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Via CFTC Comments Portal

Mr. Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW Washington, DC 20581

Re: RIN 3038-AF65 – Prediction Markets (Advance Notice of Proposed Rulemaking)

ProphetX LLC ("**ProphetX**") welcomes the opportunity to respond to the Commodity Futures Trading Commission's ("**CFTC**" or "**Commission**") Advance Notice of Proposed Rulemaking on Prediction Markets (the "**ANPR**").[1] ProphetX has applied to register as both a Designated Contract Market ("**DCM**") and a Derivatives Clearing Organization ("**DCO**") under the CFTC's regulatory oversight, with the goal of operating a participant-first, sports-native marketplace grounded in transparency, resilience, and strong customer protections, aligned with the CFTC's regulatory framework for financial markets.

I. <u>About ProphetX</u>

ProphetX's platform originally launched in the United Kingdom in 2019, within a national licensing regime known for its high standards of consumer protection and operational integrity. The driving principle behind ProphetX's business has been that analytics-based trading operates best in open, market-based systems that reward accuracy, insight, and discipline, rather than closed, operator-driven systems where outcomes are priced by the house and defined by informational asymmetry. ProphetX subsequently operated under New Jersey's regulatory framework, deepening its understanding of compliance, AML controls, and market conduct in the U.S. context. After determining that state gaming regimes were structurally incompatible with a market-based platform requiring cross-jurisdictional liquidity and uniform rules, ProphetX transitioned to an alternative compliant operating framework as an interim bridge to a federally regulated model and filed applications for DCM and DCO registration with the Commission in November 2025.

[1] Prediction Markets, 91 Fed. Reg. 12516 (March 16, 2026).

ProphetX has always been a sports-first exchange, with sports serving as our initial proving ground. While sports remain foundational to our approach, our long-term vision extends beyond sports into a broader set of measurable, real-world outcomes.

Sports markets were our proof of concept because they are among the most information-rich, data-driven, and globally understood expressions of probability in existence. They demand millisecond-level data processing, instantaneous settlement, and absolute transparency in price formation. These are the same requirements that define every CFTC-regulated derivatives market. Having built our infrastructure to handle the complexity and volatility of sports first, ProphetX is equipped to extend those same standards to every measurable contingency that shapes the world, including economic, political, meteorological, and beyond.

II. <u>Executive Summary of Our Letter</u>

We strongly support the Commission's initiative to construct rules specific to prediction markets in order to foster this burgeoning sector and secure public trust. A thoughtful rulemaking that both interprets and implements the special rule for event contracts in Section 5c(c)(5)(C) of the Commodity Exchange Act ("**CEA**"),[2] while also establishing a broader, principles-based framework for prediction markets, is long overdue. Clear, tailored regulatory guardrails will provide much-needed certainty to market participants, promote responsible innovation, and help ensure that prediction markets operate with integrity while delivering valuable price discovery and information aggregation benefits to the public.

To fully achieve these objectives, though, we urge the Commission to separately proceed pursuant to CEA Section 4(c) and issue an order exempting sports event contracts that are listed on a DCM and cleared through a DCO from the application of the special rule. While we commend the Commission's proactive participation in the judicial process to uphold its exclusive jurisdiction over prediction markets listing and clearing sports event contracts, a multitude of court decisions construing terms like "involve," "gaming," and "swap," often with inconsistent results, cannot provide the certainty necessary to the development of innovative national markets in sports event contracts. As discussed more fully below, the Commission can best do so by exercising its statutory authority under CEA Section 4(c).

Our comments are organized around four core propositions:

First, the Dodd-Frank Act's special rule for event contracts in CEA Section 5c(c)(5)(C) affirmatively cemented CFTC jurisdiction over event contracts, including those that may involve gaming, as a matter of statutory structure. The Commission should make this explicit in a rulemaking regarding the special rule.

Second, CEA Section 4(c) provides the Commission with the clearest, most durable, and most future-proof complement to the contemplated comprehensive rulemaking. By exercising its Section 4(c) authority, the Commission would trigger express federal preemption for sports event contracts under CEA Section 12(e)(2)(B) and enable the Commission to affirmatively occupy the

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[2] 7 U.S.C. § 7a-2(c)(5)(C).

field through a conditions-based regulatory framework. Section 4(c) also affords the Commission an opportunity to codify its staff's recent no-action relief for technology service vendors, transforming that framework into binding Commission-level law and providing an independent basis for federal preemption when the exemption expressly extends to sports event contracts.

Third, the Section 4(c) approach does not require the Commission to determine whether a sports event contract "involve[s]" "gaming" within the meaning of the special rule. While it may be important that the Commission interpret such terms in a rulemaking regarding the special rule generally, doing so is not a prerequisite to the Commission exercising the authority Congress gave it in Section 4(c) to promote financial innovation by providing the certainty required by sports prediction markets that currently are confronting a myriad of lawsuits.

Fourth, and most fundamentally, the Commission has an affirmative obligation to act. Event contracts are listed, cleared, and settled through organized many-to-many markets and have entered the financial system. They are no longer a matter of state gaming policy. They are a matter of financial market structure, systemic integrity, and federal market regulation. Leaving their fate to litigation, circuit splits and state quasi-monopolistic licensing regimes is not a neutral act. It amounts to the eradication of an entire class of financial assets and markets that Congress placed squarely within the CFTC's domain.

III. <u>The Special Rule Cemented CFTC Jurisdiction Over Event Contracts</u>

A. <u>The Statutory Structure Compels This Reading</u>

Before the Dodd-Frank Act, whether event contracts that might involve gaming could be listed and traded on DCMs had not been definitively addressed by the Commission. The Commission's 2008 Concept Release, among the first formal efforts to bring regulatory clarity to this space, expressly acknowledged that uncertainty and invited public input precisely because the Commission had not yet resolved it.[3]

Dodd-Frank resolved it.

The special rule in CEA Section 5c(c)(5)(C) enacted as part of Dodd-Frank provides that, in connection with the listing of agreements, contracts, and transactions in excluded commodities based upon the occurrence, extent of occurrence, or contingency of an event by a DCM, the Commission may determine that such contracts are contrary to the public interest if they involve, among other things, gaming.[4] Congress should not be presumed to have legislated a special rule governing contracts it believed were outside the Commission's jurisdiction. The decision to enact Section 5c(c)(5)(C) at all is an affirmative action by Congress to establish that these contracts, including those that may involve gaming, fall directly within the CEA's regulatory jurisdiction. A

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[3] *See* Concept Release on Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25669 (May 7, 2008) (the "**2008 Concept Release**").

[4] For convenience, our letter will focus on the activity of gaming that is enumerated in the special rule. However, our comments are equally applicable to the separately enumerated category of activity that is unlawful under any state law.

special rule governing something outside an agency's jurisdiction would have no meaning, and courts do not read statutes to produce meaningless results.[5]

This structural point has been largely absent from the litigation to date, where courts have focused on the narrower question of whether specific contracts "involve" "gaming" or are "swaps" without first asking whether Congress already resolved the jurisdictional question when it enacted the special rule.[6] The Commission is uniquely positioned, and has the obligation, to definitively assert its authority in a clear and unambiguous manner in a rulemaking regarding the special rule.

B. The Word "May" in the Special Rule Confirms That Gaming Contracts Are Permissible Absent a CFTC Prohibition

The special rule's use of the word "may" is not incidental. Rather, the term is structurally determinative. Section 5c(c)(5)(C) provides that the Commission "may" determine that a contract involving an enumerated activity is contrary to the public interest. The provision does not mandate prohibition or create a presumption against the ability of DCMs to list such contracts. Instead, it grants the Commission discretionary authority that may be exercised or withheld.

This means the default function under the CEA is permissibility. Event contracts involving sporting events may be listed on a DCM unless and until the Commission makes an affirmative finding that a contract is contrary to the public interest. Absent such a finding, a DCM that lists an event contract involving sporting events is acting within the law and its contract, like every other futures, swap, and commodity option it lists, falls within the Commission's exclusive jurisdiction.

This reading is not only consistent with the statutory text but required by it. A grant of authority to prohibit something presupposes that the thing is otherwise permitted. Courts routinely apply

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[5] *See, e.g.*, *Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685 (2022) (referring to the "longstanding canons of statutory construction . . . that we must normally seek to construe Congress's work so that effect is given to all provisions, so that no part will be inoperative or superfluous, void or insignificant.'") (*quoting Corley v. United States*, 556 U. S. 303, 314 (2009)).

[6] Although litigants have questioned whether event contracts are swaps, we note that the Commission's exclusive jurisdiction over event contracts does not depend on their characterization as swaps (or futures, for that matter). Even if a court were to conclude that a particular event contract is neither a swap nor a futures contract, it would remain a commodity option subject to the Commission's plenary authority under CEA Section 4c(b). The Commission has long exercised authority over contingent payout contracts that function as options, including instruments involving no deliverable commodity. Event-contingent, fixed-payout instruments qualify as commodity options based on their economic substance, independent of whether they fall within the definition of a swap. Once listed on or subject to the rules of a DCM, such options fall within the Commission's exclusive jurisdiction under CEA Section 2(a)(1)(A) because the CEA treats the structure of the transaction, rather than the nature of the underlying interest, as determinative of whether an instrument is an option; *see* CEA Section 4c(b). A court ruling that a particular event contract is not a swap or futures contract therefore would not displace CFTC jurisdiction given the CEA's treatment of commodity options, which reaches the same regulatory result under the CEA's exclusive jurisdiction provision. State gaming laws remain preempted in either case once the contracts are listed on a CFTC-registered DCM or exempted under Section 4(c).

this canon of construction, and the Commission should articulate it clearly in a rulemaking regarding the special rule.[7]

IV. Section 4(c) Exemptive Authority Is the Most Durable Path Forward

A. How Section 4(c) Complements Comprehensive Rulemaking

While the special rule cemented jurisdiction, it is a tool of prohibition, a mechanism by which the Commission can prevent a contract it finds contrary to the public interest from being listed. It was not designed to affirmatively authorize a specific regulatory framework, establish conditions for trading, or provide the clear preemptive effect that these markets require.

Section 4(c) of the CEA was designed for exactly that purpose. It authorizes the Commission to exempt any agreement, contract, or transaction, or class thereof, from specified provisions of the CEA ***"[i]n order to promote responsible economic or financial innovation and fair competition,"*** including, where appropriate, on a retroactive basis, subject to conditions the Commission deems appropriate. In enacting Section 4(c), Congress stated that the goal of the provision "is to give the Commission a means of ***providing certainty*** and stability ***to existing and emerging markets*** so that financial innovation and market development can proceed in an effective and competitive manner."[8]

The authority granted to the Commission in Section 4(c) is a constructive tool, not a prohibitory one. Where the special rule asks "should this be stopped?", Section 4(c) asks "how should this be structured?" In doing so, Section 4(c) authorizes the Commission to exempt "any agreement,

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[7] *See, e.g.*, *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982) (finding that a federal regulation preempted a California law where the federal regulation permitted, but did not require, federal savings and loan associations to include and enforce due-on-sale clauses, and the California law prohibited enforcement of such clauses); *see also Chrysler Corp. v. Brown*, 441 U.S. 281, 293-94 (1979) (finding that the Freedom of Information Act ("**FOIA**") protects "the submitter's interest in confidentiality only to the extent that this interest is endorsed by the agency collecting the information," but that FOIA does not *mandate* that an agency withhold the enumerated classes of information). We also note that Section 5c(c)(5)(C) was enacted *after* the CFTC had issued the 2008 Concept Release, so the question of whether an event contract involving an enumerated activity is lawful in the absence of a Commission determination to prohibit it should be interpreted based on the presumption that Congress was aware of the 2008 Concept Release. *See, e.g.*, *Lorillard v. Pons*, 434 U.S. 575 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute").

[8] House Conf. Report No. 102-978, 1992 U.S.C.A.N. 3179, 3213, *quoted in* Order Exempting the Trading and Clearing of Certain Credit Default Products Pursuant to the Exemptive Authority in Section 4(c) of the Commodity Exchange Act ("CEA"); Republication, 72 Fed. Reg. 33205, 33206 (June 15, 2007) (final order; emphasis added) ("**Credit Default Product Exemptive Order**"). Although we agree with the Commission's position in ongoing litigation that event contracts fall squarely within the CFTC's exclusive jurisdiction, we note that during the legislative process leading to the enactment of CEA Section 4(c), the House-Senate Conference Committee stated: "The Conferees do not intend that the exercise of exemptive authority by the Commission would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the [CEA]. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward." *Id.* at 3214-3215, *quoted in* Proposal to Exempt the Trading and Clearing of Certain Credit Default Products Traded on the Chicago Board Options Exchange and Cleared Through the Options Clearing Corporation Pursuant to the Exemptive Authority in § 4(c) of the Commodity Exchange Act, 72 Fed. Reg. 27091, 27092 (May 14, 2007) (notice of proposed order and request for comment).

contract, or transaction, or class thereof," from requirements to which it would otherwise be subject, and its reach is not limited by or subordinate to other CEA provisions governing specific contract types, such as the special rule.

ProphetX does not suggest that Section 4(c) is a substitute for the comprehensive rulemaking interpreting and implementing the special rule that the ANPR contemplates. Indeed, we vigorously support a robust rulemaking for event contracts. But we encourage the Commission to complement its rulemaking with the separate use of Section 4(c) to issue an order exempting sports event contracts listed by a DCM and cleared through a DCO from the application of the special rule.

The Commission has an obligation to develop rules governing core principles, manipulation susceptibility, market surveillance, customer protection, clearing, and reporting that apply to prediction markets across the board. What Section 4(c) provides is a durable legal architecture that insulates the Commission's rulemaking from challenge, supplies the preemptive force with respect to sports event contracts that rulemaking under the special rule and core principles alone cannot deliver in the same direct manner, and enables the Commission to act on a defined class of contracts before the full rulemaking is complete. An order issued under Section 4(c) and comprehensive rulemaking are complementary instruments. A Section 4(c) order would definitively establish the federal jurisdictional foundation for sports event contracts while comprehensive rulemaking builds the detailed regulatory structure for event contracts on top of it.

Importantly, contracts outside the Section 4(c) order would remain subject to the special rule. The order would create an affirmative pathway for qualifying contracts without disturbing the Commission's prohibitory authority over those that do not qualify. Event contracts that are outside the scope of a Section 4(c) order, and sports event contracts that do not satisfy the conditions of the order, would remain subject to the operation of the special rule and the Commission's full discretionary authority under Section 5c(c)(5)(C). This structure, a class-based affirmative pathway that coexists with preserved prohibitory authority, is the appropriate architecture here and one that the Commission has both the authority and the obligation to construct.

B. <u>What a Section 4(c) Order Would Accomplish</u>

An order issuing a conditional exemption for sports event contracts pursuant to CEA Section 4(c)[9] would accomplish four objectives that cannot be achieved through rulemaking under the special rule alone:

<u>Express</u> federal preemption. CEA Section 12(e)(2)(B) <u>expressly</u> preempts any state or local law that prohibits or regulates gaming with respect to an agreement, contract, or transaction exempted under Section 4(c), "regardless of whether any such agreement, contract, or transaction is otherwise subject to" the CEA. This is the most powerful preemptive tool available to the Commission, and it has not yet been deployed in the event contract context (although at least one

[9] As noted above, we are focused on sports event contracts because that is our business, and because their legality is currently being challenged in numerous courts across the country. The Commission, though, could issue an order under Section 4(c) providing a conditional exemption from the application of the special rule for any other class of event contracts the Commission deems appropriate.

court that has denied preemption arguments in existing litigation has noted the absence of a Section 4(c) exemption as a key factor).[10] A properly constructed exemption pursuant to Section 4(c) would eliminate that gap and promote responsible innovation by definitively establishing legal certainty under the CEA for sports prediction markets.

Affirmative occupation of the field. A Section 4(c) order coupled with express preemption under Section 12(e)(2)(B) would constitute an undeniable assertion of federal regulatory authority. It does not leave room for recharacterizing sports event contracts as gaming or gambling subject to state law, because the preemption is express and its trigger, a Section 4(c) order, is grounded in the CEA. The Commission would affirmatively occupy the field in a manner that is durable and clearly grounded in the Commission's statutory authority.

Future-proofing against special rule challenges. A Section 4(c) exemption can be issued without the Commission first having to resolve in its rulemaking the definitional ambiguities in the special rule, specifically the meaning of "gaming," the scope of the word "involve," and the question of whether specific sports event contracts fall within those terms. Inconsistent litigation outcomes regarding these ambiguities undermine legal certainty. To be clear on this point, courts cannot use the special rule's ambiguities to challenge a framework (Section 4(c)) that does not depend on the special rule.

Class-based authorization. The special rule does not explicitly authorize class-based public interest determinations. And historically, the Commission has considered public interest determinations under the special rule through a time-consuming, individualized review of particular contracts.[11] Section 4(c), by contrast, explicitly provides for exempting a "class" of contracts. A class-based Section 4(c) order for sports event contracts would establish a uniform, prospective framework applicable to all contracts in the class without requiring contract-by-contract review.

C. The Public Interest Predicate Is Satisfied and Demands Action

A conditional, class-based exemption for sports event contracts issued pursuant to CEA Section 4(c) would not bypass the public interest inquiry at the heart of the special rule because Section 4(c) requires the Commission to find that an exemption "would be consistent with the public

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[10] *See KalshiEx LLC v. Martin*, 793 F. Supp. 3d 667, 681 (D. Md. 2025) (acknowledging that Section 12(e)(2) provides for express preemption but finding that the sports events contracts at issue were not covered because no Section 4(c) exemption had been issued).

[11] For example, when the Commission undertook a public interest review of the RSBIX NFL futures contracts self-certified by ErisX, it identified each of the three futures contracts and in soliciting public feedback, it did not seek to categorize the contracts in any way but rather asked whether "any" of the contracts met certain criteria. *See* CFTC Announces Review of RSBIX NFL Futures Contracts Proposed by Eris Exchange, LLC, Release Number 8345-20 (Dec. 23, 2020). Additionally, when the Commission undertook a public interest review of Kalshi's Congressional Control Contracts, its review focused on a single question (rather than any type or category of political event contracts) – *i.e.*, "Will <chamber of Congress> be controlled by <party> for <term>?" *See* CFTC Announces Review of Kalshi Congressional Control Contracts and Public Comment Period, Release Number 8728-23 (June 23, 2023). Finally, when the Commission undertook a review of Nadex's Sports Contract submissions, it listed two specific contract submissions and stated that it would review each of those contracts for consistency with CFTC Regulation 40.11. *See* CFTC's Review of Nadex Sports Contract Submissions, Release Number 9033-25 (Jan. 14, 2025).

interest and the purposes of" the CEA. CEA Section 3(a) describes the public interests of transactions subject to the CEA as providing a means for managing and assuming price risks, discovering prices, and disseminating pricing information through trading in liquid, fair, and financially secure trading facilities. CEA Section 3(b) adds that to further these public interests, the purposes of the CEA include, among other things, promoting responsible innovation and fair competition among DCMs and other markets.

A Commission determination that contracts satisfying these conditions serve the purposes of the CEA, including price discovery, risk management, responsible innovation, and fair competition as articulated in CEA Sections 3(a) and 3(b), does not circumvent the special rule's public interest mandate. Rather, such a determination fulfills that mandate at an even higher level of rigor because it requires an affirmative finding that a class of contracts is consistent with the public interest, as opposed to the special rule's provision that an event contract may be prohibited if it is found to be contrary to the public interest. In this way, an exemptive order pursuant to Section 4(c) would provide the prospective certainty that sports event contracts require, and that review under the special rule cannot achieve.

The public interest case for Commission action pursuant to Section 4(c) with respect to sports event contracts is not merely satisfied, it is compelled by principles of good government. The considerations below collectively demonstrate why.

Prediction markets serve a genuine and growing public interest function. Prediction markets in an array of areas have become an important tool for information aggregation and price discovery across numerous domains. Their effectiveness stems from a fundamental insight that when individuals with diverse information and perspectives are given financial incentives to express their beliefs, the resulting market prices efficiently aggregate dispersed knowledge that no single expert, poll, or model could capture.

Today, journalists, political analysts, economists, and sports commentators routinely cite prediction market data in their probability assessments, often treating these markets as benchmark indicators of likelihood. Corporate decision-makers use prediction markets to forecast product launches, project timelines, and market trends. Policymakers consult these markets to gauge public expectations about legislative outcomes and macroeconomic developments. Academic researchers have documented that prediction markets consistently outperform traditional polling in electoral forecasts and provide more accurate real-time probability assessments across political, economic, and sporting events. Traders use event contracts to hedge their portfolio or take speculative positions about the direction of a market indicator. The Commission has recognized this public function for over two decades, issuing no-action letters to academic prediction markets since the 1990s and registering the first prediction market offering event contracts as a DCM in 2004.

Once financialized, event contracts are financial instruments subject to market structure regulation. The determinative question is not what underlies an event contract, but rather how the contract is structured, executed, and settled. When event contracts are listed on a DCM and routed through anonymous, many-to-many order matching systems, cleared through a registered DCO, marked to market, and settled against customer segregated funds, they have entered a nationwide financial system that requires uniform, federal regulation. This action removes event contracts from the purview of individual state policy seeking to regulate such contracts. They are financial instruments operating within organized market infrastructure and they must be regulated as such.

The CEA's regulatory framework has always turned on the mode of execution rather than the nature of the underlying asset class. The same logic that brought interest rate swaps, equity index futures, and weather derivatives under federal market regulation applies with equal force to event contracts listed on DCMs. To hold otherwise is to deny the financial reality of what these instruments have become.

The convergence of technology and societal change has brought prediction markets into the financial mainstream. Over the past two decades, the combination of mobile access, real-time data, algorithmic pricing, and increasing financial participation has fundamentally transformed prediction markets from academic curiosities into mainstream financial infrastructure. Platforms operating today process millions of transactions, carry billions of dollars in notional exposure, and serve as reference prices for media, corporate planning, and public discourse. This transformation did not occur in the state gaming ecosystem. It occurred because of the evolution in technology and its impact on the national financial markets ecosystem. Forcing these instruments into state gaming law does not restore the status quo ante. It would eradicate an entire class of financial assets and markets that have organically evolved into a national financial market system.

With respect to sports event contracts specifically, the Section 4(c) mandate to promote responsible financial innovation requires the Commission to act as a counterweight to piecemeal litigation and individual state interests. Congress did not give the Commission Section 4(c) authority merely to respond to industry requests. Rather, Section 4(c) expressly authorizes the Commission to act on its own initiative or on application of any person, underscoring that this authority was intended to be exercised proactively where appropriate. It gave the Commission that authority precisely because Congress understood that financial innovation would periodically encounter structural resistance from incumbent regulatory regimes that conflicted with national market development. The current litigation environment with respect to sports event contracts exemplifies exactly this dynamic. Piecemeal litigation inevitably will yield inconsistent rulings and a patchwork of state regulation that will constrain the growth of markets that Congress placed under federal jurisdiction. Section 4(c)'s mandate to promote responsible financial innovation is not merely a permissive authority, it is an affirmative call for the Commission to act. A failure to act in the face of state encroachment would itself be a policy choice, one that effectively transfers regulatory primacy over a national financial market to state gaming commissions whose mandates, tools, and incentives are entirely unsuited to the task.

State gaming regulation is structurally incompatible with sports event contract markets, and the existing state-licensed wagering ecosystem into which these products would be funneled already harbors latent systemic risk. These are two distinct points that together make a compound case for federal action consistent with the public interest.

- First, event contract markets (bona fide many-to-many markets with transparent price formation, competitive order matching, and cross-jurisdictional liquidity) cannot functionally exist under a siloed patchwork of intrastate regulation that maximizes state control and limits users' access to a nationwide pool of liquidity. State gaming frameworks can and do authorize quasi-monopolistic licensing structures, limiting participation to operators that structure outcomes to align with gains for the house, rather than to ensure price integrity.[12] These structures are antithetical to the operation of a bona fide national market. A sports event contract market fragmented into up to fifty intrastate silos is not a smaller version of a functioning market, but effectively a non-market. Liquidity, the essential input that makes event contract market price signals meaningful, cannot exist in jurisdictional fragments.[13] The consequence of ceding these markets to state law is therefore not that sports prediction markets will thrive under a different regulatory regime, but rather that bona fide sports event contract markets will cease to exist, and the products that survive will be reabsorbed into state licensing regimes that were not built for, and that penalize users of, these markets.

- Second, the state-licensed wagering ecosystem that already exists, and that would absorb sports event contract activity in the absence of federal oversight, has scaled to significant size without any meaningful framework for margin risk management, counterparty exposure monitoring, or financial surveillance. This raises a systemic risk concern that is not contingent on sports event contract markets succeeding under state law. State gaming commissions permit leveraged house trading through licensed sportsbook operators without the institutional expertise to model the concentrated risk that large-scale leveraged wagering creates across a national user base. As event contract activity grows, whether under state wagering licenses, in offshore venues, or in other unregulated forms that emerge when federal oversight is missing, the absence of derivatives-grade risk management creates exposure that neither state gaming commissions nor their licensees are equipped to identify, surveil, or mitigate. The CFTC's full collateralization requirements, DCO clearing standards, position reporting, system safeguards, and real-time surveillance requirements exist precisely to prevent that kind of systemic risk from accumulating. The point is that only the CFTC's congressionally mandated framework is designed to manage risk across and within the federal system.[14]

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[12] *See, e.g.*, Schachter, Jonathan, Columbia Business Law Review, "From Murphy to Monopolies: Rethinking State Online Sports Betting Regulation" (March 1, 2026) ("On one extreme lies those states with fully competitive marketplaces hallmarked by a number of licensed operators, and on the other extreme lies states that have affirmatively sanctioned an online sports betting monopoly free from competitors."); Rodenberg, Ryan M., Florida Law Review Forum, "Anticompetitive Sports Betting Licenses and State Power: Response to Professor Day" (2023) ("in the sports betting market . . . numerous states enact[] entry-inhibiting licensing requirements under the guise of regulation.").

[13] The Multi-State Internet Gaming Agreement ("**MSIGA**") illustrates the liquidity fragmentation problem concretely. Despite representing a significant effort at cross-state coordination for online peer-to-peer gaming, MSIGA currently encompasses only six states. *See* Pennsylvania Gaming Control Review Board, Press Release, "Governor Shapiro Signs Multi-State Internet Gaming Agreement" (April 23, 2025). A prediction market ecosystem constrained to intrastate participation pools, even under an analogous multi-state agreement, would operate at a fraction of the liquidity necessary to generate meaningful price discovery.

[14] The CFTC's framework for standardized, centrally executed, and continuously priced derivatives specifically addresses the systemic vulnerabilities that arise when large volumes of contingent financial exposure accumulate without derivatives-grade risk management. *See* CEA Section 3(b) (CEA purposes include ensuring "the financial integrity of all transactions subject to [the CEA] and the avoidance of systemic risk"). State gaming commissions lack statutory authority, institutional expertise, and regulatory tools to perform the systemic risk monitoring function that the CFTC's framework provides. As prediction market activity scales, the systemic exposure generated by large, correlated positions across a national user base requires the CFTC's regulatory infrastructure to manage responsibly.

Parallel regimes for regulation of facially similar transactions is not a novel concept. Futures and swaps are economically similar instruments, but they are regulated under markedly different federal frameworks. Credit default swaps on single corporate bonds function much like insurance against default, yet they are regulated by the SEC rather than state insurance commissioners. Thus, the existence of state gambling regulation alongside a federal derivatives framework for sports event contracts is not anomalous. This alignment reflects a long pattern of Congress establishing federal market structure regulation for instruments that have entered the national financial system, regardless of their surface resemblance to products regulated under other regimes.[15]

States' historical interest in regulating sports markets is of recent vintage. Some courts that have ruled in favor of state authority have asserted that states have "long" regulated gaming.[16] This characterization misreads the record regarding sporting events. With limited exceptions, states were expressly prohibited by federal law from sponsoring or regulating gambling on competitive sporting events until 2018.[17] In effect, this regime (under which only certain states were permitted to offer sports wagering while all others were barred) constituted a direct exercise of federal control over the structure and geographic scope of the potential market. Any broad state interest in regulating sports wagering in relation to federal oversight therefore extends back at most eight years. As the Supreme Court recognized in *Murphy v. NCAA*, "Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own."[18] In the case of DCM-listed sports event contracts, Congress explicitly acted, through Dodd-Frank, to confirm that financialized event contracts fall within the CEA's nationwide federally regulated framework.

Public interest summary. Prediction markets listing sports event contracts, today operating under persistent jurisdictional uncertainty, inconsistent judicial outcomes, threats of state enforcement actions, and definitional ambiguities in the special rule, cannot develop the liquidity, infrastructure, and institutional participation that responsible innovation requires. An exemptive order in these circumstances is not merely consistent with the public interest. Issuing it is an affirmative fulfillment of the Commission's statutory obligation to act as a constructive force for responsible financial market innovation and development. The Commission's failure to act would itself be a policy choice, one that leaves an entire class of financial instruments in a state of legal uncertainty that Congress enacted CEA Section 4(c) to resolve.

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[15] *See, e.g.*, Congressional Research Service, CRS Report RL31982, "Insurance Regulation: History, Background, and Recent Congressional Oversight" (Feb. 11, 2005) (Baird Webel & Carolyn Cobb) (detailing how federal securities laws apply to variable annuities (issued by state-regulated insurers) once they trade nationally).

[16] *See, e.g.*, *KalshiEx LLC v. Martin*, 793 F. Supp. 3d 667, 682 ("as the Supreme Court has long recognized, states have strong interests in regulating gambling") (citing *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, a case from 2018).

[17] *See* Professional and Amateur Sports Protection Act ("**PASPA**"), 28 U.S.C. § 3701 et seq.; *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 460-61 (2018).

[18] *Murphy*, 584 U.S. at 486.

D. Conditions and Other Requirements for a Section 4(c) Exemption from the Special Rule

To be clear, ProphetX does not seek a broad, wholesale exemption removing sports event contracts from applicable requirements of the CEA. The narrow Section 4(c) exemption from the special rule we are urging should be conditioned on DCMs listing such contracts, and DCOs clearing such contracts, complying with the CEA's core principles and the Commission's entire regulatory regime for DCMs and DCOs. This condition also would assure that the order satisfies the requirements of CEA Sections 4(c)(2)(B) and 4(c)(3)(K) that an exemption: (i) not have a material adverse effect on the ability of the Commission or a contract market to discharge its regulatory or self-regulatory duties under the CEA; and (ii) be entered into solely between persons the Commission determines to be appropriate in light of the applicability of appropriate regulatory protections.[19]

The ANPR provides a foundation for a comprehensive rulemaking that should include a fit-for-purpose regulatory framework tailored to sports event contracts. The precise elements can be refined through the rulemaking process, but at a minimum they should address contract integrity (pre-listing occurrence assessments for manipulation susceptibility, settlement source independence, and restricted person controls), financial protections (appropriate collateralization, customer fund segregation, DCO clearing), fair market structure (affiliated market making, anonymous price-time priority matching), market surveillance (real-time monitoring, suspicious activity reporting, Commission enforcement authority), and customer protection (standardized risk disclosures, self-limiting tools, complaint procedures).

Meanwhile, the Commission could include in an order exempting sports event contracts from the special rule any additional conditions it determines, on its own initiative or based on comments submitted in response to the ANPR or the notice required under Section 4(c), to be appropriate while that rulemaking proceeds.

E. Section 4(c) Should Also Be Used to Conditionally Exempt Qualifying Technology Service Vendors from IB Registration as a Second Independent Path to Preemption

The Commission's recent no-action letter to Phantom Technologies, Inc. granted conditional relief from introducing broker ("**IB**") registration under CEA Section 4d(g) to a technology service vendor ("**TSV**") providing front-end interface software enabling users to access Commission-regulated derivatives on DCMs.[20] That relief was issued on a no-action basis, binding only on the issuing Division, and lasting until the "effective date of a Commission rulemaking or guidance addressing the application of the IB registration requirement to software providers."[21]

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[19] *See* Credit Default Product Exemptive Order, 72 Fed. Reg. at 33206-33207 (noting that the exempt products would be traded on a regulated exchange in determining that, in light of the appropriate regulatory protections for trading on the exchange, the exempt products would be entered into solely between appropriate persons in markets that included retail participants).

[20] CFTC Letter No. 26-09 (March 17, 2026).

[21] *See* CFTC No-Action Letter 26-09 (March 17, 2026) (". . . until the effective date of a Commission rulemaking or guidance addressing the application of the IB registration requirement to software providers . . ."). The conditions

The Division itself thus anticipated that the Commission will formally address this area, and Section 4(c) is the appropriate mechanism not merely as a matter of regulatory clarity, but because a Section 4(c) exemption from the IB registration requirement that prominently and specifically brings sports event contracts within its scope would provide a second and independent path to federal preemption of state gaming laws. CEA Section 12(e)(2)(B) preempts state gaming laws with respect to agreements, contracts, or transactions exempted under Section 4(c), regardless of whether those contracts are otherwise subject to the CEA. By exempting qualifying TSVs under Section 4(c), the Commission would ensure that not only the event contracts themselves, but the technology infrastructure enabling access to those contracts as well, would appropriately be shielded from state gaming enforcement. This is particularly significant given recent state actions that have sought to reach platforms and intermediaries as a means of indirectly suppressing federally regulated prediction markets.[22]

Beyond preemption, a Section 4(c) exemption for TSVs would convert staff-level forbearance into binding Commission law, eliminate the individualized no-action request process that may currently serve as a barrier to entry for some software providers seeking to connect users to prediction markets, and expand participation in a manner that deepens liquidity and advances the public interests in price discovery and financial market access described in CEA Section 3. The conditions established in CFTC Letter No. 26-09 are based on already well-calibrated staff-level standards, and could readily be incorporated as conditions of a Section 4(c) order for TSVs. Such an exemptive order would establish Commission-level law with the durability and, by expressly extending such an exemption to sports event contracts, with the preemptive force from state gaming laws that a Section 4(c) order entails.

V. Responses to Select ANPR Questions

A. Core Principles and Commission Regulations

Question 2(c): DCM Core Principle 3 — Susceptibility to Manipulation. The determination of whether an event contract is readily susceptible to manipulation should be made through a structured pre-listing integrity assessment. The relevant factors include the number and accessibility of persons capable of influencing the outcome, the transparency and independence of the settlement source, the availability of real-time surveillance, and the presence of restricted person controls sufficient to prevent inappropriate trading by insiders and misuse of material nonpublic information. These factors are functionally equivalent to the manipulation-susceptibility

established in Letter 26-09 — requiring passive software provision, no affirmative involvement in any particular order, no express buy or sell signals, no discretion over order routing or execution, conflict-of-interest disclosure to users, risk disclosure consistent with 17 CFR 1.55(b) — provide an already well-calibrated foundation for Section 4(c) exemption conditions applicable to TSVs.

[22] *See, e.g.*, Ex Parte Temporary Restraining Order at 2, *Nevada v. Coinbase Fin'l Markets, Inc.*, No. 26-OC-0030-1B (Nev. 1st Judic. Dist. Feb. 5, 2026) (prohibiting Coinbase "from offering or facilitating the offering of event contracts in Nevada"). State actions that target market infrastructure and access platforms, rather than the contracts themselves, represent precisely the kind of harm to markets that Section 12(e)(2)(B) preemption of Section 4(c)-exempt activity is designed to prevent.

analysis the Commission applies to physical commodity contracts. Although the underlying subject matter differs, the analytical framework should not.

Question 2(f): DCM Core Principle 11 — Financial Integrity. Full collateralization is the appropriate initial standard for prediction markets. Margin trading for retail participants should not be authorized until the Commission has developed margin calibration standards specifically tailored to the characteristics of binary event contracts, including their binary payoff structure, the rapid resolution of some contracts and the extended duration of others, and the potential for concentrated positions across correlated events. This is not a theoretical concern. State-licensed sportsbooks currently offer leveraged wagering products without any material expertise in margin models, counterparty risk management, or the systemic exposure that concentrated leveraged positions can create. As prediction market activity scales under federal regulation, the Commission should ensure that any margin authorization is preceded by a separate rulemaking with a dedicated cost-benefit analysis and risk management standards that state gaming frameworks have never been equipped to develop or enforce.

B. Public Interest

Question 9: The Economic Purpose Question. The ANPR asks whether elements of the former economic purpose test, which was repealed in 2000 by the Commodity Futures Modernization Act ("**CFMA**"), should inform the Commission's public interest determination under the special rule. ProphetX believes that the requirement in the definition of an excluded commodity that a contingency be "associated with a financial, commercial, or economic consequence" clearly and unambiguously sets forth Congress' intent as it relates to the evaluation of an excluded commodity. The Commission's public interest determination under the special rule should focus on the characteristics of the market and the contract, including manipulation susceptibility, settlement integrity, and participant protections, rather than attempting to resurrect a purpose-based threshold that was specifically repealed and removed from the CEA in the CFMA as passed by Congress and signed into law by the President.

Question 12: Insurance as a Reference Point. The ANPR asks how event contracts compare to insurance. The comparison is instructive but limited. Insurance contracts require an insurable interest and proof of loss. Event contracts do not. That structural difference is precisely why event contracts are regulated as derivatives and not insurance and why the CFTC, rather than state insurance commissioners, is the appropriate regulator. As discussed above, it is not uncommon for products that may share some similarities, but that are structurally distinct, to be regulated differently and, in some cases, by different regulators. The Commission should resist any framework that imports insurance-law concepts (*e.g.*, insurable interest, indemnity, loss limitation) into the event contract regulatory structure, as doing so would distort the derivative character of these instruments and create unnecessary jurisdictional confusion.

C. Activities Listed in CEA Section 5c(c)(5)(C)

Question 19: Gaming. The gaming question should not be the primary organizing principle of the Commission's approach to sports event contracts, precisely because that question has generated the most litigation, the most inconsistent judicial outcomes, and the greatest regulatory uncertainty for these contracts. The use of Section 4(c) as recommended herein, as authorized by the CEA, will allow the Commission to do Congress' will and establish a durable national framework for sports event contracts without first having to answer any definitional issue over an ambiguous term that is currently being litigated by state gaming advocates across the country.

In the event the Commission feels the need to address the "gaming question" directly with respect to sports event contracts, ProphetX recommends that the Commission make clear that: (i) the special rule's "may" language means that a contract involving gaming is permissible absent an affirmative determination that it is contrary to the public interest; (ii) Dodd-Frank's enactment of the special rule itself constitutes congressional recognition that such contracts fall within the CFTC's jurisdiction; and (iii) the determination of whether a specific contract involves gaming for purposes of the special rule is distinct from, and does not displace, the Commission's authority under Section 4(c) to exempt a class of contracts regardless of their gaming characterization.

Question 25: The "Involve" Question. The Commission should clarify that the term "involve" in the special rule requires a direct and meaningful nexus between the contract and the listed activity, not merely a speculative or attenuated connection. A contract that settles on the outcome of a sporting event involves the event. It does not involve gaming simply because gambling also occurs with respect to sports. The activities of the participants in the market, which include price discovery through competitive order matching, are categorically different from the activities of participants in a gaming system.

D. Inside Information

Question 31: Manipulation and Insider Trading. The insider trading concern is legitimate and warrants tailored rules. The Commission's existing anti-manipulation authority under CEA Section 6(c)(1) and CFTC Regulation 180.1 applies to event contracts. The Commission should confirm this expressly and provide guidance on how it intends to apply those provisions in the prediction market context. Platforms should be required to maintain and enforce written policies defining prohibited participation and misconduct by reference to categories of persons with material non-public information about, and/or an ability to materially influence, the referenced event and to report suspicious activity detected through their surveillance activities.

Question 32: Federal Employee Restrictions. CEA Sections 4c(a)(3) and 4c(a)(4) already prohibit federal employees from trading on non-public information and imparting such information to others, and they also prohibit the knowing use of such information for trading purposes. The Commission should confirm that these provisions apply to event contracts listed on DCMs and provide guidance on how DCMs should implement compliance controls with respect to these provisions.

VI. Conclusion

By exercising its authority under Section 4(c), the CFTC can establish a conditional exemption for the class of sports event contracts that will trigger express federal preemption under the CEA, affirmatively occupy the field of regulation of markets listing such contracts, future-proof its treatment of sports event contracts from challenge under ambiguous wording in the special rule, and enable the Commission to build a clear, rule-based framework tailored to these innovative contracts and markets. Section 4(c), and preemption under CEA Section 12(e)(2)(B) for contracts for which an exemption has been issued, apply to classes of contracts regardless of whether the contracts are otherwise subject to the CEA, and regardless of whether the contracts involve gaming. The result is a uniform, federally regulated market for sports event contracts grounded in transparency, integrity, and innovation.

The Commission should not leave the resolution of these questions to courts that have generated uncertainty by issuing conflicting decisions, or to states whose regulatory mandates and institutional expertise are fundamentally misaligned with the oversight of national financial markets. The administrative record is the right place to articulate the jurisdictional confirmation of what the Dodd-Frank Act accomplished, deploy the exemptive authority that Congress gave the Commission precisely to address threats to financial innovation like this one, and fulfill the Commission's affirmative mandate under CEA Section 4(c) to promote responsible financial innovation and fair competition.

We are not asking the Commission for light regulation. We are asking for the right regulation, encompassing a uniform, conditions-based federal framework that protects participants, ensures market integrity, and promotes the responsible innovation that the CEA was designed to foster.

ProphetX stands ready to work with the Commission and its staff to develop the specific contours of this framework. We are committed to operating as the Commission's partner in building prediction markets that are transparent, fair, and worthy of public trust.

If there are any questions or if we can provide additional information relating to our foregoing comments, please do not hesitate to contact me at dean.sisun@prophetexchange.com or Bruce Fekrat, Chief Legal Officer, at bruce.fekrat@prophetexchange.com.

Respectfully submitted,

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