Timothy G. Massad

July 20, 2026

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Prediction Markets; Public Interest Determinations (RIN 3038-AF65); and Joint Request for Comment on Further Definition of "Swap" and "Security Based Swap" and on Alternative Compliance (RIN 3038-AF71)

Dear Sirs:

The Commodity Futures Trading Commission has lost its way. With this proposal on prediction markets, the agency seeks to justify a dramatic expansion of its jurisdiction that would make it the nation's regulator of sports betting and of betting and gambling more generally.[1] This is a responsibility that was never given to it by Congress and one for which it is not suited.

In recent days, it has even chosen to ignore, and seek to nullify, a judicial order that disputes the agency's claim of authority.[2] In doing so, the CFTC is not merely disagreeing with the state court's legal reasoning through conventional avenues; it has directed a regulated entity to do the opposite of what the court ordered. This is an extraordinary and improper assertion of its own supremacy over the court.

As a former chairman of the CFTC, I have publicly expressed my view that it should not regulate sports betting for some time now.[3] Although I have not submitted comments on any rule proposal since leaving the agency, I feel it is important to do so here because the agency has lost sight of its mission and the limits of its own authority. My comments will focus on the NPRM. I also refer to the Product Definition Request for Comment recently issued jointly by the CFTC and the Securities and Exchange Commission ("SEC").[4]

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[1] Notice of Proposed Rulemaking published by the Commodity Futures Trading Commission (the "CFTC" or the "agency") on June 10, 2026, regarding proposed amendments to 17 C.F.R. Part 40, Rule 40.11, Prediction Markets; Public Interest Determinations, RIN 3038-AF65 (the "NPRM").

[2] "CFTC Stays KalshiEX Rule Change and Exercises Emergency Authority to Order Fulfillment of Pending Trades," Release No. 9267-26, July 14, 2026, at https://www.cftc.gov/PressRoom/PressReleases/9267-26. Nessel v. Kalshiex LLC, Case No. 26-1087-CZ, (Mich. Cir. Ct., June 29, 2026).

[3] Timothy Massad, "The CFTC Shouldn't Join the Super Bowl Party," The Brookings Institution, February 5, 2025, https://www.brookings.edu/articles/the-cftc-shouldnt-join-the-super-bowl-party/

[4] Joint Request for Comment on Further Definition of `Swap' and `Security-Based Swap' and on Alternative Compliance published by the CFTC and the Securities and Exchange Commission on June 24, 2026, RIN 3038-AF71 (the "Product Definition Request for Comment").

Introduction

The agency reaches the conclusion that it should regulate sports betting, and betting generally, by confusing the means for achieving its mission—fostering liquid, fair and safe trading markets—for the mission itself, which is to regulate commercial, commodity-related transactions that Congress recognized as having a vital national purpose. It also interprets terms such as "swap" and "price information" as if they are infinitely expandable and need not be read in context. As a result, it seems to believe that the key factor in determining whether a contract is eligible for listing on its markets is whether enough people want to trade it. It claims that this standard is subject to further screening, but as discussed below, the review process it proposes is so impracticable as to render the possibility of meaningful review illusory. Moreover, the criteria it proposes to use for any such review are mostly of an operational and mechanical nature —for example, is the contract susceptible to manipulation, does it have "settlement integrity," and does it challenge the registered entity's "compliance infrastructure"—with a small dose of public policy concerns thrown in. The criteria for any such review appear to have little to do with the agency's mission.

The result is the agency is spending its limited resources to develop rules and guidance that seem of little consequence to the nation's economy when compared to its core responsibility, which is to regulate derivative contracts pertaining to oil, critical minerals, core agricultural products, Treasury securities and other commodities. As examples of rules that have little significance to its mission or to the functioning of commodity markets, consider these: the CFTC (incorrectly) claims that contracts on the outcome of particular games are probably appropriate for listing on its markets, but probably not if the contracts pertain to Little League games or other "pre-collegiate" sports. Contracts on how a pitcher performs over the course of a game are probably okay, but probably not if the contracts are based on the outcome or type of the next pitch he might throw. Contracts on a poker game are probably okay, but those on the outcome of a spinning roulette wheel are not. These distinctions, and the agency's quasi-philosophical musings on the attributes of games,[5] might be worth consideration if Congress *wanted* the CFTC to regulate sports betting, but that is not the case.

I highlight its proposed rules on sports because I believe the consequences of the agency's approach are most troubling when it comes to sports. Sports-related contracts are the largest type of contract on some of the biggest prediction markets, and they are far afield from any notion of what the CFTC should be about. I am not suggesting that people should not be able to bet on sports, but only that it should not be the CFTC's job to regulate such betting. Indeed, Congress has given the task of regulating sports betting to states and Indian tribes, which makes the agency's attempt to expand its jurisdiction even more problematic.[6]

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[5] For example: "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." NPRM at 35827.

[6] Approximately 20 states have challenged the agency's assertions that the Commodity Exchange Act preempts state gambling laws and that it has exclusive jurisdiction over sports betting on prediction markets. See Matt Stieb, "The Supreme Court Could Eventually Decide if Kalshi is Just Sports Gambling," *New York Magazine (Intelligencer)*, July 15, 2026, which reports that the states have won 18 of 22 judicial decisions on whether a preliminary injunction or temporary restraining order should be issued against Kalshi. Because I have long believed that the agency is

There are other event contract areas where I believe the proposal takes the agency far afield from what it should be doing. I also believe there are types of event contracts which should be within its wheelhouse. But rather than offer a list of what types of contracts should or should not be within its jurisdiction, which would inevitably be incomplete, I will focus on the ways the agency has reached this result—in particular its misunderstanding of its mission and Congressional intent and its unpersuasive interpretations of statutory terms—because I believe that is the best way to begin to construct a better approach.

I recognize the importance of innovation and that the definition of commodity has expanded since the CFTC was created. But the definition of commodity should not be made limitless. If the CFTC continues on this path and finalizes this rule, another consequence of this improper course is that it could end up spending a significant amount of its limited resources on activities that have little or no bearing on its mission. The time and resources that could be required if only to implement the review process for new contracts could be significant—if, of course, the CFTC were actually to engage in any meaningful review of new contracts, which is doubtful as discussed below. Unless Congress increases its budget, this means it will be harder for the agency to fulfill the important responsibilities that have traditionally been the focus of its attention and protect the many constituencies who depend on its core markets operating with integrity.

The CFTC Mischaracterizes its Own Mission

A basic flaw in the agency's approach is it mischaracterizes its own mission. Since its creation, the agency's mission has been to oversee markets that are fundamental to the operation of the economy because they help businesses manage commodity price risk and discover commodity prices. Futures contracts and other commodity derivative products are essential to the operation of all sorts of businesses throughout the economy—including farmers hedging crop prices; utilities, airlines and manufacturers hedging exposure to energy prices, financial institutions and other businesses managing risk related to interest and currency rates or credit, and many other businesses using many other products. The Commodity Exchange Act ("CEA") says:

> "Transactions subject to [the CEA] are entered into regularly in interstate and international commerce and are affected with a national public interest *by providing a means for managing and assuming price risks, discovering prices or disseminating pricing information* through liquid, fair and financially secure trading facilities." [italics added][7]

But when the CFTC quotes this section at the beginning of the NPRM, it omits the italicized words, an omission that appears not to be merely inadvertent.[8] It instead reflects its view that its mission pertains to a wide range of transactions *as long as they take place on* "liquid, fair and

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wrong in taking these positions (see note 3), I agreed to be a consultant in litigation that opposes the use of the CEA to preempt state and tribal regulation of sports event contracts offered on certain prediction markets. I have not received compensation from any state, person or entity in connection with this letter and the views expressed in this letter are entirely my own.

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

[8] NPRM, 91 Fed. Reg. 35806, at 35808.

financially secure trading facilities." The proposal effectively turns the agency's historic mission on its head, by elevating the means for achieving the mission—creating liquid, fair and safe trading facilities—over the mission itself.

The CFTC acknowledges that historically, the focus of regulation was whether a contract facilitated the hedging, discovery or transfer of price risk related to an underlying commodity, and it sprinkles in references to hedging in the document. But it generally dismisses the importance of these objectives. It seems to believe that because any traded contract generates a price, that can be relevant pricing information and its job is to facilitate the contract's trading.

It supports this expansive reading by taking statements and definitions out of context. For example, early in the proposal, it quotes a 1976 CFTC Advisory Committee Report, which focused on the role of futures contracts on physical commodities and their relationship to the underlying spot commodity markets. The CFTC quotes the report in saying that "any actively traded futures contract would provide economic benefits—unless it is flawed."[9] It uses this quote to bolster its view that just about any traded contract provides useful information. But that report does not use the term "futures contract" to mean any contract that anyone wishes to trade. Even a cursory review of that report shows that the authors thought about the jurisdiction of the agency and what makes futures contracts distinct in a much narrower way than this rule proposal. For example, in "Major Conclusions and Recommendations" the report says:

> The economic terms and conditions of futures contracts should mirror the marketing pattern of the cash commodity underlying the futures contract as closely as practicable. The only deviations which should be allowed are those which are essential to economically viable futures trading.[10]

Or this, from the section on "Economic Benefits of Futures Trading":

> The Committee believes a commodity futures exchange is not a direct link in a physical distribution system for a commodity but rather an auxiliary institution designed to enhance the working of the physical marketing system. As such, it provides an institutional framework around which and through which a variety of marketing functions can be organized. These include risk shifting, pricing and price discovery, resource allocation, information collection and dissemination, and financing."[11]

While the definition of "commodity" has been expanded beyond physical goods in the years since the report was written, the report's description of the functions of commodity futures markets is still relevant, because it highlights the importance of the relationship between cash and futures markets.

The agency's discussion shows that it cares little about this relationship. While it refers to whether a contract serves a hedging function as a factor it might consider, this appears to be mere

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[9] NPRM at 35811, quoting the Report of the CFTC Advisory Committee on the Economic Role of Contract Markets (1976) (the "Advisory Committee Report"), available at https://catalog.hathitrust.org/Record/000751730
[10] *Id.* Advisory Committee Report at p. 3.
[11] *Id.* Advisory Committee Report at p. 6.

window dressing in the NPRM. "Whether event contracts can be used *directly* for hedging is of limited importance in the public interest determination," it asserts [italics in original].[12] Instead, it says the standard should be whether "the information derived from event contract pricing can be used to guide hedging decisions."[13] It then carries this idea to such extremes as to be meaningless. Its example is an event contract on how well a sports team performs, which it says might not be useful as a hedging tool to a local real estate firm, but it might generate a price that is useful to that firm because it is "a factor in its decisions about how to use other financial instruments to hedge its property investment."[14] It would be generous to even call this the six-degrees of separation version of the relationship between futures and cash market pricing.

The above example also reflects its expansive view of terms like "price discovery," "price information" and the function of dissemination of pricing information. No one can argue with the proposition that the trading of any instrument creates a price. The question is whether that price is economically significant information, and whether it pertains to the commodity derivative markets and the agency's job. The agency largely ignores that issue, or at least finds ways to conclude that just about any "price" creates "price information" that could be valuable to someone, as the above example shows. It goes even further in asserting that "the price discovery function of an event contract is not limited to how the market participants buying and selling the contracts use the prices as guides to how likely events are to occur." Instead:

> "Rather, so long as there is 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 event."[15]

Even if one were to accept this unpersuasive logic, it does not contain a limiting principle, as the agency could just as easily say that the *absence* of a significant volume of trading is a useful indicator of whether the public thinks an event is important, thus justifying the listing of any contract regardless of expected or actual trading volume.

In short, by losing sight of its mission and the role of commodity derivative markets in the economy, the agency seems to take the view that facilitating the trading of practically any "event contract" can be within its mission because it generates "price information," and just about any price information could be valuable to someone.

The CFTC Creates an Untethered Interpretation of the Term "Swap"

Another way that the CFTC supports its expansive view of its jurisdiction is its interpretation of the statutory definition of "swap". Just as it takes a sentence of the Advisory Committee Report out of context, it relies on one sentence from the statutory definition of "swap" out of context to give the term an essentially limitless meaning. Thus, it quotes the clause that says a swap includes any agreement, contract or transaction:

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[12] NPRM at 35830.
[13] *Ibid.*
[14] *Ibid.*, note 231.
[15] *Ibid.*

> “. . . .that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”[16]

By reading this sentence in a vacuum, the agency concludes that a vast range of contracts that were never intended to be considered swaps should be called swaps and are therefore within its jurisdiction. This is the subject of the litigation between various states and the agency. I believe the sentence must be understood in context, in relation to the substance of the swap regulatory framework and the reasons for its creation.

The definition of a swap is contained in Title VII of the Dodd Frank Act, which created a regulatory framework for swaps as part of the reforms enacted in response to the Global Financial Crisis. At the Pittsburgh Summit in 2009, the leaders of the G-20 nations agreed to take action to regulate the over-the-counter swap market.[17] Swap transactions—in particular credit default swaps—had created excessive risks which intensified the severity and depth of the crisis. The G-20 leaders agreed on the principles for the reforms that their nations would implement, including regulation of swap dealers, margin requirements, clearing of standardized swaps and reporting of swap data to central repositories. Congress passed Title VII of the Dodd Frank Act to implement those principles.

Sports betting was, needless to say, not on the agenda at the G-20 meeting, nor was it part of what Congress sought to regulate through Title VII. If one considers the various elements of the swap regulatory framework, they have little or nothing to do with the sports-betting activity that takes place on prediction markets. Indeed, prediction markets have sought and received exemptions from swap regulations pertaining to reporting of transaction data.[18] The CFTC itself doesn’t include transactions on prediction markets in its public reports on swaps.[19]

The agency’s own precedents make it clear that this single sentence should not be read in a vacuum. The exclusion in that quoted sentence of dividends on equity securities is not the only exclusion that the agency has made from the literal words of that sentence. Shortly after the Dodd Frank Act was signed into law, the CFTC and the SEC issued a 600-page joint release with joint rules and interpretations to further define the term “swap” and related terms. This explained how a variety of agreements, contracts and transactions that might be said to fall within those literal words would not be regarded or regulated as swaps because it would not serve the statutory purposes of Title VII. The release gives a wide range of examples of both commercial and consumer agreements, contracts and transactions that might be said to fall within those literal words but would not be considered swaps, while at the same time explaining that its

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[16] NPRM at 35809, 7 U.S.C. 1a(47)(A)(ii).
[17] Pittsburgh Summit Communique, G-20 Leaders Statement, September 24-25, 2009, at https://www.g20.utoronto.ca/2009/2009communique0925.html
[18] See KalshiEx LLC, CFTC No-Action Letters, CFTCLTR Nos. 21-11, 24-15 and 25-02.
[19] See CFTC Swaps Report, https://www.cftc.gov/MarketReports/SwapsReports/index.htm

examples are not exhaustive.[20] The release repeatedly ties its discussion to the purposes of Title VII and Congressional intent in enacting the Dodd Frank Act.

The agency would do well today to follow the logic of its own precedent. But it has instead issued the Product Definition Request for Comment as a first step to revise it. While it has not yet proposed specific changes to the 2012 precedent, the new request suggests it intends to rewrite the precedent to expand the definition of swap. The request talks about its desire to promote innovation. It never mentions Congressional intent or the purposes of Title VII.[21]

The CFTC Reinterprets the Special Rule

The CFTC also reinterprets the so-called Special Rule, which is the provision of Title VII of the Dodd-Frank Act that provides the CFTC with the authority to prohibit the listing of a contract in any of six areas (the "Enumerated Activities") on the grounds that it is contrary to the public interest.[22] Those areas are (i) activity that is unlawful under any Federal or State law, (ii) terrorism; (iii) assassination; (iv) war; (v) gaming; or (vi) any similar activity determined by the Commission to be contrary to the public interest. To implement this provision, the CFTC enacted Rule 40.11 in 2011, in which it prohibited the listing of any contract that involves, relates to or references any of the first five areas.[23] Some commenters asked the CFTC to define gaming. The agency said it would consider doing so and later did so, but that proposal was withdrawn earlier this year.[24]

In this current proposal, the agency argues the CFTC did not have the statutory authority to prohibit all contracts in those five areas. In effect, the agency now argues that it *must allow* the listing of at least some contracts in those areas because the Special Rule said only that the agency "may prohibit" contracts in each such area on public interest grounds. But no justification for this reinterpretation is given beyond this semantic assertion. The agency therefore proposes a process to review individual contracts pertaining to the Enumerated Activities against certain public interest factors, including factors specific to each category. But these factors, as noted below, are often more operational or mechanical than what might be called "public interest" concerns.

It also uses arguments that, in some cases, are just plain stupid to avoid even triggering the public interest review—that is, arguments to expand the universe of contracts that can be listed because they do not "involve" an Enumerated Activity in the first place. An example is the agency's discussion of when a contract "involves" activity that is unlawful under Federal or State law. It says:

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[20] 77 Fed. Reg. 48207 (Aug. 13, 2012); Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps, Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 33-9338 (July 18, 2012).
[21] *Supra* n. 4
[22] 7. U.S.C. 7a-2(c)(5)(C).
[23] Provisions Common to Registered Entities, 76 Fed. Reg. 44776 (July 27, 2011).
[24] "CFTC Withdraws Event Contracts Rule Proposal and Staff Sports Event Contracts Advisory," Release No. 9179-26, February 4, 2026, at https://www.cftc.gov/PressRoom/PressReleases/9179-26

> "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. . . . 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."[25]

But a contract on "whether an individual will murder someone" would require the entry of a judgment of conviction also—a jury trial must *find* that the individual was guilty of murder, as the accused might otherwise claim he wasn't the culprit, or it was self-defense, etc. It seems the CFTC needs to review its understanding of the nation's legal system. More importantly, if this is the policy, then contracts can be "about" all sorts of unlawful activity without being deemed to "involve" unlawful activity.

The CFTC Creates an Illusory Review Process

Having expanded its jurisdiction in these ways, the agency then constructs a review process that is likely to be illusory in practice. Because it believes it cannot prohibit categories of contracts—even those based on assassination or terrorism—it must review individual contracts, and it proposes that any such review must be commenced within 10 days of the listing of a contract. This is an incredibly short time. It is made worse by the fact that the decision to initiate a review cannot be delegated to staff. It must be made by the Commission itself—that is, the commissioner(s). The Commission can only act by public meeting, which requires at least one week's notice, or by seriatim. That can often take a long time as traditionally, one commissioner must sign off before the next can review it. Of course, if the agency continues to operate with only one commissioner, seriatim can take place quickly, but a one-person commission is not what Congress intended.

The agency acknowledges that the review process means that its decision to disapprove a contract would come after trading of the contract has commenced, and suspending trading of a contract could create some disruption. But keep in mind it has said significant trading activity *is itself a basis to approve a contract*, as noted earlier, so query whether it would disapprove a contract that had started trading and had some volume.

The proposal spends several pages outlining the criteria for such a review, but these too seem malleable. There are three general factors that apply to all contracts, and specific factors for each type of Enumerated Activity. The general factors are largely operational and mechanical in nature and not grounded in the agency's mission or Congressional intent. The agency sprinkles in a reference to "hedging" in the general factors, but its importance is so diluted by other words that it is irrelevant. For example, after referring to whether a contract provides "meaningful hedging" it adds "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."[26] Thus, a contract need not pertain to hedging risk if it generates

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[25] NPRM at 35823.
[26] *Id.* at 35859.

"economically useful information;" but that is not required if the information is "otherwise meaningful;" and even that is not necessary if the contract "promotes innovation and competition." One wonders if there is a contract that could not meet at least one of these.

That last addition of promoting innovation and competition deserves attention. While the goals are worthy, the agency uses them to create the equivalent of a popularity test for screening contracts. For example, it notes "the competitive implications of restricting access to event contracts" and says this can lead it to approve a contract that might not meet other tests. It says "the likelihood that prohibiting an event contract would push trading activity into less transparent and less regulated foreign markets is a factor that would weigh against finding that the event contract is contrary to the public interest."[27] If the popularity of a contract is the key factor, then there is likely never to be a prohibition: contracts that are popular would be listed to avoid them moving offshore, and contracts that are not popular do not need to be prohibited because there is not much trading.

Imagine if popularity were the test of regulations generally—that is, the United States shouldn't implement a regulation if it would cause business to go elsewhere. Had that been our guiding principle, the United States would never have been able to build the securities and commodity derivatives law frameworks that have been the model for countries around the world.

That leaves two other general factors, the first being whether there is a risk of manipulation or market disruption. But it is already a CFTC requirement that a contract not be susceptible to manipulation. The additional words in this factor pertain to "settlement integrity," and risks that there could be trading on inside information. The other is whether the contract would challenge the "self-regulatory tools or compliance infrastructure" of the registered entity, which seems to duplicate the second factor as the entity's compliance infrastructure is supposed to prevent manipulation and inside trading. The criteria are not inappropriate; they are simply insufficient as a "public interest" screen.

As for the activity specific factors, the agency offers these for every Enumerated Activity, including terrorism, war and assassination because it is unwilling to categorically prohibit such contracts. This results in guidance that borders on the absurd. For example, in discussing the "information value" of contracts that "involve" terrorism, it offers the following nugget of wisdom:

> "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."[28]

Well, thank goodness it's willing to drawing the line somewhere.

In the case of gaming, it offers 12 specific factors—six positive ones and six negative ones. Many of these are largely about whether the contract is written so that it is objective, can be settled without dispute, is not subject to manipulation and does not encourage or reward bad

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[27] *Id.* at 35831.
[28] *Id.* at 35834

behavior —for example, two of these factors are about "player injury" and "physical altercations." [29]

These "public interest factors" that are specific to gaming are not on their face illogical nor in most respects objectionable. Indeed, they might be worth discussing if the agency's job were to regulate sports betting, but it is not. Instead, they underscore the fundamental question this proposal raises: should the agency really be spending its limited resources on these issues? Should it really be developing rules that say an event contract on which a baseball pitcher will record the most strikeouts in a season is not acceptable, but a contract on who wins the Cy Young award—which goes to baseball's two best pitchers each year—is okay? Or that a contract related to poker games might be okay but one related to a roulette wheel is not? Doesn't it have better things to do?

Recent European and U.K. Regulatory Statements

It is worth noting that regulators in both Europe and the United Kingdom have recently issued statements in light of the growth in prediction market activity, in each case noting that event contracts may be subject to regulation under gambling laws. Europe's top financial markets regulator, the European Securities and Markets Association, issued a statement on July 3, 2026, which said "[w]hether [event contracts] qualify as financial instruments depends on the event question. Event contracts may (also) qualify as bets under national gambling legislation."[30] In the United Kingdom, which has a robust and permissive gambling market, the Gambling Commission recently said that prediction markets would likely be subject to regulation by it under the nation's gambling law. "If a prediction market operator was to launch here in Great Britain, we do not believe they would be able to classify themselves as non-gambling products." In particular, it noted that sports betting "is established and available across the whole of Great Britain under a single overarching regulatory framework."[31].

The CFTC should consider consulting with European and U.K. authorities on a common global approach. This could help alleviate its fear of not listing a contract because it might "push" activity to foreign markets

The CFTC Attempts to Do an End-Run Around a Court Order

I will conclude by noting that it is one thing for the CFTC to make a rule proposal that I think goes too far, or even to argue in court for its exclusive jurisdiction over sports-betting, but it is quite another thing for it to seek to nullify a court order with which it disagrees.[32] Yet that is what it did last week. A Michigan state court issued a temporary restraining order with respect to Kalshi's activities in Michigan, and Kalshi proposed a rule to liquidate certain contracts in

[29] *Id.* at 35834-35837.
[30] European Securities and Markets Authority, "ESMA reminds firms of existing rules and obligations under binary option measures amid growing popularity of prediction markets globally," July 3, 2026 at https://www.esma.europa.eu/press-news/esma-news/esma-reminds-firms-existing-rules-and-obligations-under-binary-option-measures
[31] U.K. Gambling Commission, "Prediction Markets—Here's What You Need to Know, February 4, 2026, at https://www.gamblingcommission.gov.uk/blog/post/prediction-markets-heres-what-you-need-to-know
[32] *Supra,* note 2.

order to abide by that court order. But the CFTC stayed the Kalshi order. It is therefore not just disagreeing with the reasoning of the court; it is asserting its own authority over the court. That, put simply, is wrong. It also contradicts what Chair Selig promised to do at his confirmation hearing before the Senate Agriculture Committee. In response to questions from several Senators, he repeatedly said he would "look to" the courts, "follow" judicial decisions and "respect the decisions of those courts" on questions of jurisdiction.[33]

Conclusion

Congress gave the CFTC some important responsibilities which do not include regulating sports betting. It is not well suited for that task. Thrusting itself into that role will not only be contrary to what Congress intended; it will make it harder for the agency to fulfill the responsibilities Congress gave it.

I urge the agency to reconsider this proposal.

Sincerely,

Timothy Massad

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[33] These statements were made in response to questions from Senators Booker, Schiff, Slotkin and Smith. See video of hearing at https://www.agriculture.senate.gov/hearings/nomination-hearing-11-19-2025