As approved by the Commission
(subject to pre-publication technical corrections)

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038-AF81

Further Definition of "Swap" to Exclude Casino-Style Gambling Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rule; request for comments.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting an interim final rule ("Interim Final Rule") to codify its longstanding position that casino-style gambling products, including wagers placed on sportsbooks and casino games, are excluded from the "swap" definition.

DATES: *Effective Date*: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Request for comment*: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, specifically referencing "Further Definition of "Swap" to Exclude Casino-Style Gambling Products" and RIN 3038-AF81, 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 Notice 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 and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Tyler S. Badgley, General Counsel; Aaron M. Levine, Deputy General Counsel for Regulation, rulemaking@cftc.gov, 202–418–5000, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") established a comprehensive regulatory framework for swaps.[1] Section 712(d)(1) of the Dodd-Frank Act provides that the Commission and the Securities and Exchange Commission ("SEC"), in consultation with the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"), shall jointly further define, among other terms, the term "swap."[2] Pursuant to this requirement, in 2012, the Commission and the SEC, in consultation with the Federal Reserve Board, issued a final rule further defining the term "swap" and other terms.[3] That rule addressed, among other topics, the treatment of certain traditional, non-derivatives products, agreements, contracts, and transactions that they concluded Congress did not intend to be regulated as swaps or security-based swaps, including insurance contracts and certain commercial and consumer transactions.

This Interim Final Rule arises in the context of the ongoing debate regarding the scope of the Commission's jurisdiction under the Commodity Exchange Act ("CEA"), particularly as it relates to event contracts. The CFTC generally has found that many event contracts, including those based on sports-related events, are covered by the CEA's

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[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376, 1641 (2010). The text of the Dodd-Frank Act is available at http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.

[2] 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). 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). The Commission has consulted with the Federal Reserve Board by sharing this Interim Final Rule.

[3] 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) ("Further Definition Release").

swap definition.[4] The CEA contains six definitions of "swap," at least four of which are applicable to event contracts.

First, CEA section 1a(47)(A)(i) includes binary options and other commodity options in the "swap" definition by including "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."[5]

Second, 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."[6]

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[4] Event contracts might be structured as other instruments such as futures contracts, which are excluded from the statutory definition of "swap." CEA section 1a(47)(B), 7 U.S.C. 1a(47)(B) (providing "exclusions" from the definition of "swap" under the CEA, including futures, options on futures, securities such as options on securities and indexes of securities, security-based swaps, and debt securities). Certain event contracts may be security-based swaps or other instruments subject to the SEC's jurisdiction. *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). This Interim Final Rule does not further define the term "security-based swap."

[5] 7 U.S.C. 1a(47)(A)(i). A binary option is thus a type of swap which is an "option whose payoff is either a fixed amount or zero." *See* CFTC, *Futures Glossary*, available at https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm#B.

[6] 7 U.S.C. 1a(47)(A)(ii). The broad nature of clause (ii) of the swap definition is in keeping with the broad definition of the term "commodity" in the CEA. For example, the 1974 amendments to the CEA expanded the definition of the term "commodity" to encompass "all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in." *See* CEA sec. 1a(9), 7 U.S.C. 1a(9) (defining "commodity"). In 2000, Congress reaffirmed the broad scope of the commodity definition in adding the term "excluded commodity" to the CEA.

Third, CEA section 1a(47)(A)(iv) includes in the "swap" definition "an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap."[7]

Fourth, CEA section 1a(47)(A)(vi) makes clear that the "swap" definition includes "any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v)" of CEA section 1a(47)(A).[8]

In addition to the "swap" definitions provided by the statute, the Dodd-Frank Act included several provisions that give the Commission authority to further define "swap." First, Dodd-Frank Act section 712(d)(2), 15 U.S.C. 8302(d)(1), directs the CFTC and SEC, in consultation with the Federal Reserve Board, to "further define" the term "swap."[9] Second, Dodd-Frank Act section 721(b), 15 U.S.C. 8321(a)(2), permits the CFTC to define any term included in an amendment to the CEA in Subtitle A of the Wall Street Transparency and Accountability Act of 2010, which includes the term "swap." Third, Dodd-Frank Act section 721(b), 15 U.S.C. 8321(b), directs the CFTC to further define "swap" to include transactions and entities that have been structured to evade Subtitle A.

In recent months, many have expressed concern that a natural, plain-text interpretation of the "swap" definition would necessarily encompass casino-style

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[7] 7 U.S.C. 1a(47)(A)(iv).
[8] 7 U.S.C. 1a(47)(A)(vi).
[9] The CFTC and SEC, in consultation with the Federal Reserve Board, first further defined "swap" in a 2012 joint rulemaking. 77 Fed. Reg. 48208 (Aug. 13, 2012). In that rulemaking, the CFTC and SEC noted that, while "[t]he statutory definitions of the terms 'swap' and 'security-based swap' are detailed and comprehensive, . . . the definitions could be read to include certain types of agreements, contracts, and transactions that previously have not been considered swaps or security-based swaps, and nothing in the legislative history of the Dodd-Frank Act appears to suggest that Congress intended such agreements, contracts, or transactions to be regulated as swaps or security-based swaps." The CFTC and SEC thus used their authority "to further clarify the treatment under the definitions of certain types of agreements, contracts, and transactions." *Id.* at 48211.

gambling products and, finding that consequence untenable, have diverged from the plain text of the statute. For example, the Sixth Circuit viewed sports event contracts as legally indistinguishable from casino-style sports wagers, and thus, it expressed concern that, if sports event contracts are swaps, *any* sports wager—including "every sports wager placed in a casino, on an online sports book, or between two friends at a bar"—would need to "take place on federal markets."[10] Indeed, the Sixth Circuit explained, a person would commit a felony by engaging in gambling off a designated contract market ("DCM").[11] Thus, the Sixth Circuit believed that its atextual interpretation of the "swap" definition would avoid "attach[ing] criminal penalties to a breathtaking amount of commonplace gambling activity."[12]

The Ninth Circuit similarly reasoned that sports event contracts and casino-style sports wagering are indistinguishable, finding that the "substance" of the sports event contracts at issue was "sports gambling, regardless of whether [the DCM] calls them swaps" (and, by inference, regardless of whether the CFTC regulates them as swaps).[13] And because "there is not a difference under the CEA's swap definition between sports betting on Kalshi and sports betting in Caesar's Sportsbook, then every person placing a sports bet at Caesar's Sportsbook (or anywhere else for that matter) is violating the CEA."[14] The court also expressed concern that "bingo games and pingpong matches" would fall under CFTC jurisdiction.[15] For these and other reasons involving the court's

[10] *Schuler*, 2026 WL 2884087, at *14-15 (citation modified).
[11] *Id.* at *14.
[12] *Id.* (citation modified).
[13] Assad, 2026 WL 2543846, at *10.
[14] *Id.* at *11.
[15] *Id.*

understanding of the CEA's "context" and "history,"[16] the court ultimately "conclude[d] that these sports event contracts are likely not swaps under the CEA."[17]

Exploiting this lack of clarity, certain states have asserted that event contracts traded or executed on a DCM should be state regulated (rather than federally regulated under the CEA). These states argue that if the Commission has jurisdiction over event contracts, that would necessarily subject casino-style sports wagers—traditionally regulated by the states—to the Commission's jurisdiction, as well. For example, in response to a Commission proposed rulemaking, 40 states and the District of Columbia submitted a comment, arguing that sports event contracts are "indistinguishable from traditional sports betting."[18] The State of New Jersey recently argued to the United States Supreme Court that "[n]othing in the [CEA] gives the CFTC unprecedented authority to become the sole regulator of sports gambling in this country."[19] And the Commonwealth of Kentucky has claimed that determining that event contracts are swaps under the CEA amounts to "[t]ransferring every ounce of authority over sports wagering from the States to the CFTC."[20]

There also appears to be confusion within the gaming industry. The American Gaming Association has argued that if "sports wagers qualify as 'swaps,' the CEA would require *all* sports bets—including those placed on the Las Vegas Strip—to be traded on DCMs."[21] In its view, there is "no plausible statutory basis to distinguish retail sports bets

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[16] *Id.* at 9 (citation omitted).
[17] *Id.* at 15.
[18] Letter from Dave Yost, et al. to Michael Selig at 1 (Apr. 30, 2026); https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=115653&SearchText=yost.
[19] Brief for Petitioner, *Flaherty v. KalshiEX, LLC*, No. 26-299 (Sept. 2, 2026), 2026 WL 2658173, at *32.
[20] Memorandum of Law in Support of Motion to Dismiss or, in the Alternative, for Summary Judgment at 24, *United States v. Kentucky*, No. 3:26-cv-49 (E.D. Ky. Aug. 24, 2026).
[21] Brief of Amicus Curiae American Gaming Association in Support of Defendants-Appellees and Affirmance, *KalshiEX LLC v. Schuler*, No. 26-3196, Dkt. No. 54 at 23 (6th Cir. June 11, 2026).

from identical wagers placed on [a DCM]—if the latter are swaps, the former must be as well."[22]

As the above discussion demonstrates, there is widespread confusion regarding whether the definition of a swap includes casino-style gambling products, including wagers placed on sportsbooks and casino games, traditionally regulated at the state level. In this regard, many courts, states, and private businesses are currently operating under the erroneous premise that if event contracts are swaps, then casino-style gambling products must also be swaps subject to CFTC jurisdiction. That premise has led courts and states to deviate from the plain text of the "swap" definition and impose atextual limitations on the concept of an "event" that is "associated with a potential financial, economic, or commercial consequence."[23]

To address this misunderstanding, this Interim Final Rule affirms and codifies the Commission's longstanding position that casino-style gambling products, including sports-wagering contracts entered into on a sportsbook and casino games, are not swaps and do not fall within the CFTC's jurisdiction. This action is intended to remove regulatory ambiguity and clarify the boundaries between the Commission's jurisdiction over the derivatives markets and State and Tribal jurisdiction over casino-style gambling.

The Commission notes that this approach is supported by a decision of the United States Court of Appeals for the Third Circuit, which held that "sports-related event contracts are traded on a CFTC-licensed DCM and depend on event outcomes associated with economic consequences" and therefore "fit within the Act's definition of 'swaps'

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[22] *Id.* at 23-24.
[23] *Schuler*, 2026 WL 2884087, at *11 (holding that "the [must] be one *inherently* associated with a 'financial, economic, or commercial consequence'" (emphasis added)).

subject to the CFTC's jurisdiction."[24] In response to the State's concern that "anything from bingo games to pingpong matches will fall under the CFTC's jurisdiction," the court observed that "[i]n such far-fetched scenarios, Congress's express delegation to the CTFC and the Securities and Exchange Commission to 'further define' swaps would prove useful," and it cited the Commissions' 2012 rulemaking excluding insurance contracts and consumer transactions.[25] Other courts have similarly recognized that the CEA applies to sports event contracts that "take[] the form of swaps," even while the CEA "does not federalize all gambling, or even all sports gambling."[26] This Interim Final Rule implements the Third Circuit's suggested approach.

Statutory Authority

Section 712(d)(1) of the Dodd-Frank Act provides that the Commission and the SEC, in consultation with the Federal Reserve Board, "shall further define," among other terms, the term "swap."[27] Section 712(d)(2)(A) further empowers the Commission and the SEC, in consultation with the Federal Reserve Board, to "jointly adopt such other rules regarding such definitions as the [CFTC and SEC] determine are necessary and appropriate, in the public interest, and for the protection of investors."[28]

II. Interim Final Rule

[24] *KalshiEX, LLC v. Flaherty*, 172 F.4th 220, 228 (3d Cir. 2026).
[25] *Id.*
[26] *Coinbase Fin. Mkts., Inc. v. Raoul,* Nos. 1:25-cv-15406, 1:26-cv-03659, 1:26-cv-07363, 2026 WL 2969682, at *10 (N.D. Ill. Oct. 2, 2026).
[27] 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). This release adopts a rule of the CFTC that addresses matters within the exclusive jurisdiction of the CFTC. The SEC joins in adopting this rule in satisfaction of the statutory requirement in Section 712(d)(1). The Interim Final Rule does not address or otherwise relate to matters within the jurisdiction of the SEC.
[28] Dodd-Frank Act sec. 712(d)(2)(A), codified at 15 U.S.C. 8302(d)(2)(A).

The Commission is issuing this Interim Final Rule to further define the term "swap" to explicitly exclude casino-style gambling products, including sports-wagering contracts entered into on a sportsbook, from the swap definition. By enacting this Interim Final Rule, the Commission seeks to reiterate its longstanding position that its oversight of federally regulated derivatives markets does not intrude upon the traditional State and Tribal regulation of casino-style gambling products.

Though Congress deliberately drafted a broad definition of a swap,[29] the CFTC's jurisdiction is not boundless. The Commission has always acknowledged that certain instruments may, on their face, plausibly fit within the definition of "swap" in CEA Section 1a(47), but that the swap definition is best read to exclude that instrument in light of statutory context and a longstanding tradition of regulation by another regulator. Gambling products offered by state or tribe-licensed casino operators and sportsbooks fit this mold.

Insurance serves as a prime precedent.[30] On its face, prong (ii) of the "swap" definition could plausibly be read to encompass insurance contracts, because they make "payment" "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."[31] Given that potential ambiguity, when the Commission and the SEC jointly further defined the term "swap" in 2012, the agencies explicitly noted that they did not interpret prong (ii) of the swap definition[32] "to mean that products historically

[29] CEA section 1a(47), 7 U.S.C. 1a(47).
[30] *See* Further Definition Release, 77 FR at 48210, 48212-48225.
[31] 7 U.S.C. 1a(47)(A)(ii).
[32] As described above, 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

regulated as insurance products should be included."[33] The Commission and the SEC further emphasized that nothing in the Dodd-Frank Act "suggest[ed] that Congress intended for traditional insurance products to be regulated as swaps."[34]

Consequently, the Commission and the SEC specifically carved out traditional insurance products from the swap definition by relying on core factual and structural differences to distinguish them from derivatives. A foundational distinction was whether the instrument is traded: the Commission and the SEC noted that "insurance products traditionally have not been entered into on or subject to the rules of an organized exchange nor traded in secondary market transactions (i.e., they are not traded on an organized market or over the counter)," whereas swaps are routinely traded on such venues.[35] Furthermore, the Commission and SEC emphasized that "all or part of swaps and security-based swaps are novated or assigned to third parties, usually pursuant to industry standard terms and documents." In other words, swaps can be centrally cleared, unlike insurance contracts.[36]

The Commission and the SEC also relied on the fact that insurance products are "provided by a person that is subject to supervision by the insurance commissioner (or similar official or agency) of any state or by the United States" and are "regulated as insurance under applicable state law or the laws of the United States."[37] The agencies clarified, however, that other instruments providing substantially similar economic

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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." 7 U.S.C. 1a(47)(A)(ii).

[33] 77 FR at 48212.

[34] *Id.*

[35] *Id.* at 48214; *see also* 17 CFR 1.3 (Swap)(4).

[36] 77 FR at 48208, 48214.

[37] 77 FR at 48220.

exposure to an insurance contract—such as certain credit default swaps—remain within the swap definition and subject to the CFTC's jurisdiction.[38]

The Commission and the SEC took a similar approach to "consumer and commercial agreements that historically have not been considered swaps or security-based swaps" but nonetheless "may have attributes that could be viewed as falling within the swap or security-based swap definition."[39] Examples included "acquisitions or sales of property (tangible and intangible), provisions of services, employment of individuals, and other matters that could be viewed as falling within the definitions."[40] The Commission and the SEC excluded these contracts on the ground that they did "not believe Congress intended to include these types of customary consumer and commercial agreements, contracts, or transactions in the swap or security-based swap definition," again highlighting the "key" point that such transactions are "not traded on an organized market or over-the-counter."[41] The Commissions adopted this interpretation to address, among other concerns, the possibility that customary consumer and commercial agreements, contracts, or transactions could be subject to the restriction in section 2(e) of the CEA on entering into swaps with persons who are not eligible contract participants ("ECPs") other than on, or subject to the rules of, a DCM.

As explained above, similar concerns have recently arisen in connection with traditional gambling products offered by state-regulated gambling companies and tribes.

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[38] *Id.* (comparing insurance products and credit default swaps). In this regard, the Commission and the SEC noted their "concern[] that certain agreements, contracts, or transactions that are swaps or security-based swaps might be characterized as insurance products to evade the regulatory regime under Title VII of the Dodd-Frank Act." *Id.*
[39] *Id.* at 48,246.
[40] *Id.*
[41] *Id.* at 48,246-48.

To address this concern, the Commission seeks to further clarify through this Interim Final Rule that casino-style gambling products are not within Commission's jurisdiction. As explained below, the same concerns that led the Commission to exclude insurance contracts and consumer and commercial agreements from the "swap" definition are equally applicable to gambling products.

First, and most fundamentally, gambling products do not bear the structural characteristics of a CEA-regulated derivative. Gambling products are typically conducted as bilateral transactions between a casino or bookkeeper (a "house") and its customer rather than on an organized market.[42] Prices are not set by market forces and are not subject to negotiation; rather, customers must accept the price set by the house. Because of these dynamics, gambling products are not inherently *tradeable*, which is a strong indicator that these products are not swaps or any other kind of derivative within the Commission's jurisdiction.[43]

Tradability is a material consideration in determining whether a financial instrument has the legal status of a derivative, as the Commission and SEC emphasized with respect to insurance contracts and consumer transactions. Although the CEA's "swap" definition does not itself contain a tradability requirement, interpreters of statutory text nonetheless must be guided by "[t]he broader context provided by other sections of the statute."[44] The CEA's broader context repeatedly reinforces tradability as

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[42] Steven D. Levitt, *Why Are Gambling Markets Organised So Differently from Financial Markets?*, 114 Econ. J. 223, 223 (2004).
[43] While this Interim Final Rule addresses only casino-style gambling products offered pursuant to State or Tribal law, the exclusion provided herein is non-exclusive. There may be other gambling-style transactions that are not swaps given how those transactions are structured and whether they are tradable. Examples could include a casual bet between friends or a casino-style sportsbook illegally operating in a State that prohibits gambling.
[44] *Robinson v. Shell Oil Co.*, 519 U.S. 337, 345 (1997).

an important consideration in whether a particular contract qualifies as a swap.[45] For example, CEA Section 2(e) makes it unlawful for any person, other than an ECP, to enter into a swap unless executed on, or subject to the rules of, a DCM.[46]

Likewise, Section 2(a)(1) of the CEA confers exclusive jurisdiction on the CFTC with respect to "accounts, agreements . . . , and transactions involving swaps or contracts of sale of a commodity for future delivery," to the extent they are "traded or executed on a [DCM] or a swap execution facility."[47] Furthermore, the CEA provides that the transactions subject to the Commission's exclusive jurisdiction serve 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."[48] Only tradable instruments—i.e., those that are executed multilaterally or at least subject to negotiation—can serve those purposes.

The CEA's Core Principles also presuppose that derivatives are tradable instruments. Core Principle 9 for DCMs requires exchanges to provide "a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market."[49] Gambling products are not offered through "trading" on "centralized market[s]," and prices for gambling products are not set by "a competitive, open, and efficient market"—they are unilaterally dictated by the casino or sportsbook. Other Core Principles for DCMs and SEFs likewise presuppose the competitive trading of derivatives, which cannot be said of gambling

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[45] Notably, courts have looked to the tradability of an instrument to determine whether it is a future or a forward contract. *See, e.g.*, *CFTC v. Zelener*, 373 F.3d 861, 865-66 (7th Cir. 2004).
[46] 7 U.S.C. 2(e).
[47] 7 U.S.C. 2(a)(1)(A).
[48] 7 U.S.C. 5(a).
[49] 7 U.S.C. 7(d)(9).

products.[50] For these reasons, gambling products are not derivatives subject to its jurisdiction.

Second, the CEA contemplates that a swap can be cleared. Section 2(h) of the CEA provides that "[i]t shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this chapter or a derivatives clearing organization that is exempt from registration under this chapter if the swap is required to be cleared."[51] Like insurance contracts, gambling products are not "cleared," in that the wager obligation is not routinely transferred to a third party to eliminate counterparty credit risk and ensure contract fulfillment.

Third, there is no indication that "Congress intended to include [gambling products] in the swap … definition."[52] To the contrary, Congress has long recognized a distinction between gambling products and derivatives contracts.[53] Furthermore, when Congress adopted the "swap" definition, it did so against a background of other federal statutory provisions regulating sports gambling, and the Commission does not presume Congress to have impliedly repealed those provisions.[54]

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[50] *E.g.*, *id.* 7(d)(7) (requiring the offeror of a derivative to have an "electronic matching platform" or "trade execution facility"); § 7(d)(8) (requiring daily publication of price and volume information "for actively traded contracts"); *id.* 7b-3(f)(4) (requiring SEFs to "monitor trading in swaps").
[51] 7 U.S.C. 2(h).
[52] 77 FR at 48,246.
[53] 7 U.S.C. 16(e)(2) (preempting "any State or local law that prohibits or regulates gaming … in the case of" certain "excluded" or "exempted" contracts); 31 U.S.C. 5362(1)(E) (distinguishing a "bet or wager" from "any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act").
[54] 18 U.S.C. 1084(a) ("Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both."); 28 U.S.C. 3702(1) ("It shall be unlawful for--(1) a

Fourth, just as insurance products and consumer transactions have traditionally been subject to a distinct regulatory framework governed by state law, casino-style gambling products have historically been, and are, offered by state-licensed gambling venues or tribes, and subject to a gambling-specific regulatory regime. Absent a more specific indication in the statutory text, the Commission does not presume that Congress intended to disrupt that federal-state balance.[55]

Fifth, the "swap" definition also encompasses any "agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap."[56] The Commission is unaware of any trade usage or market belief that gambling products are considered swaps in the derivatives industry. To the contrary, DCMs and industry groups have repeatedly emphasized to federal courts that gambling contracts are *not* swaps.[57]

Event contracts differ from gambling products in all five respects. First, unlike gambling products, event contracts have the essential structural characteristics of a derivatives contract. By design, they are traded on CFTC-registered national exchanges at market-set prices through the interaction of bids or offers placed on a central orderbook,

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governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games."), held unconstitutional in *Murphy v. National Collegiate Athletic Ass'n*, 584 U.S. 453 (2018).

[55] *See Bond v. United States*, 572 U.S. 844, 863 (2014).

[56] 7 U.S.C. 1a(47)(A)(iv).

[57] Opening Brief for Appellant KalshiEX LLC, *KalshiEX LLC v. Schuler*, No. 26-3196, Dkt. No. 28 at 51 (6th Cir. May 5, 2026) ("[T]hat Kalshi's sports-event contracts are swaps does not mean that run-of-the-mill sports bets are also swaps."); Appellant's Opening Brief, *QCX LLC v. Nessel*, No. 26-1552, Dkt. No. 15 at 12 (6th Cir. Aug. 17, 2026) ("Sports-related event contracts are fundamentally different than sportsbook bets."); Brief of Amicus Curiae the Coalition for Prediction Markets in Support of Plaintiff-Appellee and Affirmance, *KalshiEX LLC v. Orgel*, No. 26-5235 at 17-22 (6th Cir. June 24, 2026) (explaining legally significant distinctions between event contracts and gambling).

not at prices unilaterally dictated by a "house." The exchanges are neutral; they do not profit when the event contract settles one way versus another. Rather, they earn profit by charging transaction fees when a trade occurs, similar to any other derivatives trade.[58] Such contracts are subject to the comprehensive DCM and derivatives clearing organization ("DCO") core principles that serve to, among other things, protect customers who are trading and clearing such contracts. The structure of gambling wagers and event contracts is materially different, and therefore subject to different regulatory regimes.[59]

Second, event contracts traded on a DCM are centrally cleared by CFTC-registered clearinghouses to eliminate counterparty credit risk, just like other derivatives transactions. Thus, when a bid and offer match on a DCM's central orderbook, the parties enter into a contract with one another, but that contract is then novated such that each party has a contractual relationship with a neutral, creditworthy clearinghouse.

Third, there is strong textual evidence that Congress intended for event contracts to be considered "swaps" under the CEA and to give the Commission authority to regulate them. The second prong of the "swap" definition is the most obvious illustration, as it specifically covers "contract[s]" based on "event[s]."[60] Additionally, when Congress created the "swap" definition, it also enacted a "Special rule for review and approval of *event contracts and swaps contracts*."[61] The Special Rule recognizes that "swaps in excluded commodities" can be "based upon the occurrence, extent of an occurrence, or

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[58] The CFTC recently issued a letter to Commission-regulate entities to remind those entities of their obligation to display prices clearly and not to mislead customers into mistaking market-priced products with casino-style products. CFTC, Misleading or Deceptive Practices (Aug. 7, 2026), available at https://www.cftc.gov/PressRoom/PressReleases/9278-26.
[59] Additionally, while a sportsbook or other gambling venue may regularly exclude winners, a DCM is subject to an impartial access requirement that does not allow it to bar traders who have profited. *See* 17 CFR 38.151.
[60] 7 U.S.C. 1a(47)(A)(ii).
[61] *Id.* § 7a-2(c)(5)(C) (emphasis added).

contingency" that "involve[s]," among other things, "gaming."[62] The word "'gaming,' as used in the special rule, refers to playing games," so "event contracts related to … sporting events … could implicate the gaming category."[63] Congress expressly gave the Commission jurisdiction over those contracts, confirming their status as derivatives contracts.[64] Notably, Congress did *not* give the Commission authority over "gaming" products themselves, further confirming that gaming products like wagers fall outside the Commission's jurisdiction but event contracts that involve games are within the Commission's jurisdiction.[65]

The Sixth Circuit expressed the view that "just because the CFTC may prohibit gaming-related event contracts does not mean [a DCM's] sports-event contracts are *necessarily* swaps," since event contracts can also be "agreements, contracts, [or] transactions" under the Special Rule.[66] But apart from "gaming," the Special Rule only applies to event contracts that "involve" "activity that is unlawful under any Federal or State law," "terrorism," "assassination," "war", or "other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest."[67] It must be the case that a "swap" can "involve" at least one of these categories of activity, or else the word "swap" in the Special Rule is surplusage. Furthermore, even if a "gaming" contract is considered an "agreement," "contract," or "transaction," the Special Rule still classifies that contract as being "in excluded commodities."[68] And the swap definition covers

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[62] *Id.* § 7a-2(c)(5)(C)(i).
[63] *KalshiEX LLC v. CFTC*, 2024 WL 4164694, at *10 (D.D.C. Sept. 12, 2024).
[64] 7 U.S.C. § 7a-2(c)(5)(C)(ii).
[65] *KalshiEX,* 2024 WL 4164694, at *12 (rejecting interpretation of Special Rule that would give CFTC jurisdiction over any contract that "states define … as 'gambling'").
[66] *Schuler*, 2026 WL 2884087, at *15.
[67] 7 U.S.C. 7a-2(c)(5)(C)(i)(I)-(IV), (VI).
[68] *Id.*

binary options in excluded commodities which, as discussed below, includes event contracts.[69] In short, the Special Rule contemplates that "gam[es]" are "excluded commodities," which reinforces that event contracts based on games are derivatives.

Fourth, event contracts have traditionally been regulated by the Commission, not the states. "Since 1992, Commission-regulated exchanges have listed for trading a variety of commodity futures and options contracts with payout terms based on" events "as diverse as regional insured property losses, the count of bankruptcies, temperature volatilities, corporate mergers, and corporate credit events," and in subsequent years, event contracts encompassed "the accomplishment of certain scientific advances, world population levels, the adoption of particular pieces of legislation," and even "the length of celebrity marriages."[70] In 1993, the Commission issued a no-action letter to Iowa Electronic Markets, allowing the facility to list event contracts tied to U.S. and Canadian elections.[71] In 2004, the CFTC designated the first DCM dedicated to listing contracts based on events that are excluded commodities.[72] Initially, these contracts were structured as commodity options known as "binary options," the cash settlement of which was based

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[69] *Id.* 1a(47)(A)(i).
[70] 73 FR 25669, 25670-71 (May 7, 2008).
[71] CFTC Staff Letter No. 93-66 (June 18, 1993), *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/93-66.pdf*.
[72] *See* CFTC 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. In 2009, HedgeStreet changed its name to North American Derivatives Exchange, Inc., or Nadex, and in 2025, Nadex transitioned to the Crypto.com platform. *See* summary of registration, available at https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizations/34536. It continues to list contracts on foreign exchange, equity indices, commodity prices, and digital assets.

on whether a specified event had occurred.[73] Thus, while gambling is traditionally state-regulated, event contracts are traditionally federally regulated.

Fifth, as set forth in the separate Notice of Proposed Rulemaking proposing to further define "swap" to include event contracts, the Commission preliminarily believes that event contracts are known to the trade as "swaps." Therefore, if certain event contracts do not qualify as swaps under the first or second prongs of the swap definition, they do qualify under the fourth prong. The same cannot be said of gambling products, for the reasons noted above.

In sum, the "swap" definition generally should not apply where a product has a longstanding history of being subject to a distinct regulatory framework and structurally does not lend itself to the requirements of the CEA, including its exchange-trading requirement and the core principles. As the Commission and SEC recognized in 2012, insurance contracts and consumer and commercial agreements are such examples. Today, the Commission clarifies that casino-style gambling products offered by casinos or sportsbooks likewise fit the exclusion.

The Commission acknowledges that a person can achieve similar economic exposure by either entering into a gambling wager or purchasing an event contract. However, that does not make the two products one and the same, nor does it require that the two be subject to identical regulatory frameworks. Indeed, there are many instances in which a person can achieve the same (or similar) economic exposure via structurally different products subject to distinct regulatory regimes. For example, as noted, insurance

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[73] *See e.g.*, Letter from HedgeStreet, Inc. to David Stawick, Sec'y, CFTC, *Re: Rule Certification: HedgeStreet's listing of new Germany 30 Binary Hedgelet Contracts* (Oct. 30, 2008), available at https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul103008hedgestreet001.pdf.

and credit default swaps can provide similar risk mitigation, but that does not mean the two are or must be regulated the same way. Likewise, a person can gain exposure to a crypto asset by purchasing the crypto asset itself, purchasing shares in a firm that holds the crypto asset, or by purchasing crypto asset futures, each of which has distinct regulatory consequences. The same is true in the context of event contracts and casino-style gambling products.

Based on this interpretation and to address the concerns referenced in Part I above, the Commission is adopting this Interim Final Rule to establish an exclusion confirming that traditional gambling products do not qualify as swaps under the CEA. Nothing herein implies or presumes that an agreement, contract, or transaction that does not meet any of the requirements of this exclusion is a swap. Such an agreement, contract, or transaction will require further analysis of the applicable facts and circumstances, including the form and substance of such agreement, contract, or transaction, to determine whether it is a gambling product, and thus not a swap.

Similar to the exclusions for insurance contracts and consumer transactions, the exclusion has two components: a test relating to the status of the party offering the agreement, contract, or transaction (the "Provider Test") and a test relating to the terms of the agreement, contract, or transaction (the "Product Test").

To satisfy the Provider Test, the relevant agreement, contract or transaction must be provided by a person that is subject to supervision by the gaming commissioner (or similar official or agency) of any State or by a Tribe, and such agreement, contract, or

transaction is regulated as gaming or gambling under applicable State or Tribal law.[74] This requirement ensures that the Commission does not have jurisdiction over persons or products that have traditionally been the subject of State or Tribal regulation, particularly given the absence of an indication in Dodd-Frank that Congress intended the Commission to regulate these persons and transactions.

To satisfy the Product Test, the agreement, contract, or transaction must not be traded on a board of trade, an organized exchange, a swap execution facility, or any other market in which trades are executed multilaterally or subject to individual negotiation. For example, bets or wagers offered by a sports book or casino as principal to its customers, where the material terms of those bets or wagers are governed by standard "house rules" or similar standard terms, would satisfy the Product Test. In contrast, an agreement, contract, or transaction entered into on a trading facility,[75] including a DCM, or a SEF,[76] would not satisfy the Product Test because its price and other economic terms would be determined through the competitive interaction of multiple buyers and sellers

[74] The insurance exclusion is similarly limited (outside of the contexts of reinsurance and non-admitted insurance) to products offered by a person that is subject to supervision by the insurance commissioner (or similar official or agency) of any State or by the United States and requires that the agreement, contract, or transaction also must be regulated as insurance under applicable State law or the laws of the United States. *See* 77 FR at 48220. The consumer-transaction exclusion likewise contains limitations to agreements, contracts, and transactions entered into by consumers or commercial or non-profit entities for specified purposes. *See id.* at 48247.

[75] *See* 7 U.S.C. la(5l) (defining a "trading facility," in relevant part, to mean a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids or offers made by other participants that are open to multiple participants in the facility or system or through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm).

[76] *See* 7 U.S.C. 1a(50) (defining a "swap execution facility," in relevant part, to mean a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system).

on a multilateral basis, even though the other material terms of the agreement, contract, or transaction would be governed by standardized rules adopted by the facility.[77]

Although there is not currently a practical overlap between the casino-style gambling products offered by State and Tribe-regulated entities (*i.e.*, bilateral and non-tradable) and swaps offered by CFTC-registered entities (i.e., multilateral and tradable), the Product Test is designed to nonetheless acknowledge the functional distinction between the types of products and relationships that traditionally fall within the scope of derivatives regulation under the CEA from those traditionally addressed by State or Tribal gaming regulation.[78] By distinguishing agreements, contracts, or transactions entered into on a bilateral basis from those entered into on a multilateral basis, the Product Test recognizes that a principal purpose of the CEA is to establish a regulatory framework for price discovery on "liquid, fair and financially secure trading facilities"[79]—that is, trading on multilateral execution venues such as DCMs and SEFs—whereas State and Tribal gaming regulation typically concerns bets or wagers in which the odds or "line" are set by a licensed gaming operator acting as principal with its customers on a bilateral basis. The Product Test thereby ensures that State and Tribal-regulated entities do not, in the future, begin offering products properly within the Commission's jurisdiction, unless they do so consistent with the CEA and the Commission's regulations.

Therefore, the Commission is adding section 1.3 (Swap)(7) to further define the term swap to not include any agreement, contract, or transaction that: (A) is offered or

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[77] Thus, an agreement, contract, or transaction entered into by an ECP on a bilateral basis through individual negotiation with a bank or other swap dealer also would not satisfy the Product Test.
[78] The insurance exclusion similarly requires that a covered insurance product not be traded separately from its insurable interest, on an organized market or over-the-counter. 77 FR at 48217. The consumer transaction exclusion contains a similar limitation. *Id.* at 48247.
[79] 7 U.S.C. 5(a).

entered into by a person that is licensed or otherwise authorized to offer gambling or gaming products, or accept wagers, under the law of a State or the law of a federally recognized Indian tribe pursuant to the Indian Gaming Regulatory Act,[80] is acting within the scope of that license or authorization, and such agreement, contract, or transaction is regulated as gaming or gambling under applicable state or Tribal law; and (B) is not traded on a board of trade, an organized exchange, a swap execution facility, or any other market in which trades are executed multilaterally or subject to individual negotiation. That section would also explicitly identify sports wagers, casino games, and other licensed games of chance as products that are not swaps subject to the Commission's jurisdiction.

Finally, the Commission reiterates that this Interim Final Rule does not further define the term "security-based swap" and that nothing in the Interim Final Rule should be read to imply or presume that an agreement, contract, or transaction that does not meet any of the requirements of this exclusion is necessarily a swap. Also as previously noted, there may be other types of unlicensed gambling transactions that do not meet this Interim Final Rule's exclusion but nonetheless are still not swaps subject to the Commission's jurisdiction.[81]

The classifications adopted in this Interim Final Rule are for purposes of the Commodity Exchange Act. Federal tax treatment and associated information reporting, withholding, registration, and payment obligations are determined under the Internal Revenue Code, applicable Treasury regulations, and IRS guidance.

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[80] 25 U.S.C. 2701 *et seq.*
[81] *See supra* note 43 for additional detail.

II. Request for Comment

The Commission welcomes public comments from interested persons regarding any aspect of the Interim Final Rule. The Commission also seeks comment on the following specific questions. The Commission will take into consideration comments received and may modify the Interim Final Rule if warranted.

(1) This Interim Final Rule limits the exclusion to agreements, contracts, and transactions offered by a person that satisfies the Provider Test. Are there additional categories of providers that the Provider Test should cover beyond State-regulated gaming companies and Tribes, such as those discussed in note 43? If so, please explain the basis for including each additional category of qualifying provider.

(2) The Provider Test requires that the agreement, contract, or transaction be regulated as gaming or gambling under applicable State or Tribal law. Is it clear which agreements, contracts, or transactions are subject to these regulations? Are there better ways to define how State or Tribal gaming regulation should apply to agreements, contracts, or transactions covered by the exclusion? If so, please explain.

(3) The Product Test turns on whether the agreement, contract, or transaction is traded on a board of trade, an organized exchange, a swap execution facility, or any other market in which trades are either executed multilaterally or subject to individual negotiation. Are there better ways to draw an objective, functional distinction between swaps, on the one hand, and traditional gambling products, on the other hand? If so, please explain, including how any alternative or additional basis for a distinction would be consistent with the CEA, including the definitions of "swap," "commodity," and "excluded commodity" and the Special Rule.

III. Related Matters

A. Administrative Procedure Act

1. Legal Standard

Agencies need not engage in notice-and-comment rulemaking "when the agency for good cause finds" that such "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest."[82] In interpreting this "good cause" standard, courts have looked to the Administrative Procedure Act's ("APA") Senate Report, which explains that "'[i]mpracticable' means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rulemaking proceedings . . . . 'Public interest' supplements the term[] 'impracticable' . . .; it requires that public rule-making procedures shall not prevent an agency from operating." [83]

"[T]here is a general consensus among the circuit courts that an agency's invocation of the good cause exception [to notice-and-comment rulemaking] should . . . be upheld . . . where following the regular rulemaking procedure would result in serious or real harm."[84] Absent traditional emergencies, courts have found good cause where notice-and-comment rulemaking would create "possible fiscal harm," where "the agency's prior regulations or guidelines had been invalidated by a court order, and thus,

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[82] 5 U.S.C. 553(b)(B).
[83] *See, e.g.*, *National Nutritional Foods Ass'n v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978) (quoting S. Rep. No. 79-752, at 200 (1945)).
[84] *ITServe Alliance, Inc. v. Scalia*, No. 20-146604, 2020 WL 7074391, at 4 (D.N.J. Dec. 3, 2020) (collecting cases).

immediate promulgation of a new regulation was needed to prevent harm to the public in the interim,"[85] and/or where such rulemakings are not intended to be permanent.[86]

2. Rationale for Interim Final Rule

Recent developments require the Commission to exercise its statutory authority to further define the term "swap" to explicitly exclude casino-style gambling products, including sports-wagering contracts entered into on a sportsbook, from the swap definition. As a group of 39 States and the District of Columbia recently observed, "[f]ederal and state courts are hopelessly confused and divided over an issue of immense importance"–whether, among other things, the swap definition is broad enough to encompass casino-style gambling products, which would threaten, among other things, State regulatory authority and Tribal revenue.[87] For example, and as described above, the Commonwealth of Kentucky has claimed that determining that event contracts are swaps under the CEA amounts to "[t]ransferring every ounce of authority over sports wagering from the States to the CFTC."[88] And the State of New Jersey recently argued to the United States Supreme Court that "[n]othing in the [CEA] gives the CFTC unprecedented authority to become the sole regulator of sports gambling in this country."[89]

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[85] *Id.* at 5.
[86] *See, e.g.*, *American Fed'n of Gov't Emps. v. Block*, 655 F.2d 1153, 1157 (D.C. Cir. 1981) ("Common sense suggests that any administrative action taken in a rare 'emergency' situation . . ., while perhaps necessarily 'immediately effective,' need only be temporary, pending public notice-and-comment procedures.").
[87] Brief of Amici Curiae Ohio, 38 Other States, and the District of Columbia in Support of Petitioners at 1, *Flaherty v. KalshiEX, LLC*, No. 26-299 (U.S. Oct. 7, 2026); *see also id.* at 13 ("So if sports bets are swaps, they must be on DCMs and regulated by the CFTC, thus making the agency a national gambling czar and leaving the States with no power.").
[88] Memorandum of Law in Support of Motion to Dismiss or, in the Alternative, for Summary Judgment at 24, *United States v. Kentucky*, No. 3:26-cv-49 (E.D. Ky. Aug. 24, 2026).
[89] Brief for Petitioner, *Flaherty v. KalshiEX, LLC*, No. 26-299 (Sept. 2, 2026), 2026 WL 2658173, at *32.

One result of this confusion has been state actions and court decisions that threaten to expose large areas of hitherto uncontroversial CFTC jurisdiction to incursion by certain of the States.[90] This lack of nuance has already led to overreach that risks indiscriminate disruption—or the outright dismantling—of federally-regulated event contract markets, whether they purportedly offer casino-style gambling products or not.

In particular, the Ninth Circuit panel's interpretation of the "swap" definition in Section 1a(47)(A)(ii)—which would deprive the CFTC of exclusive jurisdiction over most event contracts—threatens to wreak havoc on the operations of DCMs nationwide. That is particularly true in Arizona, where the State's pending criminal case against a DCM—for offering event contracts of any kind—may be permitted to move forward.[91] Arizona does not stand alone. The State of Minnesota has attempted to enact a criminal statutory ban on prediction markets; the State of New York has sought emergency injunctive relief that would prohibit a DCM from offering event contracts anywhere; and many more enforcement actions remain pending.[92] These state-level actions imperil a nascent industry that Congress has entrusted to the "exclusive jurisdiction" of a federal agency, the CFTC.[93]

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[90] *See, e.g.*, *United States v. Minnesota*, No. 26-cv-2661, __ F. Supp. 3d ___, 2026 WL 2150211, at *1 (D. Minn. July 27, 2026) (granting the CFTC a preliminary injunction relating to "Minnesota lawmakers pass[ing] a law prohibiting the creation, operation, and advertising of prediction markets in the state"); *CFTC v. New York*, No. 26-cv-3404, ECF No. 120 (S.D.N.Y. July 30, 2026) (letter explaining that "New York seeks a temporary restraining order . . . prohibiting [a prediction market] from operating as a DCM registered with and regulated by the CFTC under the Commodity Exchange Act . . . . New York seeks to prohibit [the prediction market] from operating its business 'within or from New York,' which is where [the prediction market] is headquartered.").
[91] *See KalshiEX LLC v. Johnson*, 832 F.Supp.3d 954, 958 (D. Ariz. 2026) (prior to *Assad*, Arizona filed "a twenty-count criminal information" against the DCM).
[92] *See, e.g.*, *supra* note 88.
[93] 7 U.S.C. 2(a)(1)(A).

The economic consequences of the shuttering of prediction markets on a state-by-state basis due to a lack of clear guidance, are of a type and magnitude well in excess of prior cases recognizing good cause to skip notice-and-comment rulemaking due to "possible fiscal harm."[94] In one instance, "actuarial disarray [that] might have posed a serious threat to the financial stability of a [federal employee] benefit program" constituted "good cause" to dispense with notice-and-comment.[95] In another, market "confusion" and "economic harm and disruption" that would have resulted if the agency had been forced to use "antiquated [poultry processing] guidelines" rather than its interim rule constituted "good cause."[96] Here, in contrast to the relatively limited economic harm envisioned in those cases, entire markets on which various individuals and businesses rely for hedging and/or financial, economic, or commercial planning purposes—with tens of billions of dollars of transactions—are at stake.[97] "A massive rush to . . . conduct 'actual transactions'—*or avoid them*," as would occur if any states succeeded in closing prediction markets, similarly constituted "good cause" where the Temporary Emergency Court of Appeals found that section 553(b)(B) was satisfied by price control regulations adopted without notice-and-comment.[98]

"Good cause" is further demonstrated by the circumstances that gave rise to this Interim Final Rule. This is not a case where the CFTC seeks to circumvent the APA's notice-and-comment requirement. Rather, like in cases where an "agency's prior

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[94] *Scalia*, 2020 WL 7074391, at *5.
[95] *Nat'l Fed'n of Fed. Emps. v. Devine*, 671 F.2d 607, 611 (D.C. Cir. 1982).
[96] *Block*, 655 F.2d at 1157.
[97] *See, e.g.*, *Trading volume on prediction markets has soared in recent months,* Pew Research Center (May 27, 2026), https://www.pewresearch.org/short-reads/2026/05/27/trading-volume-on-prediction-markets-has-soared-in-recent-months/ (noting $24 billion in trading volume in April 2026 on two prediction markets).
[98] *DeRieux v. Five Smiths, Inc.*, 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1974) (emphasis added).

regulations or guidelines had been invalidated by a court order, . . . immediate promulgation of a new regulation [is] needed [here] to prevent harm to the public" while the judiciary adjudicates the outer contours of one prong of the "swap" definition.[99] Just as a regulatory gap—leading to possible "confusion" and "irremedi[able] financial consequences"—would have resulted following a prior rule invalidation in *Mid-Tex Elec. Coop., Inv. v. FERC*,[100] so too do *Flaherty*, *Assad*, and other judicial decisions justify this Interim Final Rule. The "promulgation of emergency regulations by [an agency is] a reasonable and perhaps inevitable response to [some adverse] injunctive court order[s]," like certain of those at issue here.[101]

Indeed, regulators have used interim final rules in circumstances analogous to the confusion resulting in part from the emerging circuit split over the scope of the CEA's "swap" definition in the context of event contracts. For example, after a district court issued a state law preemption opinion that was in tension with "the [Office of the Comptroller of the Currency ("OCC")] and courts' longstanding interpretation" of a statute, the OCC issued an interim final rule to stave off "regulatory confusion . . . and the potential consequences of such confusion."[102] Like the dangers posed by state regulatory overreach to national prediction (and other derivatives) markets, the state law in question would have "create[d] a complex and potentially unworkable [state]

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[99] *See Scalia*, 2020 WL 7074391 at *5.
[100] 822 F.2d 1123, 1133-34 (D.C. Cir. 1987); *see also Block*, 655 F.2d at 1157 ("good cause" satisfied where "court granted . . . motion for preliminary injunction, declaring [existing] guidelines . . . null and void"); *United Farm Works v. U.S. Dep't of Lab.*, 2026 WL 1345918, at *2 (E.D. Cal. May 14, 2026) (interim final rule "good cause" justified by agency after prior rule "had been vacated by . . . [a] final judgment" and even earlier version of the rule did not address "regulatory gap" that had emerged in the meantime; preliminary injunction challenging interim final rule denied on other grounds).
[101] *Block*, 655 F.2d at 1157.
[102] National Bank Non-Interest Charges and Fees, 91 FR 22989, 22992 (Apr. 29, 2026) (codified at 12 CFR 7).

standard," which "national banks may [have] take[n] drastic actions to avoid," thereby leading to potential "economic harm and disruption and pos[ing] significant risks to the safety and soundness of national banks and the national banking system as a whole."[103]

For the reasons described above, the Commission also finds that good cause exists to make this rule effective immediately upon publication.[104]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[105] requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. However, the RFA does not apply when a general notice of proposed rulemaking is not required.[106] As explained above, the Commission has determined that this rule is exempt from the notice-and-comment requirements of the APA,[107] for "good cause." Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply to this rule.[108]

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[109] imposes certain requirements on federal agencies, including the Commission, in connection with 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

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[103] *Id.*
[104] 5 U.S.C. 553(d)(3).
[105] 5 U.S.C. 601 *et seq*.
[106] 5 U.S.C. 601, 603, and 604.
[107] *Id.*5 U.S.C. 553(b).
[108] *See* 5 U.S.C. 603 (regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment).
[109] 44 U.S.C. 3501 *et seq*.

collection of information unless it displays a currently valid control number from the Office of Management and Budget ("OMB").[110] 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.[111] 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.[112]

This Interim Final Rule would not impose any new collection of information requirements that require approval of OMB under 44 U.S.C. 3507(d), nor would it amend or otherwise revise any existing collection of information subject to the PRA. Consistent with the Commission's jurisdiction, this Interim Final Rule clarifies the definition of "swap" excludes casino-style gambling products.

The Interim Final Rule does not establish any new reporting requirement under the CEA or the Commission's regulations applicable to any Commission registrant or market participant; establish any new recordkeeping requirement beyond those already imposed under the CEA and the Commission's existing regulations, which are currently approved by OMB under existing control numbers; impose any new third-party

[110] *See* 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).
[111] *See* 44 U.S.C. 3501.
[112] *See* 44 U.S.C. 3502(3).

disclosure obligation; or modify the substantive scope, frequency, form, or content of any existing information collection of the Commission currently approved by OMB.

The Interim Final Rule does not alter the burden associated with existing collections currently approved by OMB. Any incremental activity that may occur as an indirect consequence of registrants electing to conduct business within the federal regulatory perimeter clarified by this Interim Final Rule reflects the application of existing, previously approved information collections to a new class of underlying transactions and does not itself constitute a new or revised collection of information within the meaning of the PRA.

Accordingly, the requirements of the Paperwork Reduction Act do not apply to this rulemaking.

D. Consideration of Benefits and Costs

1. Introduction

The Commission is mindful of the economic effects, including the benefits and costs, of the Interim Final Rule. Section 15(a) of the CEA requires the Commission to consider the benefits and costs of its actions before promulgating a regulation under the CEA or issuing certain orders.[113] As required by section 15(a), the Commission evaluates these benefits and costs evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

[113] 7 U.S.C. 19(a).

The Interim Final Rule excludes casino-style gambling products from the definition of swaps. In promulgating the Interim Final Rule, the Commission would not change the legal rights or obligations of market participants under the CEA because the Commission already treats casino-style gambling products as outside its jurisdiction. Instead, consistent with the CEA, the Interim Final Rule will reduce interpretive uncertainty by codifying the Commission's understanding that regulation of casino-style gambling products is outside of the Commission's jurisdiction, affirming the long-standing regulatory authority of States and Tribes.

The Commission qualitatively discusses the benefits and costs of the Interim Final Rule below because it is not practicable to quantify the effect of greater regulatory certainty on market participant behavior.

2. Baseline

The baseline against which the benefits and costs of the Interim Final Rule are measured consists of the current regulatory framework and the current state of Commission-regulated markets.

The Commission has exclusive jurisdiction to regulate transactions involving swaps (other than security-based swaps).[114] Under the plain language of the CEA, casino-style gambling products are not swaps or any other instrument that the Commission regulates and therefore, outside the scope of the Commission's jurisdiction. The Commission is not aware of any casino-style gambling products that are treated as Commission-regulated instruments or otherwise traded on Commission-licensed DCMs or SEFs.

[114] *See* 7 U.S.C. 2(a)(1)(A).

However, as discussed above, recent court decisions regarding whether sports-related event contracts are swaps and the breadth of the swaps definition under the CEA, including casino-style gambling products, has created legal uncertainty.[115]

3. Benefits

Because the Interim Final Rule does not change the legal rights or obligations of market participants under the CEA, the primary benefit of the Interim Final Rule is the immediate mitigation of regulatory and interpretive uncertainty triggered by recent, conflicting federal appellate court interpretations of the CEA's swap definition.

By expressly stating that traditional casino-style gambling products and sportsbook wagers do not constitute swaps, the Interim Final Rule could benefit gambling industry participants, State gaming commissions, and Tribal authorities. Insofar as industry participants and others are less likely to misapprehend the scope of the Commission's regulatory authority, they may benefit by allocating less capital to challenge or defend against Federal derivatives oversight, or to unnecessarily re-engineer their localized wagering infrastructures to meet incompatible Federal frameworks.

4. Costs

Because the Interim Final Rule codifies the Commission's long-standing operational baseline—that traditional casino-style gambling products reside outside its jurisdiction—it does not directly impose any new or incremental compliance costs under the CEA or the Commissions' regulations on derivatives market participants or retail gaming operators.

[115] *Compare Flaherty*, 172 F.4th at 227, *with Assad*, 2026 WL 2543846.

Codification of the exclusion of casino-style gambling products might slightly increase the incentive for certain entities to attempt to structure certain derivatives contracts as locally regulated gambling wagers to evade Commission jurisdiction. However, because the alternative to Federal regulation is compliance with a patchwork of State and Tribal regulatory frameworks (including outright prohibition in some jurisdictions), the risk of increased regulatory arbitrage is likely minimal. If entities nevertheless seek to evade Commission jurisdiction, the Commission understands that State and Tribal regulatory frameworks—although different than the Federal regulatory framework—would also offer some protection to industry participants and the public.

5. Section 15(a) Factors

Because the Interim Final Rule is consistent with existing law and market practice, it will have limited impact on protecting market participants and the public; efficiency, competitiveness, and financial integrity of the futures markets; price discovery; sound risk management practices; and other public interest considerations.

6. Regulatory Alternatives

Given the Interim Final Rule seeks only to clarify that casino-style gambling products are outside of the Commission's jurisdiction, the Commission has not identified any viable regulatory alternatives.

D. Antitrust Laws

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 objectives of the CEA as well as the policies and 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 or registered futures association established pursuant to section 17 of the CEA.[116]

The Commission believes that the public interest protected by the antitrust laws is the promotion of competition. The Commission has considered whether the Interim Final Rule is anticompetitive and has identified no anticompetitive effects. The Commission also has not identified any less anticompetitive means of achieving the purposes of the CEA.

E. Executive Orders 12866, 13563, and 14192

Executive Orders 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 Executive Order 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.

[116] 7 U.S.C. 19(b).

OMB has determined that this action is a significant regulatory action as defined under section 3(f) of Executive Order 12866 and therefore this action has been reviewed by OMB, consistent with Executive Order 14215.

This Interim Final Rule is not an Executive Order 14192 regulatory action, because it imposes no more than *de minimis* net costs.

F. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act ("CRA"), generally provides for congressional review of agency rules. CFTC must submit a report to Congress and the Comptroller General when it issues a final rule, as defined in the CRA. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a "major rule." OIRA has determined that this rule is not a "major rule" within the meaning of the relevant sections of the CRA. CFTC will also file appropriate reports with Congress and the Comptroller General so this rule may be reviewed.

List of Subjects in 17 CFR Part 1

For the reasons set forth in the preamble, the Commission is amending 17 CFR part 1 as follows:

PART 1 – General Regulations Under the Commodity Exchange Act

1. The authority citation for part 1 continues to read as follows: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a-1, 7a-2, 7b, 7b-3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24 (2012).

2. In section 1.3, in the definition of the term Swap, add paragraph (7) to read as follows:

§ 1.3 Definitions.

* * * * *

Swap.

* * * * *

(7) ***Casino-style gambling products.***

(i) The term *swap* as used in section 1a(47) of the Commodity Exchange Act does not include an agreement, contract, or transaction that:

(A) is offered or entered into by a person that is licensed or otherwise authorized to offer gambling or gaming products, or accept wagers, under the law of a State or the law of a federally recognized Indian tribe pursuant to the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*), is acting within the scope of that license or authorization, and such agreement, contract, or transaction is regulated as gaming or gambling under applicable State or Tribal law; and (B) is not traded on a board of trade, an organized exchange, a swap execution facility, or any other market in which trades are executed multilaterally or subject to individual negotiation.

(ii) Provided that the requirements of paragraph (i) are met, and without limiting the generality of paragraph (i), the following agreements, contracts, and transactions are excluded from the term *swap*:

(A) Sports Wagers. Any agreement, contract, or transaction in which a licensed sportsbook or sports wagering operator accepts a wager on the outcome of one or more sporting events;

(B) Casino Games. Any agreement, contract, or transaction in which a licensed casino operator accepts a wager in connection with a casino table game, slot machine, or other electronic gaming device; and

(C) Other Licensed Games of Chance. Any agreement, contract, or transaction in which a licensed operator accepts a wager in connection with any other game of chance (such as bingo, pool wagering, lotteries, and raffles).

Issued in Washington, DC, on [DATE], by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.