Testimony By

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Examining Customer Protections and Market Integrity in Sports Event Prediction Markets

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Chairman Dusty Johnson, Ranking Member Don Davis, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today to share my views on the regulation of prediction markets and event contracts by the Commodity Futures Trading Commission (CFTC or Commission), with a particular focus on the Commission's existing rules relating to customer protections and market integrity. I am a partner at Katten Muchin Rosenman LLP, where I advise clients on U.S. derivatives law, including the CFTC's regulations of event contracts and other swaps. My appearance before you today is in my personal capacity. I am not representing or speaking on behalf of any other person, private-sector entity, or governmental agency.

Through my testimony today, I intend to explain why the Commodity Exchange Act (CEA) and Commission regulations already provide the CFTC with a comprehensive, principles-based framework for regulating prediction markets. One that safeguards customer protection and market integrity while allowing responsible innovation.

While prediction markets have existed for decades, these markets have expanded rapidly in recent years. In 2025, total trading volume across CFTC-registered prediction markets exceeded $25 billion, and in one of the largest such markets the daily average number of event contracts listed for trading rose from roughly 1,600 in April 2025 to approximately 162,000 in April 2026.[1] The introduction of sports-related event contracts has significantly contributed to this expansion.

As these markets have grown and sports-related event contracts have drawn public scrutiny, the debate around them has centered around one threshold question. Are sports and certain other event contracts, as a class, either "permissible" or "prohibited"? In my view, that is the wrong question, and a plain reading of the CEA shows why. My remarks today explain that reading, and they explain why the arrival of sports-related event contracts is far less unusual than the current debate suggests.

[1] *See* Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806, 35,844 n.298 (proposed June 12, 2026) (to be codified at 17 C.F.R. pt. 40) (daily average of event contracts listed on one of the largest prediction markets increased from approximately 1,600 in April 2025 to 162,000 in April 2026).

U.S. derivatives markets have constantly evolved since the CFTC was created in 1974, and each time the markets have evolved, the Commission has modernized its rules to reach the new development. When new categories of commodities emerged in the 1970s and 1980s, including foreign exchange, precious metals, and energy, the Commission brought them within its existing framework. When trading moved off open-outcry "pit" trading and onto fully electronic platforms, the Commission accommodated the shift. When the 2008 financial crisis revealed the dangers of unmanaged counterparty credit exposure, Congress and the Commission strengthened the same framework in response. Sports-related event contracts are simply the newest product to test that framework, and the Commission's recent notice of proposed rulemaking addresses them using authority the CEA has provided all along.

To complement the remarks of certain other witnesses appearing today, I plan to limit my prepared remarks to four key points. Together, I believe that these remarks in total show how Congress, through major amendments to the CEA in 1974, 2000, and 2010, built a comprehensive and forward-looking framework for regulating the CFTC markets and its participants.

- First, I will explain how designated contract markets (DCMs), the trading facilities on which derivatives are traded (including event contracts), are registered and regulated under the CEA's Core Principles for DCMs.
- Second, I will describe how the Commission's June 2026 notice of proposed rulemaking would affect the operations of DCMs.
- Third, I will discuss the derivatives contract listing process that was established by the CEA and promulgated under Part 40 of the Commission's rules, including its origins in the Commodity Futures Modernization Act of 2000 (CFMA), how that process has worked in practice, and how it operates today.
- Fourth, I will highlight several of the comprehensive customer protection requirements that currently exist under the CEA and CFTC's rules, including those requirements that apply to futures commission merchants (FCMs).

By developing each of the foregoing points, I hope the Subcommittee leaves today's hearing with an understanding of two important themes concerning U.S. derivatives regulation. The first theme is about how Congress built the CEA. Congress has consistently understood that it could not foresee every derivative contract that might one day trade on a CFTC-registered exchange or through a CFTC-registered intermediary, so it did not try to name them. It instead wrote the CEA's core definitions of "commodity" and "swap" in deliberately broad terms, intending them to reach new products as those products emerged.

The second theme is about how that federal framework fits alongside the states. The rise of prediction markets does not force a choice between federal derivatives regulation and state gambling regulation, because the two regimes can, and already do, operate side by side.

Participants routinely reach the same underlying asset through more than one regulatory regime at the same time. Gold is a familiar example. A person can buy gold from a local dealer under state law, trade gold futures on a CFTC-regulated exchange, or buy shares in a gold exchange-traded product overseen by the SEC.

Prediction markets are no different. A person who prefers to wager through a state-licensed sportsbook remains free to do so, and a person who prefers to trade a CFTC-regulated event contract on a federally registered exchange may choose that path instead. Recognizing the Commission's authority over event contracts that trade on registered exchanges takes nothing away from the states' authority over the gambling they license. The choice of which market to use belongs to the participant. With those two themes in mind, I turn to the mechanics of how designated contract markets (DCMs) are registered and regulated under the CEA's Core Principles.

Designated Contract Markets: Registration and the Core Principles

The CFTC is the primary regulator of the U.S. futures, options on futures, and swaps markets. Congress created the Commission in 1974 to establish a uniform national system for regulating futures trading, after concluding that the prior patchwork of state-by-state regulation had impaired the development and functioning of national commodities markets. To that end, Congress vested the Commission with exclusive jurisdiction over transactions involving contracts of sale of a commodity for future delivery traded on a DCM.[2]

The CEA today operates under a principles-based regime for the registration and oversight of DCMs, but that was not always so. Before 2000, the CEA required the Commission to approve each new contract before a DCM could list it for trading, and it imposed prescriptive, one-size-fits-all designation requirements on the exchanges themselves. The CFMA replaced that regime. It restructured CEA Section 5 into a set of designation criteria and Core Principles that a DCM must satisfy, and it gave each DCM reasonable discretion to decide how it would satisfy them.[3]

CEA Section 5 was further amended in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act amended Section 5 to eliminate the former eight designation criteria, fold their substance into the Core Principles, and add five new principles. A DCM today must therefore demonstrate compliance with a total of 23 Core Principles as a condition of obtaining and maintaining designation.[4] And unless the Commission determines otherwise by rule, a board of trade has reasonable discretion in establishing the manner in which it complies with the Core Principles.[5]

The Core Principles are the foundation of DCM oversight and DCMs themselves are self-regulatory organizations—quasi regulators charged with monitoring and enforcing the rules that they establish. As noted, there are 23 Core Principles,[6] but two of them speak most directly to today's topics of customer protection and market integrity.

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[2] CEA § 2(a)(1)(A), 7 U.S.C. § 2(a)(1)(A).
[3] CFMA § 110, 114 Stat. 2763, 2763A–384 (restructuring CEA § 5, 7 U.S.C. § 7).
[4] Dodd-Frank Act § 735; *see* Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36,612 (June 19, 2012) (eliminating the eight former designation criteria, revising existing core principles, and adding Core Principles 13, 20, 21, 22, and 23).
[5] CEA § 5(d)(1), 7 U.S.C. § 7(d)(1); 17 C.F.R. § 38.100(b).
[6] The following are a sample of the DCM Core Principles offered for illustrative purposes. Under Core Principle 2, a DCM must establish, monitor, and enforce compliance with its own rules, including rules that prohibit abusive trade practices, and it must have the capacity to detect, investigate, and sanction violations. Under Core Principle 5, a DCM must adopt position limits or accountability levels for speculators where necessary and appropriate. Under Core Principle 7, a DCM must make accurate information about contract terms and market operation available to the public. Under Core Principle 9, a DCM must provide a competitive, open, and efficient mechanism that protects the price-discovery process. Under Core Principle 11, a DCM must ensure the financial integrity of transactions, including clearance and settlement through a derivatives clearing organization and the protection of customer funds. Under Core Principle 12, a DCM must protect markets and participants from abusive practices. And under Core Principle

Core Principle 3 requires that a DCM list only those contracts that are not readily susceptible to manipulation.[7] A DCM must be able to show that the way a contract settles, and the data on which it settles, cannot be readily distorted, cornered, or gamed.

Core Principle 4 requires a DCM to have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement.[8] In practice, a DCM must collect and evaluate data on individual traders, monitor general market data, conduct real-time monitoring of trading, and reconstruct trading comprehensively and accurately.

Together, Core Principles 3 and 4 make the DCM the first line of defense against manipulation and disruption. These Core Principles apply with the same force to a sports-related event contract as they do to a Treasury futures contract or a plain vanilla interest rate swap.

To understand how those contracts come to be listed in the first place, however, requires a closer look at the Commission's Part 40 rules and the self-certification process they establish.

Contract Listing Process Under Part 40

Before 2000, the CEA required a DCM to obtain the Commission's prior approval before listing a contract for trading, and Section 5(7) required the exchange to demonstrate that each contract "will not be contrary to the public interest."[9] The legislative history of that provision, dating to 1974, folded an "economic purpose" test into the public-interest requirement, and from 1974 to 2000 the Commission took the position that every proposed futures contract had to satisfy both an economic-purpose test and a broader public interest test.[10] The Commission administered that regime through "Guideline No. 1," which asked whether a proposed contract would serve, on more than an occasional basis, as a price-discovery or hedging tool for commercial users.[11]

That prior-approval, economic-purpose regime proved controversial and difficult to administer, and Congress ultimately abandoned it. Spurred by a 1999 report of the President's Working Group on Financial Markets, Congress enacted the CFMA, which repealed CEA Section 5(7) and added CEA Section 5c.[12] Under Section 5c, a DCM may list a contract for trading simply by providing the Commission a certification that the contract complies with the CEA and the Commission's rules.[13] Following the CFMA, the Commission was no longer required to find that each contract is not contrary to the public interest before it could be listed.

21, a DCM must maintain adequate financial, operational, and managerial resources. These are the standing obligations against which every listed contract, including every event contract, must be measured. CEA § 5(d)(2)–(21), 7 U.S.C. § 7(d); 17 C.F.R. §§ 38.150, 38.200, 38.250, 38.300, 38.400, 38.500, 38.600, 38.650, 38.700, 38.1100.

[7] CEA § 5(d)(3), 7 U.S.C. § 7(d)(3); 17 C.F.R. § 38.200.

[8] CEA § 5(d)(4), 7 U.S.C. § 7(d)(4); 17 C.F.R. § 38.250.

[9] CEA § 5(7), 7 U.S.C. § 7(7) (1994 ed. & Supp. V 1999) (repealed 2000).

[10] *See* H.R. Rep. No. 93–975, at 103 (1974); S. Rep. No. 93–1131, at 72 (1974); H.R. Rep. No. 93–1383, at 14 (1974) (Conf. Rep.).

[11] Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 Fed. Reg. 25,849 (June 19, 1975), as revised, 47 Fed. Reg. 49,832 (Nov. 3, 1982), and 57 Fed. Reg. 3518 (Jan. 30, 1992).

[12] *See* Report of the President's Working Group on Financial Markets, Over-the-Counter Derivatives Markets and the Commodity Exchange Act (Nov. 1999); CFMA § 113, 114 Stat. at 2763A–399 (adding CEA § 5c, 7 U.S.C. § 7a–2).

[13] CEA § 5c(c)(1), 7 U.S.C. § 7a–2(c)(1).

The CFMA, together with the shift to electronic trading, unleashed a boom in U.S. derivatives markets. Contracts that once waited on Commission approval could now come to market on self-certification, and the range of listed products expanded quickly. By 2003, the CFTC accepted or approved 348 new futures and options contracts in a single year.[14] Electronic execution kept lower-volume contracts viable and gave commercial participants continuous access to hedging tools that would not have survived under the older regime.[15]

Today, when a DCM prepares to list a new product, it has two options under the Commission's Part 40 rules. A DCM may voluntarily submit the product to the Commission for formal, prior approval under Rule 40.3, or it may self-certify the product under Rule 40.2.[16] Both routes have been in use for more than 25 years. Self-certification is the route that has attracted the most criticism, often from commentators unfamiliar with U.S. derivatives markets and how the process actually works in practice.

Under Commission Rule 40.2, a DCM self-certifies a new product by filing with the Commission, by the open of business on the business day preceding the product's listing, a submission that includes "a concise explanation and analysis" of the product and its compliance with the CEA, including the Core Principles.[17] The exchange must, on request, provide any additional evidence, information, or data demonstrating that the contract meets the requirements of the CEA and the Commission's rules, and in certain circumstances the Commission may stay the listing of a self-certified contract.[18] A DCM that wants certainty may instead elect, voluntarily, to submit a contract for the CFTC's prior approval under Commission Rule 40.3.[19]

In practice, self-certification has long operated as a collaborative, iterative process rather than a unilateral act. Exchanges routinely pre-engage with Commission staff on novel products. An exchange will informally test a draft or proposal, receive staff's preliminary and non-binding views, and then file the self-certification, so that the formal one-business-day submission is often the last step in a much longer dialogue.[20] The very first Bitcoin swap, for example, came to market in September 2014 through a self-certification filed with the Commission's Division of Market Oversight, and trading began the next day.[21]

What has changed more recently with the expansion in prediction markets is the scale of contracts being self-certified by DCMs. Since 2021, the number of event contracts listed for trading has increased from roughly five per year historically to more than 220 in 2021, with over 8,000 event contracts trading in May 2026.[22] There are now 25 registered DCMs and 20 swap execution facilities (SEFs). In the past year, the Commission reviewed 28 applications involving DCMs and

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[14] CFTC, *History of the CFTC: CFTC History in the 2000s*, https://www.cftc.gov/About/HistoryoftheCFTC/history_2000s.html.

[15] Grant Cavanaugh and Michael Penick, *The Lifecycle of Exchange-Traded Derivatives* 12 (CFTC Office of the Chief Economist, Working Paper, June 28, 2014).

[16] 17 C.F.R. §§ 40.2, 40.3.

[17] 17 C.F.R. §§ 40.2(a)(2), (a)(3)(v).

[18] 17 C.F.R. § 40.2(b), (c).

[19] 17 C.F.R. § 40.3; CEA § 5c(c)(4)–(5), 7 U.S.C. § 7a–2(c)(4)–(5).

[20] *See* 91 Fed. Reg. at 35,846 (CFTC staff "may, at its discretion and upon a request from a prediction market, review a draft contract submission or proposal and provide guidance;" encouraging prediction markets to engage with staff prior to self-certification).

[21] *See In re TeraExchange LLC*, CFTC Docket No. 15-33, at 3 (Sept. 24, 2015).

[22] 91 Fed. Reg. at 35,844 n.303.

SEFs, approved seven DCMs, and had 18 DCM applications and three SEF applications still under review. Many of these applicants are interested primarily or exclusively in operating prediction markets.[23] Even at $25 billion in 2025 volume, event contracts remain a small share of the roughly $31 trillion notional futures market the Commission oversees, on the order of 0.08 percent.[24]

The Commission has met the rapid growth of prediction markets the same way it has met every earlier wave of innovation in U.S. derivatives markets. It has held its focus on customer protection and market integrity, and it has worked to modernize its rules in a way that leaves room for responsible innovation while setting clear guardrails for exchanges and market participants. Its recent actions on event contracts follow exactly that approach, and I turn to them now.[25]

The Commission's Recent Notice of Proposed Rulemaking on Event Contracts

The Commission's response to the growth of prediction markets has been deliberate, transparent, and iterative, and at each step it has invited exchanges, market participants, and the public to weigh in. It began on March 12, 2026, when the Commission's staff issued Staff Advisory Letter No. 26-08. That letter reminded DCMs that the existing Core Principles already apply to event contracts, and it urged exchanges to engage with staff proactively before listing novel sports and other event contracts. Four days later, on March 16, 2026, the Commission issued an Advance Notice of Proposed Rulemaking that formally invited public comment on how prediction markets should be regulated.[26] Then, on June 12, 2026, the Commission published a Notice of Proposed Rulemaking titled "Prediction Markets; Public Interest Determinations," which proposes targeted amendments to Part 40 governing event-contract derivatives (the Proposal).[27] I expect the Proposal to be the first of several rulemakings and pieces of guidance the Commission issues as this market matures, each building on the record the Commission is now assembling.

The Proposal is best understood not as a new source of authority but as a more detailed procedure layered on top of obligations that DCMs already carry. For the narrow set of event contracts that involve one of CEA Section 5c's enumerated activities, namely activity unlawful under federal or state law, terrorism, assassination, war, or gaming (the Enumerated Activities), it adds a focused, factor-based public interest review. For a DCM, the practical weight of that review falls mainly on Core Principle 3, the requirement that an exchange list only contracts that are not readily susceptible to manipulation. A DCM must already make that showing for every contract it lists. The Proposal sharpens the showing for event contracts by favoring contract designs that settle on objective, publicly verifiable data, and by asking the exchange to explain, in its Rule 40.2 submission, the specific manipulation and integrity risks a contract presents and the safeguards the exchange has adopted to address them.[28] The Proposal also gives exchanges a defined, 90-day review process with predictable timing and procedural rights, so that a DCM knows precisely what to expect if the Commission decides to review a contract after listing. The rest of this section

[23] *Id.* at 35,844 n.298; *see id.* at 35,817–18.
[24] *Id.* at 35,807; *id.* at 35,845–46 n.308 (noting $25 billion is approximately 0.08% of the $31 trillion total notional value in CFTC-regulated futures).
[25] CFTC, Staff Advisory Letter No. 26-08, *Advisory with Respect to Prediction Markets* (Mar. 12, 2026).
[26] Prediction Markets, 91 Fed. Reg. 12,516 (Mar. 16, 2026).
[27] 91 Fed. Reg. 35,806 (proposed June 12, 2026).
[28] 91 Fed. Reg. at 35,840.

explains where the Commission's authority over event contracts comes from, what the Proposal does and does not do, and how the review process would work in practice.

The Proposal does not create the Commission's authority over event contracts. That authority comes from CEA Section 5c(c)(5)(C), known as the "Special Rule," which Section 745(b) of the Dodd-Frank Act added to the CEA, and which the Commission already implemented through Commission Rule 40.11 in 2011. The Special Rule authorizes the Commission to prohibit a registered entity from listing or clearing an event contract if the contract involves one of five Enumerated Activities, and the Commission determines that the contract is contrary to the public interest. The Proposal would amend the existing Rule 40.11 to spell out how the Commission identifies those activities and how it makes that public interest determination.[29]

The most important feature of the Proposal is what it is not. It is not a categorical ban, and it does not make the Special Rule self-executing. The Special Rule applies only after a prediction market has already certified that an event contract complies with all other requirements of the CEA, including the Core Principles.[30] The CEA provides that, even where an event contract involves an Enumerated Activity, the Commission "may" determine that it is contrary to the public interest. It does not say the Commission "must" do so. As the Commission puts it, the Special Rule "does not provide that event contracts involving Enumerated Activities are contrary to the public interest per se."[31] The Proposal would revise Commission Rule 40.11(a) to track that "may determine" language more closely, correcting the current rule's misleading "shall not list" phrasing.[32]

The Proposal interprets the Special Rule to require a three-step inquiry before the Commission can require the delisting of any event contract, which falls within one of five Enumerated Activities. The Commission must find, first, that the instrument is an event contract. It must find, second, that the contract "involves" one of the five Enumerated Activities. And it must find, third, that the contract is affirmatively contrary to the public interest.[33]

The Enumerated Activities operate as a filter that identifies which contracts are even eligible for a public-interest review. They are not a list of forbidden subjects.[34] The Proposal would define an event contract as one that "involves" an activity only if its settlement is determined by an occurrence in that activity, focusing the analysis on the underlying event rather than on trading behavior.[35] It would also define "gaming" by reference to games themselves, meaning activities that people engage in for recreation or entertainment, that are governed by rules, and whose

[29] CEA § 5c(c)(5)(C), 7 U.S.C. § 7a–2(c)(5)(C), as added by Dodd-Frank Act § 745(b), 124 Stat. 1376, 1735 (2010); *see* Provisions Common to Registered Entities, 76 Fed. Reg. 44,776 (July 27, 2011) (adopting Rule 40.11 to implement the Special Rule).

[30] 91 Fed. Reg. at 35,811, 35,818 (Special Rule applies only after the prediction market certifies compliance with all other requirements, including the Core Principles in CEA §§ 5 and 5h).

[31] *Id.* at 35,811 (Special Rule confers discretion; "does not provide that event contracts involving Enumerated Activities are contrary to the public interest *per se*") (emphasis in original).

[32] *Id.* at 35,818 (proposed § 40.11(a) would "more clearly follow the plain language of the Special Rule by stating that '[t]he Commission may determine'").

[33] *See id.* at 35,811.

[34] *Id.* at 35,821 (role of the Enumerated Activities is "to filter which event contracts are potentially subject to a public interest determination").

[35] *Id.* at 35,821 (proposed § 40.11(a)(3) contracts "involve an activity if their settlement is determined by an occurrence, extent of an occurrence, or contingency in the activity").

outcomes turn on participants' luck, skill, or athletic ability. It would confirm that elections and awards are contests, not gaming.[36]

Applying that framework, the Proposal identifies broad categories of event contracts that fall outside the Special Rule altogether. These include contracts on economic indicators such as the CPI, GDP, and unemployment, contracts on financial indicators such as the federal funds rate and broad stock indexes, contracts on foreign-exchange rates, contracts on the results of political elections and legislative actions, and contracts on honor and award outcomes.[37]

Within the category of events that fit within the gaming definition, the Commission preliminarily concludes that certain sports-related contracts are unlikely to be contrary to the public interest. These are event contracts on the aggregate outcomes of professional or collegiate sports, such as final scores, point differentials, win-loss results, tournament advancement, and season-long statistics, that settle on objective, verifiable data and that a prediction market supports with integrity coordination.[38] By contrast, the Proposal identifies categories that the Commission would likely find contrary to the public interest. These include pure games of chance, player-injury contracts, officiating-outcome contracts, discrete-action contracts tied to a single participant, physical altercation contracts, and pre-collegiate sports.[39]

The Proposal also lays out how the determination process would begin, as it does today, with self-certification under Commission Rule 40.2. A prediction market certifies a new event contract and may list it for trading on the next business day.[40] The Special Rule then operates as a backstop that applies only after that certification. Within 10 days of listing, the Commission may commence a review by issuing a written determination that the contract both involves an Enumerated Activity and may be contrary to the public interest.[41] That review is discretionary. The Commission opens review only if it decides the contract warrants scrutiny, not automatically for every contract that touches an Enumerated Activity.

Once the Commission opens a review, the Proposal sets a structured timetable within the 90-day window the statute allows. Commission staff would provide the prediction market a statement of concerns by day 15. The prediction market would then submit a written response, including any proposed contract modifications, by day 30. Staff would provide a recommendation by day 60, and the prediction market would respond to that recommendation by day 70.[42] The review resolves in one of two ways at the end of the window. If the Commission issues an order finding the contract contrary to the public interest, the contract may not be listed or continue to trade. If the Commission issues no order by day 90, the contract may continue to trade, and the review concludes.[43]

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[36] *Id.* at 35,825 (proposed § 40.11(b) definition of "gaming"); *id.* at 35,826 (political elections are contests, not gaming).
[37] *Id.* at 35,828 (illustrative examples of event contracts not within the scope of the Special Rule).
[38] *Id.* at 35,836 (aggregate sports-outcome contracts, with objective settlement data and integrity coordination, "unlikely to be found to be contrary to the public interest").
[39] *Id.* at 35,835–37 (games of random chance, player-injury, officiating-outcome, discrete-action, physical-altercation, and pre-collegiate sports contracts).
[40] 17 C.F.R. § 40.2(a)(2); 91 Fed. Reg. at 35,810 n.53.
[41] 91 Fed. Reg. at 35,840 (proposed § 40.11(c)(1); review must commence within 10 days of listing).
[42] *Id.* at 35,818–19 n.163 & accompanying text; *id.* at 35,841–42 (proposed § 40.11(d)(1)–(4)).
[43] *Id.* at 35,842 (proposed § 40.11(e)(1)(ii); review "deemed concluded" absent an order).

Customer Protections in Derivatives Markets: A Multi-Layered Framework

Customer protection in derivatives markets does not turn on the kind of contract a customer trades. The CEA and the Commission's rules extend the same core protections to an event contract that they extend to any other product listed on a CFTC-regulated exchange. Nor does that protection depend on the customer reaching the market through a single, uniform channel. Some prediction markets are intermediated, which means that an FCM carries the customer's account, holds the customer's funds, and routes the customer's orders to the exchange. Others are direct access markets, in which customers trade on the exchange without an intermediary standing between them and the market. Customer protections apply in both models, though they attach at different points.

Where an FCM carries the account of a derivatives customer, the FCM is bound by the extensive requirements described below. Where a customer trades directly on the exchange, the exchange and its clearing organization remain bound by the Core Principles that govern the financial integrity of transactions and the protection of customer funds, and the clearing organization must hold and safeguard customer money under the CEA's segregation rules. Either way, the customer is trading inside a regulated system rather than outside of one. These obligations are, moreover, demanding to bear.

To hear those who are unfamiliar with derivatives markets say that there are no customer protections in these markets is strange to me, especially when an FCM carries a customer account. I am perplexed by those criticisms because FCM registration and compliance are burdensome enough that several financial institutions (both large and small) have scaled back or abandoned their FCM businesses over the past two decades. This trend is a reflection of the significant operational, compliance, and capital costs the CFTC's customer protection regime imposes.[44]

FCMs act as custodians of their customers' money, and their regulatory obligations reflect the seriousness of that role. An FCM must register with the CFTC through the National Futures Association (NFA), the self-regulatory organization the CFTC has designated to oversee its member firms, and it must maintain at all times a minimum level of adjusted net capital, which for an FCM that is not also a swap dealer is at least $1 million. It must keep customer funds segregated from its own, hold those funds with approved depositories, calculate the required and actual segregated amounts every day, and invest customer funds only in the narrow set of low-risk instruments the CFTC permits.[45] It must also designate a competent chief compliance officer who files annual reports with the Commission, maintain a comprehensive risk-management program covering market, credit, liquidity, and operational risk, satisfy detailed financial and event-based reporting requirements, and implement an anti-money-laundering program under the Bank Secrecy Act.[46] These requirements are not paper formalities. They exist because the FCM is the point at which a customer's money enters the derivatives market, and the CEA and the

[44] *See* John McCrank, *BNY Mellon to Exit Futures Clearing Business*, Reuters (Feb. 24, 2015); John McCrank, *RBS to Exit Futures and OTC Clearing Business*, Reuters (Apr. 21, 2015).
[45] *See, e.g.*, CEA §§ 4d, 4f; 7 U.S.C. §§ 6d, 6f; 17 C.F.R. pts. 1, 22.
[46] *See, e.g.*, 17 C.F.R. §§ 1.20–1.30 (customer funds segregation and reporting); 17 C.F.R. § 1.12 (financial reporting and notice requirements); 17 C.F.R. § 1.25 (permitted investments of customer funds); NFA, Compliance Rule 2-29 (Nov. 19, 1985, as amended July 21, 2025); NFA Board of Directors, Interpretive Notice 9033 to Compliance Rule 2-29 (June 4, 1996, revised Jan. 1, 2020).

Commission's rules are built so that the customer's collateral remains the customer's property even if the FCM itself fails.

Beyond these CFTC requirements, every FCM is also a member of the NFA and is subject to a further layer of self-regulatory oversight and comprehensive regulation. NFA members must adopt and maintain business-continuity and disaster-recovery plans, implement cybersecurity and information-security programs, supervise their personnel and operations under enhanced supervisory standards, and comply with detailed rules governing the fairness and veracity of their sales practices and communications with the public.[47] Taken together, these requirements build a strong customer protection framework that rests on three reinforcing layers, the CEA itself, the Commission's rules, and NFA regulation. That framework already governs sports-related event contracts on CFTC-regulated exchanges to the same extent, and in the same ways that it governs every other derivatives product listed on those exchanges.

Let the Framework Work As It Has Since 1974

I began by saying that the single threshold question dominating the public debate is the wrong question. I want to close by explaining why. To ask whether event contracts are, as a class, permitted or prohibited assumes that the CEA works like a list that sorts instruments into those that are allowed and those that are banned. The CEA does not work that way.

The CEA sets up a framework instead, and it puts a different question to each contract. That framework rests on exclusive federal jurisdiction, mandatory trading on registered exchanges, principles-based regulation of those exchanges, self-certification of new products, and a narrow public interest backstop reserved for a defined set of subjects. Under it, an exchange may list an event contract if the exchange can certify, and if called upon defend, the contract's compliance with DCM Core Principles, foremost the requirement that the contract not be readily susceptible to manipulation,[48] and if the contract does not fall within the narrow band that the Special Rule reserves for case-by-case public interest review. The right question is therefore not whether event contracts are lawful in the abstract, but how a particular contract fares when it is measured against that framework.[49]

Congress chose this design deliberately. It defined "commodity" to encompass practically all goods, articles, services, rights, and interests, carving out only onions and motion-picture box-office receipts. And it defined "swap" to reach any transaction dependent on the occurrence or nonoccurrence of an "event or contingency associated with a potential financial, economic, or commercial consequence."[50] The definition of "excluded commodity," into which most event contracts fall, is written in four parts that grow progressively broader, reaching from interest rates and currencies at one end to any "occurrence, extent of an occurrence, or contingency" of financial, commercial, or economic consequence at the other. That structure, as the Commission reads it,

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[47] *See e.g.*, NFA, Compliance Rule 2-9 (as amended Mar. 18, 2026); NFA Board of Directors, Interpretive Notice 9070 to Compliance Rules 2-9, 2-36 and 2-49 (Aug. 20, 2015, as amended Sept. 30, 2019); *see also* NFA, Self-Examination Questionnaire (addressing supervisory, cybersecurity, and business continuity obligations).

[48] 91 Fed. Reg. at 35,810 (statutory requirement to list only contracts "not readily susceptible to manipulation"); *id.* at 35,828 (Special Rule applies after certification of compliance with the Core Principles).

[49] *Id.* at 35,810–11.

[50] CEA § 1a(9), 7 U.S.C. § 1a(9); CEA § 1a(47)(A)(ii), 7 U.S.C. § 1a(47)(A)(ii).

reflects "a Congressional intent to include a very wide variety of measures and occurrences."[51] In short, Congress legislated for the instruments it could not foresee.

For that reason, the familiar canon that Congress "does not hide elephants in mouseholes" is misapplied here.[52] There is nothing cryptic about the CEA's commodity and swap definitions. Their breadth appears on the face of the statute, and Congress adopted it with eyes wide open. Congress could have banned event contracts on elections, sports, or any other subject. It did not. Congress, through the Special Rule, confirmed the Commission's jurisdiction over such contracts and gave the Commission discretion to decide, contract by contract, whether particular event contracts are contrary to the public interest.[53] A categorical, binary reading of the CEA cannot be squared with a provision that, by its own terms, calls for individualized public interest determinations.

As I have mentioned, I ask the Subcommittee to carry away from my testimony two key themes. First, the recurring demand for a single threshold answer on whether certain event contracts are permissible asks the wrong question. Congress built a framework, not a list, and it gave the Commission the tools to apply that framework to instruments no one in 1974, 2000, or 2010 could have named in advance.

A categorical ban would discard the case-by-case judgment Congress assigned to the Commission, and it would do so at a moment when the Commission has proposed the first rulemaking in what I believe will be a series of rulemakings establishing workable solutions to many of the criticisms being lobbed at event contracts more broadly.

Demand for these products is real, and a prohibition would not extinguish it. It would move the activity to venues beyond the reach of U.S. surveillance, customer protections, and clearing. The better course is to let the Commission do what Congress charged it to do under the CEA, which is to hold each contract to the Core Principles, apply the Special Rule where it fits, and keep the door open to responsible innovation.

Thank you for the opportunity to appear before the Subcommittee. I look forward to answering any questions you may have.

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[51] 91 Fed. Reg. at 35,820.

[52] *See id.* at 35,808, 35,820; *cf. Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (Congress does not "hide elephants in mouseholes").

[53] 91 Fed. Reg. at 35,813 (Congress "chose not to prohibit event contracts involving those sorts of events" and instead created a process by which the Commission "may" find them contrary to the public interest).