. The Commission proposes that it would then weigh these considerations—together with the broader public-interest factors discussed above—to understand the extent to which the underlying activity is recognized as unlawful. This inquiry would address the character of the underlying activity for purposes of the Special Rule and does not alter the Commission's exclusive jurisdiction.

For these reasons, under the Commission's proposed factors, it would be likely that event contracts that involve activity that is unlawful under state law would be found to be contrary to the public interest, unless the event contracts involve crime rates in a general area over extended periods as described above. As noted above, the relevant issue is whether the activity on which the event contracts are based is unlawful under state law.

(b) Terrorism, Assassination, and War

As discussed above, in addition to the general factors in section II.E.2, the Commission proposes to consider also the more specific factors below in determining whether event contracts involving terrorism, assassination, or war are contrary to the public interest.

National security. The Commission preliminarily believes that event contracts involving terrorism, assassination, or war can present significant national security risks and therefore raise public interest concerns. The Commission is concerned, first, that the prices of such event contracts would not necessarily align with the actual likelihood of the underlying terrorism, assassination, or war events because the trading public is shielded as a matter of public policy from relevant information about the event. For this reason, trading in such event contracts could, at the least, present a distraction to law enforcement and military authorities and, at worst, be manipulated by wrong-doers to divert attention from planned harmful events.[247] For example, event contracts based on whether an attack on a particular location will occur would provide an opportunity to individuals planning such an attack to buy the ''no'' contract and thereby create misleading market signals, potentially diverting attention and resources at a critical time.

As discussed above, these event contracts also present especially significant information leakage and misappropriation concerns because individuals with access to sensitive national security information could potentially be incentivized to exploit that information through trading that would be in violation of their duty of confidentiality.[248]

More generally, the Commission preliminarily believes that event contracts involving terrorism, assassination or war are particularly vulnerable to settlement ambiguity. The inherent uncertainty and limited access to reliable information during such events—often described as the ''fog of war''—can undermine clarity regarding whether relevant events have taken place. Additionally, as noted above, the prices of these event contracts may not accurately reflect actual probabilities because the individuals with direct knowledge or insight are typically insiders subject to legal restrictions that prohibit them from trading these event contracts. To promote public safety, the Commission believes it is preferable for other individuals with pertinent information to share that information with the authorities, rather than to use it for trading purposes.

Violence, profiting from harm to human life, or potential to facilitate illicit behavior. The Commission preliminarily believes that event contracts involving terrorism, assassination, or war could potentially result in or incentivize violence or harm to human life or other illicit behavior and therefore raise public interest concerns. First, as noted above, these types of event contracts have very little informational value, but individuals who do have any special knowledge regarding these types of activities or events have a public duty to report this information to the proper authorities to prevent any violence, harm, or illicit behavior. For example, if a private terrorist expert were to uncover communications regarding a plot to assassinate a public figure, the Commission believes that expert should alert authorities rather than trade event contracts regarding that assassination. It is contrary to the public interest to profit from the potential assassination of a human being.

Moreover, the Commission preliminarily believes that event contracts involving terrorism, assassination, or war could potentially encourage such activity, because there is a potential for individuals to act in order to receive payout under the event contracts, resulting in significant risk of harm to human life and property. The Commission preliminarily believes that this encouragement and incentivization of violence, human harm, or illicit behavior is not in the public interest and proposes to carefully analyze these types of contracts to ensure that the incentives structured into the contract for a monetary payout do not encourage any direct violence, harm to human life, or illicit behavior. Based on the foregoing public interest analysis, all event contracts involving terrorism, assassination, and war are highly likely to be against the public interest.

(c) Gaming

In determining whether event contracts involving gaming are contrary to the public interest, the Commission proposes to consider the following factors in addition to the general factors in section II.E.2.

[247] The Commission notes that this concern could become increasingly problematic as the volume of trading in such event contracts increases.

[248] Although the case does not involve event contracts traded on a CFTC-registered prediction market, a recent instance where a U.S. service member allegedly used confidential information regarding a U.S. military operation to trade in event contracts on an unregistered platform is an example of the potential for such insider trading. *See* CFTC Press Release No. 9217–26, CFTC Charges U.S. Service Member with Insider Trading in Nicolás Maduro-Related Event Contracts (Apr. 23, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9217-26.*

(i) Games of Random Chance Are Likely Contrary to the Public Interest

The Commission preliminarily believes that event contracts involving games whose outcome depends on random chance—*e.g.,* pure luck—are likely to be contrary to the public interest. As discussed above, prediction markets function as information aggregation vehicles, meaning their usefulness depends in part on whether market participants can bring insight, expectations, or informed views as to whether the event underlying the contract will occur. When an outcome is dictated solely by luck and cannot be meaningfully predicted, participants have no insight to contribute, leaving their forecasts without any informational value. Trading in such event contracts therefore provides no meaningful information that could support decision making or market understanding.

On the other hand, the outcome of some games that depend on a high degree of luck, like poker, can also be significantly affected by the participants' skill, particularly when the game is repeated over many rounds, as in organized tournaments. The Commission preliminarily believes that when a game with some element of random chance also depends to a significant extent on the participants' skill, and the settlement of an event contract involving the game is determined by an occurrence, extent of an occurrence or contingency in an organized tournament, then that event contract would less likely be viewed as involving a game that depends entirely on random chance.

Thus, the Commission preliminarily believes that event contracts involving games whose outcome depends on random chance—by definition, devoid of informational content—would not advance any of the purposes of the CEA. For these reasons, under the Commission's proposed factors, it would be highly likely that event contracts involving games that depend entirely on random chance would be found to be contrary to the public interest.

(ii) Factors Indicating When Event Contracts Involving Sports Activities Are Not Contrary to the Public Interest

The Commission observes that prediction markets have successfully listed for trading a wide variety of event contracts based on sports activities. The Commission preliminarily finds that certain characteristics of event contracts involving sports activities would reduce the basis for finding that the event contracts are contrary to the public interest. For example, the extent to which event contracts settle based on the overall outcome of a sporting event—including final scores, point differentials, win-loss results, tournament advancement, individual or team statistical performance or season long performance metrics—would be factors against a finding that the event contracts are contrary to the public interest. The Commission preliminarily believes that these categories of sports event contract markets may serve price discovery functions and provide meaningful information. Additionally, in terms of the Commission's focused analysis of event contracts involving Enumerated Activities described above,[249] the Commission preliminarily believes that these event contracts are unlikely to raise the particular manipulation, settlement ambiguity and information leakage issues that could raise public interest concerns.

The structural features underlying the Commission's preliminary view are that, for these event contracts, manipulation risk is bounded by the distribution of determinative capacity among participants and events in the underlying activity, and any residual manipulation risk produces observable patterns that the prediction market can detect through surveillance.[250] An event contract involving the aggregate outcome of a single game typically depends on the cumulative contributions of many participants over the course of the game; no individual participant has determinative capacity to affect settlement through their own conduct, and any participant's attempt to do so produces performance patterns inconsistent with prior play and inconsistent with game context.[251] An event contract involving aggregate statistical performance of an individual over the course of a game presents a similar analysis. No single act has determinative capacity to affect settlement, and a participant's attempt to do so produces performance patterns that are detectable.

Among other considerations, the Commission notes that the settlement outcomes of these types of event contracts would typically depend on the aggregate performance over an extended period of play. The breadth of potential outcomes, and the variety of factors influencing the outcomes, should provide more opportunities for the event contracts to advance price discovery or provide meaningful information. Generally, a finding that sports-related event contracts fall within the above categories would weigh heavily against finding that the contract is contrary to the public interest.

Objective and verifiable settlement data. As part of its review of particular public interest concerns in event contracts involving Enumerated Activities, the Commission preliminarily believes that objective settlement data reduces the risk that settlement values can be manipulated through the exercise of subjective judgment by individuals positioned to influence the settlement determination. The Commission also preliminarily believes that objective settlement data permits surveillance of trading activity for patterns inconsistent with the publicly available data, which is a tool by which prediction markets detect attempted manipulation. The fact that event contracts involving sports settle by reference to publicly reported, league-verified, or otherwise objectively determinable data would be a factor weighing against a finding that the applicable event contracts are contrary to the public interest.[252]

Established sport-level integrity infrastructure. The Commission preliminarily believes the public interest considerations relevant to event contracts involving sports are materially affected by whether the underlying game operates within a framework that addresses integrity concerns at the level of the sport. A prediction market listing event contracts involving a sport with a developed integrity framework can leverage that framework in ways unavailable for sports without comparable infrastructure. The fact that the sport underlying an event contract is subject to an established integrity framework, including a recognized governing body, an integrity unit or comparable monitoring function, published rules of competition, and disciplinary procedures applicable to participants, officials, and other personnel would be a factor weighing against a finding that the applicable

[249] *See supra* introduction to section II.E.

[250] That is, the event contracts would generally not be reasonably susceptible to manipulation, and moreover any residual manipulation risk would not raise public interest concerns.

[251] For example, the Commission preliminarily believes that in games such as tennis or golf, an individual player's attempt to skew occurrences during the game would typically be detectable in the context of the game and the player's prior performance.

[252] As noted above, *see supra* section II.E.2(b), the settlement mechanism and the data upon which it relies should be suitable to the event contracts under review. The Commission acknowledges that a variety of data sources may be appropriate for the settlement of event contracts and does not intend to overly restrict prediction markets' flexibility to determine which sources should be used in settlement.

event contract is contrary to the public interest.

Information sharing and coordination with relevant sports leagues and governing bodies. As noted above, event contracts involving sports may implicate the involvement of a recognized governing body, integrity unit or comparable monitoring function for that sport, including but not limited to professional sports leagues and their integrity units, as well as the National Collegiate Athletic Association. The Commission preliminarily believes that communication between prediction markets and such relevant governing bodies or authorities prior to listing sports event contracts would support compliance and surveillance programs for sports events contracts.[253] The Commission also preliminarily believes that establishing formal information sharing agreements between prediction markets, the Commission, and the relevant sports integrity monitoring organization may aid prediction markets in monitoring sports event contracts for manipulation, insider trading and other compliance issues. Such engagement and information sharing efforts could entail a practice or agreement with the relevant sports governing body that the prediction market will:

- Report suspicious trading activity or trading activity by prohibited traders to the relevant sports governing body;
- Cooperate with sports governing bodies to provide certain data in connection with sports integrity investigations;
- Consult with sports governing bodies on proposed event contracts; and
- Consult, as appropriate, with relevant governing bodies regarding integrity-related restrictions applicable to marketing, participant protections, and event contract design in the relevant sport.

To the extent a prediction market coordinated with or entered into information sharing arrangements with the relevant sports leagues or governing bodies and/or designs event contracts in accordance with league integrity standards, where applicable, those facts would weigh against a finding that the applicable event contracts are contrary to the public interest.

For these reasons, the Commission preliminarily believes that event contracts based on the aggregate outcomes of professional or collegiate sports events, based on objective and verifiable settlement criteria, listed by prediction markets that maintain appropriate surveillance, trading prohibitions, and coordination with relevant sports governing bodies, are, depending on the full record and the Commission's evaluation of all relevant factors, unlikely to be found to be contrary to the public interest. This preliminary belief also rests on relevant prior experience with how similar event contract types have operated, although no prior listing or experience is dispositive. Prediction markets have listed sports event contracts of the types described—final scores, point differentials, win-loss results, tournament advancement, individual and team statistical performance, and season-long performance metrics—in volumes sufficient to permit meaningful evaluation of their operating characteristics. The Commission has considered surveillance data, integrity referrals, identified instances of attempted manipulation, and the prediction markets' responses to those instances. The Commission preliminarily believes that the record supports the conclusion that event contracts involving aggregate outcomes can be operated consistent with the public interest when prediction markets maintain the structural protections outlined in § 40.11(a)(6)(iii)(A). The Commission has also considered the potential uses of price information generated by these event contracts in commercial decision-making, including by sports broadcasters, sponsors, advertisers, fantasy sports operators, sports analytics firms, and other commercial participants in sports-adjacent industries, although generalized use of price information by adjacent industries is not, standing alone, sufficient to resolve the public interest inquiry.

Nothing in the Proposal, including the Commission's preliminary belief that such event contracts are unlikely to be contrary to the public interest, is intended to create a safe harbor that any particular contract satisfies the public interest standard, nor does it replace the multi-factor analysis required under §§ 40.11(a)(5) and 40.11(a)(6). Rather, it reflects the Commission's considered preliminary view of how the factor analysis generally resolves for such event contracts. Event contracts remain subject to factor-by-factor weighing.

(iii) Factors Indicating That the Commission Would Find Event Contracts Involving Sports Activities To Be Contrary to the Public Interest

The Commission preliminarily finds that certain types of event contracts involving sports activities are likely to be found to be contrary to the public interest.

Player injury contracts. The Commission preliminarily believes that event contracts that explicitly settle solely by reference to the duration, severity, occurrence, or medical diagnosis of an injury sustained by a specific athlete raise serious public interest concerns.[254] First, such event contracts create perverse financial incentives that could encourage or facilitate physical harm to athletes. Second, the settlement of such event contracts would likely depend on medical diagnoses, which raises public interest concerns about the confidentiality of medical information and the potential for such sensitive information to be leaked or exploited by insiders. Third, settlement conditions based on a physicians' diagnoses or injury reports do not provide a sufficiently objective, verifiable, and manipulation-resistant basis for contract settlement. Therefore, under the Commission's proposed factors, it would be likely that event contracts that explicitly settle solely by reference to the severity, occurrence, or medical diagnosis of an injury sustained by a specific player would be found to be contrary to the public interest.

Officiating outcome contracts. The Commission preliminarily believes that event contracts that settle solely by reference to judgment calls, discretionary decisions, or rulings of referees, umpires, or other game officials, including without limitation, penalties assessed, fouls called or not called, reviews initiated, video replay decisions, player ejections, or disciplinary rulings made during live games raise public interest concerns. Unlike final score outcome contracts, event contracts based on officiating decisions resolve on the basis of a small number of discrete human decisions made by identifiable individuals under significant pressure and with limited

[253] The Commission notes that any communication by prediction markets with third parties must comply with any applicable regulatory or confidentiality requirements. Also, beyond the relevance of interactions with sports governing bodies to the public interest determination under the Special Rule, these interactions may also be relevant to a prediction market's compliance obligations in general.

[254] Comments on the ANPRM from the associations representing major league sports players said that event contracts based on player injuries should be prohibited, including because they involve personal medical information. *See* Letter from the National Football League Players Ass'n, the Major League Baseball Players Ass'n, the National Basketball Players Ass'n, the National Hockey League Players' Ass'n, and the Major League Soccer Players Ass'n 2–3 (Apr. 30, 2026).

accountability in real time.[255] The Commission preliminarily finds that the risk of inappropriate contact between market participants and officiating personnel and the risk of selective officiating raises public interest concerns because that risk threatens the integrity of the game, which is, in turn, a matter of public interest.[256] In addition, market participants could not form meaningful forecasts about officiating outcomes described above because for these calls officials must make quick, discrete judgments, and so the prices of such event contracts would not provide meaningful information.[257] For these reasons, under the Commission's proposed factors, it would be likely that event contracts that explicitly settle solely by reference to officiating outcomes as described above would be found to be contrary to the public interest.[258]

Discrete-action contracts involving specific participants. The Commission preliminarily believes that event contracts that settle solely by reference to a discrete action, event, or occurrence in sporting events, including, without limitation, event contracts settling on the type of a specific play called for or executed by a specific player or team, the type or outcome of a specific pitch thrown by a specific pitcher, the outcome of a specific shot taken by a specific player, or whether a specific player or team commits a specific foul or penalty, present public interest concerns.

Specifically, event contracts based on discrete actions do not provide meaningful information because market participants can have little actual insight into specific in-game acts of identifiable participants. Also, in the context of the Commission's focused review of event contracts involving Enumerated Activities, the Commission preliminarily views such event contracts as raising public interest concerns relating to manipulation and information leakage because a single player or team coaching staff member can determine the settlement outcome of the event contracts. Last, the risk that athletes' in-game decisions would be influenced by such event contracts is contrary to the integrity of the game. For these reasons, under the Commission's proposed factors, it would be likely that event contracts meeting the criteria of a discrete-action contract as described above would be found to be contrary to the public interest.

Physical altercation contracts. The Commission preliminarily believes that event contracts that settle solely by reference to physical altercations, fights, or conduct between players or participants in the game that are subject to penalty, ejection, or disciplinary action raise public interest concerns.[259] Such event contracts could create a direct financial incentive for both athletes and market participants to encourage, facilitate, or provoke such conduct. Even if the probability that any athlete or market participant acts on such an incentive is low, the effect of a market in physical altercation contracts on the culture of athletic competition is inconsistent with the public interest. Also, the Commission preliminarily believes that such event contracts are unlikely to provide meaningful information, as market participants would generally not have insight into when altercations would occur and, to the extent they do have such insight, it is contrary to the public interest for market participants to express those views on regulated markets. For these reasons, under the Commission's proposed factors, it would be likely that event contracts involving game-related altercations, as described above, would be found to be contrary to the public interest.

Pre-collegiate sports events. The Commission preliminarily believes that event contracts that settle solely by reference to games, sporting events, or outcomes in which participants are below the collegiate level raise public interest concerns.[260] There are several factors that differentiate pre-collegiate sports from sports at the collegiate and professional levels. Since pre-collegiate sports have less extensive governing bodies and typically lack a rigorous integrity infrastructure, prediction markets would be less able to interface with the governing body. Also, the relevant data flows (to the extent formal data are collected at all) are decentralized and less reliable than for collegiate and professional sports. Similarly, broad and numerous groups of individuals would potentially have inside information about pre-collegiate sports and would be subject to little or no contractual limitations on information usage. In the context of its focused review of event contracts involving Enumerated Activities, the Commission preliminarily believes that these differences from professional and collegiate sports raise particular concerns about manipulation, settlement integrity and information leakage.

The Commission also notes that, to the extent event contracts based on pre-collegiate sports events would yield economically useful information, this use of the event contracts could raise public interest concerns relating to marketing and other commercial use of information related to minors. There may also be public interest concerns related to the disclosure of minors' personal identifying information. For these reasons, under the Commission's proposed factors, it would be likely that event contracts involving pre-collegiate sports events would be found to be contrary to the public interest.

The Commission requests comment on all aspects of its proposed factors to determine whether event contracts that involve particular Enumerated Activities are contrary to the public interest.

F. The Commission's Authority To Identify Additional Activities Similar to the Enumerated Activities

Clause (VI) in paragraph (i) of the Special Rule provides that the Commission may determine that event contracts are contrary to the public interest if the event contracts involve ''other similar activity determined by the Commission, by rule or regulation,

[255] For example, event contracts based on officiating decisions could incentivize game participants to commit more fouls, thereby threatening the integrity of the game.

[256] The Commission notes an instance of selective officiating and other inappropriate conduct that is an example of the public interest concerns regarding officials' conduct. *See U.S.* v. *Donaghy,* 570 F.Supp.2d 411 (E.D.N.Y. 2008) (NBA official cooperated in investigation and pled guilty in case where official used inside information in a betting scheme).

[257] That is, market participants' opinions on such matters are irrelevant and expression of those opinions through event contract trading would call into question the integrity of the game involved.

[258] For the avoidance of doubt, event contracts that settle based on the overall outcome of sports events, including final scores, point differentials, or statistics compiled over the course of play, are not included in this category, even if such outcomes may have been affected in part by officiating decisions. This factor relates solely to event contracts in which the settlement events are officiating decisions, rather than derivative outcomes of play.

[259] The Commission preliminarily believes that event contracts based on the overall outcomes, and not the specific actions of a particular fighter, of combat sports, including Mixed Martial Arts, Brazilian Jujitsu, Muay Thai, Boxing, Wrestling, and other sports in which physical contact or combat is an integral and sanctioned element of the game, are not included in this category. For these sports, the occurrence of physical combat or contact during the game is a core and lawful element of the sporting event on which the contract is based, not an extraneous act of misconduct.

[260] The Commission preliminarily does not view this category to include any professional league, international competition sanctioned by recognized governing bodies, or other games that may include athletes of various ages but are not organized primarily at the pre-collegiate or youth level.

to be contrary to the public interest.'' [261] The Commission notes that this phrasing appears to call for the Commission to make two separate determinations that the event contracts are contrary to the public interest, but preliminarily does not believe that is the intent of the provision.

Instead, the Commission preliminarily believes that the Special Rule calls for, first, a determination that the other activity is similar to one or more of the Enumerated Activities, made by rule or regulation, and second, a determination that event contracts involving that activity are contrary to the public interest. The second determination would be made in the same way as for other event contracts that involve Enumerated Activities.

The Commission also preliminarily believes that the phrase ''contrary to the public interest'' at the end of clause (VI) means that the similarity to the Enumerated Activities should be in a way that makes event contracts based on the similar activity also subject to a public interest prohibition. That is, this phrase emphasizes that the similarity must be in some public interest-related aspect.

Clause (VI) is implemented in proposed § 40.11(a)(2)(vi), which provides that § 40.11 applies to event contracts that involve ''Other activity that the Commission determines, by rule or regulation, to be similar to one or more activities enumerated in paragraphs (a)(2)(i) through (v) of this section.'' Proposed § 40.11(a)(2)(vi) would thus authorize the Commission to identify, by rule or regulation, additional, similar activities to the Enumerated Activities. And if event contracts involved those similar activities, then the event contracts would be subject to a determination that the event contracts are contrary to the public interest. While the Commission is not proposing to adopt, at this time, a rule or regulation determining that any activity is similar to any Enumerated Activity, the Commission reiterates that it retains the authority under the Special Rule and proposed § 40.11(a)(2)(vi) to do so.

The Commission requests comment on all aspects of its proposed approach to event contracts that involve activities that are similar to the Enumerated Activities.

G. Process Under § 40.11 and Technical Amendments

The Commission acknowledges that under the structure of the Special Rule, event contracts could be found to be contrary to the public interest after trading of the event contracts has begun. Since this statutory structure could require that prediction markets close out market participants' positions in event contracts that are found to be contrary to the public interest, the Commission recognizes that this could disadvantage market participants and prediction markets. This section discusses these issues and how the Commission has attempted, in the Proposal, to streamline § 40.11 so that any necessary Commission action can be taken as efficiently as possible. This section also discusses technical amendments in § 40.11 and the delegation of authority in § 40.7.

1. The Process for Commission Action Under § 40.11

The Special Rule provides that the Commission must make a final public interest determination ''not later than 90 days from the commencement of its review unless the party seeking to offer the [relevant event contract] agrees to an extension of this time limitation.'' [262] CEA section 5c(c)(1) provides that a DCM may list a contract for trading by providing a written certification that the contract complies with the CEA (including Commission regulations thereunder).[263] Rule 40.2(a)(2) provides that the Commission must receive a self-certified contract submission by the open of business on the business day preceding the product's listing.[264] The Special Rule (*i.e.,* CEA section 5c(c)(5)(C)) does not include any requirement that the DCM suspend the listing of event contracts that are under review by the Commission.[265]

The Commission preliminarily believes it is clear from this statutory timeline that Congress contemplated that self-certified event contracts that are subject to the Special Rule and that are listed and actively trading could be found to be contrary to the public interest and prohibited, in which case the event contracts would have to be delisted under clause (ii) of the Special Rule. The Commission notes that the Special Rule applies ''[i]n connection with the listing of'' event contracts but does not impose a specific time limit on when the Commission may commence a public interest review of event contracts.[266] Also, as explained above, the Commission preliminarily believes that the Special Rule does not authorize the Commission to determine that event contracts are contrary to the public interest unless the Commission has the relevant event contracts before it.

For these reasons, the Commission preliminarily anticipates that its determinations that event contracts are contrary to the public interest might entail the delisting of at least some event contracts that are actively trading. The Commission understands that this delisting could result in an administrative burden for the prediction market but anticipates that it would be manageable for the prediction market to cancel the event contracts and return the purchase price and fees paid by market participants for the event contracts. Market participants would lose any hedge and unrealized gains provided by the event contracts, but the Commission preliminarily believes that event contracts found to be contrary to the public interest would have lesser hedging utility. In any case, contracts that are determined to be contrary to the public interest should not be listed for trading or cleared, as is stated in the Special Rule.

The Commission also acknowledges that unless the prediction market agrees to suspend trading of the event contracts while they are under review, it is possible that event contracts that are later found to be contrary to the public interest would be traded for the time permitted for the Commission's review under the proposed process. To mitigate this, the Commission has attempted to propose factors that should assist prediction markets in avoiding the self-certification of event contracts that would likely be found to be contrary to the public interest. The Commission encourages prediction markets to engage with Commission staff to discuss event contracts that may involve Enumerated Activities and potentially raise concerns under the factors in proposed §§ 40.11(a)(5) and 40.11(a)(6). Such discussions prior to self-certification could mitigate adverse consequences from trading of event contracts that are later prohibited under the Special Rule.

Last, the Commission preliminarily believes that proposed § 40.11(c)(5), which provides for the Commission to request that the prediction market suspend trading of the event contracts under review, could also mitigate such adverse consequences. In determining whether to abide by the request and suspend trading, the prediction market

[261] CEA sec. 5c(c)(5)(C)(i)(VI), 7 U.S.C. 7a–2(c)(5)(C)(i)(VI).

[262] CEA sec. 5c(c)(5)(C)(iv), 7 U.S.C. 7a–2(c)(5)(C)(iv).

[263] 7 U.S.C. 7a–2(c)(1).

[264] 17 CFR 40.2(a)(2).

[265] *Cf.* CEA sec. 5c(c)(3), 7 U.S.C. 7a–2(c)(3), providing for a stay of the certification of a new rule or rule amendment while under review by the Commission.

[266] CEA sec. 5c(c)(5)(C)(i), 7 U.S.C. 7a–2(c)(5)(C)(i).

could consider any of its relevant statutory, regulatory or self-regulatory obligations (*e.g.,* its obligations to ensure market integrity and prevent market disruption) and circumstances such as the volume of transactions in the event contracts. Thus, relevant obligations and market factors would influence the prediction market's choice whether trading should occur in event contracts that may potentially be found contrary to the public interest.

The Commission requests comment on its preliminary interpretation of the process under § 40.11 and any steps that could mitigate any market disruption from a determination that event contracts are contrary to the public interest.

Recalling that clause (i) of the Special Rule states that ''[i]n connection with the listing of'' event contracts, ''the Commission may determine that such [event contracts] are contrary to the public interest'' if they involve an Enumerated Activity,[267] commenters are invited to address a different possible reading of this provision. It could be interpreted to mean that the Commission's public interest determination may be made *prior to* listing, so long as the determination relates to a type of event contract that involves an Enumerated Activity and could potentially be listed.

The Commission is not proposing to adopt this reading.[268] Under such an interpretation, however, the Commission could issue determinations that categories of event contracts involving certain Enumerated Activities (as described in the determinations) are contrary to the public interest and may not be listed or made available for clearing or trading, even before any such event contracts are self-certified. In this approach, all of the Proposal would remain the same, including the factors that the Commission would apply to determine if event contracts involve an Enumerated Activity and if such event contracts are contrary to the public interest. The difference would be the addition of a provision to proposed § 40.11 to the effect that the Commission may issue an order finding that event contracts involving an Enumerated Activity described in the order are contrary to the public interest, based on the factors in proposed §§ 40.11(a)(5) and 40.11(a)(6), without requiring that the event contracts be self-certified by a prediction market or that the Commission undertake a 90-day review of the event contracts under proposed § 40.11(c).

As another alternative, the Commission requests comment on whether it should use its exemptive authority under CEA section 4(c) to provide that defined classes of event contracts may be listed and traded without individualized review under § 40.11,[269] and whether such relief would meaningfully reduce the burden of individualized review.

The Commission requests comment on whether either of these alternative approaches should be added to the proposed approach.

2. Information Required for Commission Action Under § 40.11

The Commission notes that application of the proposed factors to determine whether event contracts involve an Enumerated Activity and whether such event contracts are contrary to the public interest would require that prediction markets provide appropriate information about the event contracts they certify for trading. This information would have to be sufficient for Commission staff reviewing the event contracts to recommend Commission action under § 40.11 when appropriate.

The Commission notes that § 40.2(a)(3)(v) requires the prediction market to submit with its self-certification of a contract ''[a] concise explanation and analysis that is complete with respect to the product's terms and conditions, the underlying commodity, and the product's compliance with applicable provisions of the [CEA],'' along with sufficient documentation.[270] The Commission believes that, where an event contract potentially involves an Enumerated Activity, this rule requires that the prediction market concisely explain and analyze whether the event contract does in fact involve an Enumerated Activity and, if it does, why the event contract is not contrary to the public interest, as these are applicable provisions of the CEA.

The Commission preliminarily anticipates that prediction markets would address the proposed factors for the Commission's determinations in the prediction markets' part 40 submissions of event contracts that potentially involve an Enumerated Activity. The Commission notes that overly broad or generalized contract specifications may impact a prediction market's ability to provide a complete explanation and analysis of whether the event contract's potential permutations may involve an Enumerated Activity and, if so, are contrary to the public interest—as well as the CFTC's ability to effectively evaluate such explanation and analysis.[271] The Commission preliminarily believes that for event contracts that potentially involve an Enumerated Activity, a mere general statement of the type of event contracts to be listed would be insufficient for the Commission's review under § 40.11 and would not comply with the § 40.2(a)(3)(v) requirement that the prediction market explain why the event contracts comply with the CEA. Therefore, the Commission preliminarily anticipates that in such instances, the staff would request that the prediction market provide additional information, sufficient for the Commission's review under § 40.11, demonstrating that the event contracts meet the requirements of the CEA, as required by § 40.2(b).[272]

3. Amendments to § 40.11(c) and New § 40.11(d)–(f)

A determination under the Special Rule that an event contract is contrary to the public interest carries substantial consequences. The event contract cannot be listed for trading or accepted for clearing. The prediction market loses the ability to offer a product it has developed, on which it has expended compliance costs, and around which market participants may have organized hedging or trading strategies. Counterparties lose access to the event contract. The information-aggregation and price-discovery functions the event contract might have served are foreclosed. And the certification right Congress provided to prediction markets under section 5c(c)(1) is overridden as to that event contract.

Accordingly, the Commission proposes a framework designed to ensure that prohibition determinations rest on a record sufficient to support them and on the considered judgment of the Commission as a body. The framework reflects the Commission's preliminary view that determinations of this consequence should be made carefully, on a developed record, with the prediction market having had a meaningful opportunity to respond to the agency's reasoning, and only when the Commission has reached a

[267] *Id.*

[268] *See supra,* introduction to section II., for a description of the Commission's proposed interpretation of the Special Rule.

[269] CEA sec. 4(c), 7 U.S.C. 6(c).

[270] 17 CFR 40.2(a)(3)(v).

[271] *See* CFTC Staff Letter 26–08 (Mar. 12, 2026), at 4–5, available at *https://www.cftc.gov/csl/26-08/download.* The statutory and regulatory requirements discussed in this letter apply to all event contracts self-certified by prediction markets, not just event contracts subject to the Special Rule.

[272] 17 CFR 40.2(b).

considered conclusion that the public interest requires prohibition.

The 90-day timeline the Special Rule imposes is a hard backstop on the determination process. The proposed framework's procedural steps are designed to fit within 90 days because the statute requires it. Where additional time is needed to develop the record adequately, the statute provides for extensions only with the prediction market's agreement,[273] and the framework preserves that mechanism by permitting extensions only with the agreement of, or upon the request of, the prediction market.

The Commission acknowledges that the framework proposed herein departs in several respects from the procedures established in the existing § 40.11(c). The existing rule provides a 90-day review process triggered by Commission determination based on review of submissions and contemplates suspension of listing or trading during the pendency of review at the Commission's request. The framework proposed by the Commission refines the initiation procedure, clarifies the suspension provision, and adds procedural protections for the prediction market that is the subject of review. The reasons supporting the new framework are stated in the discussion of each provision below.

The Commission's proposed § 40.11 establishes a structured 90-day review process with defined procedural rights for the prediction market, defined record-development obligations on the Commission and its staff, and defined limits on the Commission's authority to act on a thin record or without considered Commission-level engagement.

Initiation of Review. Proposed § 40.11(c)(1) provides that the Commission may commence a review under this section only by a written determination of the Commission that there is a basis to believe that an event contract submitted under § 40.2 or § 40.3 both involves an Enumerated Activity and may be contrary to the public interest under the factors set forth in §§ 40.11(a)(5) and 40.11(a)(6). Such a review must commence within 10 days after the event contract's listing. This provision implements the statute's ''may determine . . . if'' structure. The statute does not require the Commission to review every submission involving an Enumerated Activity; it authorizes the Commission to act when warranted. This proposed basis-determination ensures that the Commission's discretion to initiate review is exercised through a Commission-level commitment, rather than through informal staff-level processes that the Commission must subsequently ratify, under time pressure. Notice to the prediction market of the Commission's written determination initiating review would be the action that triggers the 90-day clock and engages the procedural and substantive consequences that follow; the Commission preliminarily believes that the triggering action should reflect the Commission's considered judgment from the start.

The proposed provision refines the initiation procedure under the existing § 40.11(c)(1), which permits the Commission to determine, based on review of submissions, that event contracts may involve an enumerated activity and are subject to review, without specifying a basis standard or a written-determination requirement. The Commission preliminarily believes that initiation of review should rest on a written determination of the Commission satisfying a defined standard. The written determination requirement and the basis standard ensure that the procedural and substantive consequences of review are engaged only when the Commission has determined those consequences are warranted, and they create a record at the start against which any subsequent determination can be measured.

The proposed notice-content requirements in § 40.11(c)(2) ensure that the prediction market knows what is being reviewed, which Enumerated Activity is implicated, which terms of the event contract are at issue, and which factors in proposed §§ 40.11(a)(5) and 40.11(a)(6) the Commission has identified as warranting review. Without this information, the Commission preliminarily believes the prediction market cannot meaningfully respond. The Commission also preliminarily believes the requirements are also beneficial for record development—the Commission should articulate its theory at the start of the review and be constrained, going forward, to develop the record consistent with the theory it has stated.[274]

Consolidation. As noted above, due to the increase in the number of event contracts that DCMs have self-certified for listing under § 40.2, the Commission preliminarily believes that in some circumstances DCMs and the general public would benefit from the issuance of a single order (rather than multiple orders) finding that a group of similar event contracts are contrary to the public interest. Throughout proposed § 40.11, the text refers to agreements, contracts, transactions, or swaps in the plural to match the text of the Special Rule.[275] The plural form used in the Special Rule implies that more than one contract can be covered by a public interest finding.

Therefore, proposed § 40.11(c)(4) provides that the Commission may consolidate review of multiple submissions pending under § 40.2 or § 40.3 that share common characteristics, in which case the determination to begin the review would include a description of the group of submissions. The rule also makes clear that a determination to begin a 90-day review can cover event contracts submitted by multiple prediction markets. The Commission preliminarily intends that this provision would apply to groups of event contracts that are similar in substance because they involve the same underlying event or a substantially similar set of underlying events. Distinctions between the event contracts in matters such as the particular settlement mechanism would be less important. The purpose would be to group together event contracts that raise substantially the same potential public interest concerns so that the event contracts could be reviewed together and, if found to be contrary to the public interest, be covered by a single order by the Commission.

Correspondingly, proposed § 40.11(e)(1)(i) provides that the Commission may issue an order finding that a group of event contracts that are subject to a 90-day review are contrary to the public interest. The Commission preliminarily believes that its action with respect to a group of event contracts would promote predictability for prediction markets and market participants. It would also obviate the need for multiple determinations with respect to similar contracts and streamline the process for Commission action under § 40.11. The Commission realizes that to serve this purpose, an order covering a group of event contracts would have to describe the group and the reasons why the event contracts in the group are contrary to the public interest in a manner that would be useful to prediction markets and market participants in understanding what types of event contracts would be subject to the same finding.

[273] CEA sec. 5c(c)(5)(c)(iv), 7 U.S.C. 7a–2(c)(5)(c)(iv).

[274] *Cf. SEC* v. *Chenery Corp.,* 318 U.S. 80, 87 (1943).

[275] CEA sec. 5c(c)(5)(C)(i), 7 U.S.C. 7a–2(c)(5)(C)(i).

The Commission has carefully considered whether the proposed rule should authorize categorical determinations—that is, determinations applying prospectively to a defined class of agreements, contracts, transactions, or swaps not yet certified or submitted to the Commission. The Commission preliminarily believes that such categorical determinations are not permissible under the structure of CEA section 5c. This preliminary belief flows from the text of the Special Rule, the structure of section 5c, and the APA.

The Special Rule authorizes the Commission to ''determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve'' any of the enumerated activities.[276] The text refers to specific ''agreements, contracts, transactions, or swaps''—the same agreements, contracts, transactions, or swaps that registered entities certify or submit to the Commission under CEA section 5c(c) and the Commission's part 40 regulations. The Special Rule's placement within the same statutory section as the certification and approval framework suggests that it operates as a backstop: when a prediction market certifies an agreement, contract, transaction, or swap involving an enumerated activity, the Commission may determine whether that particular instrument is contrary to the public interest. The text does not authorize the Commission to issue prospective declarations applying to agreements, contracts, transactions, or swaps that have not been certified or submitted and that may not yet exist.

The Commission preliminarily believes that categorical determinations would function as rulemaking without APA compliance. The APA distinguishes between ''rule making'' which is ''the agency process for formulating, amending, or repealing a rule,'' and ''adjudication,'' which is ''the agency process for the formulation of an order.'' [277] A ''rule'' is defined as ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.'' [278] An ''order'' is ''the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a manner other than rule making but including licensing.'' [279]

The Commission preliminarily believes that a categorical determination applying prospectively to a class of agreements, contracts, transactions, or swaps not before the Commission would have general applicability and future effect—the defining features of a rule rather than an order. The Supreme Court has long recognized that an agency cannot achieve through adjudication what the APA requires it to achieve through notice-and-comment rulemaking.[280] A categorical determination—purporting to apply prospectively to a class of future certifications without those certifications having been the subject of the determinative proceeding—would have precisely the general applicability and future effect that distinguish a rule from an order. The Commission preliminarily believes that issuing such a determination through an adjudicative posture rather than through notice-and-comment rulemaking would invert the APA's allocation of agency authority.

The Commission acknowledges that the volume of event contracts certified under §§ 40.2 and 40.3 may make individualized review burdensome, particularly during periods of high submission activity. The Commission preliminarily believes, however, that this burden follows from the structure Congress established.

The absence of categorical determinations does not leave market participants without guidance. Although the Commission's determinations would apply only to the event contracts before it, the Commission's reasoning in prior determinations would inform its analysis of substantially similar event contracts. Consistent with ordinary principles of reasoned decision-making, the Commission would treat like event contracts alike and would explain any departure from its prior analysis. Prediction markets could thus look to the Commission's published determinations to anticipate how the public interest factors are likely to apply to comparable event contracts. This predictability arises from the consistency of the Commission's reasoning rather than from any binding categorical effect. The Commission preliminarily expects that prediction markets, as self-regulatory organizations, will incorporate the Commission's public interest findings into their construction and listing of event contracts, reducing the number of event contracts that the Commission will need to review.

As noted above, the Commission requests comment on alternatives to the proposed approach in this regard.[281]

Statement of concerns and prediction market response. Proposed § 40.11(d)(1) requires the Director of the Division of Market Oversight, within fifteen days after the prediction market is provided the written determination of initiation, to provide the prediction market a written statement identifying the factual basis, legal theory, specific contract terms, and factors in proposed §§ 40.11(a)(4), 40.11(a)(5), and 40.11(a)(6) supporting the Commission's review. Proposed § 40.11(d)(2) provides the prediction market 30 days from the written determination of initiation to submit a written response, which may include supporting data, expert submissions, economic analysis, and any proposed modifications to the event contract.

The Commission preliminarily believes that these provisions advance two principles. The first is that meaningful opportunity to respond requires advance notice of the Commission's theory. The fifteen-day statement of concerns prevents the prediction market from responding to a moving target. It also forecloses the Commission from refining its theory after seeing the response, which is a form of post hoc rationalization the Commission disfavors and which administrative law bars.[282]

The second principle is that determinations of this consequence are substantively better when the Commission has the prediction market's response and proposed modifications before it. The Commission preliminarily believes that a determination process that operates as a binary yes-or-no on the event contract as submitted is suboptimal. The prediction market may be able to address the Commission's concerns through targeted modifications, and the Commission may be able to reach a result that protects the public interest without imposing the determinate costs of prohibition. The express provision for proposed modifications during the response period creates space for that possibility on the record, before the Commission commits to a determination.

The existing § 40.11(c) does not provide defined procedural rights of this kind to the prediction market that is the

[276] *Id.*

[277] 5 U.S.C. 551(5), (7).

[278] 5 U.S.C. 551(4).

[279] 5 U.S.C. 551(6).

[280] *See, e.g., Chrysler Corp.* v. *Brown,* 441 U.S. 281, 301–03 (1979) (agency action having ''the force and effect of law'' must be promulgated through procedures consistent with the APA).

[281] *See supra,* text accompanying notes 268 to 269.

[282] *See Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 50 (1983).

subject of review. The Commission preliminarily believes that defined procedural rights are warranted given the consequences of a § 40.11 determination and given the contribution that meaningful registered-entity participation makes to the quality of the Commission's record and reasoning.

Staff recommendation and prediction market response to recommendation. Proposed § 40.11(d)(3) provides that the Director of the Division of Market Oversight, with the concurrence of the General Counsel, may submit a written recommendation to the Commission not later than 60 days after the written determination of initiation. The recommendation would address the prediction market's response and any proposed modifications and would be required to be provided to the prediction market simultaneously with submission to the Commission. Proposed § 40.11(d)(4) allows the prediction market until day 70 to submit a written response to the recommendation, limited in scope to the recommendation.

The Commission preliminarily believes that these provisions reflect the principle that a party adverse to consequential agency action should have the opportunity to identify errors in the Commission's reasoning before the agency acts. A staff recommendation provided to the Commission without the prediction market's response operates as a one-sided submission. The Commission preliminarily believes that the prediction market may have factual or analytical responses to the recommendation that the Commission would benefit from considering before voting. The Commission preliminarily believes that the day-70 response right ensures that the Commission has those responses before it.

The scope of the day-70 response would be limited to the recommendation itself. It would not be an opportunity to relitigate the response submitted by day 30. The Commission preliminarily believes the response should be limited to address what the staff recommendation said, what it relied on, what it omitted, and how it characterized the prediction market's prior submission.

The existing § 40.11(c) does not provide for any of these procedures. The Commission preliminarily believes that the response opportunity is warranted given the consequence of the determination and the contribution responsive submissions make to the quality of the Commission's deliberation.

Extensions. Proposed § 40.11(d)(5) provides that the 90-day review period may be extended only with the agreement of, or upon the request of, the prediction market. This proposed provision implements the statute.[283] The statute does not authorize unilateral Commission extension.

Determination and review deemed concluded. Proposed § 40.11(e)(1) provides that, not less than 90 days after the written determination of initiation, or at the conclusion of any registered-entity-agreed extension, the Commission may issue an order finding that the event contract (or contracts if a consolidated group is under review) is contrary to the public interest. If the Commission does not issue such an order, the event contract may be, or continue to be, listed for trading and accepted for clearing, and the review is deemed concluded.

Proposed § 40.11(e)(1)(ii) includes a specific statement that if the Commission does not issue an order before the end of the 90-day review period, or any agreed extension thereof, or if 100 days have passed since the date of the contracts' listing, the event contracts subject to review (or never subjected to review) may be, or continue to be, listed for trading and accepted for clearing and the review shall be deemed concluded. The Commission preliminarily believes that this provision would allow for a more streamlined process by not requiring that the Commission issue an order of approval and provide certainty in cases where the Commission does not take any action at the end of the review period. Thus, whether through an order or through non-action, the agency will have taken final agency action.

For clarity, proposed § 40.11(c)(3) specifically provides for the Commission to notify the prediction market of the commencement of a 90-day review.

The existing § 40.11 does not articulate the consequences of inaction at the 90-day point in the terms the new proposed rule uses. The Commission preliminarily believes this feature is warranted. The Commission preliminarily believes that the deemed-concluded default is supported by the statutory text and benefits prediction markets, market participants, and the Commission by providing certainty about the status of contracts at the conclusion of the review period.

Required findings. Proposed § 40.11(e)(2) provides that an order finding an event contract contrary to the public interest must include written findings addressing each factor in proposed §§ 40.11(a)(4), 40.11(a)(5), and 40.11(a)(6) on which the Commission relied, weighing the factors favoring listing against those disfavoring listing, and explaining the consistency of the determination with prior Commission determinations involving comparable agreements, contracts, transactions, or swaps, or providing a reasoned explanation for any departure.

These requirements would codify obligations that already apply to the Commission as a matter of administrative law. The duty of reasoned decision-making, including the duty to consider relevant factors and to weigh evidence in the record, is a *State Farm* obligation.[284] The duty to acknowledge departures from prior agency positions and to provide a reasoned explanation for them is a *Fox* obligation.[285] The Commission preliminarily believes that codifying these obligations in the Proposal does not impose substantive standards beyond what administrative law requires, but it makes those obligations explicit on the face of the regulation and ensures that any reviewing court will have a clear regulatory benchmark against which to assess Commission action.

Limits on delegation. Proposed § 40.11(f) provides that the Commission shall not delegate the determination to initiate review, the submission of a recommendation to the Commission (except as provided in proposed § 40.11(d)(3)), or the issuance of a determination. The Commission preliminarily believes that delegation of these functions is incompatible with the structure of the proposed framework.

4. Delegation of Authority to Director of Division of Market Oversight

The Commission is proposing to add a provision to § 40.7(a) that delegates to the Director of the Division of Market Oversight, or the Director's designee, the authority to perform ministerial and record-development functions under § 40.11, including service of notices, written determinations, and statements and the development of staff recommendations. The proposed provision states expressly that the Commission does not delegate the functions reserved to the Commission under § 40.11(f).

The proposed new provision would be subject to the existing limitation in § 40.7(d) that the Commission may at

[283] CEA sec. 5c(c)(5)(C)(iv), 7 U.S.C. 7a–2(c)(5)(C)(iv).

[284] *State Farm,* 463 U.S. at 43.

[285] *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

any time exercise the delegated authority. Also, current § 40.7(c) provides that the Director of the Division of Market Oversight may submit to the Commission for its consideration any matter that has been delegated pursuant to § 40.7, which would include the new provision.

The Commission requests comment on all aspects of its preliminary views on the process for Commission action under § 40.11 and the proposed amendments to streamline the rule.

H. Implementation Timeline and Severability

The Commission proposes that the amendments to part 40, including the adoption of the proposed factors for determining whether event contracts involve Enumerated Activities and, if so, are contrary to the public interest, would go into effect 60 days following publication of a final rule in the **Federal Register**. At this time, Commission staff would begin to review certified event contracts as described in section II.G. above. The Commission preliminarily believes that the public interest is served by preventing the listing and trading of event contracts that are contrary to the public interest as soon as practicable.

The Commission intends that if any provision of the Proposal were to be held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or circumstance, the provision shall be severable from the remainder of the Proposal, and shall not affect the remainder thereof, and the invalidation of any specific application of a provision shall not affect the application of the provision to other persons or circumstances.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they issue will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.[286] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[287] The amendments to part 40 set forth herein impact DCMs and SEFs. The Commission has previously determined that DCMs are not small entities for purposes of the RFA.[288] As the Commission explained in its Small Entity Policy Statement, DCMs play a vital role in the national economy and are required to operate as self-regulatory organizations, subject to Commission oversight, with statutory duties to enforce the rules adopted by their own governing bodies. Accordingly, the Commission designates a DCM only when it meets the stringent requirements set forth in section 5 of the Act, 7 U.S.C. 7, including expenditure of sufficient resources to establish and maintain adequate self-regulatory programs. Moreover, the Commission considered the resource and capital requirements for operation of a DCM. Membership on the designated exchanges is expensive and includes the nation's largest brokerage houses. Moreover, the Commission considered the high volume of transactions on Commission-designated DCMs and the large number of employees. Based on these factors, the Commission has concluded DCMs do not constitute small entities for purposes of the RFA.

Likewise, The Commission has also previously determined that SEFs [289] are not small entities for purposes of the RFA. The Commission has determined that SEFs should not be considered ''small entities'' for essentially the same reasons that DCMs have previously been determined not to be small entities.[290] In making this determination, the Commission has considered the resource and capital requirements for registration as a SEF. SEFs play a central role in the national regulatory scheme overseeing the trading of swaps and are subject to Commission oversight with statutory duties to enforce the regulations adopted by their own governing bodies. Accordingly, the Commission will register an entity as a SEF only after it has met specific criteria to establish it has the capability and sufficient resources to establish and maintain an adequate self-regulatory program. In addition, once registered, SEFs are required to comply with the requirements set forth part 37 of the Commission's rules. For this reason, the Commission has previously determined that SEFs do not constitute small entities for purposes of the RFA.

Accordingly, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the proposed amended rules will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on this determination.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) [291] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (OMB).[292] The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by Federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal government.[293] The PRA applies to all information, regardless of form or format, whenever the Federal government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.[294]

The Commission is proposing amendments to regulations containing a collection of information for which the Commission has previously received a control number from OMB. The title for this collection is: OMB control number 3038–0093, Part 40, Provisions Common to Registered Entities.[295] The Proposal does not, however, contain any new collections of information or modify any existing information collection requirements subject to the PRA. Instead, as described in this preamble, the proposed amendments specify types of event contracts that may fall within the scope of section 5c(c)(5)(C) of the CEA. They also include provisions allowing the Commission to determine that certain categories of event contracts are contrary to the public interest and therefore may not be listed for trading

[286] 5 U.S.C. 601 *et seq.*

[287] Policy Statement and Establishment of ''Small Entities'' for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

[288] *Id.* at 18618, 18619.

[289] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548 (June 4, 2013).

[290] *Id.*

[291] 44 U.S.C. 3501 *et seq.*

[292] 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

[293] 44 U.S.C. 3501.

[294] 44 U.S.C. 3502(3).

[295] For the previously approved estimates, *see* ICR Reference No: 202408–3038–001, available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202408-3038-001.*

or accepted for clearing on or through a CFTC-registered entity and set out factors the Commission would apply in making this public interest determination. Further, the Commission is proposing a definition of the term ''gaming,'' a rule defining when an event contract ''involves'' an Enumerated Activity, and related procedural amendments. These proposed amendments do not include information collection requirements and will not alter the information collection obligations of Commission registrants subject to part 40.

Accordingly, the CFTC has not prepared a PRA submission to OMB with respect to the proposed amendments.

C. Consideration of Costs and Benefits

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[296] Consistent with this statutory obligation, the Commission preliminarily considers the potential costs and benefits associated with the proposed amendments to § 40.11. As required by CEA section 15(a), the Commission evaluates these potential costs and benefits in light of the five broad areas of market and public concern identified in the statute: (i) protection of market participants and the public; (ii) efficiency, competitiveness, and financial integrity of the derivatives markets; (iii) price discovery; (iv) sound risk-management practices; and (v) other public-interest considerations.[297]

Since 2023, prediction-market activity has evolved against a backdrop of significant legal and regulatory developments. The Commission has observed continued growth in both the number and diversity of event contracts listed for trading, as well as heightened interest from entities seeking registration for the purpose of offering such contracts as DCMs.[298] A 2024 lawsuit challenged the Commission's prior interpretations of the Special Rule, including the Commission's treatment of political-control contracts and the scope of the term ''involve'' under the Special Rule.[299] The Commission's history with event contracts has also included academic-purpose political and economic indicator markets,[300] a 2008 Commission concept release seeking comment on the appropriate regulatory treatment of event contracts,[301] several resource-intensive 90-day reviews of political and sports-related contracts,[302] and the significant expansion of novel event contracts in recent years.[303] Collectively, these developments highlight that the current regulatory framework may benefit from additional clarity, greater predictability, and a more focused articulation of the factors that guide the Commission's evaluation of whether an event contract is within the scope of the Special Rule and, if so, whether the event contract is contrary to the public interest.

The proposed amendments seek to provide this clarity while aligning the Commission's administration of § 40.11 with recent judicial interpretations and the statutory structure of the Special Rule. In particular, the Commission is considering amendments that would: (i) clarify what it means for an event contract to ''involve'' an enumerated activity under the Special Rule, including by expressly focusing the analysis on whether an event contract's settlement is determined by an occurrence, extent of an occurrence, or contingency in such an activity; (ii) provide a definition of ''gaming'' consistent with the ordinary meaning of the term and recent judicial guidance by distinguishing ''gaming'' from other contests or competitive activities; (iii) articulate a focused and understandable set of public-interest factors, as described in proposed §§ 40.11(a)(5) and 40.11(a)(6), that the Commission would apply in determining whether an event contract subject to the Special Rule is contrary to the public interest; and (iv) clarify the procedures for initiating and conducting a 90-day review while preserving the requirement that any final determination be based on the statutory public-interest standard. Because prediction markets operate as self-regulatory organizations under the CEA, the implementation of more explicit § 40.11 standards and a factor-based framework enhance certainty at the time of contract listings, minimize interpretive discrepancies, and mitigate late-stage disruptions. The Commission preliminarily believes these improvements are likely to generate tangible administrative efficiencies for prediction markets and market participants, including shorter review cycles, fewer scope-related disputes,

[296] *See* 7 U.S.C. 19(a). *See also, Investment Co. Inst.* v. *Commodity Futures Trading Comm'n,* 720 F.3d 370 (D.C. Cir. 2013); *Sec. Indus. & Fin. Mkts. Ass'n* v. *U.S. Commodity Futures Trading Comm'n,* 67 F. Supp. 3d 373 (D.D.C. 2014) (stating, ''Section 19(a) does not require the CFTC to promulgate only rules that have low or no costs; rather, the agency is simply required to show that they *'considered'* and *'evaluated'* the costs of the rule . . . Nor does Section 19(a) require the CFTC to conduct a 'rigorous, quantitative economic analysis to consider hypothetical costs that may never arise or to ''measure the immeasurable'' benefits of ''preventing future financial crises . . . the CFTC need not even gather additional market data or conduct empirical studies to support its analysis, so long as it reasonably addresses the uncertainty stemming from any data limitations'').

[297] The Commission's requirements under CEA sec. 15(a) differ from those set out in Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1532–1538), which covers Cabinet departments and independent agencies, but not independent regulatory agencies. According to Congressional Research Service, ''UMRA requires that before promulgating a rule containing a mandate that may result in the expenditure of $100 million or more in any one year . . . covered agencies are to prepare a written statement containing (among other things) a qualitative and quantitative assessment of the anticipated costs and benefits . . . as well as the effect of the Federal mandate on health, safety, and the natural environment. The written statement is also generally required to include estimates of future compliance costs, and any disproportionate budgetary effects on particular regions, governments, or segments of the private sector, and estimates of effects on the national economy, including effects on job creation, productivity, full employment, and international competitiveness.'' *See* Curtis W. Copeland, Cong. Research Serv., R41974, Cost-Benefit and Other Analysis Requirements in the Rulemaking Process (2011), available at *https://www.congress.gov/crs-product/R41974.*

[298] In the past year, the Commission has reviewed 28 applications involving DCMs and SEFs. The Commission approved 7 DCMs, while 18 DCM applications and 3 SEF applications are still under review. Currently, there are 25 DCMs and 20 SEFs that operate within the Commission's regulatory framework. *See https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizations.* In one of the largest prediction markets, the daily average number of event contracts listed for trading increased from approximately 1,600 in April 2025 to 162,000 in April 2026.

[299] *See supra* section I.C.7.

[300] The Commission has long evaluated small-scale prediction markets operated for academic purposes. For example, the Commission issued no-action relief to the University of Iowa in 1992 and to Victoria University of Wellington in 2014, permitting limited political and economic-indicator trading for research purposes. *See supra* section I.C.1.

[301] The 2008 Concept Release sought public comment on the appropriate regulatory treatment of event contract markets, prompted by numerous questions about how the CEA applied to such products. The release sought responses to 24 enumerated questions and reflected early recognition of the increasing diversity of event-based derivatives. *See supra* section I.C.2.

[302] Since the adoption of § 40.11 in 2011, the Commission has conducted three 90-day reviews under § 40.11(c) reflecting recurring interpretive challenges under the Special Rule. *See supra* sections I.C.5., I.C.6., and I.C.7.

[303] Since 2021, the number and diversity of event contracts listed for trading have increased dramatically—from roughly five per year historically to more than 220 in 2021, with over 8,000 contracts trading in May 2026. New event contract underliers vary from international events and natural disasters in specific U.S. cities to public-health metrics, the occurrence of exoplanet discoveries, video-game release dates, Academy Awards, public-health metrics (COVID–19 cases and restrictions), confirmation of federal officials, Supreme Court case outcomes, NFL television ratings, and NASA moon-landing milestones.

and reduced risk of post-listing reversals.

These amendments are intended to make the rules more transparent, encourage responsible innovation, and reduce uncertainty for registered entities and market participants. They also aim to ensure that any event contracts traded on prediction markets comply with the CEA and serve the public interest.

Under the Special Rule, the Commission interprets the public interest as tied to specific, identifiable concerns rooted in the CEA's purposes. These include whether a contract provides meaningful price-discovery or informational utility; whether it poses risks of manipulation, information leaks, or unclear settlement; and whether the contract can be administered effectively within a prediction market's compliance framework. The Proposal also considers the economic, financial, and commercial significance of prediction market pricing as an input into economic decision-making—including how aggregated market sentiment may inform commercial planning, resource allocation, and assessments of economic conditions. Conversely, if an event contract does not provide meaningful informational value, encourages illicit conduct, raises national-security concerns, or creates particular risks of manipulation or information leakage, these factors strongly support a finding that the contract is contrary to the public interest.

The Commission recognizes that market participants and prediction markets may experience costs under the proposed amendments. These include those associated with contract design, compliance planning, market integrity, informational value, and submission practices, and potentially second order impacts on the market structure and the availability of new risk management tools. The Commission preliminarily believes that the proposed factors-based framework, while imposing some additional upfront analysis and documentation costs, will reduce longer-term uncertainty, improve the predictability of Commission determinations, and decrease the likelihood of late-stage disruptions such as delisting following an adverse finding.

The discussion that follows identifies the baseline against which potential costs and benefits are evaluated, describes the anticipated effects associated with the amendments under consideration, and explains how the Commission interprets and applies the CEA section 15(a) factors in this context. Because the Commission's analysis is preliminary, and because the amendments under consideration may be revised in response to public comments, the Commission invites commenters to provide both qualitative and quantitative data regarding the costs and benefits associated with these potential amendments, as well as any information that may assist the Commission in refining its evaluation in final rulemaking.

In the discussion that follows, the Commission has endeavored to quantify costs and benefits, where possible and appropriate. In many places, however, the Commission either lacks the necessary data to reasonably quantify all of the costs and benefits, quantification is impossible, or quantification would not enhance the consideration of costs and benefits. Therefore, the Commission discusses the costs and benefits in qualitative terms. Moreover, the Commission recognizes that each market participant structures their business differently, so the costs and benefits will not be applied uniformly across the market. Lastly, the costs and benefits set out in the discussion below may be mitigated by current market practices; however, the Commission's discussion takes an expansive approach, as not all affected market participants may have already realized or mitigated these costs and benefits.

2. Baseline

For purposes of evaluating the potential costs and benefits of the amendments under consideration, the Commission identifies the current legal framework and current market conditions as its baseline. This baseline includes: (i) the Special Rule—meaning CEA section 5c(c)(5)(C), (ii) the text of § 40.11 as adopted in 2011, which governs the submission process and how the Commission applies the Special Rule; and (iii) the current state of the law applying that text, including the 2024 decision of the U.S. District Court for the District of Columbia in *KalshiEX,*[304] the resulting vacatur of the Commission's 2023 disapproval order, and the Commission's withdrawal of the 2024 proposed rulemaking.

The baseline also reflects current market practices and conditions, especially the rapid growth and expansion of some prediction markets. These practices and conditions provide insight and frame both the expected benefits (*e.g.,* price discovery, information aggregation, hedging) and the risks borne by market participants (*e.g.,* manipulation susceptibility, exposure to information leakage).

Under the current framework for CFTC-regulated transactions, prediction markets self-certify contracts (§ 40.2), including event contracts, and list them for trading or clearing on the business day following submission. These submissions are subject to the general requirements of the CEA and the Commission's regulations, including Core Principles applicable to prediction markets. Such event contracts are also subject to the Special Rule, which applies after the prediction market has certified the contract's compliance with all other applicable requirements. The Special Rule directs the Commission to evaluate whether the event contracts ''involve'' an enumerated activity and, if so, whether the contracts are contrary to the public interest. As reflected in the Commission's history with prediction markets, the application of the Special Rule has produced significant interpretive and procedural challenges.[305]

The 2024 *KalshiEX* decision exposed significant unresolved questions about the application of the Special Rule.[306] The court rejected the Commission's interpretation of ''involve'' and the scope of ''gaming'' in the Special Rule and vacated the Commission's 2023 disapproval of congressional control event contracts.[307] The decision resolved the particular event contracts before the court but left open broader questions about how the Special Rule applies, including how to identify when an event contract ''involves'' an enumerated activity, what falls within ''gaming,'' and how the unlawful-activity prong interacts with conduct regulated under non-federal law. The Commission's subsequent withdrawal of the 2024 proposed rulemaking left these questions unaddressed.

In parallel, the Commission has observed a substantial expansion in the number and diversity of event contract submissions and trading activity, especially since October 2025, reaching $25 billion in March 2026, including new underlying events related to entertainment, public health, natural phenomena, scientific discoveries, and political events.[308] Even though some of

[304] *KalshiEX,* 2024 U.S. Dist. LEXIS 163925.

[305] These include the adoption of § 40.11 in 2011 and the subsequent 90-day reviews and determinations involving political event contracts and sports-related contracts; the 2023 disapproval of congressional control contracts; and a 2024 decision of the U.S. District Court for the District of Columbia vacating that disapproval. *See supra* section I.C.

[306] *KalshiEX,* 2024 U.S. Dist. LEXIS 163925.

[307] *Id.* at *39.

[308] The $25 billion in event contracts is approximately 0.08% of the $31 trillion total notional value in futures contracts regulated by the

Continued

these markets are still relatively new, event contracts are already being used for price discovery, information aggregation, and hedging across macroeconomics, politics, weather, and sports. The market for event contracts is proving to be a vibrant and competitive space. In response to strong demand from retail and institutional market participants, multiple venues have registered as DCMs.

DCMs registered with the CFTC (and other platforms outside the U.S. where event contracts are listed and traded) have increasingly applied their self-regulatory obligations to address trading on material non-public information. In February 2026, for example, Kalshi closed two cases alleging trading on material non-public information against its own members, and the CFTC's Division of Enforcement issued an advisory publicizing them.[309] These developments reflect both heightened DCM and Commission scrutiny of insider trading, manipulation, and surveillance sufficiency in prediction markets, elements that bear on baseline risk and compliance burdens for exchanges and market participants.

The withdrawal of the 2024 proposal and the issuance of the 2026 ANPRM have further informed the Commission. The 2026 ANPRM requested comments on the scope and operation of the Special Rule, including the meaning of ''involve,'' the appropriate treatment of the Enumerated Activities, and the factors relevant to a public-interest determination. The Commission received approximately 3,500 public comments.

Collectively, these developments reflect a regulatory environment where the meaning and application of § 40.11 remains uncertain for both courts and market participants. At the same time, the scope of the Commission's authority under the Special Rule has been the subject of judicial scrutiny, leaving exchanges and market participants without clear guidance on how their event contract submissions will be evaluated.

3. Proposed Amendments

Key elements of the Proposal include: (1) providing a definition of the circumstances in which an event contract ''involves'' an enumerated activity, consistent with the understanding that ''involve'' refers to the underlying event and not to trading activity or incidental relationships; (2) providing a definition of ''gaming'' that aligns with the meaning of the term as playing a game for recreational or entertainment purposes and distinguishing games from contests such as elections and awards; (3) setting out a structured set of factors to guide Commission evaluations when determining whether a contract is contrary to the public interest, which intends to ensure that the Special Rule remains narrow and does not duplicate the Core Principles or introduce an open-ended ''public good'' standard; (4) allowing the Commission to review a self-certified contract, or a group of similar contracts, by placing such contract(s) into a 90-day review period to evaluate whether listing would be contrary to the public interest under the Special Rule using the Proposal's factor framework; (5) clarifying that at the end of the 90-day review period (i) if the Commission issues an order finding a contract contrary to the public interest, the contract may not be listed or may not continue to trade; or (ii) if no order is issued, self-certification remains operative under § 40.2 and the contract may be listed or continue to trade; and (6) delegating authority to the Director of the Division of Market Oversight to perform ministerial actions in the 90-day review.

The Proposal reflects the Commission's recent experience with event contract market submissions, the procedural challenges observed in prior 40.11(c) reviews, the interpretive issues raised in recent litigation, observations of DCMs' responses to violations of their standards in certain event contracts, and the feedback received in response to the 2026 ANPRM. As described in section I.C., the Commission's prior efforts demonstrate that flexibility and clarity are required for a regulatory framework that ensures a fulsome analysis of event contracts, leading to responsible market innovation. The Proposal aims to clarify the Commission's authority under the Special Rule by providing exchanges and market participants with clear standards and predictable procedures, concentrating on the public-interest inquiry relating to the specific characteristics of the underlying event and contract design. The Commission also believes that the Proposal reestablishes the relationship between the Commission and prediction markets, acting in their role as self-regulatory organizations (SROs), where the Commission is providing SROs with a clear framework in applying the Special Rule, resulting in market and administrative efficiencies.

The proposed amendments are intended to support prediction markets as they provide price discovery, function as an information aggregation tool, and enable hedging for events that lack traditional financial-hedging instruments. Overall, these amendments may result in increased regulatory scrutiny. This scrutiny may raise compliance burdens for prediction markets listing diverse set of event contracts, potentially increasing their costs. Furthermore, prediction markets may face additional costs as they may need to modify internal reviews to align with new definitions and factors. The Commission preliminarily believes that to some extent these costs are attenuated by the Proposal as they provide clearer boundaries for lawful versus prohibited products resulting in potential declines in litigation risk and regulatory uncertainty. Finally, to the extent that proposed amendments result in enhanced consistency across prediction markets, there may be benefits as consistency leads to a better functioning marketplace.

While the Proposal is likely to result in both costs and benefits, the Commission preliminarily believes that the costs will be largely mitigated by current market practices, and the benefit of enhanced regulatory certainty will more than offset the costs.

(a) Proposed § 40.11(a)(3): Event-Focused ''Involves'' Standard

Proposed § 40.11(a)(3) identifies event contracts that ''involve'' an activity if their settlement is determined by an occurrence, the extent of an occurrence, or a contingency in that activity. This formulation focuses analysis on the underlying event the contract references, not on features of trading behavior, venue mechanics, or incidental relationships among market participants. This event-focused formulation is part of the Proposal's broader effort to increase clarity and align § 40.11 to the statutory structure of the Special Rule. The objective of the proposed amendment is to reduce ambiguity around the scope of the Special Rule by focusing the inquiry on the event that the event contract references. Focusing on what happens in the world (*e.g.,* whether a specified game is played and a given outcome occurs) rather than on how trading happens (*e.g.,* who participates, market-maker strategies, cross-listing) is intended to produce more consistent determinations and streamline review under § 40.11, thereby advancing the Proposal's goals of clarity,

Commission. *See* Commodity Futures Trading Commission, FY 2025 Agency Financial Report 4, available at *https://www.cftc.gov/media/13096/2025AFR/download.*

[309] CFTC Press Release No. 9185–26, CFTC Enforcement Division Issues Prediction Markets Advisory (Feb. 25, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9185-26.*

predictability, and consistency in public-interest analysis.

Under the existing § 40.2(a)(3)(v), prediction markets are required to submit a concise explanation and analysis on whether the event contract does in fact involve an Enumerated Activity and, if it does, why the event contract is not contrary to the public interest. Currently, many event contracts are certified using a template submission, which is then used for listing many specific event contracts. These templates often provide only a general description of type of event contracts that will be listed. The Commission preliminarily believes that for event contracts that potentially involve an Enumerated Activity, this general description would be insufficient for the Commission's review under § 40.11 and would not comply with the § 40.2(a)(3)(v) requirement that the prediction market explain why the event contracts comply with the CEA. Therefore, the Commission preliminarily anticipates that in such instances, the staff would request that the DCM supplement the template with additional information, sufficient for the Commission's review under § 40.11, demonstrating that the event contracts meet the requirements of the CEA and regulations thereunder, as required by § 40.2(b).

(i) Benefits

By shifting the focus to the triggering event of the event contract, the Commission preliminarily believes that the Proposal will provide prediction markets with clearer standards and a more transparent review process. This added clarity will make it easier and more efficient for prediction markets to bring event contracts to market, producing administrative benefits for both the public and the exchanges. The Commission also preliminarily believes that clearer criteria and greater transparency will help prediction markets better anticipate how their submissions will be evaluated, which may, in turn, support a timelier listing of certain event contracts. As a result, market participants may benefit from a broader range of contract offerings, enabling more targeted exposures and improved hedging opportunities. Clarity will also enable prediction markets to more efficiently execute their responsibilities as SROs.

(ii) Cost

The Commission preliminarily believes there may be documentation and workflow costs resulting from specific analysis of each underlying event of an event contract. However, the Commission believes that these costs will be incremental, short-term, and modest, as many prediction markets list similar types of events that can be slightly modified for each event contract. The Commission further believes that these costs are also mitigated by the clarity gained resulting from fewer interpretive disputes, shorter review cycles, and lower likelihood of post-listing challenges once settlement conditions are objectively specified.

(b) Proposed Amendment: Revised Definition of ''Gaming''

The proposed rulemaking defines ''gaming'' as activity typically engaged in for recreation or to entertain others, governed by rules, with measurable occurrences or outcomes dependent on participants' luck, skill, or athletic ability during the activity. The Proposal also clarifies that elections and awards are contests, not gaming. The Commission is now providing clarity and objective criteria to the market regarding the Commission's approach in reviewing these types of event contracts under the Special Rule, aligning the definition with the U.S. District Court for the District of Columbia decision vacating the Commission's previous definition.

Currently listed event contracts already reflect elements of this shift away from the Commission's prior view. These event contracts include underlying events focused on aggregate performance in sports events (final scores, point differentials, season long statistics, tournament advancement).

Relative to the baseline, where the Commission did not define gaming, the proposed definition is expected to reduce interpretive variance and correct past misapplications that read ''gaming'' too broadly. By centering classification on the character of the underlying activity and the event contract's settlement link to that activity, the amendment narrows gaming to games and provides prediction markets with clearer design criteria.

The Commission preliminarily believes the resulting economic effects of the proposed approach are operational and compliance-focused, as prediction markets may incur front-loaded documentation and taxonomy costs to restate product families and certification narratives in activity-based terms, update internal review workflows to reflect game vs. contest distinctions, and evidence settlement triggers with independent, reliable sources. Based on Commission estimates, these initial compliance activities are expected to require between 40 and 100 staff hours per entity, resulting in a one-time cost of approximately $6,400 to $16,000 per prediction market, assuming an average fully loaded hourly rate of $160 for compliance and legal professionals. Costs for updating internal review workflows and training staff on new distinctions (such as game vs. contest) are expected to be included within this range, as most entities can leverage existing compliance infrastructure. The cost of evidencing settlement triggers with independent, reliable sources may vary depending on the complexity of the product, but for most prediction markets, this is expected to be a modest incremental cost, typically involving additional documentation and, where necessary, procurement of third-party data or verification services. For highly novel or complex products, costs may be higher, but the Commission does not expect these to be significant for the majority of entities. These are expected to be modest and are attenuated by greater determinacy at listing and review, fewer scope disputes, and reduced risk of post-listing reversals. The Proposal's process clarifications elsewhere—particularly that, at the end of a 90-day review, if no order issues the contract may be listed or continue to trade—also may limit uncertainty costs while factor-based analysis proceeds.

(i) Benefits

In providing a definition of the term ''gaming,'' the Commission believes that it is providing clarity, as prediction markets will know what underlying activities meet the definition of gaming. With this clarity, prediction markets will ensure that those event contracts that meet this definition follow the proper procedures when taking an event contract to market. Prediction markets gain predictable criteria for designing and certifying event contracts, which reduces signal-to-noise at the threshold and streamlines staff review to focus on objective, verifiable settlement conditions in the underlying activity. These effects align with the Proposal's goals of clarity, predictability, and consistency and with the statutory alignment objective under the Special Rule.

In addition, acting in their capacity as SROs, prediction markets will benefit from the Commission's definition of gaming, as it provides clarity in executing the Special Rule. This clarity may result in greater efficiency in executing their responsibilities as SROs.

The Proposal also identifies process benefits that lessen uncertainty while factual determinations proceed. Where event contracts or groups of event contracts are placed into a 90-day review, the Proposal clarifies that if the

Commission does not issue an order by the end of the review period, listing may proceed or continue and the review is deemed concluded. This process mitigates delay costs for exchanges and market participants while protecting market integrity, as exchanges will now have a clear definition of gaming, which allows them to follow the correct process when bringing an event contract to market, and market participants will have confidence that the event contract will not be cancelled after entering into a transaction.

Finally, by correcting past misapplications associated with the Nadex Order and Kalshi Order—where ''gaming'' was read expansively—the proposed definition decreases the likelihood of post-listing disruption, improves regulatory certainty, and supports responsible innovation in prediction markets.

(ii) Cost

The possible costs incurred by prediction markets include incremental, front-loaded compliance and operational costs to implement the ''gaming'' definition. The Commission believes that prediction markets may have to redocument product designs to map settlement conditions to the proposed definition. In addition, legal and surveillance teams must update § 40.2 certification workflows with a concise explanation and analysis addressing classification and any public-interest considerations tied to the design. The Commission believes that these changes may include training, taxonomy changes in product governance, and limited vendor work for outcome verification.

For borderline categories, such as certain hybrid events, prediction markets may need to invest additional effort in classification to ensure the event contract meets the activity-based criteria and aligns with the factor framework. If the Commission decides to review groups of event contracts, prediction markets could experience temporary timing costs pending determinations. Due to this uncertainty, there may be costs. First, data availability and quality can affect the pace at which clarity benefits are realized, particularly for gaming events reliant on non-standard adjudicators or specialized sources. The proposed definition is likely to mitigate this effect by requiring exchanges to substantiate settlement conditions with independent, reliable providers. Second, since involvement of activity that is unlawful under state law is a basis for application of the Special Rule, if an event contract references contests subject to state prohibitions, prediction markets may face additional advisory time and documentation costs during reviews. To the extent that the activity-based gaming definition enhances clarity by keeping classification focused on games and settlement linkage, the costs will be limited.

Lastly, the Commission's proposed definition of ''gaming'' may be over or under inclusive. If the Commission is over-inclusive in its definition, certain contracts that should not have been covered under the definition, and therefore, the Special Rule, may be reviewed and ultimately delayed or never listed. Alternatively, the proposed definition may be too narrow. If this is the case, certain contracts that should be covered under § 40.11 may be listed without Commission review.

(c) Public Interest Factors Relating to Price Discovery and Information Aggregation Utility

The Proposal sets out a multi-factor public interest analysis in two separate categories: factors applicable to all event contracts and factors specific to each enumerated activity. This section and sections III.C.3(d) and III.C.3(e) below discuss the factors applicable to all event contracts.

The Commission's policy objective is to clarify scope and increase determinacy in Special Rule reviews, focusing the public interest inquiry through clear, multi-factor criteria while preserving room for responsible innovation by registered entities. By making explicit how the Commission will assess (i) whether event contracts involve an Enumerated Activity and (ii) whether they are contrary to the public interest, the framework aims to reduce interpretive variance and limit ad hoc determinations, ultimately promoting transparent design discipline and predictable outcomes for prediction markets and the public.

Regarding price discovery and information aggregation utility, the Commission is seeking in the Proposal to screen out contracts that, by design, would likely produce uninformative or misleading signals. Under proposed § 40.11(a)(5), the factor involving price discovery and information aggregation utility directs the Commission's analysis to whether a contract's settlement conditions, data environment, and use case plausibly support information aggregation and decision-relevant pricing. The extent to which event contracts exhibit predictable informational value, including the ability to inform hedging decisions or model-based economic choices, would weigh against a finding that the event contracts are contrary to the public interest. In applying this factor, the Commission does not reinstate the pre-CFMA ''economic-purpose'' test; rather, event contracts exhibiting predictable informational value—whether by facilitating hedging decisions or by serving as inputs to model-based economic choices—would be less likely to be found contrary to the public interest.

As proposed, the Commission would consider whether the contract's design (i) permits market participants to contribute and aggregate dispersed information about the underlying occurrence, (ii) produces trading prices that can be used, either directly or as inputs to economic models, for forecasting and decision-making, and (iii) does not depend on inherently non-informational mechanisms (*e.g.,* outcomes determined purely by chance). This framing reflects the Commission's understanding that prediction markets may serve as information aggregation vehicles, and that useful signals can arise even where traditional cash-market price basing is indirect; conversely, events determined solely by luck (*e.g.,* pure chance games) lack meaningful information aggregation and presumptively weigh in favor of a contrary-to-the-public-interest finding.

The price discovery and information aggregation utility factor operates as a quality filter that distinguishes contracts whose prices include credible beliefs about future states of the world from contracts whose prices are uninformative. A contract passing this screen will typically: (a) specify objective, verifiable settlement criteria tied to occurrences about which non-insider participants can form rational expectations; (b) leverage publicly accessible data or transparent adjudication so that prices can be compared to eventual outcomes; and (c) exhibit breadth of outcome space (*e.g.,* aggregate sports statistics over a game or season rather than a single controlled action) that dilutes any single actor's unilateral control over settlement. These design attributes enhance the information content of prices and thereby serve the CEA's price-discovery purpose.

The price discovery and information aggregation utility factor explicitly recognizes that event-contract prices may be input variables to broader economic models, not solely direct hedges. For example, aggregated prices on sports outcomes can inform downstream decisions by sponsors, broadcasters, advertisers, or local businesses, even absent a one-for-one hedge; in such settings, market-implied

probabilities may be used with other data (*e.g.,* foot traffic, inventory, staffing) to optimize economic choices. By favoring contracts that meaningfully inform decisions, the factor favors event contracts that advance price discovery in the sense contemplated by CEA section 3.

(i) Benefits

By directing listings toward event contracts with demonstrable information value, the Commission believes that this factor reduces the likelihood of listing event contracts that do not provide informative data to the market, which may result in more accurate information in the market. The Commission believes that this more accurate information and its resulting price series given through event contracts provides the market with a better guide in economic decisions, consistent with CEA section 3(a), resulting in a more efficient market and economy. Furthermore, the Commission believes that to the extent that prediction markets adopt objective settlement feeds and, as relevant, real-time dissemination, markets can absorb data more accurately and form prices that reflect aggregated beliefs, improving transparency in the marketplace and supporting public price discovery across prediction markets and related sectors.

The Commission believes that there are potentially indirect benefits as well. For example, to the extent that the utilization of this factor encourages event contract designers to build around objective data and wider outcome spaces, and to pair event contracts with integrity coordination (*e.g.,* with governing bodies), it will likely contribute to the development of clear informational-utility benchmarks. Those clear benchmarks will, in turn, reduce the likelihood of subsequent re-work and late disapprovals, resulting in more efficiencies in the process of creating and taking an event contract to market. The Commission also believes that this self-reinforced design discipline by the prediction markets is likely to result in responsible innovation, which will potentially improve signal quality, yielding efficiency gains for market participants and commercial users who incorporate event contract prices into resource allocation or risk-management models (*e.g.,* staffing, sponsorship hedging strategies, advertising placement). Lastly, in providing clarity to the prediction market, acting as an SRO, the Commission preliminarily believes that this will result in greater efficiencies in carrying out its role, as there will be less uncertainty in overseeing the market.

(ii) Cost

The Commission preliminarily believes that the direct cost associated with this factor stems from increased documentation in the self-certification process. The Proposal would require prediction markets to provide detailed narratives—such as data sources, adjudication pathways, and anticipated informational use—to demonstrate compliance with the price-discovery and information-aggregation benchmarks. This would likely increase initial compliance obligations for event contract submissions.[310] Data procurement and integrity arrangements further contribute to operational costs. To maintain objective settlement and ensure verifiable data, registrants may incur vendor fees, governance expenses, or additional integrity coordination overhead, such as suspicious-activity reporting channels and restrictions for certain trader categories. These requirements add to standard surveillance responsibilities and costs to be implemented.

The Commission also believes that there are potential indirect costs. For example, time-to-market considerations are particularly relevant for event contracts approaching the threshold of non-informational designs, such as single-action or pure-chance event constructs. To the extent that redesigning to increase outcome diversity or introducing objective data elements results in delayed product launches, there will be not only administrative costs, but also opportunity costs to the prediction market and to the market in general, as the event contract is not available for trading. Nevertheless, these delays are attenuated by long-term advantages resulting from the Proposal, including more reliable signals and a reduction in subsequent regulatory actions.

Some commenters on the ANPRM asserted that prediction markets built around agricultural events could alter participation patterns and trading behavior on traditional agricultural derivatives exchanges, potentially shifting liquidity and affecting the cost and reliability of hedge execution for producers, merchants, processors, and allied participants.[311] The commenters also noted that if rules enable agricultural event contracts without early, systematic engagement, the result could be event contract designs misaligned with real hedging needs, leading to basis risks, weaker convergence, or less useful risk-transfer for producers, all of which translate into additional costs across supply chains.

(d) Public Interest Factors Relating to Potential Threats to Market Integrity

The market integrity factor addresses three principal risk domains: (i) susceptibility to manipulation or market disruption; (ii) presence of settlement-integrity deficits (*e.g.,* subjective or non-verifiable adjudication, unclear resolution criteria, or contested data pipelines) that undermine orderly market function; and (iii) risks of information leakage or exploitation of material non-public information by insiders or identifiable persons capable of influencing outcomes. Elevation of any of these risks would weigh in favor of a determination that an event contract is contrary to the public interest.

The first prong of this factor is intended to function as a manipulation susceptibility test. Specifically, the Commission would assess whether settlement outcomes are unduly controllable by a narrow set of actors (*e.g.,* single-decision officiating, first-action triggers for a named participant) or whether event contract terms invite selective influence inconsistent with orderly markets. Designs that diffuse control across aggregate outcomes and rely on data not subject to discretionary intervention weigh against manipulation concerns. This test augments Core Principle 3 expectations and settlement practices referenced in exchange compliance materials.

The second prong of this factor is intended to function as a settlement-integrity test. Specifically, the Commission would evaluate whether the event contracts settle on clear, objective, and publicly verifiable criteria, supported by resilient data feeds, transparent calculation procedures, and defined dispute-resolution protocols. Settlement frameworks that minimize subjectivity and establish auditability of inputs and triggers weigh against a contrary-to-public-interest finding. This approach is designed to be consistent with guidance concerning third-party cash-settlement

[310] In the past year, approximately 14% of the self-certified event contracts required additional review by Commission staff to ensure consistency with core principles and self-certification requirements. For these contracts, registrants may incur further costs associated with responding to staff inquiries, providing supplemental documentation, or revising submissions. The Commission estimates that such follow-up activities may require an additional 5–15 staff hours per contract, or $800–$2,400 per contract, depending on the complexity of the issues raised.

[311] *See, e.g.,* Letter from National Cattlemen's Beef Association (Apr. 30, 2026); Letter from the Commodity Markets Council on behalf of multiple agricultural trade organizations (Apr. 30, 2026).

series and data reliability reflected in exchange compliance materials.

The third prong of this factor is intended to function as a tool to control information leakage. Because misuse of insider information degrades market integrity and public confidence, the Commission would consider whether registrants implement prohibited-trader policies, eligibility screens, and surveillance protocols capable of identifying and deterring misappropriation of confidential information or other illegal trading practices. The Commission believes that trader-identifying information and prompt public dissemination of transaction data facilitate monitoring and enforcement, as discussed in event contract reporting materials.

As this factor is designed to ensure that certain event contracts are not listed because they lack certain design controls and assurances, leading to a lack of market confidence, the Commission preliminarily believes that this proposed factor is likely to deter and prevent manipulation, price distortion, settlement ambiguity, and exploitation of material non-public information in event contract markets, thereby preserving the integrity, fairness, and financial soundness of Commission-regulated trading facilities. In furtherance of the findings and purposes of the CEA, the market integrity factor directs the Commission's analysis to whether a contract's design, data environment, and surveillance posture create heightened risks of market disruption or insider misuse that outweigh any informational or innovative benefits.

(i) Benefits

The Commission believes that one of the direct benefits of implementing this factor is the potential reduction in the susceptibility of event contracts to manipulation and disruption. Specifically, by prioritizing aggregate-outcome designs and objective, non-discretionary settlement criteria (*e.g.,* verified statistics rather than single officiating calls), this factor curtails channels through which identifiable persons could exert selective influence over settlement triggers. The Commission believes that event contract types that diffuse control across many participants and that settle on publicly verifiable data materially reduce the likelihood of price distortion or disruptive tactics, thereby preserving market integrity. The Commission, however, recognizes that there could still be room for residual manipulation through indirect channels limiting the effectiveness of this factor. Even with aggregate outcomes, actors may attempt indirect influence (*e.g.,* strategic behavior affecting statistics without overt rule violations). The Commission preliminarily believes that while risk controls and surveillance programs mitigate the possibility of manipulation, the factor is not likely to screen for all evolving tactics, which may reduce the overall benefit derived from this factor.

The Commission believes that a second potential benefit is enhanced settlement integrity. Specifically, by requiring clear, objective, and publicly verifiable settlement feeds, paired with documented calculation procedures and dispute resolution protocols, the Commission believes that the proposed factor provides auditability and predictability at resolution. Exchange compliance frameworks that evaluate third-party cash-settlement series and the reliability of input data—including safeguards against unauthorized release—further reinforce settlement integrity. The Commission, however, believes that the benefits may be attenuated due to the potential heterogeneity of the implementation of these practices across prediction markets. Specifically, differences in prediction markets' technology infrastructure, staffing, and compliance maturity may lead to uneven application of integrity controls. Furthermore, the potential benefits resulting from enhanced settlement integrity may be limited due to cross-regime coordination frictions. The Commission recognizes that since the integrity coordination relies on third-party governing bodies, differences in data standards and legal constraints may limit the speed and completeness of information sharing. The Commission, therefore, preliminarily believes that the factor, as a review criterion, cannot substitute for the operational capabilities required to sustain robust surveillance and rapid incident response once trading begins. While the factor may encourage responsible arrangements, it cannot compel uniform practices across non-Commission entities.

The Commission also preliminarily believes that a third potential benefit exists, as there may be an increase in the detection and deterrence of the misuse of insider information. Specifically, by embedding trader-identifying information collection and real-time public dissemination of transaction data into operational practices, the utilization of the proposed factor is likely to improve surveillance which will then support the identification of misappropriation of confidential information and other illegal practices. Reporting provisions (*e.g.,* dissemination as soon as technologically practicable) could formalize transparency expectations that bolster market monitoring and enforcement. The Commission, however, preliminarily believes that there are limitations to the effectiveness of controls that aim to limit access to, and deter the misuse of, insider information. Specifically, eligibility screens and surveillance are likely to reduce risk but cannot perfectly eliminate trading by people with privileged access (*e.g.,* team staff, medical personnel, broadcast insiders). The Commission believes that the factor's effectiveness in detecting and deterring misuse of non-public information will depend on prediction market enforcement and on the timeliness and accuracy of trader-identifying information and alerts. Despite best practices residual leakage risk may still exist.

The Commission preliminarily believes that the proposed factor is also likely to result in indirect benefits. One of the potential indirect benefits of implementing this factor is discipline and predictability it may bring to event contract design. Clear integrity benchmarks encourage registrants to internalize risk-mitigating attributes (objective feeds, redundancy, prohibited-trader lists, integrity coordination) at the design stage. This reduces ad hoc interventions and late prohibitions, fosters predictable Commission determinations, and supports competitive neutrality across prediction markets. Another potential indirect benefit that the Commission preliminarily believes may be realized is the improvements in the price-signal quality. When settlement standards and insider-risk controls are robust, information content of prices is less likely to be degraded by selective influence or data uncertainty, thereby improving public price discovery and the reliability of market-implied probabilities used in downstream decisions. Finally, the utilization of the proposed factor may likely lead to operational resilience, which is an indirect benefit. Specifically, risk-control practices (*e.g.,* trading halts, order-entry limits, layered surveillance) documented in exchange materials strengthen resilience to emergent disturbances, may help contain the aberrant behavior in an expedient manner. As discussed above, in providing clarity, the Commission preliminarily believes that this will result in greater administrative efficiencies to prediction markets in

carrying out their role as SROs, as there will be less uncertainty in overseeing the process of bringing an event contract through the Special Rule to market.

(ii) Cost

The Commission believes that possible direct costs may result from procurement of settlement-related data and the implementation of governance protocols. Specifically, to meet integrity expectations, registrants may incur costs to secure third-party verified feeds, implement redundant data sources, and formalize calculation/adjudication protocols and dispute processes. The Commission believes that these investments are incremental to ordinary listing preparations and are necessary to demonstrate objective and verifiable settlement and will be spread over many event contracts that involve similar underlying events. Another source of direct costs that the Commission believes prediction markets are likely to incur are costs from the surveillance and compliance practices implemented in response to the Proposal. Specifically, the Commission preliminarily believes that to the extent that prediction markets implement prohibited-trader policies, eligibility screens, and enhanced monitoring, including trader-identifying information workflows, in response to the Proposal, they are likely to incur technology, staffing, and policy costs. Finally, the Commission believes that prediction markets are likely to incur costs relating to the necessary documentation for certifications. Specifically, the Proposal would require prediction markets to submit granular narratives in § 40.2 certifications detailing settlement data provenance, adjudication pathways, redundancy, surveillance programs, and risk controls, which is likely to increase the pre-listing documentation burden.

The Commission preliminarily believes that the implementation of the proposed factor is also likely to result in indirect costs. For example, indirect costs may arise from the additional time it may take to market and re-design event contracts. Specifically, in cases where the event contracts rely on subjective judgement or narrowly controllable outcomes, prediction markets will need to re-design to expand outcomes and eliminate discretion which may result in delays in event contract listings. Similarly, the need to establish feed redundancy, integrity coordination, and dissemination workflows may extend development timelines, resulting in additional indirect costs. Furthermore, even objective settlement feeds may experience latency, outages, or revisions, and some sports contexts inevitably involve judgment elements (*e.g.,* review processes) that can reintroduce subjectivity. While redundancy mitigates risk, the proposed factor is not likely to fully eliminate feed-level vulnerabilities.

The Commission preliminarily believes that prediction markets may also incur additional indirect costs due to their ongoing operational commitments. Specifically, in response to the Proposal prediction markets may establish continuous insider-risk surveillance which would result in additional and sustained demand for operational capacity. Since these indirect costs are fixed costs, small or new prediction markets are likely to face a larger burden to maintain these capabilities over time. Finally, the Commission believes that prediction markets may face additional indirect costs resulting from coordination. Specifically, prediction markets' efforts in establishing and maintaining information-sharing arrangements with governing bodies (*e.g.,* league integrity units) in an attempt to promote market integrity and confidence is likely to result in legal and administrative burdens (*e.g.,* MOUs, data-sharing protocols), especially in cases where multiple sports or governing authorities are involved.

(e) Public Interest Factors Relating to Compliance and Self-Regulatory Challenges

Under the Proposal, the Commission considers whether a prediction market, in its capacity as a self-regulatory organization, can meaningfully administer the event contracts at issue. This factor focuses on the prediction market's ability to discharge its obligations under CEA sections 5(d) and 5h(f), including market surveillance, position monitoring, customer-identification programs, dispute-resolution processes, and data-integrity controls. Unlike the preceding factors, which evaluate how the characteristics of the event contract itself bear on public-interest concerns, this factor examines whether the prediction market possesses the operational infrastructure necessary to supervise trading, detect and deter misconduct, and ensure accurate, timely, and verifiable settlement. The Commission preliminarily believes that to the extent that the prediction market lacks the surveillance, compliance, or dispute-resolution capabilities necessary to oversee trading in event contracts involving Enumerated Activities, this would weigh in favor of finding the event contracts contrary to the public interest.

This aspect of the Proposal considers several dimensions of administrability: (i) whether the prediction market maintains surveillance systems capable of detecting abnormal trading patterns, insider-information risks, coordinated activity, and other behavior inconsistent with orderly markets; (ii) whether the prediction market's customer identification and account monitoring systems are sufficient to identify traders, link trading activity to individuals or entities, and distinguish insiders or persons with privileged access to information about the underlying event; (iii) whether the prediction market's dispute-resolution processes, including documentation standards, process timelines, and escalation procedures, are adequate to resolve settlement or trading disputes for event contracts involving Enumerated Activities; (iv) whether the prediction market has access to reliable settlement feeds, its processes for validating the integrity of those data, and the mechanisms it uses to identify incomplete, inconsistent, or contested information.

The Commission preliminarily believes that evolving market dynamics may affect whether a prediction market can effectively perform its self-regulatory responsibilities. For example, advancements in artificial intelligence tools, such as model-driven trading agents capable of generating rapid, correlated trading patterns, may strain conventional surveillance models, increasing the need for predictive analytics and real-time anomaly detection. Furthermore, competitive pressures from offshore or foreign platforms, which may operate without comparable surveillance obligations, may also create incentives for domestic prediction markets to list higher-risk products despite lacking the operational capacity to supervise them effectively. Under this factor, the Commission would evaluate whether these dynamic conditions meaningfully limit the prediction market's ability to fulfill its self-regulatory responsibilities.

(i) Benefits

The Commission preliminarily believes that this factor would enhance market integrity and public confidence by ensuring that prediction markets list only those event contracts that they can effectively supervise. By requiring prediction markets to demonstrate robust surveillance systems, comprehensive customer-identification controls, effective dispute-resolution procedures, and reliable settlement-data pipelines, the factor strengthens

protections against insider misuse, manipulation, information leakage, and operational failures. This, in turn, supports orderly markets and reduces the likelihood of disruptive post-listing events such as settlement disputes or large-scale position close-outs.

The Commission preliminarily believes indirect benefits may also arise as prediction markets invest in upgraded surveillance technologies, expand their customer-identification and account-monitoring systems, and improve their ability to ingest and validate settlement feeds. These improvements may enhance operational resilience, reduce systemic vulnerabilities exposed by AI-driven trading dynamics, and allow prediction markets to respond more effectively to emerging risks. By basing listing decisions in administrability, this factor may deter product offerings driven by regulatory arbitrage or competitive pressures from offshore markets and instead favor those that the prediction market can monitor responsibly. The Commission preliminarily believes that, over time, this is likely to result in a more stable and reliably supervised market structure, improving participant trust and supporting responsible innovation among registered entities.

(ii) Cost

The Commission preliminarily believes that prediction markets may incur direct costs in upgrading their surveillance, compliance, and data-integrity infrastructure to meet the expectations outlined under this factor. These costs may include additional staffing for compliance and surveillance functions, investment in analytical and pattern-recognition technologies, enhancements to customer-identification and verification systems, and procurement of reliable third-party settlement feeds. Prediction markets may also incur costs associated with strengthening dispute-resolution frameworks, documenting control processes, and maintaining operational redundancies necessary to ensure accurate and timely settlement.

The Commission preliminarily believes that there may also be indirect costs. For example, prediction markets that cannot feasibly supervise certain event contracts may forego listing them, reducing potential revenues and limiting the breadth of products available to market participants. In addition, competitive pressure from offshore or pseudonymous markets may exacerbate these indirect costs, especially by listing higher-risk products without comparable self-regulatory obligations. Furthermore, innovations in the marketplace, including growth in artificial intelligence driven trading, may entail continuous surveillance upgrades, raising ongoing operational expenditures. The Commission notes that smaller or newer prediction markets may face disproportionate burdens in scaling these capabilities, potentially affecting their competitiveness. Nonetheless, the Commission preliminarily believes that these costs are mitigated by the benefits of improved oversight, reduced manipulation and insider-risk exposure, and increased market stability.

(f) Public Interest Factors Specific to Unlawful Activity

The Commission is proposing specific factors to prevent listing of event contracts that reference specific criminal acts or otherwise involve activity unlawful under federal or state law, due to attendant manipulation risk, public-harm incentives, and comity concerns. The Commission also proposes to distinguish such event contracts from those that reference broad measures such as crime-rate indices, where different informational and integrity considerations may apply. In determining whether event contracts fit under the ''unlawful event'' category, the Commission is proposing to consider the following three factors: (i) whether the event contracts reference specific criminal acts (heightened manipulation and perverse incentive risk to create harm); (ii) whether the event contracts reference activity that is unlawful under federal law (strong presumption against listing); or (iii) whether the event contracts reference activity that is unlawful under state law, with weight calibrated to the breadth and consistency of state prohibitions and public harm considerations.

(i) Benefits

The Commission preliminarily believes that to the extent that the public interest factor discourages the listing of event contracts that could incentivize criminal conduct or exploit crime-adjacent information asymmetries, strengthening protection of market participants and the public, there will be benefits. The Commission preliminarily believes that by preventing incentives of criminal activity through these types of event contracts, the Proposal would lower the possibility of increasing illegal behavior, as the incentive through these contracts may be removed. Additionally, the Commission anticipates that applying clear illegality weighting will lead to more predictable outcomes disincentivizing the listing of these event contracts, thereby minimizing resource-intensive scope disputes during the listing process. There could be, however, limitations to this benefit due to the heterogeneity in state-laws resulting in residual interpretive uncertainty.

(ii) Cost

The Commission believes that the cost of implementation of this factor may require the exchanges to document legality, public-harm considerations, and integrity controls within a § 40.2 submission, which may increase the costs in a prediction market's pre-listing process. In addition, the Commission believes that prediction markets may face indirect costs as event contract designs based on broader-measures (*e.g.,* indices) may require legal surveys across jurisdictions and calibrations to avoid implied references to specific criminal acts, marginally extending timelines.

(g) Public Interest Factors Specific to Terrorism, Assassination, and War

The Commission believes that event contracts that involve terrorism, assassination, or war present national-security harms, extraordinary information leakage risks, and perverse incentive effects that overwhelm any potential informational utility. Consequently, these event contracts would be very likely to be contrary to the public interest. In determining whether event contracts fit under this category, the Commission is proposing three factors that emphasize: (i) national-security externalities; (ii) insider-information constraints and misuse risk (including classified or sensitive sources); (iii) settlement uncertainty in contested or incomplete information environments; and (iv) perverse incentive effects that could facilitate or reward violence.

(i) Benefits

With these public interest factors specifically tailored to apply to this category, the Commission believes that the Proposal would prevent these event contracts from being listed because they could, among other things, distract authorities, enable exploitation of sensitive information, or incentivize violence. The Commission also believes that the specialized set of factors is likely to enhance clarity at the time of the listing, reduces interpretive variance, and results in prediction markets avoiding event contracts involving these prohibited activities. To the extent that the factors prevent these event contracts from being listed,

encourage innovation on non-sensitive event categories, and reduce the risk of post-listing disruption, there will be benefits. In addition, as with illegal activity discussed above, the Commission believes that by preventing the incentivization of these activities through these types of event contracts, the Proposal may lower the possibility of these types of activities. Moreover, the Commission preliminarily believes that proposing specific factors for event contracts on terrorism, assassination, or war may result in greater administrative efficiencies, as there will be less uncertainty for SROs overseeing the market with regard to these types of contracts.

(ii) Cost

The Commission believes that by providing clarity regarding event contracts that fall under this category, the Proposal is likely to foreclose potential revenue and possible informational value from event contracts tied to geopolitical violence categories. The Commission preliminarily believes that potential foregone revenue and value from these event contracts are outweighed by public-interest harms. Furthermore, there are likely to be additional costs as event contracts proximate to ''war'' (*e.g.,* sanction triggers, mobilization thresholds) may require careful scoping and documentation under the factors in the Proposal. There are potentially additional costs as dynamic geopolitical events can blur boundaries—even categorical prohibitions require ongoing interpretive guidance to prevent a chilling impact on lawful macro-risk contracts.

(h) Public Interest Factors Specific to Gaming

The Proposal defines gaming functionally and distinguishes games from contests such as elections and awards. Within gaming, the Commission aims to permit contracts settled on aggregate sports outcomes with objective data and integrity infrastructure, while prohibiting pure-chance games and high-risk sports-adjacent designs (*e.g.,* injury, officiating-only, discrete actions, altercations, pre-collegiate events). The activity specific factors that group event contracts into three categories: (i) event contracts involving pure chance games, with outcomes determined entirely by randomness that lack informational utility and create gambling-adjacent risks; (ii) event contracts involving aggregate sports outcomes, which include final scores, point differentials, win-loss results, advancement, statistics, and season-long metrics, where settlement relies on objective, verifiable, league-certified data and robust integrity coordination; (iii) event contracts involving player injury, officiating-only decisions, discrete actions, altercations, and pre-collegiate sports. Furthermore, for event contracts in this category, the general factors that apply to all event contracts are also highly relevant as they weigh settlement-integrity, insider-risk, and information-sharing arrangements to preserve information quality and limit manipulation.

The Commission preliminarily believes that event contracts involving pure games of chance are likely to be contrary to the public interest due to the absence of informational utility. In contrast, contracts based on broad sports outcomes, such as final scores, statistics, and season records, are generally considered not to be contrary to the public interest, if settlement relies on objective, verifiable data and robust integrity measures. The Commission preliminarily believes that contracts referencing player injuries, officiating decisions, limited-controlled outcomes, altercations, or pre-collegiate sports are likely contrary to the public interest as these types of event contracts present significant risks of manipulation, offer opportunities for insider access, and may create perverse incentives for harmful behavior. As a result, the Commission would likely find event contracts in these areas to be contrary to the public interest and thereby protect market integrity.

(i) Benefits

The Commission preliminarily believes that the Proposal provides market participants with clarity and predictability by offering a transparent taxonomy that permits aggregate sports outcomes with objective data, while screening out designs prone to manipulation or harm incentives. Furthermore, the Commission believes that the proposed factors focusing on specific circumstances relating to sports contracts provide benefits to the market through enhanced market integrity by prohibiting injury, officiating-only, limited-control outcomes, and altercation contracts, and protecting minors in pre-collegiate contexts. Furthermore, the Commission believes that the Proposal is likely to result in responsible innovation by encouraging prediction markets to embed integrity coordination (*e.g.,* information sharing, suspicious-activity reporting) and objective settlement feeds, improving market signal quality.

In addition, the Commission preliminarily believes that this factor may also improve process efficiency by reducing scope disputes and late-stage interventions—supporting category-level determinations where appropriate. The Commission, however, also preliminarily believes that as the result of residual judgment, the proposed application will have limited effectiveness in some settings (*e.g.,* replay decisions), as the integrity controls and objective feeds may mitigate but cannot eliminate residual subjectivity. Similarly, there could be limitations in the effective implementation of the factors due to the persistence of insider risk where even though eligibility screens and surveillance reduce the risk, these mitigants cannot fully eliminate trading by people with privileged access. Finally, the Commission believes that there could be limitations on applying the factors effectively due to coordination variability across prediction markets and sports leagues because the integrity arrangements could depend on third-party practices and uneven cooperation or data standards may affect effectiveness of their collaboration. In defining gaming functionally, and distinguishing games from contests, the Commission preliminarily believes that it is increasing regulatory certainty over these event contracts, which is likely to result in more administrative efficiencies for SROs and lessen the likelihood of litigation, as the Commission is limiting the probability that problematic event contracts may be listed.

(ii) Cost

The Commission preliminarily believes that this factor is likely to result in costs, as registrants may incur vendor costs for league-certified data, feed redundancy, protocol decisions, and eligibility controls to address insider risk. The registrations may incur additional costs relating to the changes in the certification process as the Proposal requires more granular § 40.2 narratives mapping event contracts to the gaming taxonomy and its sub-factors. In addition, the Commission preliminarily believes that as a result of this factor, some sports-related event contracts may not be listed, which may result in lost revenue to the prediction market and the unavailability of trading to market participants. The Commission also preliminarily believes that there are likely to be indirect costs associated with the redesign of event contracts and the time it takes to market these event contracts as redesign may be required

(*e.g.,* shift from first-action to aggregate metrics). The Commission preliminarily believes that there may also be further indirect costs associated with potential coordination challenges, such as the legal and administrative burdens introduced when establishing information-sharing agreements with governing bodies.

(i) Additional Activities Similar to the Enumerated Activities

The Proposal seeks to clarify its authority under the Special Rule to identify additional activities that are similar to the Enumerated Activities (*i.e.,* unlawful activity, terrorism, assassination, war, and gaming) and to determine whether event contracts involving such similar activities are contrary to the public interest. The Proposal describes the general approach that the Commission would take in a comparative assessment of risk channels and public-interest concerns between the candidate activity and the enumerated categories, using the general factors (*i.e.,* price discovery, information aggregation, market integrity, compliance) as the analytic baseline and considering whether the activity may be identified as ''similar'' for Special Rule purposes if risk profiles and public-interest harms are materially similar.

(i) Benefits

The Commission preliminarily believes that this approach provides clarity and flexibility. The authority to identify similar activities indicates that the Special Rule is not limited to a closed list, enabling flexible, timely responses to novel event contract designs that pose comparable public-interest risks. Determining ''similarity'' is, however, inherently context-dependent and may require nuanced judgments about risk comparators and public-interest harms. While the factors in proposed §§ 40.11(a)(5) and 40.11(a)(6) enhance determinacy, some borderline cases will remain fact-intensive. While there likely will be limitations due to definitions around the boundary cases, there likely will also be benefits, to the extent that the proposed approach promotes consistency and market integrity in line with statutory purposes.

Furthermore, the Commission believes that the Proposal approaches harm mitigation proactively, as the proposed mechanism allows the Commission to preemptively address emerging activities whose incentive effects, insider-risk profiles, or settlement uncertainties would otherwise replicate concerns in Enumerated Activities, thereby protecting market participants and the public. The Commission preliminarily believes that there are likely to be indirect benefits due to potential increases in process efficiency and competitive neutrality across prediction markets, as they internalize the risk-profile comparators, which in turn leads to improved ex-ante event contract design and reduced scope disputes. The Commission, however, recognizes that there may be limitations to this benefit as innovation may outpace codified examples, which may result in the Commission's updating guidance through orders and interpretations, as event contract architecture evolves. The Commission also believes that there are also potential indirect benefits as the Proposal encourages listing activity away from similar-risk categories with poor settlement integrity or insider-leakage risks, which in turn increases the potential benefit from listed event contracts, leading to possible greater price discovery and information aggregation. Moreover, the Commission preliminarily believes that in proposing specific factors for other similar activities, it may result in greater administrative efficiencies when an SRO reviews event contracts and oversees its market in regard to these similar contracts.

(ii) Cost

As a result of this section of the Proposal, the Commission preliminarily believes that prediction markets may incur incremental costs to analyze whether proposed event contracts could be deemed similar to enumerated activities, including detailed § 40.2 narratives mapping risk channels, settlement data provenance, and integrity controls to address comparability concerns. Furthermore, in cases of similarity concerns, prediction markets may need to redesign settlement features (*e.g.,* objective feeds, redundancy, dispute procedures), tighten eligibility policies, or embed coordination with independent adjudicators or integrity bodies, entailing vendor, legal, and surveillance costs. In addition, products close to similar-activity boundaries may face longer development timelines as prediction markets assess and address comparability to Enumerated Activities, potentially slowing rollout of borderline designs, resulting in costs. Finally, the Commission preliminarily believes that until precedents accumulate, registrants may experience interpretive uncertainty regarding certain hybrid or emerging activities that may be deemed similar, increasing advisory and scoping costs for first movers.

(j) Procedural Amendments and Delegations

Under proposed § 40.11, the Commission may initiate a 90-day review when a self-certified event contract appears to involve an Enumerated Activity and may be contrary to the public interest. The review would proceed within the 90-day statutory window with defined milestones (initiation; written statement of concerns; prediction market response; staff recommendation; Commission order), with extensions only at the prediction market's request or agreement. The Commission may also conduct reviews of groups of substantially similar submissions to foster consistency and reduce duplicative effort.

At the end of the review, the Commission may either: (i) issue an order finding the event contract (or a group of event contracts) contrary to the public interest, in which case it may not be listed or must be delisted; or (ii) allow the contract to continue trading if no such order is issued, potentially with modifications proposed by the prediction market that resolve the Commission's concerns. Because the CEA permits self-certified contracts to trade on the business day following self-certification, event contracts are likely to trade during the review period. The Proposal allows the Commission to request suspension of trading of the event contracts under review, but prediction markets are not required to abide by such requests.

(i) Benefits

The Commission preliminarily believes that the 90-day framework with defined steps provides predictable timing and clear expectations for prediction markets, reducing uncertainty costs at listing and improving efficiency in Commission operations. The Proposal may also provide indirect benefits as grouped reviews could reduce duplicative effort and streamline recurring determinations, encouraging design discipline and fewer borderline submissions. Nonetheless, novel or hybrid event contract designs requiring fact intensive approach may remain and as a result benefits will be limited as the effectiveness of the process relies on accumulating precedents and clear orders to reduce residual uncertainty. The Commission preliminarily believes that there are additional potential indirect benefits if prediction markets are able to discern from any Commission orders finding event contracts to be contrary to the public

interest ways to design event contracts that would not be subject to an adverse Commission order. The Commission, however, notes that differences in capabilities among prediction markets could lead to uneven preparedness for the milestones in the proposed process.

(ii) Cost

The Commission preliminarily believes that the Proposal is likely to result in certification and documentation costs if prediction markets choose to engage in the Commission's review process and submit responses to the Commission. Preparing such responses would require pre-listing effort and associated advisory time. Potential operational processes (*e.g.,* tracking Commission milestones, preparing responses) may require additional vendor costs (*e.g.,* to strengthen data feeds), as the registrants develop protocols consistent with the proposed process. The Commission preliminarily believes that event contracts near scope boundaries may require redesign or additional documentation, potentially lengthening development timelines resulting in indirect costs. Furthermore, while fixed costs faced by prediction markets decline as precedents accumulate, they may continue to incur transitional costs to standardize templates to the revised processes resulting in indirect costs.

4. Section 15(a) Factors

The Commission has evaluated the costs and benefits of the Proposal in light of the following five broad areas of market and public concern identified in CEA section 15(a): protection of market participants and the public; efficiency, competitiveness, and financial integrity of the markets; price discovery; sound risk management practices; and other public interest considerations.

(a) Protection of Market Participants and the Public

Section 15(a) requires the Commission to ensure its regulations protect market participants and the public. For event contracts, this includes discouraging harmful incentives or illicit conduct, ensuring clear settlement and market safeguards, deterring misuse of material non-public information and manipulation, and mitigating risks for all participant types including retail traders. The framework in part 40 (including appendix F) aims to effect these protections, when necessary, through the Commission's review of event contracts that may be contrary to the public interest. The accompanying analysis notes that while the process may require prediction markets to provide more documentation, the factor-based approach reduces uncertainty, encourages responsible innovation, and lowers disruption risks like late-stage delistings—ultimately protecting market participants and the public.

In the Proposal, the Commission aims to ensure event contracts are settled using clear, verifiable data and streamlined dispute-resolution processes to protect market participants. The Proposal's focus on real-time, objective information helps build trust, reduces confusion and disputes, and enhances oversight for all investors. Furthermore, the framework excludes designs with outcomes easily controlled by a few participants, instead favoring those with distributed influence to limit disruptive tactics and support orderly markets. Furthermore, the Proposal would prioritize event contracts that prediction markets could supervise efficiently within existing structures, reducing participant risk and promoting self-regulatory effectiveness. Finally, the proposed framework aims to protect retail users by excluding pure games of chance from CFTC derivatives markets and requiring clear settlement, objective procedures, and dispute resolution for allowed contracts. These measures help ensure retail participants avoid contracts lacking informational value or with random outcomes.

The Proposal recognizes that contracts referencing specific unlawful acts pose acute manipulation and perverse-incentive risks, can undermine public-safety objectives, and may compromise law-enforcement efforts if trading reveals sensitive information. Accordingly, the Proposal weighs heavily against listing such event contracts while recognizing a limited role for broader-measure references (*e.g.,* area crime-rate indices) where informational utility and integrity controls can be demonstrated without incentivizing specific harmful conduct.

The Proposal recognizes that contracts tied to terrorism, assassination, or war present extreme information leakage risks, settlement uncertainty (*e.g.,* the ''fog of war''), and incentive effects incompatible with the protective aims of the CEA. Therefore, the framework treats these products as highly likely to be contrary to the public interest, noting that prices could distract or be manipulated to misdirect authorities and that persons with sensitive information should report to authorities rather than trade. Foreclosing listings of this type would best protect market participants and the public.

Finally, the Proposal defines ''gaming'' by its ordinary meaning. It also would find event contracts involving games of pure chance likely to be contrary to the public interest, while channeling permissible sports event contracts toward aggregate outcomes (final scores, tournament advancement, season metrics) settled on objective, league-verified data within established integrity frameworks. Within sports, the framework discourages or disallows designs that directly increase participant harm or selective influence—such as player-injury, officiating-only, first-action, altercation, and pre-collegiate contracts—because these structures heighten perverse incentives, subjectivity, and insider risk in ways incompatible with participant protection and the integrity of the game.

The framework advances protection when contract pricing conveys decision-relevant information rather than low-content or misleading signals. Designs that meet this quality filter anchor settlement to objective, verifiable criteria, use transparent adjudication and reliable data, and diffuse control across broad outcome spaces, thereby reducing measurement error and elevating the informational utility of prices.

Protection also derives from a predictable process. The proposed 90-day framework, written statement of concerns, prediction market response (which could include proposed modifications), staff recommendation, and Commission final action promotes fairness, transparency, due process, and certainty. It ensures prediction markets can address concerns on the record, limits rationalization of outcomes ex-post, and provides clear defaults (*e.g.,* if no order issues, listing may proceed or continue), reducing disruption risks for market participants.

It is the Commission's preliminary view that the proposed factor-based framework protects market participants and the public by excluding event contracts involving activities with inherent harm risks (terrorism, assassination, war; pure-chance games; specified unlawful acts), steering permissible event contracts toward aggregate outcomes settled on objective data with integrity coordination, demanding administrability and surveillance feasibility, and providing procedural safeguards that reduce uncertainty and disruption. The Commission recognizes that despite the residual risks, such as innovation risks, coordination problems with third-parties, and potential migration of demand offshore, the Proposal's clear protective factors, process rights, and category guidance are designed to limit these externalities while supporting

responsible innovation consistent with market integrity and public welfare.

(b) Efficiency, Competitiveness and Financial Integrity

By clarifying what it means for a contract to involve an Enumerated Activity (*i.e.,* its settlement is determined by an occurrence, extent of an occurrence, or contingency in that activity), defining gaming using its ordinary meaning, and aligning the rule text with the statute (including the cross-reference to CEA section1a(19)(i)), the Proposal is designed to reduce interpretive variance, streamline Commission review, and provide predictable procedures. The factor-based framework and the codified, time-bounded review process anchors determinations in objective settlement linkages and enumerated decision criteria, improving the contract listing and review process and lowering late-stage uncertainty costs while preserving Commission control over consequential determinations. These proposed changes aim to support a marketplace experiencing rapid growth and facing ongoing interpretive challenges.

From an efficiency standpoint, the Commission preliminarily believes that the framework established in the Proposal will likely reduce threshold disputes and shorten review cycles relative to ad hoc sequencing, and, importantly, create space for targeted event contract modifications that resolve integrity concerns without foreclosing listing. In addition, it should allow for a more efficient SRO, when carrying out their responsibilities. At the same time, the Proposal introduces some fixed costs (more granular § 40.2 narratives, objective settlement feeds and redundancy, dispute-resolution protocols) that can increase the time it takes to list contracts, especially for smaller exchanges. Additionally, the Commission preliminarily believes that dependence on third-party data vendors may introduce potential latency or outage risks. There may also be efficiency challenges resulting from heterogeneity in the effectiveness of and uneven implementation of the surveillance programs. Moreover, because trading may still occur during the Commission's review, unless the prediction market voluntarily suspends the trading, adverse determinations may still result in late-stage delistings and position close-outs. The Commission preliminarily believes that the efficiency gains from clarity and predictable timing will dominate these frictions over the medium term but recognizes transitional costs and operational heterogeneity across prediction markets.

The Commission believes the presence and implementation of transparent factors and explicitly defined review milestones should lower discovery costs particularly for event contract designs that pursue compliant innovation and support a process that is applied uniformly across all prediction markets, promoting product competition that focuses on informational utility, enhancing the integrity of the infrastructure, and data quality rather than regulatory arbitrage. Furthermore, the Commission believes that the ability to group reviews reduces duplication of effort, supporting new entrants with predictable compliance expectations.

The Commission, however, recognizes this is a growing marketplace with multiple new and potential entrants competing for traders, liquidity, and market share. Such competition can create incentives to differentiate by offering broader event contract selections, including designs that test the boundary of acceptability under the Proposal. While competition typically promotes efficiency, competition on listing standards can have countervailing effects, including liquidity fragmentation across prediction markets with uneven standards, rising transaction costs, and reduced overall market efficiency. The Commission preliminarily believes that uniform enforcement of the Proposal across platforms would alleviate these concerns, but on the other hand scale economies in integrity tooling could advantage incumbents, narrow precedents may chill borderline experimentation, and unequal access to league-verified data or integrity arrangements could create de facto asymmetries. The Proposal acknowledges migration risks for prohibited or borderline event contract designs to offshore venues, with attendant liquidity fragmentation; however, clarity around aggregate-outcome designs and objective settlement standards is intended to sustain viable compliant alternatives, while competitive pressure from least-compliant venues remains a relevant constraint.

The factors in proposed §§ 40.11(a)(5) and 40.11(a)(6) elevate settlement clarity and market-integrity safeguards by favoring aggregate-outcome designs that diffuse control across broader outcome spaces and settle on objective, publicly verifiable data, and disfavoring constructs that are inherently susceptible to manipulation or insider misuse (*e.g.,* discrete-action triggers for named competitors, officiating-only or injury-diagnosis settlement). Paired with surveillance practices—eligibility screens, trader identification, and prompt public dissemination—the framework strengthens auditability and enforcement against misappropriation of confidential information and other illegal practices. Coordination with relevant governing bodies and resilient data pipelines further enhance resolution confidence and incident response capacity.

Residual vulnerabilities persist, as event contracts based on aggregate outcomes can face indirect influence or strategic behavior, subjective elements in some adjudication contexts, and lower resolution confidence because of feed latency, outages, or revisions. Requiring Commission action to prohibit event contracts that are contrary to the public interest anchors consequential prohibitions in a developed record and reasoned decision-making, but realization of integrity gains remains contingent on sustained investment by prediction markets and practical cooperation with external data and integrity providers.

(c) Price Discovery

In prediction markets that settle on objective, verifiable events, dispersed signals are translated into market-implied probabilities through continuous trading, and prices become informative when participants can form rational expectations about clearly specified outcomes and control over those outcomes is diffuse rather than concentrated. The Proposal would reinforce this mechanism by focusing any public interest determination on the underlying event that determines settlement, which in turn ensures that price paths credibly aggregate beliefs rather than idiosyncratic discretion.

The Proposal directs event contract listings to focus on comprehensive aggregate sports outcomes rather than designs with limited or conflated content. This approach reduces extraneous noise and enhances the informational value of pricing. Additionally, it explicitly excludes event contracts involving games of pure chance which lack meaningful informational content and do not facilitate public price discovery.

Price discovery should be enhanced when settlement standards are objectively verifiable, data feeds remain robust and transparent, and prediction markets actively prevent the misuse of material non-public information by implementing eligibility screens and surveillance mechanisms. These policy measures mitigate measurement error and reduce adverse selection. Consequently, market-implied probabilities more accurately reflect

realized outcomes resulting in more efficient price discovery process.

The Commission acknowledges that market microstructure and information dissemination practices significantly influence price discovery. Accordingly, the Proposal is designed to facilitate the delivery of timely and objective data streams, alongside well-documented calculation procedures. These measures enhance the auditability and comparability of price series both across various events and over time, thereby strengthening the reliability of these information signals for economic decision-making. In contrast, limited liquidity, wide bid-ask spreads, and delayed or subjective inputs reduce the informativeness of price signals.

The Commission believes that its approach to event contract design focusing on aggregate outcomes and objective data could improve prediction market reliability and limit manipulation. The Proposal would encourage prediction markets to show informational value in their § 40.2 submissions, promoting event contracts that help non-insiders form rational expectations. While listing event contracts may require more documentation and external vendor support, these challenges are outweighed by enhancements in information quality and comparability across event contracts, which could ultimately strengthen the price discovery process.

The Commission preliminarily believes that as precedents are established and prediction markets coordinate actively with governing bodies, the quality and reliability of data pipelines are likely to improve. This collaborative framework is anticipated to reduce price discrepancies, thereby promoting stability between market prices and actual outcomes. The adoption of clearer standards further limits competition based on permissive listing practices, enhancing credibility and acceptance of market-implied probabilities across business models.

The Commission preliminarily believes that effective price discovery relies on robust metrics such as forecast accuracy, timeliness, microstructure health, settlement reliability, and integrity safeguards. By focusing on event-driven settlements, objective aggregate outcomes, and strict process standards, the Proposal would advance the informational quality and trustworthiness of price formation process. Collectively, these enhancements align with the CEA's mandate to promote efficient and reliable price discovery within the marketplace.

(d) Sound Risk Management Practices

The Commission views ''sound risk management practices'' as the operational controls that prediction markets use to ensure event contract trading, clearing, and settlement are conducted securely and transparently. Prediction markets have grown rapidly with fully collateralized designs that limit immediate clearing risk, but ongoing expansion underscores the need for clear contract settlement, anti-manipulation measures, and insider-risk controls.

Objective and auditable settlement terms reduce risk, prevent disputes, and protect operational systems. As a result of the standards and procedures in the Proposal, the Commission anticipates that prediction markets are likely to use eligibility screens, prohibited-trader lists, and real-time surveillance, and promptly share transaction data, to deter manipulation and maintain orderly markets. The Proposal also would promote cooperation with governing bodies, improving detection of and response to abnormalities in sports-related event contracts.

The Proposal should encourage transparent data pipelines, system redundancy, and well-defined dispute-resolution mechanisms to ensure settlement accuracy. The standardization of integrity tools contributes to greater outcome stability; however, certain residual risks persist, such as offshore migration and challenges with data feeds. To mitigate these risks, the Proposal encourages enhanced coordination among stakeholders.

The Commission believes that ongoing monitoring and comprehensive reporting on surveillance, settlement integrity, market resilience, and governance actions are essential for registrants to fulfill regulatory requirements under CEA section 15(a). The Commission believes that these practices underpin robust risk management, strengthen the security and transparency of event contract trading, clearing, and settlement, and support the Commission's broader objectives of maintaining orderly and trustworthy markets.

(e) Other Public Interest Considerations

The Commission preliminarily considers several additional public interest dimensions implicated by event contract markets. These include the protection of retail participants, the integrity of public processes, informational externalities from technology and data quality, migration to offshore or unregulated venues, distributional impacts, and design features that may influence real-world outcomes.

The Commission preliminarily believes that as a result of the clarifying nature of the Proposal, it is possible that more event contracts may be listed. With this possible increase in the number of event contracts, a related public interest issue should be considered. Some prediction market trading characteristics (such as outcomes occurring at unpredictable intervals, perception of skill-based decision making, near miss experiences, and potential for loss chasing behavior) are generally associated with addictive potential. Furthermore, low minimum position sizes, continuous market availability, and notification systems that facilitate frequent engagement could further contribute to this potential. These factors can lead to financial harm as users accumulate losses through high frequency trading, allocate disproportionate resources to trading activity, and have trouble disengaging voluntarily. Protective measures, such as position limits, cooling off periods, notification restrictions, or self-exclusion mechanisms might preserve legitimate market functions while mitigating harm to retail traders.

In addition, event contracts can concentrate losses among retail segments with lower financial literacy or higher susceptibility to salience and longshot bias. The systematic overpricing of very low-probability outcomes and underpricing of near-certain ones can draw traders into positions with negative expected values. Because such miscalibration can impair price discovery and produce distributional harms, prediction markets could monitor calibration and cohort outcomes and document when remediation, such as product redesign or targeted education, reduces these adverse consequences.

The Commission also believes that the public interest is served when event contracts do not create incentives to profit from devastating events or undermine confidence in sensitive processes. The Proposal's activity-specific factors reflect that contracts involving terrorism, assassination, or war are very likely to be contrary to the public interest. Insider-risk controls, transparent data pipelines, and eligibility screens for participants with access to confidential information can mitigate the risk of misuse that could erode trust in public institutions.

However, excessive prohibitions of event contracts could shift demand to unregulated or offshore platforms,

fragment liquidity, and reduce access to consumer protections. To mitigate these externalities, the Commission preliminarily favors maintaining viable, compliant event contracts with high informational utility and settlement integrity, pursuing cross-market visibility and enforcement where appropriate, and communicating determinations and precedents clearly so that listing decisions are predictable. The Commission preliminarily believes that monitoring of migration signals, such as traffic to offshore venues for prohibited or borderline designs, could be advisable when appropriate.

The Commission preliminarily believes the public interest could be better served when prediction markets evidence data provenance, publish clear calculation procedures, maintain feed redundancy, and document controls for automated quoting and news ingestion that limit spurious price moves. Surveillance could incorporate model-audit trails and anomaly detection tuned to event-contract microstructure. Where AI-generated content may influence outcomes (*e.g.,* synthetic polling or deep-fakes), prediction markets could consider mitigants, such as verified data sources and latency buffers for contested inputs, so settlement remains anchored to objective, verifiable facts.

Because of these public-interest considerations, the Commission invites comment on which metrics and processes could be implemented to monitor these concerns. For example, would any of the following steps allow for better monitoring of the potential costs and benefits arising from the Proposal: (i) retail-outcomes dashboards (education completion, complaint rates, cohort loss distributions); (ii) integrity and influence indicators (insider-risk detections, event-adjacent incident referrals, influence-risk assessments for narrow outcomes); (iii) migration monitoring (cross-venue traffic or listings on offshore platforms for prohibited/borderline products); and (iv) technology quality measures (feed uptime, revision history, model auditability, anomaly alerts). Could these indicators provide an auditable basis for demonstrating that ''other public interest'' concerns are being identified early and mitigated effectively?

The Commission preliminarily believes the Proposal would likely support the broader public interest by (1) preserving confidence in sensitive public processes, (2) countering manipulation and insider misuse through objective settlement and surveillance, and (3) guiding innovation toward designs with demonstrable informational and societal value. The Commission preliminarily believes that these measures, together with the implementation practices described above, are likely to reduce externalities and enhance the welfare of market participants and the public.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to ''take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving'' the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market established pursuant to section 17 of the CEA.[312]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the Proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the Proposal to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the Proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the Proposal is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the Proposal.

E. Executive Orders 12866, 13563, and 14192

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

The Office of Management and Budget has determined that this action is an economically significant regulatory action as defined in section 3(f)(1) of E.O. 12866, and therefore it was subject to E.O. 12866 review.

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

F. Indian Tribal Consultation

Executive Order 13175 requires subject agencies to adhere, to the extent permitted by law, to certain criteria when formulating actions that have tribal implications.[313] The CFTC is not subject to E.O. 13175, but non-subject agencies such as the CFTC are ''encouraged to comply with [its] provisions[.]'' [314] Under E.O. 13175, a subject agency identifies whether an action has tribal implications by assessing whether the action has a substantial direct effect on one or more Indian tribes, the federal tribal relationship, or the distribution of power between tribes and the federal government.[315]

The Commission understands that the Indian Gaming Regulatory Act (IGRA) establishes a comprehensive federal framework for the regulation of gaming on Indian lands, that the National Indian Gaming Commission administers that framework, and that Tribal-State compacts under section 11(d) of the IGRA govern the conduct of Class III gaming.[316] The Commission recognizes the importance of gaming revenue to tribal governments and the federal interest, reflected in the declaration of

[312] 7 U.S.C. 19(b).

[313] E.O. 13175 sec. 3, 65 FR 67249 (Nov. 9, 2000). Commenters on the ANPRM suggested that the Commission should consider E.O. 13175 in any rulemaking about prediction markets. *See, e.g.,* Letter from the Tohono O'odham Nation 15 (Apr. 30, 2026).

[314] E.O. 13175 at secs. 1(c), 8.

[315] *Id.* at secs. 1(a), 3.

[316] The IGRA is codified at 25 U.S.C. 2701 *et seq.* Section 11(d) of the IGRA is codified at 25 U.S.C. 2710(d).

policy in section 2 of the IGRA, in tribal gaming as a means of promoting tribal economic development and self-sufficiency.[317] However, the Proposal involves event contracts traded as swaps or futures contracts, which are subject to the Commission's exclusive jurisdiction.

The Commission agrees that ''[t]he United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions.'' [318] For this reason, Commission staff has met with Indian tribal governments concerning prediction markets and the Commission invites Indian tribal governments and other concerned parties to provide comments on all aspects of the Proposal that may relate to the relationship between the federal and Indian tribal governments or that may affect tribal governmental, economic, or regulatory interests.

List of Subjects in 17 CFR Part 40

Commodity futures, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission hereby proposes to amend 17 CFR part 40 as follows:

PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

■ 1. The authority citation for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 7, 8 and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Amend § 40.7 by adding paragraph (a)(6) to read as follows:

§ 40.7 Delegations.

(a) * * *

(6) The Commission hereby delegates to the Director of the Division of Market Oversight, to be exercised by the Director or by such employees of the Commission as the Director may designate, the authority to perform ministerial and record-development functions under § 40.11, including service of notices, written determinations, and statements and the development of staff recommendations. The Commission does not delegate the functions reserved to the Commission under § 40.11(f).

■ 3. Revise § 40.11 to read as follows:

§ 40.11 Event contracts based upon certain excluded commodities.

(a) *Event contracts subject to a public interest determination*—(1) *Determination.* The Commission may determine, in accordance with the procedures set forth in this section, that agreements, contracts, transactions, or swaps described in paragraph (a)(2) of this section are contrary to the public interest. Agreements, contracts, transactions, or swaps subject to such a determination shall not be listed for trading or accepted for clearing on or through a registered entity.

(2) *Enumerated activities.* This section shall apply to agreements, contracts, transactions, or swaps in excluded commodities based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(19)(i) of the Act) that involve:

(i) Activity that is unlawful under any Federal or State law;

(ii) Terrorism;

(iii) Assassination;

(iv) War;

(v) Gaming; or

(vi) Other activity that the Commission determines, by rule or regulation, to be similar to one or more activities enumerated in paragraphs (a)(2)(i) through (v) of this section.

(3) *Involve.* For purposes of paragraph (a)(2) of this section, agreements, contracts, transactions, or swaps involve an activity if their settlement is determined by an occurrence, extent of an occurrence, or contingency in the activity.

(4) *Factors for involvement of enumerated activity.* In determining whether agreements, contracts, transactions, or swaps involve an activity enumerated in paragraph (a)(2) of this section, the Commission shall consider the following factors:

(i) *Involvement of activity that is unlawful under any Federal or State law.* In determining whether agreements, contracts, transactions, or swaps involve activity that is unlawful under any Federal or State law, the Commission shall consider the relevant laws and whether the occurrence, extent of an occurrence, or contingency on which an event contract is based occurs in an activity that is unlawful under any Federal or State law. The discussion in paragraph (b) of appendix F to this part describes how the Commission shall consider these factors.

(ii) *Involvement of terrorism, assassination, or war.* In determining whether agreements, contracts, transactions, or swaps involve terrorism, the Commission shall consider the extent to which they involve violent or destructive activities occurring outside the United States with an element of coercion or intimidation and some relationship to political or social groups or ideologies. In determining whether agreements, contracts, transactions, or swaps involve assassination, the Commission shall consider the extent to which they involve any intentional killing of an individual outside the United States. In determining whether agreements, contracts, transactions, or swaps involve war, the Commission shall consider the extent to which they involve belligerent military activities and violent activities by organized groups. The discussion in paragraph (c) of appendix F to this part describes how the Commission shall consider these factors.

(iii) *Involvement of gaming.* In determining whether agreements, contracts, transactions, or swaps involve gaming, the Commission shall consider the definition of ''gaming'' in paragraph (b)(1) of this section. The discussion in paragraph (d) of appendix F to this part describes how the Commission shall interpret this definition.

(5) *Public interest factors applicable to all agreements, contracts, transactions, or swaps subject to this section.* In determining whether agreements, contracts, transactions, or swaps described in paragraph (a)(2) of this section are contrary to the public interest, the Commission shall consider all of the factors in this paragraph (a)(5) as well as the factors in paragraph (a)(6) of this section applicable to the activity that such agreements, contracts, transactions, or swaps involve.

(i) The Commission shall consider whether such agreements, contracts, transactions, or swaps serve the public interest by providing meaningful hedging or price-basing utility consistent with section 3 of the Act, yielding economically useful or otherwise meaningful information, or promoting responsible innovation and fair competition.

(ii) The Commission shall consider whether the agreements, contracts, transactions, or swaps present a particular risk of manipulation or market disruption, exhibit settlement integrity deficits arising from their particular characteristics, or create particular risks of information leakage or exploitation of material non-public information by insiders.

(iii) The Commission shall consider whether trading or clearing of the agreements, contracts, transactions, or swaps would challenge the registered entity's self-regulatory tools or compliance infrastructure.

[317] 25 U.S.C. 2701.

[318] E.O. 13175 at sec. 2(a).

(iv) The discussion in paragraph (f) of appendix F to this part describes how the Commission shall consider the factors in this paragraph (a)(5).

(6) *Public interest factors relevant to specific activities.* In determining whether agreements, contracts, transactions, or swaps described in paragraph (a)(2) of this section are contrary to the public interest, the Commission shall consider the factors in this paragraph (a)(6) relevant to the activity that such agreements, contracts, transactions, or swaps involve, as well as the factors in paragraph (a)(5) of this section.

(i) *Activity that is unlawful under any Federal or State law.* (A) Regarding such agreements, contracts, transactions, or swaps that involve activity that is unlawful under any Federal law, the Commission shall consider the extent to which they involve activity that Congress has determined to be illegal under federal law.

(B) Regarding such agreements, contracts, transactions, or swaps that involve activity that is unlawful under any State law, the Commission shall consider the extent to which they involve activity that is unlawful under State law, taking into account variations in State laws, relevant judicial precedents, and whether the underlying activity is generally considered as causing or posing public harm.

(C) The extent to which any such agreements, contracts, transactions, or swaps (involving activity that is unlawful under any Federal or State law) involve aggregate crime rates in a geographic area over extended periods shall weigh against a finding that such agreements, contracts, transactions, or swaps are contrary to the public interest.

(D) The discussion in paragraph (g)(1) of appendix F to this part describes how the Commission shall consider the factors in this paragraph (a)(6)(i).

(ii) *Terrorism, assassination, or war.* Regarding such agreements, contracts, transactions, or swaps that involve terrorism, assassination, or war, the Commission shall consider the factors in this paragraph (a)(6)(ii). The extent to which each such factor is relevant would weigh in favor of finding that such agreements, contracts, transactions, or swaps are contrary to the public interest.

(A) *National security.* Whether such agreements, contracts, transactions, or swaps present a material risk to national security, including by providing a vehicle for individuals planning a terrorist attack, assassination, or act of war to create misleading market signals or otherwise divert law enforcement or military resources.

(B) *Inside information.* Whether persons with insight into the probability of the underlying event are likely to be insiders subject to a duty of confidentiality with respect to that information, and such duty cannot be adequately addressed through surveillance and trading prohibitions of the registered entity.

(C) *Facilitation.* Whether such agreements, contracts, transactions, or swaps create a financial incentive for any person to commit, facilitate, or encourage the underlying terrorist act, assassination, or act of war.

(D) *Lack of meaningful information.* Whether trading in such agreements, contracts, transactions, or swaps is unlikely to yield meaningful information, taking into account that persons with material insight into the underlying event are typically subject to a duty to report that information to authorities rather than to trade upon it.

(E) *Reference to appendix.* The discussion in paragraph (g)(2) of appendix F to this part describes how the Commission shall consider the factors in this paragraph (a)(6)(ii).

(iii) *Gaming.* Regarding such agreements, contracts, transactions, or swaps that involve gaming, the Commission shall consider the factors in this paragraph (a)(6)(iii).

(A) *Positive public interest factors.* The extent to which a factor in this paragraph (a)(6)(iii)(A) is relevant would weigh against a finding that such agreements, contracts, transactions, or swaps are contrary to the public interest.

(*1*) *Aggregate outcome.* Whether settlement of such agreements, contracts, transactions, or swaps is based on the aggregate outcome of one or more professional or collegiate games, including final scores, point differentials, win-loss results, tournament advancement, individual or team statistical performance, or season-long performance metrics.

(*2*) *Individual statistical performance.* Whether settlement of such agreements, contracts, transactions, or swaps is based on aggregate statistical performance of an individual over the course of a game.

(*3*) *Objectively determinable settlement data.* Whether settlement of such agreements, contracts, transactions, or swaps is based on reference to publicly reported, league-verified, or otherwise objectively determinable settlement data, as opposed to data dependent upon inherently subjective determinations.

(*4*) *Integrity framework.* Whether the underlying game is subject to an established integrity framework, including a recognized governing body, an integrity unit or comparable monitoring function, published rules of competition, and disciplinary procedures applicable to participants, officials, and other personnel.

(*5*) *Information sharing.* Whether the registered entity has established formal information-sharing or coordination arrangements with the league, governing body, or integrity monitoring organization relevant to the underlying game, including, with respect to collegiate games, the National Collegiate Athletic Association.

(*6*) *Surveillance.* Whether the registered entity maintains appropriate surveillance and trading prohibitions, and coordination with relevant governing bodies, with respect to such agreements, contracts, transactions, or swaps.

(B) *Negative public interest factors.* The extent to which a factor in this paragraph (a)(6)(iii)(B) is relevant would weigh in favor of a finding that such agreements, contracts, transactions, or swaps are contrary to the public interest.

(*1*) *Random chance.* Whether such agreements, contracts, transactions, or swaps involve a game that depends entirely on random chance.

(*2*) *Player injury.* Whether such agreements, contracts, transactions, or swaps settle solely by reference to the duration, severity, occurrence, or medical diagnosis of one or more injuries sustained by one or more participants in the game.

(*3*) *Officiating outcome.* Whether such agreements, contracts, transactions, or swaps settle solely by reference to one or more judgment calls, discretionary decisions, or rulings of referees, umpires, or other game officials, including without limitation penalties assessed, fouls called or not called, reviews initiated, video replay decisions, player ejections, or disciplinary rulings made during live games.

(*4*) *Discrete actions.* Whether such agreements, contracts, transactions, or swaps settle solely by reference to a discrete action, event, or occurrence in a game.

(*5*) *Physical altercations.* Whether such agreements, contracts, transactions, or swaps settle solely by reference to one or more physical altercations, fights, or conduct between players or participants in the game that are subject to penalty ejection or disciplinary action.

(*6*) *Pre-collegiate games.* Whether such agreements, contracts, transactions, or swaps settle solely by reference to one or more games or outcomes in which participants are below the collegiate level.

(C) *Reference to appendix.* The discussion in paragraph (g)(3) of appendix F to this part describes how the Commission shall consider the factors in this paragraph (a)(6)(iii).

(b) *Gaming.* (1) For purposes of this section, ''gaming'' means 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.

(2) [Reserved]

(c) *Initiation of review.* (1) The Commission may commence a review under this section only by a written determination of the Commission that there is a basis to believe that an agreement, contract, transaction, or swap submitted by a registered entity under § 40.2 or § 40.3 both involves an activity enumerated in paragraph (a)(2) of this section, considering the factors in paragraph (a)(4) of this section, and may be contrary to the public interest under the factors set forth in paragraphs (a)(5) and (a)(6) of this section. Such review must commence no later than 10 days after the date of the listing of an agreement, contract, transaction, or swap under review.

(2) The Commission's written determination initiating review shall identify:

(i) The specific submission or submissions under § 40.2 or § 40.3 that are under review;

(ii) The enumerated activity under paragraph (a)(2) of this section that is implicated;

(iii) The specific terms of the agreements, contracts, transactions, or swaps at issue; and

(iv) The factors in paragraphs (a)(4), (a)(5), and (a)(6) of this section that the Commission has determined warrant review.

(3) The Commission shall provide the written determination to the registered entity making a submission referred to in paragraph (c)(1) of this section and post it on the Commission's website. The 90-day review period commences on the date the written determination is provided to the registered entity.

(4) The Commission may consolidate review of multiple submissions under § 40.2 or § 40.3 that involve the same underlying event or a substantially similar set of underlying events. In such case, the written determination referred to in paragraph (c)(2) of this section shall identify a description of the consolidated group. The consolidated group of submissions may include submissions by more than one registered entity, in which case the written determination referred to in paragraph (c)(2) of this section shall be provided to each such registered entity and references in this section to the registered entity shall include all such registered entities.

(5) The Commission may request that the registered entity suspend the listing or trading of the agreements, contracts, transactions, or swaps subject to a 90-day review during the pendency of the review period.

(d) *Pre-decisional process*—(1) *Statement of concerns.* Not later than 15 days after the date the registered entity is provided the written determination under paragraph (c)(3) of this section, the Director of the Division of Market Oversight shall provide the registered entity a written statement identifying the factual basis, legal theory, specific contract terms, and factors in paragraphs (a)(4), (a)(5), and (a)(6) of this section supporting the Commission's review.

(2) *Registered entity response.* Not later than 30 days after the date the registered entity is provided the written determination under paragraph (c)(3) of this section, the registered entity may submit a written response, including supporting data, expert submissions, economic analysis, and any proposed modifications to the agreements, contracts, transactions, or swaps.

(3) *Recommendation.* Not later than 60 days after the date the registered entity is provided the written determination under paragraph (c)(3) of this section, the Director of the Division of Market Oversight, with the concurrence of the General Counsel, may submit to the Commission a written recommendation regarding the Commission's determination. The recommendation shall address the registered entity's response and any proposed modifications and shall be provided simultaneously to the registered entity.

(4) *Response to recommendation.* Not later than 70 days after the date the registered entity is provided the written determination under paragraph (c)(3) of this section, the registered entity may submit to the Commission a written response to the recommendation under paragraph (d)(3) of this section. The response shall be limited in scope to the recommendation.

(5) *Extensions.* The 90-day review period may be extended only with the agreement of, or upon the request of, the registered entity.

(e) *Determination.* (1) Not later than 90 days after the date the registered entity is provided the written determination under paragraph (c)(3) of this section, or at the conclusion of any extension under paragraph (d)(5) of this section:

(i) The Commission may issue an order finding that the agreement, contract, transaction, or swap, or consolidated group of agreements, contracts, transactions, or swaps, under review is contrary to the public interest and such review shall be deemed concluded; or

(ii) If the Commission does not issue an order under paragraph (e)(1)(i) of this section, or if 100 days have passed since the date of the listing of the agreements, contracts, transactions, or swaps under review (and any extension under paragraph (d)(5) of this section has concluded), the agreements, contracts, transactions, or swaps, or consolidated group of agreements, contracts, transactions, or swaps, that are subject to such review may be, or continue to be, listed for trading and accepted for clearing on or through a registered entity and such review shall be deemed concluded.

(2) An order under paragraph (e)(1)(i) of this section shall include written findings:

(i) Addressing each factor in paragraphs (a)(4), (a)(5), and (a)(6) of this section on which the Commission relied;

(ii) Weighing the factors favoring listing against those disfavoring listing; and

(iii) Explaining the consistency of the order with prior Commission determinations involving comparable agreements, contracts, transactions, or swaps, or providing a reasoned explanation for any departure.

(f) *Limits on delegation.* Notwithstanding any other provision of this part, the Commission shall not delegate any of the following:

(1) The determination to initiate a review under paragraph (c)(1) of this section;

(2) The submission of a recommendation to the Commission under paragraph (d)(3) of this section, except to the extent provided in that paragraph; or

(3) The issuance of a determination under paragraph (e) of this section.

■ 4. Add appendix F to part 40 to read as follows:

Appendix F to Part 40—Factors To Determine Whether Event Contracts Involve Enumerated Activities and, if so, Are Contrary to the Public Interest

(a) *Definitions.* In this appendix the following terms have the meanings set forth in this paragraph (a).

''Enumerated Activity'' means an activity enumerated in clauses (I) to (VI) of section 5c(c)(5)(C)(i) of the Act.

''Event contract'' means an agreement, contract, transaction, or swap that is subject to the Special Rule.

''Prediction market'' means a designated contract market or swap execution facility that offers for trading event contracts in the form of swaps or contracts of sale of a commodity for future delivery.

''Special Rule'' means section 5c(c)(5)(C) of the Act.

(b) *Factors to Determine Whether Event Contracts Involve Activity That is Unlawful Under Any Federal or State Law.* In determining whether agreements, contracts, transactions, or swaps involve activity that is unlawful under any Federal or State law, the Commission shall consider the factors in § 40.11(a)(4)(i) as set forth in this paragraph (b).

(1) *Survey of relevant law.* Where there is a question regarding whether an event contract submitted to the Commission involves activity that is unlawful under any Federal or State law, the Commission would survey the relevant law.

(2) *State laws*—(i) *Discrepancies.* Where an activity is illegal under the laws of some States, but not others, the Commission would consider whether the discrepancy relates to any of the factors that would apply in determining if the event contract is contrary to the public interest. For example, if an activity is illegal under the laws of some States, and the relevant factors suggest that event contracts involving that activity would be found to be contrary to the public interest, then the Commission would be more likely to find that the event contract involves unlawful activity and is within the scope of the Special Rule.

(ii) *Archaic laws.* The Commission acknowledges that many state codes include laws prohibiting certain activity that, while not repealed, are generally considered archaic and are not enforced. The Commission believes that it is unlikely that a prediction market would seek to list for trading or accept for clearing an event contract involving such a law. To the extent that a prediction market does make a submission to the Commission regarding a contract that may involve such a law, the Commission believes that it may be appropriate to commence a review of the contract pursuant to § 40.11(c) to evaluate whether, in light of the relevant facts and circumstances, it is appropriate to recognize the contract as involving ''activity that is unlawful under any . . . State law'' for purposes of § 40.11(a)(1).

(3) *Staff review.* The Commission notes further that a prediction market may receive a definitive resolution of any questions concerning the applicability of § 40.11(a)(1) by submitting a contract for Commission approval under § 40.3. CFTC staff also may, at its discretion and upon a request from a prediction market, review a draft contract submission or proposal and provide guidance concerning the contract's compliance with the Act and CFTC regulations, including § 40.11(a)(1). The Commission notes, however, that staff's guidance concerning drafts and proposals is preliminary and non-binding. CFTC staff formally reviews contracts only at such time as a compliant submission is provided to the Commission pursuant to § 40.2 or § 40.3.

(4) *Examples.* (i) An event contract that settles on whether an individual will murder someone involves an activity that is unlawful under State law, because the settlement-determining occurrence—the murder—is itself within unlawful activity.

(ii) By contrast, an event contract that settles on whether an individual is convicted of securities fraud by a specified date does not involve activity that is unlawful under State or Federal law within the meaning of the Special Rule. The settlement-determining occurrence is the entry of a judgment of conviction by the court, which is a lawful judicial act. Although the underlying conduct alleged in the indictment would, if proven, constitute unlawful activity, the event contract's settlement is determined by the court's judgment rather than by the underlying conduct itself. The same analysis applies to an event contract settling on whether a defendant in a specified Federal securities-fraud prosecution is sentenced to a term of imprisonment exceeding a specified threshold, or whether a specified judgment of conviction is affirmed on appeal by a specified court.

(c) *Factors to Determine Whether Event Contracts Involve Terrorism, Assassination, or War.* In determining whether agreements, contracts, transactions, or swaps involve terrorism, assassination, or war, the Commission will consider the factors in § 40.11(a)(4)(ii) as set forth in this paragraph (c).

(1) *In general.* Generally, the Commission intends to interpret the terms ''terrorism,'' ''assassination,'' and ''war'' broadly and without making distinctions based on criteria under international law, such as whether a war has been formally declared. The Commission also notes that terrorism and assassination would be unlawful under Federal or State law, and the Commission generally interprets these Enumerated Activities to encompass events occurring outside the United States, including against non-U.S. persons. For clarity, the Commission notes that event contracts involving more than one Enumerated Activity would be subject to the Special Rule.

(2) *Terrorism.* (i) Terrorism includes all violent or destructive activities occurring outside the United States with an element of coercion or intimidation and some relationship to political or social groups or ideologies. To find that an activity constitutes terrorism would not require identification of a specific aim or demand, or identification of a specific responsible group. Terrorism encompasses cyberterrorism and other forms of attack that cause substantial destruction or disruption through non-physical means, where the attack is conducted with an element of coercion or intimidation and bears a relationship to political or social group or ideologies. Since unlawful activity inside the United States is an Enumerated Activity, it is irrelevant whether a particular unlawful activity in the United States constitutes domestic terrorism.

(ii) *Examples.* (A) An event contract that settles on whether a certain organization outside the U.S. conducts an armed attack causing more than ten civilian deaths in a certain location during a certain month involves terrorism within the meaning of the Special Rule. The settlement-determining occurrence is the attack itself, which is within the terrorism activity.

(B) An event contract that settles on whether a coordinated cyberattack attributed by the United States Cybersecurity and Infrastructure Security Agency to a state-sponsored or politically motivated actor causes the operational shutdown of electricity transmission in a certain location for more than twenty-four hours in a certain time period involves terrorism.

(C) By contrast, an event contract that settled on whether the Transportation Security Administration implements enhanced screening procedures at certain airports does not involve terrorism, because the settlement-determining occurrence is a governmental administrative action, which is a lawful exercise of agency authority, rather than any act of terrorism.

(3) *Assassination.* (i) An act constitutes assassination when the target is a prominent individual and the attack is connected to a political or social motive. The Commission believes that any person who is the subject of an event contract is prominent, and that the relationship to a political or social motive should be interpreted broadly. Therefore, any intentional killing of an individual outside the United States would be an assassination.

(ii) *Examples.* (A) An event contract that settles on whether a foreign leader dies as a result of an attack by an organized political or military faction by a certain date involves assassination. The settlement-determining occurrence is itself within the assassination activity.

(B) By contrast, an event contract that settles on whether the leader will lose an election does not involve assassination, war, or any other Enumerated Activity.

(4) *War.* (i) The Commission intends that the factors to define war would encompass all belligerent military activities and violent activities by organized groups. By referring to belligerent military activity, the Commission does not intend to include any non-belligerent military activities, such as routine deployments, training or disaster relief assistance. That is, this Enumerated Activity is not limited to declared wars and would include the belligerent activities of both government and civil militias. It would also include civil wars and civil unrest by organized groups.

(ii) Because the Special Rule is applied to particular event contracts, the Commission believes that it is not appropriate to apply a temporal or quantitative threshold to determine if belligerent military or violent activities constitute ''war.'' For example, if

event contracts were certified about a single belligerent military activity, it would not be appropriate to examine whether that activity was isolated or rather a part of a campaign over a certain time. Instead, the proposed factors explain that event contracts about a single belligerent military or organized violent activity would involve war.

(iii) *Examples.* (A) A contract that settles on whether a foreign government conducts a missile or drone strike against a target within a certain city during a certain fiscal quarter involves war within the meaning of the Special Rule, because the settlement-determining occurrence is itself a military activity within the war activity.

(B) A contract that settles on whether a foreign government conducts a naval or amphibious military action against another government likewise involves war, regardless of whether such action is characterized as a declared war or a more limited military operation, because the event contract's settlement turns on the occurrence of a belligerent military activity by an organized armed force.

(C) By contrast, an event contract that settles on whether the front-month Brent crude oil futures contract closes above $120 per barrel on any trading day during a certain fiscal quarter does not involve war within the meaning of the Special Rule, even though oil prices are sensitive to military and geopolitical conditions. The settlement-determining occurrence is the published settlement price of an exchange-traded futures contract, which is a measurement produced by a registered futures exchange.

(5) *Multiple causal pathways.* (i) The foregoing analysis addresses event contracts whose settlement-determining occurrence falls within an Enumerated Activity on the face of the event contract's terms. A separate question arises when an event contract's settlement-determining occurrence is facially neutral—that is, when the occurrence on which settlement turns can be reached through multiple causal pathways, at least one of which falls within terrorism, war, or assassination. In such cases, the Commission would understand the event contract to involve the Enumerated Activity unless the event contract's terms specify the qualifying settlement pathways with sufficient detail to exclude the Enumerated-Activity pathway. An event contract drafted at a level of generality that permits settlement on the basis of an act of terrorism, war, or assassination is treated as involving that activity. This approach reflects the Commission's view that the Special Rule's protective purpose would be undermined if registered entities could avoid its application by drafting settlement conditions broadly enough to encompass Enumerated-Activity pathways alongside non-enumerated ones.

(ii) *Examples.* (A) An event contract that settles on whether a foreign leader is out of office by a certain date, without further specification of the qualifying mechanisms, involves assassination within the meaning of the Special Rule because assassination is among the pathways by which the settlement condition can be satisfied

(B) The same event contract, redrafted to settle only on whether the named individual ceases to hold office ''by reason of electoral defeat, resignation, constitutional removal, negotiated departure, or natural death,'' would not involve assassination, because the event contract's terms specify the qualifying pathways and exclude the Enumerated-Activity pathway.

(C) Similarly, an event contract that settles on whether a specified facility of a certain foreign nation remain functional as of a certain date would involve war, because an activity of war is among the pathways by which the facility could cease to remain functional; the same event contract, redrafted to settle only on whether the facility is demolished pursuant to a government order, or to negotiated terms of a diplomatic deal, would not.

(d) *Factors to Determine Whether Event Contracts Involve Gaming.* In determining whether agreements, contracts, transactions, or swaps involve gaming, the Commission will consider the definition of ''gaming'' in § 40.11(b)(1) as set forth in this paragraph (d).

(1) *Ordinary meaning.* The Commission believes that the word ''gaming'' in the statute carries its ordinary, plain meaning and involves playing a game. Dictionaries define ''gaming'' as ''the practice or activity of playing games for stakes'' and ''the practice or activity of playing games.'' The Commission's interpretation of the term ''gaming'' in this appendix F is limited to the Special Rule context and does not purport to interpret or displace any other federal or state statutory regime using the same or a related term.

(2) *Interpretive principles.* (i) In interpreting ''gaming,'' the Commission considers it important to recognize what the Special Rule's other Enumerated Activities describe. Terrorism, assassination, war, and unlawful activity each describe activities that happen in the world: wars are fought, assassinations are carried out, crimes are committed. The term ''gaming'' must play the same grammatical and functional role in the statute. ''Gaming'' is the game itself, the activity that occurs.

(ii) This matters for two reasons. First, this structural reading is essential to giving effect to the Special Rule's operative text. As discussed above in connection with the term ''involve,'' the Commission interprets the Special Rule as asking whether event contracts' settlements are determined by the occurrence of an Enumerated Activity. That inquiry presupposes a distinction between the event contract and the underlying activity to which it refers. Enumerated Activities must therefore be activities in the world that event contracts can reference.

(iii) A definition that characterizes ''gaming'' as a property of the event contract itself (for example, ''the act of risking something of value, especially money, for a chance to win a prize'') cannot coherently be applied because it has no limiting principle. Under such a definition, every event contract would involve ''gaming'' by definition, because every event contract stakes value on a contingent outcome.

(iv) For similar reasons, a wagering- or gambling-centered definition of gaming is overbroad. Ordinary definitions of ''gambling'' include ''the act of risking something of value, especially money, for a chance to win a prize.'' A definition of gaming built around wagering would apply to all event contracts and render the Special Rule's ''gaming'' category limitless. The Commission believes the coherent reading is the one the ordinary meaning of the word naturally supplies: gaming is the game itself—the activity in which occurrences, the extent of occurrences, or contingencies determine settlement.

(v) Under this approach, the word ''gaming'' derives from ''game,'' which in turn is a word with many nuances and meanings. The Commission believes that the meaning of ''game'' relevant to the Special Rule encompasses the activities that are games in common parlance—sports games, athletic competitions, and recreational games including games of chance.

(vi) The Commission derived the definition of gaming in § 40.11(b) from dictionary definitions of the term ''game'' to mean ''a physical or mental competition conducted according to rules with the participants in direct opposition to each other'' and ''activity engaged in for diversion or amusement,'' or ''an activity which provides amusement or fun'' and ''a contest or competition, governed by rules of play, according to which victory or success may be achieved through skill, strength, or good luck.''

(vii) As noted above, the Commission aims to capture the activities that are games in common parlance. To do so, the purposes for which participants typically engage in the activity must be an element of the definition. The Commission notes that, as discussed further below, a definition of ''gaming'' to encompass any competition with rules and measurable outcomes depending on skill, without considering the purpose of the activity, would be very broad and contrary to the common understanding of games.

(3) *Clauses of the definition.* (i)(A) The Commission intends that the first clause of the regulatory definition—a typical purpose of ''recreation or to entertain others''—will reflect the dictionary definitions' reference to amusement and also capture professional sports, which are commonly understood to be games. By looking to the typical purpose of the activity, the regulatory definition acknowledges that there may be atypical circumstances where participants have different purposes for engaging in an activity that is a game in common parlance, but the activity should still be encompassed in ''gaming.'' The Commission intends that the term ''recreation'' in the definition would include many elements, such as when participants engage in the activity for the simple pleasure of the activity, the personal satisfaction of meeting a challenge, and the enjoyment of competing against others. The proposed definition encompasses a mix of recreational and entertainment purposes, as well as the variety of purposes subsumed within ''recreation.'' The Commission notes that a recreational or entertainment purpose is not contrary to the activity having financial or economic consequences. Recreation and entertainment are large parts of the U.S. economy.

(B) To the extent professional participants are not engaged in recreation, they are

engaged in gaming to entertain others. The Commission understands that professional athletes are paid or receive monetary compensation and are therefore motivated by the opportunity to earn an income. Nonetheless, the Commission believes it is accurate, and in accordance with common understanding, to say that the purpose of the participants in a professional sporting activity is typically to entertain an audience (and also to gain personal satisfaction through achievement). The salary or compensation that the participants receive is a result of fulfilling the entertainment purpose.

(ii) That ''gaming'' must be governed by rules simply conveys what the Commission believes to be the commonsense understanding of a game and conforms to the dictionary definitions.

(iii) To be covered by the Special Rule, the Commission believes that the activity must have measurable occurrences or outcomes. These occurrences in the game or outcomes at the end of a game would be the potential bases for event contracts. And, in keeping with the recreational or entertainment purpose of the activity, the occurrences or outcomes must depend on luck, skill, or athletic ability during the activity. Thus, gaming includes all games of chance (*e.g.,* roulette), games requiring skill (*e.g.,* chess), and games of mixed chance and skill (*e.g.,* poker). The definition includes both skill and athletic ability to be clear that gaming includes all sports, including e-sports and sports where judges rank participants based on their skill or athletic ability during the activity.

(iv) *Examples.* (A) If the outcome of the activity depends on other factors such as judges' evaluation of the participants' merit or qualifications on a broader basis than a certain activity, it is not gaming. For example, a figure skating competition is gaming because the skaters—the participants in the activity—are doing so for recreation and to entertain others. Under the rules of the game, judges rank the participants based on their skill and athletic ability displayed in the competition.

(B) On the other hand, an award of ''figure skater of the year'' based on a vote or panel of judges is a contest, not gaming, if its purpose is to honor the person who the judges assess to have displayed the best overall figure skating ability over the past year. The requirements that gaming have a recreational or entertainment purpose, and that the occurrences or outcome of the activity depend on the participants' luck, skill, or athletic ability during the activity, distinguish gaming from other competitive activities. The same distinction would apply whether the judges are individual people or algorithms developed by the organizers of the event. If the outcome is decided by algorithms based only on skill and ability during the activity, it would be gaming. If the algorithm considers other factors, it would not be gaming.

(4) *Contests.* In this paragraph (d), the term ''contest'' refers to an activity where participants compete for a prize, honor, award or position based on their qualifications or merit displayed in general or over an extended period. These contests are not gaming.

(i) Political elections illustrate the distinction between gaming and contests. Elections typically serve the purpose of selecting political leadership, not recreation or entertainment. Their outcomes do not turn on the participants' luck, skill, or athletic ability during the election itself, but rather on voters' judgment regarding who should hold office, informed by considerations beyond the discrete election period. Thus, political elections are not gaming.

(ii) Similarly, contests like the Nobel Prize and the Academy Awards are not gaming. The outcome of these contests depends on electors' judgment on who should receive an award based on a range of considerations beyond the participants' luck, skill, or athletic ability displayed during the contest. Because the award turns on evaluative judgments, *not on measurable occurrences dependent on the participants' skill or athletic ability in the activity itself,* it is a contest, not gaming.

(iii) Mere association with athletic performance does not change this analysis. For example, the Cy Young Award, which is presented annually by the Baseball Writers' Association of America to the two best baseball pitchers, is not gaming. Although players are recognized for their athletic performance during the season, the outcome is ultimately determined by the judgment of a panel of voters, who assess overall performance without being strictly limited to occurrences in any game or games. On the other hand, an event contract on which baseball pitcher will record the most strikeouts in a season is gaming. Its outcome depends on a measurable outcome of the participants' skill and athletic ability in games—*i.e.,* who records the most strikeouts.

(5) *Other gambling.* The Commission also notes that if an activity is not gaming as defined above, the mere fact that gambling occurs in relation to that activity does not make it gaming. For example, if gambling occurs on who will win the Nobel Prize, that gambling does not change the fact that the Nobel Prize contest is not gaming, and event contracts based on who will win the Nobel Prize would not be subject to the Special Rule. In other words, the Commission believes that the definition of gaming in § 40.11 should be limited to events that are games.

(6) *Events happening in games.* (i) Whether an event contract involves gaming depends on whether its settlement is determined by the occurrence, extent of an occurrence, or contingency in a gaming activity. The outcome of a game is an occurrence in a game. Accordingly, gaming includes events happening in games but does not include events occurring in connection with or around games.

(ii) *Examples.* (A) An event contract on whether a football player will score a certain number of touchdowns in a game involves gaming: settlement is determined by an occurrence in the football game.

(B) An event contract on attendance at the football game does not involve gaming: settlement is determined by ticket-purchasing decisions by prospective attendees, not by an occurrence in the game itself.

(C) Similarly, an event contract on whether a particular athlete will win a gold medal at the Olympic Games involves gaming: settlement is determined by a contingency in the Olympic athletic event itself.

(D) An event contract on which city will host future Olympic Games does not involve gaming: settlement is determined by the International Olympic Committee's host-selection decision, which is a political and economic decision rather than occurrence in any gaming activity.

(e) *Illustrative examples of event contracts not within scope.* While the Commission cannot anticipate every contract design, the Commission believes that event contracts based on the following would generally fall outside of the scope of the Special Rule and § 40.11. For the avoidance of doubt, these event contracts remain subject to the statutory and regulatory requirements for listing and trading of event contracts.

- Rates, measures or levels of economic indicators, including the CPI and other price indices; the U.S. trade deficit with another country; measures related to GDP, jobless claims, or the unemployment rate; and U.S. new home sales.
- Rates, measures or levels of financial indicators, including the federal funds rate; total U.S. credit card debt; fixed-rate mortgage averages (*e.g.,* the 30-year fixed-rate mortgage interest rate); and the values for broad-based stock indexes at particular times.
- Rates, measures or levels of foreign exchange rates or currencies.
- Results of political elections and outcomes or occurrences of political activities, such as legislative votes, enactments of laws or appointments of people to political offices.
- Results or outcomes of honor and award contests, or occurrences during those contests, such as who will win or be nominated for a particular award, or when or if an award will be granted.

(f) *Public interest factors applicable to all agreements, contracts, transactions, or swaps subject to § 40.11.* In determining whether agreements, contracts, transactions, or swaps described in § 40.11(a)(2) are contrary to the public interest, the Commission will consider all of the factors in § 40.11(a)(5) as set forth in this paragraph (f). The Commission will also consider the factors in § 40.11(a)(6) applicable to the activity that such agreements, contracts, transactions, or swaps involve, as set forth in paragraph (g) of this appendix.

(1) *Overview.* (i) The Special Rule does not define the term ''public interest.'' While section 3 of the Act guides the Commission's consideration of whether a contract is contrary to the public interest, it is not the Commission's exclusive consideration. The Commission observes that by limiting the application of the Special Rule to Enumerated Activities—activity that is unlawful under any federal or state law, terrorism, assassination, war, and gaming—Congress specified the areas that are of particular public interest concern. The Commission believes that the Special Rule is an instruction to apply a particular, focused

public interest analysis to specific types of event contracts. That is, the Commission should consider how the public interest purposes of the Act (and other public interest factors) may be particularly implicated in the context of event contracts involving Enumerated Activities. The discussion in this section includes an explanation of when the Commission believes it should apply these public interest factors in a more focused manner than the same factors would be applied to other event contracts that do not involve Enumerated Activities and are not subject to the Special Rule.

(ii) Further, the Commission believes the public interest review should focus on specific, potential harms, rather than a broad or indeterminate inquiry into the ''public good.'' The relevant question is whether particular event contracts that otherwise satisfy all applicable requirements nonetheless raise public interest concerns.

(iii) The Commission believes that the public interest inquiry under the Special Rule encompasses considerations in addition to compliance with the Core Principles and other requirements under the Act.

(iv) *Multi-factor approach.* (A) Given the range of the Enumerated Activities and potential breadth of event contracts that could be listed, the Commission believes it is appropriate to consider a series of factors when determining whether an event contract that involves an Enumerated Activity is contrary to the public interest, instead of relying on a single, static public interest test. The Special Rule contemplates a review that considers the public interest, including the public interests underlying the Act, in a holistic manner to determine whether the event contracts in question raise the potential for harms to the public interest that outweigh any utility or public interest value of the event contracts. The Commission believes that evaluating whether an event contract is contrary to the public interest through multiple factors, rather than a single static test, is beneficial because it allows the Commission to account for the diversity and complexity of event contracts that could fall within the Enumerated Activities.

(B) A multifactor approach enables the Commission to weigh different dimensions of potential harm or public benefit—including the event contract's hedging or price-basing utility or potential to encourage illicit behavior—while also accommodating novel event contract designs and market developments and supporting innovation. This flexibility helps to ensure that the Commission's analysis remains consistent, transparent, and adaptable across a wide range of event contracts, rather than constrained by an overly rigid or underinclusive test. The Commission notes that no single public interest factor discussed below would be dispositive as the Commission will apply a range of public interest considerations when determining whether an event contract is contrary to the public interest. The Commission also notes that the factors that inform a public interest determination, and the weight given to each such factor, are likely to vary depending on the particular characteristics of the event contract and Enumerated Activity being evaluated.

(v) To provide a consistent and transparent framework for evaluating event contracts subject to a public interest review under the Special Rule, the Commission will apply the factors in this section to all such event contracts. In addition to these general considerations, the Commission will also apply more specific public interest factors tailored to the specific Enumerated Activity which a given event contract involves, as discussed in paragraph (g) of this appendix. The Commission notes that no single factor is dispositive as the Commission would weigh the various factors on balance.

(2) *Price discovery and information aggregation utility*—(i) *Overview.* (A) The factors in this section consider whether the event contracts serve the public interest by providing meaningful hedging or price basing utility consistent with section 3 of the Act, yielding information that is economically, financially, or commercially useful or otherwise meaningful, or promoting responsible innovation and fair competition. As discussed above, the public interests underlying the Act are stated in section 3 as findings that hedging and price formation are the public purpose of CFTC-regulated markets and are in the public interest.

(B) The Commission believes that event contracts subject to the Special Rule, like other event contracts, can play a role in ''managing and assuming price risks, discovering prices, or disseminating pricing information'' as contemplated by section 3(a) of the Act.

(C) Also, prediction markets function as information aggregation vehicles because event contract prices reflect the market participants' aggregate beliefs regarding whether the events will occur.

(D) Another purpose stated in section 3(b) of the Act is to promote responsible innovation and fair competition.

(E) The Commission believes that these public interests underlying the Act, relevant to all derivatives under the CFTC's jurisdiction, should be included in the Commission's review under the Special Rule. Therefore, when reviewing event contracts involving an Enumerated Activity, the Commission will consider whether the event contracts can facilitate these functions.

(F) The Commission believes it is not necessary to demonstrate that event contracts have a reasonable potential for a hedging or pricing function to avoid a finding that the event contracts are contrary to the public interest. Still, event contracts' reasonable potential for a hedging or pricing function would be a significant factor against a finding that they are contrary to the public interest. As part of this inquiry, the Commission will consider whether the event contracts can meaningfully facilitate risk transfer and price discovery.

(ii) *Use of information in economic decisions.* (A) The Commission believes that price discovery and the connection between prices and economic decisions become more complex as information is used in economic decision-making in ever more sophisticated ways. Economic modeling uses inputs from a multitude of sources to guide decision-making on a variety of topics that are not necessarily directly tied to a specific commodity market. Whether event contracts have a potential price discovery function depends not just on whether the price of a particular event contract can be used, alone, to make economic decisions. Instead, the event contracts' role in price discovery can arise from how the prices of a variety of event contracts can be factored into decision-making processes. Event contracts can serve as a collective assessment of not only the likelihood of events, but also the level of the market's or the public's attention to various issues and their assessment of the importance of that issue.

(B) The collective assessment reflected in event contract pricing has economic value, which, in turn, would be a factor in the Commission's assessment of event contracts' price discovery functionality. For example, event contracts that involve sporting events can be used for price discovery in a variety of ways. Sports teams are economic enterprises and sports stadiums are regional economic anchors that generate economic activity and materially affect both regional and national markets. For these reasons, it is economically useful to know not only how a sports team is likely to perform in upcoming games, but also how the public *believes* that the sports team will perform in upcoming games. This information could be useful, for example, to hotels adjusting their pricing models, restaurants making staffing decisions to accommodate increased demand, vendors increasing supply orders, and cities allocating resources to accommodate projected crowds.

(C) Thus, the price discovery utility of an event contract on whether a team will win a game arises not simply from whether the information about that particular game can be directly tied to a specific economic decision. Rather, the price discovery usefulness of all event contracts about a team may arise from other analyses, such as how their pricing and trading volume change over time, how trading in event contracts about one team compares to trading in event contracts about other teams, and so forth.

(D) The Commission believes that three fundamental points are especially pertinent here.

(*1*) The price discovery function of event contracts is not limited to how the market participants buying and selling event contracts use the prices as guides to how likely events are to occur. Rather, so long as there is a sufficient volume of event contracts about an underlying event or issue, they can serve as price discovery tools by indicating what the market or the general public thinks about the underlying events or issues (*i.e.,* market sentiment).

(*2*) The usefulness of event contracts for price discovery, as compared to other tools such as surveys to measure market sentiment, arises from the fact that market participants are spending money, even in nominal amounts, to support their beliefs. Thus, event contracts may be a more accurate indicator than surveys of how strongly those beliefs are held.

(*3*) Whether event contracts can be used *directly* for hedging is of limited importance in the public interest determination; rather, the question is whether the information

derived from event contract pricing can be used to guide hedging decisions. For example, even if a real estate firm does not use event contracts involving a sports team to hedge its investment in property near the team's stadium, it could nonetheless use the event contract prices as a factor in its decisions about how to use other financial instruments to hedge its property investment.

(E) *Example.* The price discovery value of event contracts on how many points a basketball player will score in a game depends on more than whether the event contracts can be used to hedge the purchase price of a ticket to the game. In some circumstances, the prices of those contracts could also, along with other information including the prices of many other event contracts, be factored into models used for commercial forecasting or audience-demand analysis, which are economic questions.

(F) For these reasons, the Commission will be more likely to find that the event contracts involving an Enumerated Activity are contrary to the public interest where the event contracts lack the potential to inform any economic, commercial or financial decisions. This includes event contracts that settle based on purely random events, such as the spin of a roulette wheel or the outcome of a random-number generator. Market participants buying and selling such event contracts cannot, by definition, have any insight into whether the events will occur. Therefore, the prices of the event contracts cannot be used to understand market sentiment about any potential economic, financial or commercial consequence. However, it is important to distinguish random events from unpredictable events. The outcome of a game of skill may be unpredictable at times, but it is not random because the outcome depends on the players' actions in the game, which are under the players' control. A game of pure chance, such as roulette, is structured to be random and outside any individual's control. Many games and other activities mix skill and chance and are therefore not ''purely random.''

(iii) *Information aggregation.* (A) The Commission believes that innovative event markets have the capacity to facilitate the discovery of information and thereby provide potential benefits to the public. For many years, event contract markets have been used for educational insights, research, and accurate forecasting of events, among other uses. Many prediction markets have become reliable and accurate information sources, in part, by harnessing the wisdom of crowds—market participants who are incentivized to avoid financial loss when taking a position in a particular contract. There are also many documented cases where prediction markets outperform traditional polling sources or other forecasting methods. In that context, information gleaned from prediction markets can help guide economic decision-making.

(B) The Commission believes that event contracts are more likely to be contrary to the public interest when any meaningful information about whether the underlying event will occur is unavailable to the broader market. This includes events that are entirely random or where insight into the underlying event is highly concentrated—in a single individual, for example, or only individuals legally prohibited from transacting—and relevant information is necessarily concealed from the public. In such cases, the Commission will consider whether buyers and sellers have any basis to form a meaningful view on the underlying event, and whether the resulting prices can reasonably be expected to reflect informed market sentiment. This factor could also apply where the only market participants with insight into the underlying event would be legally prohibited from transacting in the event contract. Thus, this factor is closely related to the previous factor about whether the event contract can be used for price discovery, and the factor below regarding inside information.

(C) *Examples.* Event contracts settling on where a military attack will occur or on the officiating calls made by referees in a specific game may present this concern. The individuals with genuine insight into such event—military personnel or referees—are typically subject to fiduciary duties or confidentiality obligations that would prevent them from lawfully transacting in the event contract. In some instances, other market participants would lack any comparable basis for forming an informed view on the event, with the result that resulting prices would not reflect aggregated informed sentiment about the underlying event.

(D) The Commission also believes that in determining whether event contracts can convey meaningful information, event contracts should generally be considered in the aggregate. As described in the previous section, the prices and volumes of event contracts over time can indicate public sentiment, especially when event contracts on related topics are compared with each other. So, if a small group of event contracts do not appear to convey any meaningful information, the Commission will still consider whether the event contracts convey meaningful information when combined with or compared to other event contracts.

(E) Therefore, when reviewing event contracts involving an Enumerated Activity, the Commission will consider whether the event contracts have any utility as information aggregation vehicles—meaning whether the event contracts provide any meaningful information that is useful to making economic, financial or commercial decisions. The Commission will consider the absence of any information aggregation utility as a factor in favor of finding the event contracts to be contrary to the public interest.

(iv) *Innovation and fair competition.* (A) Another purpose stated in section 3(b) of the Act is to promote responsible innovation and fair competition among designated contract markets, other markets and market participants. Responsible innovation and fair competition are critical to the healthy functioning of the derivatives markets, particularly given the substantial increase in the trading of event contracts and the growing demand for these products by market participants seeking information regarding, or to hedge exposure to, variables for which no traditional financial instrument exists. This expansion underscores a clear market need and sustained demand for prediction markets as a means of managing novel and otherwise unaddressed risks. The public therefore has an interest in ensuring that these markets retain the space to innovate and develop responsibly so they can continue to meet the evolving needs of market participants while maintaining appropriate regulatory safeguards.

(B) The Commission observes that market participants have demonstrated demand for event contracts addressing categories of risk for which traditional financial instruments either do not exist or provide only imperfect hedges with substantial basis risk. For example, event contracts referencing the timing or content of legislative, regulatory, and policy actions, such as whether a certain bill will become law, or whether a specified tariff or trade measure will be in force at a given time, likewise address exposure that businesses face but cannot meaningfully hedge through equity, rates, or commodity markets. Indications that event contracts support responsible innovation and fair competition would accordingly weigh against a finding that the event contracts are contrary to the public interest.

(C) In assessing this factor, the Commission will also consider the competitive implications of restricting access to event contracts. Particularly where demand for the event contract is strong, a determination barring its listing on a CFTC-registered prediction market is unlikely to eliminate the activity; rather, it may divert trading to offshore or otherwise less transparent and less supervised markets. Such migration would diminish the Commission's oversight of these markets, deprive the public of the transparency and market integrity safeguards afforded by the Act, and undermine the public benefits associated with responsible innovation occurring within the U.S.

(D) Accordingly, the likelihood that prohibiting an event contract would push trading activity into less transparent and less regulated foreign markets is a factor that weighs against finding that the event contract is contrary to the public interest.

(3) *Potential threats to market integrity.* Another purpose stated in section 3(b) of the Act is to deter and prevent price manipulation or any other disruptions to market integrity. The factors in this section consider whether, in the context of the focused review required by the Special Rule, the event contracts present a particular risk of manipulation or market disruption, exhibit settlement integrity deficits arising from the event contracts' particular characteristics, or create particular risks of information leakage or exploitation of material non-public information by insiders.

(i) *Overview.* (A) As a general matter applicable to all swaps and futures contracts traded on their platforms, designated contract markets and swap execution facilities have a statutory obligation to ensure that the contracts they list for trading are not readily susceptible to manipulation. But in its public interest analysis of event contracts subject to the Special Rule, the Commission believes that, as discussed above, it should also consider how the public interest purposes of the Act are particularly implicated. The

Commission therefore distinguishes its evaluation of whether a particular risk of manipulative activity may raise public interest concerns for purposes of the Special Rule, from the review that all designated contract markets and swap execution facilities must undertake to evaluate whether a contract complies with this statutory obligation. Thus, the use of the factors outlined below in determining whether event contracts are contrary to the public interest is beyond and separate from a designated contract market's or swap execution facility's analysis of a contract's compliance with the Act and applicable regulations.

(B) In the same way, the Commission will also apply a particular analysis of whether event contracts involving Enumerated Activities can be settled based on objective, publicly verifiable criteria within a reasonable timeframe in determining whether the event contracts are contrary to the public interest, and whether such event contracts raise a particular potential for improperly obtained non-public information to be exploited by insiders. To the extent particular concerns arise with respect to event contracts subject to the Special Rule, such factors will weigh in favor of finding the event contracts to be contrary to the public interest.

(C) The factors outlined below address risks that inhere in the event contracts themselves—their terms, their underlying subject matter, and the criteria on which settlement turns—and that may be present regardless of the prediction market's compliance capabilities.

(ii) *Settlement integrity.* (A) Registered entities are statutorily required by sections 5(d)(2)(A)(ii) (designated contract markets) and 5h(f)(2)(A)(i) (swap execution facilities) of the Act to establish, monitor, and enforce compliance with the terms and conditions of contracts traded on the registered entity. The Commission believes that in the context of its public interest analysis under the Special Rule, it is particularly important that the criteria on which event contracts involving Enumerated Activities settle are clear, objective, and publicly verifiable, and that the contracts identify the triggering events and the means by which it is determined whether those events have occurred transparently and in a manner that clearly identifies the triggering events and how it is determined whether or not those events have occurred. It is also important that the settlement mechanism and the data upon which it relies are suitable to the event contracts under review. The Commission acknowledges that a variety of data sources may be appropriate for the settlement of event contracts and does not intend to overly restrict prediction markets' flexibility to determine which sources should be used in settlement.

(B) Vulnerability to settlement integrity deficits—*e.g.,* a lack of clarity about exactly how event contracts involving Enumerated Activities will be resolved—undermines market function and is indicative of event contracts that are likely to be contrary to the public interest. Therefore, when reviewing event contracts involving an Enumerated Activity, the Commission will consider whether the criteria for settlement of the event contracts are clear, objective, and publicly verifiable. Event contracts whose conditions or resolution criteria are ambiguous, overly complex, or potentially misleading to market participants raise settlement integrity concerns under this factor.

(iii) *Information leakage and misuse of confidential information.* (A) Commission Rule 180.1 (§ 180.1 of this chapter) makes it unlawful for any person to employ any device, scheme, or artifice to defraud or attempt to defraud any person or manipulate the price of any futures contract listed on a registered entity or any swap, including the misappropriation of confidential information in breach of a pre-existing duty of trust or confidence to the source.

(B) The Commission believes that certain event contracts involving Enumerated Activities may create unique incentives for information leakage or misuse of material nonpublic information—for example, by encouraging individuals with privileged access to disclose or act upon such information, by incentivizing the unlawful acquisition of additional sensitive information, or by enabling third parties to pressure, solicit, or bribe such individuals to obtain it. These incentives may present significant public interest concerns for event contracts involving Enumerated Activities, particularly where the information is highly sensitive and closely guarded, and meaningful insight into the underlying event is concentrated among a small number of individuals.

(C) The Commission believes that these concerns are especially acute for contracts involving national-security matters, where relevant information is tightly held, highly sensitive, and subject to strict confidentiality obligations. In such settings, an event contract may create improper incentives to leak or misuse sensitive information, or to attempt to obtain such information illicitly.

(D) *Example.* Event contracts settling on the occurrence, timing, or specifics of intelligence activities could create financial incentives for individuals with security clearances or other access to classified information to disclose or trade upon such information in violation of their obligations and could similarly incentivize foreign intelligence services or other third parties to target cleared personnel for the purpose of extracting tradeable information.

(E) Where the structural features of an event contract—the sensitivity of the underlying information, the concentration of insight among a small number of individuals, or the nature of the activity to which the contract refers—give rise to identifiable concerns regarding the leakage, misuse, unlawful acquisition, or third-party exploitation of privileged information, and where a prediction market has not implemented adequate safeguards, those concerns will weigh in favor of finding the event contracts contrary to the public interest.

(4) *Compliance and self-regulatory challenges arising from the prediction market's capacity to administer the contracts.* (i) The factors in this section consider whether trading or clearing of the event contracts would challenge the prediction market's self-regulatory tools or compliance infrastructure because of the event contracts' involvement of Enumerated Activities.

(ii) Prediction markets have self-regulatory obligations to ensure proper surveillance and oversight of trading in all of the event contracts that they list, accounting for the particular characteristics and attributes of each event contract. In the context of the Special Rule and the analysis of whether event contracts involving Enumerated Activities are contrary to the public interest, the Commission will consider whether the event contracts would be difficult to administer or challenge the prediction market's compliance obligations. This factor addresses a question distinct from the contract-design concerns identified in the prior section: whether the prediction market, given its existing compliance, surveillance, and dispute-resolution infrastructure, can discharge its statutory self-regulatory obligations with respect to the event contracts. These types of challenges weigh in favor of a finding that such event contracts are contrary to the public interest. Conversely, the Commission believes that the existence of guardrails reasonably designed to address the specific risks the event contracts present is a factor weighing against a finding that the contract is contrary to the public interest.

(iii) Among the considerations relevant to this factor, the Commission will consider whether the prediction market's dispute resolution processes are suitable to resolving potential disputes about the resolution of the event contracts. The Commission will consider the absence of settlement criteria and dispute resolution procedures that are suitable for event contracts involving Enumerated Activities as a factor in favor of finding the event contracts to be contrary to the public interest.

(iv) The Commission will also consider whether a prediction market has adopted effective guardrails against the spread or misuse of non-public information, such as prohibiting certain categories of traders likely to have access to inside information from trading in certain event contracts and maintaining a robust surveillance and customer identification policy. Such mitigating measures will weigh against a finding that the event contracts are contrary to the public interest.

(v) The Commission believes that public interest concerns are likely to arise when uncertainties about the circumstances influencing the underlying events mean that the prediction market's surveillance program may not be able to detect whether or not insiders would have an information advantage.

(g) *Public interest factors specific to the enumerated activities.* The Commission will evaluate all event contracts subject to review under the Special Rule under the public interest factors set out in § 40.11(a)(5), as discussed in paragraph (f) of this appendix. The Commission will also consider the factors in § 40.11(a)(6) applicable to the activity that such agreements, contracts,

transactions, or swaps involve, as discussed in this paragraph (g). The following factors specific to each type of Enumerated Activity supplement the general factors in paragraph (f) of this appendix.

(1) *Activity that is unlawful under any federal or state law*—(i) *Overview.* (A) First, the Commission believes that there is a distinction between event contracts involving an overall rate of unlawful activity, and event contracts involving more specific unlawful actions. For example, event contracts based on crime rates in a general area over extended periods may have price basing or information utility in matters such as insurance or other economic planning.

(B) In contrast, the Commission believes that event contracts based on more specific unlawful activity raise concerns under the general public interest factors described above. To the extent that trading in such event contracts would yield meaningful information about specific criminal actions, that information should be shared confidentially with the appropriate authorities—it would be contrary to the public interest for such information to be revealed in a public market because it could compromise law enforcement efforts. Trading in such event contracts could also incentivize criminal behavior, and, if the event contracts are based on potential actions of individuals or small groups, would be subject to manipulation and insider trading concerns. Also, public attention to such event contracts could lead to ''copycats,'' *i.e.,* individuals engaging in the criminal behavior because of the publicity about it. Public interest considerations particular to federal and state law are described below.

(ii) *Activity that is unlawful under any federal law.* (A) The Commission exercises the authorities granted to it by Congress under the Act to help ensure that U.S. derivatives markets operate with integrity. The Commission believes that it is likely contrary to the public interest to permit trading, in the financial markets that the Commission is mandated by Congress to oversee, in event contracts that involve activity that Congress has determined to be illegal under federal law. The Commission notes that the issue here is whether the activity on which the event contracts are based is unlawful under federal law. If *trading* in the event contracts was unlawful under federal law or facilitated unlawful activity (*e.g.,* if trading in the event contracts facilitated money laundering), then the event contracts could not be certified to be in compliance with the Act.

(B) The Commission recognizes, however, that not all references to unlawful activity present public policy concerns. In particular, event contracts that involve aggregate crime rates in a geographic area over extended periods generally do not create incentives to engage in specific unlawful acts. Instead, they reflect broad, statistical measures used for economic, demographic, or public-policy analysis. Because these event contracts do not encourage or reward criminal conduct—and instead reference generalized, population-level data—the Commission believes they do not raise the same public policy concerns.

(C) Accordingly, it is highly likely that event contracts involving activity that is unlawful under federal law will be found contrary to the public interest, except where the event contracts reference generalized crime rates over time in a manner that does not incentivize specific criminal conduct.

(iii) *Activity that is unlawful under any state law.* (A) The Commission believes that event contracts that involve activity that is illegal under state law likely raise public interest concerns. Legislative bodies generally bar or prohibit activity that they recognize as causing, or posing, public harm. Judges and judicial bodies, applying statutes and developing common law, also establish the illegality of activity that is recognized as causing, or posing, public harm. The Commission thus believes that event contracts that involve activity that is unlawful under state law would likely undermine important state interests, expressed in state statutes and common law, in protecting the public good.

(B) The Commission notes that there are variations across state law in the specific activities that are recognized as unlawful. In assessing whether event contracts are contrary to the public interest, the Commission will account for variations in state laws and in how states define the underlying activity; consider any relevant judicial precedent that may bear on the Commission's analysis; review a survey of state statutes to understand the extent to which jurisdictions have determined the activity to be unlawful; and consider whether the underlying activity is generally considered as causing, or posing, public harm. The Commission will then weigh these considerations—together with the broader public-interest factors discussed above—to understand the extent to which the underlying activity is recognized as unlawful.

(C) For these reasons, it is likely that event contracts that involve activity that is unlawful under state law will be found to be contrary to the public interest, unless the event contracts involve crime rates in a general area over extended periods as described above. As noted above, the relevant issue is whether the activity on which the event contracts are based is unlawful under state law.

(2) *Terrorism, assassination, and war*—(i) *National security.* The Commission believes that event contracts involving terrorism, assassination, or war can present significant national security risks and therefore raise public interest concerns. The Commission is concerned, first, that the prices of such event contracts would not necessarily align with the actual likelihood of the underlying terrorism, assassination or war events because the trading public is shielded as a matter of public policy from relevant information about the event. For this reason, trading in such event contracts could, at the least, present a distraction to law enforcement and military authorities and, at worst, be manipulated by wrong-doers to divert attention from planned harmful events. The Commission notes that this concern could become increasingly problematic as the volume of trading in such event contracts increases.

(ii) *Example.* Event contracts based on whether an attack on a particular location will occur would provide an opportunity to individuals planning such an attack to buy the ''no'' contract and thereby create misleading market signals, potentially diverting attention and resources at a critical time.

(iii) *Information leakage.* As discussed above, these event contracts also present especially significant information leakage and misappropriation concerns because individuals with access to sensitive national security information could potentially be incentivized to exploit that information through trading that would be in violation of their duty of confidentiality.

(iv) *No meaningful information.* More generally, the Commission believes that event contracts involving terrorism, assassination or war are particularly vulnerable to settlement ambiguity. The inherent uncertainty and limited access to reliable information during such events—often described as the ''fog of war''—can undermine clarity regarding whether relevant events have taken place. Additionally, as noted above, the prices of these event contracts may not accurately reflect actual probabilities because the individuals with direct knowledge or insight are typically insiders subject to legal restrictions that prohibit them from trading these event contracts. To promote public safety, the Commission believes it is preferable for other individuals with pertinent information to share that information with the authorities, rather than to use it for trading purposes.

(v) *Violence, profiting from harm to human life, or potential to facilitate illicit behavior.* The Commission believes that event contracts involving terrorism, assassination, or war could potentially result in or incentivize violence or harm to human life or other illicit behavior and therefore raise public interest concerns. First, as noted above, these types of event contracts have very little informational value, but individuals who do have any special knowledge regarding these types of activities or events have a public duty to report this information to the proper authorities to prevent any violence, harm, or illicit behavior. For example, if a private terrorist expert were to uncover communications regarding a plot to assassinate a public figure, the Commission believes that expert should alert authorities rather than trading event contracts regarding that assassination. It is contrary to the public interest to profit from the potential assassination of a human being.

(vi) *Incentivization of violence.* Moreover, the Commission believes that event contracts involving terrorism, assassination, or war could potentially encourage such activity, because there is a potential for individuals to act in order to receive payout under the event contracts, resulting in significant risk of harm to human life and property. The Commission believes that this encouragement and incentivization of violence, human harm, or illicit behavior is not in the public interest and will carefully analyze these types of contracts to ensure that the incentives structured into the contract for a monetary payout do not encourage any direct violence,

harm to human life, or illicit behavior. Based on the foregoing public interest analysis, all event contracts involving terrorism, assassination, and war are highly likely to be against the public interest.

(3) *Gaming*—(i) *Games of random chance are likely contrary to the public interest.* (A) The Commission believes that event contracts involving games that depend on random chance—*e.g.,* pure luck—are likely to be contrary to the public interest. As discussed above, prediction markets function as information aggregation vehicles, meaning their usefulness depends in part on whether market participants can bring insight, expectations, or informed views as to whether the event underlying the contract will occur. When an outcome is dictated solely by luck and cannot be meaningfully predicted, participants have no insight to contribute, leaving their forecasts without any informational value. Trading in such event contracts therefore provides no meaningful information that could support decision making or market understanding.

(B) On the other hand, the outcome of some games that depend on a high degree of luck, like poker, can also be significantly affected by the participants' skill, particularly when the game is repeated over many rounds, as in organized tournaments. The Commission believes that when a game with some element of random chance also depends to a significant extent on the participants' skill, and the settlement of an event contract involving the game is determined by an occurrence, extent of an occurrence or contingency in an organized tournament, then that event contract would not be viewed as involving a game that depends entirely on random chance.

(C) Thus, the Commission believes that event contracts involving games that depend on random chance—by definition, devoid of informational content—would not advance any of the purposes of the Act. For these reasons, it is highly likely that event contracts involving games that depend entirely on random chance would be found to be contrary to the public interest.

(ii) *Factors indicating when event contracts involving sports events are not contrary to the public interest*—(A) *Overview.* (*1*) The Commission finds that certain characteristics of event contracts involving sports events would reduce the basis for finding that the event contracts are contrary to the public interest. For example, the extent to which event contracts settle based on the overall outcome of a sporting event—including final scores, point differentials, win-loss results, tournament advancement, individual or team statistical performance or season long performance metrics—are factors against a finding that the event contracts are contrary to the public interest. The Commission believes that these categories of sports event contract markets may serve price discovery functions and provide meaningful information. Additionally, in terms of the Commission's focused analysis of event contracts involving Enumerated Activities described above, the Commission believes that these event contracts are unlikely to raise the particular manipulation, settlement ambiguity and information leakage issues that could raise public interest concerns.

(*2*) The structural features underlying the Commission's view is that, for these event contracts, manipulation risk is bounded by the distribution of determinative capacity among participants and events in the underlying activity, and any residual manipulation risk produces observable patterns that the prediction market can detect through surveillance. That is, the event contracts would generally not be reasonably susceptible to manipulation, and moreover any residual manipulation risk would not raise public interest concerns. An event contract involving the aggregate outcome of a single game typically depends on the cumulative contributions of many participants over the course of the game; no individual participant has determinative capacity to affect settlement through their own conduct, and any participant's attempt to do so produces performance patterns inconsistent with prior play and inconsistent with game context. An event contract involving aggregate statistical performance of an individual over the course of a game presents a similar analysis. No single act has determinative capacity to affect settlement, and a participant's attempt to do so produces performance patterns that are detectable. For example, the Commission believes that in games such as tennis or golf, an individual player's attempt to skew occurrences during the game would typically be detectable in the context of the game and the player's prior performance.

(*3*) Among other considerations, the Commission notes that the settlement outcomes of these types of event contracts would typically depend on the aggregate performance over an extended period of play. The breadth of potential outcomes, and the variety of factors influencing the outcomes, should provide more opportunities for the event contracts to advance price discovery or provide meaningful information. Generally, a finding that sports-related event contracts fall within the above categories will weigh heavily against finding that the contract is contrary to the public interest.

(B) *Objective and verifiable settlement data.* As part of its review of particular public interest concerns in event contracts involving Enumerated Activities, the Commission believes that objective settlement data reduces the risk that settlement values can be manipulated through the exercise of subjective judgment by individuals positioned to influence the settlement determination. The Commission also believes that objective settlement data permits surveillance of trading activity for patterns inconsistent with the publicly available data, which is a tool by which prediction markets detect attempted manipulation. The fact that event contracts involving sports settle by reference to publicly reported, league-verified, or otherwise objectively determinable data would be a factor weighing against a finding that the applicable event contracts are contrary to the public interest. The settlement mechanism and the data upon which it relies should be suitable for the event contracts under review. The Commission acknowledges that a variety of data sources may be appropriate for the settlement of event contracts and does not intend to overly restrict prediction markets' flexibility to determine which sources should be used in settlement.

(C) *Established sport-level integrity infrastructure.* The Commission believes the public interest considerations relevant to event contracts involving sports are materially affected by whether the underlying game operates within a framework that addresses integrity concerns at the level of the sport. A prediction market listing event contracts involving a sport with a developed integrity framework can leverage that framework in ways unavailable for sports without comparable infrastructure. The fact that the sport underlying an event contract is subject to an established integrity framework, including a recognized governing body, an integrity unit or comparable monitoring function, published rules of competition, and disciplinary procedures applicable to participants, officials, and other personnel is a factor weighing against a finding that the applicable event contract is contrary to the public interest.

(D) *Information sharing and coordination with relevant sports leagues and governing bodies.* (*1*) As noted above, event contracts involving sports may implicate the involvement of a recognized governing body, integrity unit or comparable monitoring function for that sport, including but not limited to professional sports leagues and their integrity units, as well as the National Collegiate Athletic Association. The Commission believes that communication between registered entities and such relevant governing bodies or authorities prior to listing sports event contracts would support compliance and surveillance programs for sports events contracts. The Commission notes that any communication by registered entities with third parties must comply with any applicable regulatory or confidentiality requirements.

(*2*) The Commission also believes that establishing formal information sharing agreements between prediction markets, the Commission, and the relevant sports integrity monitoring organization may aid prediction markets in monitoring sports event contracts for manipulation, insider trading and other compliance issues. Such engagement and information sharing efforts could entail a practice or agreement with the relevant sports governing body that the prediction market will:

- Report suspicious trading activity or trading activity by prohibited traders to the relevant sports governing body;
- Cooperate with sports governing bodies to provide certain data in connection with sports integrity investigations;
- Consult with sports governing bodies on proposed event contracts; and
- Consult, as appropriate, with relevant governing bodies regarding integrity-related restrictions applicable to marketing, participant protections, and event contract design in the relevant sport.

(*3*) To the extent a prediction market coordinated with or entered into information sharing arrangements with the relevant sports leagues or governing bodies and/or designs event contracts in accordance with league

integrity standards, where applicable, those facts will weigh against a finding that the applicable event contracts are contrary to the public interest.

(E) For these reasons, the Commission believes that event contracts based on the aggregate outcomes of professional or collegiate sports events, based on objective and verifiable settlement criteria, listed by prediction markets that maintain appropriate surveillance, trading prohibitions, and coordination with relevant sports governing bodies, are, depending on the full record and the Commission's evaluation of all relevant factors, unlikely to be found to be contrary to the public interest. This belief also rests on relevant prior experience with how similar event contract types have operated, although no prior listing or experience is dispositive. Prediction markets have listed sports event contracts of the types described—final scores, point differentials, win-loss results, tournament advancement, individual and team statistical performance, and season-long performance metrics—in volumes sufficient to permit meaningful evaluation of their operating characteristics. The Commission has considered surveillance data, integrity referrals, identified instances of attempted manipulation, and the prediction markets' responses to those instances. The Commission has also considered the potential uses of price information generated by these event contracts in commercial decision-making, including by sports broadcasters, sponsors, advertisers, fantasy sports operators, sports analytics firms, and other commercial participants in sports-adjacent industries, although generalized use of price information by adjacent industries is not, standing alone, sufficient to resolve the public interest inquiry.

(F) Nothing in this appendix F, including the Commission's belief that such event contracts are unlikely to be contrary to the public interest is intended to create a safe harbor that any particular contract satisfies the public interest standard, nor does it replace the multi-factor analysis required under § 40.11(a)(5) and (a)(6). Rather, it reflects the Commission's considered view of how the factor analysis generally resolves for such event contracts. Event contracts remain subject to factor-by-factor weighing.

(iii) *Factors indicating that the Commission would find event contracts involving sports events to be contrary to the public interest.* The Commission finds that certain types of event contracts involving sports events are likely to be found to be contrary to the public interest.

(A) *Player injury contracts.* The Commission believes that event contracts that explicitly settle solely by reference to the duration, severity, occurrence, or medical diagnosis of an injury sustained by a specific athlete raise serious public interest concerns. First, such event contracts create perverse financial incentives that could encourage or facilitate physical harm to athletes. Second, the settlement of such event contracts would likely depend on medical diagnoses, which raises public interest concerns about the confidentiality of medical information and the potential for such sensitive information to be leaked or exploited by insiders. Third, settlement conditions based on a physicians' diagnoses or injury reports do not provide a sufficiently objective, verifiable, and manipulation-resistant basis for contract settlement. Therefore, it is likely that event contracts that explicitly settle solely by reference to the severity, occurrence, or medical diagnosis of an injury sustained by a specific player will be found to be contrary to the public interest.

(B) *Officiating outcome contracts.* The Commission believes that event contracts that settle solely by reference to judgment calls, discretionary decisions, or rulings of referees, umpires, or other game officials, including without limitation, penalties assessed, fouls called or not called, reviews initiated, video replay decisions, player ejections, or disciplinary rulings made during live games raise public interest concerns. Unlike final score outcome contracts, event contracts based on officiating decisions resolve on the basis of a small number of discrete human decisions made by identifiable individuals under significant pressure and with limited accountability in real time. For example, event contracts based on officiating decisions could incentivize game participants to commit more fouls, thereby threatening the integrity of the game. The Commission finds that the risk of inappropriate contact between market participants and officiating personnel and the risk of selective officiating raises public interest concerns because that risk threatens the integrity of the game, which is, in turn, a matter of public interest. In addition, market participants could not form meaningful forecasts about officiating outcomes described above because for these calls officials must make quick, discrete judgments, and so the prices of such event contracts would not provide meaningful information. That is, market participants' opinions on such matters are irrelevant and expression of those opinions through event contract trading would call into question the integrity of the game involved.

(C) For these reasons, it is likely that event contracts that explicitly settle solely by reference to officiating outcomes as described above will be found to be contrary to the public interest. For the avoidance of doubt, event contracts that settle based on the overall outcome of sports events, including final scores, point differentials, or statistics compiled over the course of play, are not included in this category, even if such outcomes may have been affected in part by officiating decisions. This factor relates solely to event contracts in which the settlement events are officiating decisions, rather than derivative outcomes of play.

(D) *Discrete-action contracts involving specific participants.* The Commission believes that event contracts that settle solely by reference to a discrete action, event, or occurrence in sporting events, including, without limitation, event contracts settling on the type of a specific play called for or executed by a specific player or team, the type or outcome of a specific pitch thrown by a specific pitcher, the outcome of a specific shot taken by a specific player, or whether a specific player or team commits a specific foul or penalty, present public interest concerns.

(E) Specifically, event contracts based on discrete actions do not provide meaningful information because market participants can have little actual insight into specific in-game acts of identifiable participants. Also, in the context of the Commission's focused review of event contracts involving Enumerated Activities, the Commission views such event contracts as raising public interest concerns relating to manipulation and information leakage because a single player or team coaching staff member can determine the settlement outcome of the event contracts. Last, the risk that athletes' in-game decisions would be influenced by such event contracts is contrary to the integrity of the game. For these reasons, it is likely that event contracts meeting the criteria of a discrete-action contract as described above will be found to be contrary to the public interest.

(F) *Physical altercation contracts.* The Commission believes that event contracts that settle solely by reference to physical altercations, fights, or conduct between players or participants in the game that are subject to penalty, ejection, or disciplinary action raise public interest concerns. Such event contracts could create a direct financial incentive for both athletes and market participants to encourage, facilitate, or provoke such conduct. Even if the probability that any athlete or market participant acts on such an incentive is low, the effect of a market in physical altercation contracts on the culture of athletic competition is inconsistent with the public interest. Also, the Commission believes that such event contracts are unlikely to provide meaningful information, as market participants would generally not have insight into when altercations would occur and, to the extent they do have such insight, it is contrary to the public interest for market participants to express those views on regulated markets. For these reasons, it is likely that event contracts involving game-related altercations, as described above, will be found to be contrary to the public interest. The Commission believes that event contracts based on the overall outcomes, and not the specific actions of a particular fighter, of combat sports, including Mixed Martial Arts, Brazilian Jujitsu, Muay Thai, Boxing, Wrestling, and other sports in which physical contact or combat is an integral and sanctioned element of game, are not included in this category. For these sports, the occurrence of physical combat or contact during the game is a core and lawful element of the sporting event on which the contract is based, not an extraneous act of misconduct.

(G) *Pre-collegiate sports events.* (*1*) The Commission believes that event contracts that settle solely by reference to games, sporting events or outcomes in which participants are below the collegiate level raise public interest concerns. The Commission does not view this category to include any professional league, international competition sanctioned by recognized governing bodies, or other games that may include athletes of various ages but are not organized primarily at the pre-collegiate or youth level.

(*2*) There are several factors that differentiate pre-collegiate sports from sports at the collegiate and professional levels. Since pre-collegiate sports have less extensive governing bodies and typically lack a rigorous integrity infrastructure, prediction markets would be less able to interface with the governing body. Also, the relevant data flows (to the extent formal data are collected at all) are decentralized and less reliable than for collegiate and professional sports. Similarly, broad and numerous groups of individuals would potentially have inside information about pre-collegiate sports and would be subject to little or no contractual limitations on information usage. In the context of its focused review of event contracts involving Enumerated Activities, the Commission believes that these differences from professional and collegiate sports raise particular concerns about manipulation, settlement integrity and information leakage.

(*3*) The Commission also notes that, to the extent event contracts based on pre-collegiate sports events would yield economically useful information, this use of the event contracts could raise public interest concerns relating to marketing and other commercial use of information related to minors. There may also be public interest concerns related to the disclosure of minors' personal identifying information. For these reasons, it is likely that event contracts involving pre-collegiate sports events will be found to be contrary to the public interest.

Issued in Washington, DC, on June 10, 2026, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Prediction Markets; Public Interest Determinations—Commission Voting Summary

On this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative.

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