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Stop the Spread: Why the CFTC Must Shut the Door on Gambling in Derivatives Markets

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The Stakes Are High

Most Americans would be surprised to learn that a federal financial regulator—the Commodity Futures Trading Commission (CFTC)—is now being asked to oversee what are essentially bets on the outcomes of sporting events, entertainment contests, and other games of chance. Once a regulator focused on agricultural commodities and later a pioneer in policing complex financial derivatives, the CFTC is now enabling the spread of gambling-style products by treating them as financial instruments. These so-called "event contracts" are being presented as financial products, but they function more like gambling slips than traditional tools used to manage financial risk.

This shift is not just a technical regulatory issue. It has real consequences for consumers and the public. If gambling-style event contracts are allowed to trade on federally regulated exchanges, it could open the door to widespread speculation on sports without any of the safeguards that typically apply to gambling. Unlike state-regulated gaming, which often includes age restrictions, addiction resources, and limits on exposure, these contracts could be marketed nationwide with few restrictions and lure retail investors into risky, zero-sum bets under the illusion of legitimate financial trading. That puts consumers at risk of financial harm and undermines public confidence in markets that are supposed to serve the real economy, not enable speculative gambling disguised as innovation.

We have already seen this slippery slope in action. Earlier this year, the CFTC allowed a contract to be listed that let people bet on the outcome of the Super Bowl, one of the most watched and emotionally charged sporting events in the country. That decision signaled to the market that even the most blatantly gambling-like contracts could pass regulatory muster if framed as "financial products." Since then, other entities have rushed to propose similar contracts for sporting events, testing the limits of the law and the CFTC's willingness to enforce it. Rather than drawing a clear line, the CFTC's inaction has opened the floodgates.

While the CFTC delays, the risks to consumers and markets continue to grow. Contracts tied to sporting or game-like outcomes do not just blur the line between finance and gambling. They cross it. These contracts not only violate the public interest standard in the Commodity Exchange Act (CEA), but they also represent a backdoor attempt to bring gambling into regulated markets without the oversight, consumer protections, or legal clarity provided by state gaming commissions. Most troubling, the CFTC is not equipped—legally or institutionally—to regulate gambling.

The Public Interest Standard

Most people do not think of derivatives as part of their everyday lives, but they affect everything from the price of groceries to the cost of gas and electricity. Farmers use futures contracts to lock in prices for crops before they are harvested. Airlines use them to hedge against rising fuel costs. These contracts are meant to serve the real economy by helping businesses manage risk. That's why, historically, not just any contract could be traded in these markets. For decades, the law required that all contracts serve a legitimate economic purpose, either by helping businesses hedge real-world risks or by contributing to transparent and reliable price discovery. This standard, known as the economic purpose test, was a gatekeeper. It prevented purely speculative or harmful contracts from entering the marketplace, much like banning a contract that lets someone profit from whether their neighbor's house burns down.

However, in 2000, the Commodity Futures Modernization Act (CFMA) eliminated the economic purpose test in an effort to deregulate and encourage financial innovation. In doing so, it eliminated a foundational principle that helped distinguish legitimate financial instruments from wagers. This deregulatory move created a legal void, and while large-scale gambling contracts had not yet emerged, Congress foresaw the potential for abuse and acted preemptively to prevent gambling from infiltrating regulated derivatives markets. In 2010, through Section 5c(c)(5)(C) of the CEA, Congress created a public interest review to allow the CFTC to prohibit event contracts that involve gaming, terrorism, assassination, war, or activities that are unlawful under federal or state law, or that are otherwise deemed contrary to the public interest.

The legislative history of this provision makes clear that it was intended to restore something akin to the economic purpose test for the specific purpose of evaluating event contracts. In fact, the Senate colloquy on July 15, 2010, directly addressed this point. Speaking on the Senate floor, lawmakers expressed concern that contracts involving sports betting and other gambling-style activity could proliferate absent clear legal limits. The colloquy underscored that sports betting contracts are not consistent with the public interest and should not be permitted under the CFTC's jurisdiction. In short, Congress had the foresight to prevent regulated derivatives markets from becoming glorified gambling halls.

Critics have argued that Section 5c(c)(5)(C) is an undue delegation of legislative power, suggesting that the phrase "contrary to the public interest" is too vague and gives the CFTC excessive discretion to deny contracts. But this criticism misses the mark. Far from being an open-ended standard, "public interest" in this context is a well-established legal principle, narrowly applied to a specific class of contracts, and grounded in clear congressional intent. As affirmed in the legislative history, Congress enacted this provision to restore a form of the economic purpose test and prevent regulated derivatives markets from being used for gambling. Even under *Loper Bright*, which limits judicial deference to agency interpretations, the CFTC's authority here is firmly anchored in the statutory text and its legislative purpose.

The CFTC's implementation of this provision through CFTC Rule 40.11 further demonstrates that this is not an unbounded or improvised exercise of discretion. The rule provides objective criteria and a procedural framework for assessing whether a contract involving an event, activity, or outcome that is unlawful under federal or state law, involves, relates to, or references terrorism, assassination, war, gaming, or is otherwise contrary to the public interest. Rather than acting arbitrarily, the CFTC has created a transparent, rule-based mechanism to operationalize Congress's mandate ensuring that self-certified contracts undergo appropriate scrutiny when they raise serious legal or ethical questions.

Moreover, Section 5c(c)(5)(C) functions as a statutory firewall, designed to prevent CFTC-regulated exchanges from becoming de facto casinos. Many of these contracts target highly retail-facing, emotionally charged, and culturally significant events such as sports championships, entertainment awards, and political contests. These are not traditional financial instruments grounded in commercial activity. They are bets disguised as financial products, crafted to exploit the regulatory advantages of operating within the CFTC's jurisdiction.

Congress Meant What It Said

If not to prevent gambling, then what exactly was Congress trying to prevent when it enacted Section 5c(c)(5)(C)? Congress didn't toss the word "gaming" into Section 5c(c)(5)(C) by accident. Why include "gaming" alongside terrorism, assassination, and war if not to signal the severity of the concern? These are not casual or vague categories. They are red flags for contracts that carry societal, ethical, and legal implications far beyond the traditional scope of financial risk management.

Critics who challenge the clarity of the public interest standard overlook the fact that it operates within a highly specific and limited statutory framework. The statute does not allow the CFTC to reject any contract for any reason. It applies exclusively to event contracts, and even then, only when those contracts fall into clearly defined categories involving unlawful conduct, violence, or gaming. And if "gaming" doesn't refer to gambling, then what does it refer to? Congress didn't use "gaming" by accident. It was a deliberate choice intended to draw a bright line between legitimate financial contracts and bets masquerading as derivatives and to give the CFTC the authority to keep gambling out of regulated markets.

That intent is clear in both the statute and its legislative history. Section 5c(c)(5)(C) was meant to serve as a statutory barrier against the misuse of federally regulated markets for betting activity that has no place in risk management. Congress did not intend for betting slips to be repackaged as financial derivatives. It intended to draw a line. That means rejecting contracts that mimic gambling, no matter how cleverly they are dressed up as financial innovation.

Otherwise, it is a betrayal of the statute's purpose and an invitation to turn the CFTC into the nation's federal gaming commission.

Backdoor Attempt to Legalize Gambling in Financial Markets

Despite clear statutory prohibitions against gambling within federally regulated derivatives markets, certain CFTC-regulated exchanges are actively circumventing these restrictions by rebranding gambling activities as financial instruments.

The CEO of Kalshi, a CFTC-regulated exchange, recently claimed, "I just don't really know what this has to do with gambling. If we are gambling, then I think you're basically calling the entire financial market gambling." This assertion conflates traditional financial markets that are designed to facilitate risk management, capital formation, and price discovery with betting on the outcome of a basketball game. There is a fundamental difference between an airline company hedging its risk in the oil futures markets and someone betting on who will win the NBA championship. Suggesting that the entire financial system is equivalent to placing a bet on a basketball game is not only misleading, it undermines the decades-long legal and regulatory distinction between legitimate financial instruments and gambling.

In an attempt to further distance itself from traditional sportsbooks, Kalshi's CEO argues that because the exchange does not profit from users' losses and simply matches traders in a marketplace, it should not be considered a gambling entity. But the issue is not how the platform makes money. It's the nature of the contracts themselves. Congress gave the CFTC authority to prohibit event contracts involving gaming, not based on business models, but based on subject matter. As made clear in the legislative history of Section 5c(c)(5)(C), the concern was that contracts resembling sports bets could slip into regulated markets unless explicitly barred. The method of execution does not transform a bet into a hedge.

Yet despite Kalshi's public denial that its contracts involve gambling, the company has taken a very different position in court. In a legal challenge filed against the CFTC—seeking approval to list bets on the outcome of elections—Kalshi acknowledged that sports betting-style contracts fall within the very definition of "gaming" that Congress intended to prohibit. In its own filings, Kalshi conceded that "contracts on sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament" were precisely the types of contracts Congress empowered the Commission to block. It admitted that the "gaming" category "reaches contracts contingent on games," including "whether a certain team will win the Super Bowl," and stated that the law was designed to "check on attempts to launder…sports gambling through the derivatives markets." Kalshi even went so far as to state that such contracts "are probably not the type of contracts we want . . . listed on an exchange because they don't have any real economic value to them." In other words, in order to justify offering bets on the winner of the presidential election, Kalshi has already made the case against sports betting.

Despite those prior acknowledgments in court, Kalshi has gone on to aggressively promote its sports event contracts, especially in states where sports betting remains illegal. What explains the reversal? Kalshi appears to be betting that the CFTC will not enforce the very statutory barrier Congress put in place to protect the public interest. The CFTC has allowed sports betting-style contracts to be listed—such as a contract on the Super Bowl—without issuing a public explanation or conducting a meaningful review under its regulation. That inaction has sent a clear signal that the CFTC is unlikely to exercise its authority to stop these contracts, even when they closely resemble traditional gambling. Rather than drawing a legal boundary, the CFTC's failure to intervene has created an opening that Kalshi is now exploiting to push its agenda forward.

In a public blog post, the exchange declared that its sports contracts are "legal in all 50 states," not because any state regulator has approved them, but because it claims its operations fall under exclusive federal jurisdiction through its CFTC registration.

This is not just a legal strategy. It is a calculated end-run around state law. Kalshi is using its federal designation to backdoor sports gambling into every state in the country, bypassing all 50 state legislatures and gaming commissions. That's not innovation. It's evasion.

The CFTC Lacks the Expertise to Regulate Gambling

The CFTC is tasked with overseeing derivatives and commodities markets, ensuring market integrity, transparency, and stability. Its regulatory framework is designed to manage financial instruments like futures and options, not gambling activities. By contrast, gambling regulation focuses heavily on consumer protection, fraud prevention, and ethical oversight. State gaming commissions routinely enforce safeguards such as age restrictions, identity verification, wagering limits, self-exclusion programs, and addiction treatment resources. These protections are designed to reduce financial harm and mitigate public health risks—areas far outside the CFTC's expertise or regulatory infrastructure.

Expanding the CFTC's role to include oversight of gambling would stretch its already limited resources and divert focus from its core mission. The agency's expertise lies in evaluating financial risk and economic utility, not in determining the social, ethical, or public health impacts of gaming. Attempting to layer gambling supervision onto a financial regulatory agency not designed for that task would create confusion, weaken oversight, and undermine the effectiveness of both financial and gambling regulations.

In their recent legal battles with state gaming regulators, two CFTC-regulated exchanges have argued that their sporting event contracts fall solely under federal jurisdiction. Because these contracts are listed on designated contract markets, the argument goes that they are derivatives subject only to the CFTC jurisdiction and immune from state-level gambling laws.

While it is technically true that event contracts fall within the CFTC's jurisdiction when listed on a designated contract market, the argument these exchanges are making is a distraction from the real issue. It shifts attention to the *form*—whether the CFTC has exclusive jurisdiction over sports event contracts (derivatives)—instead of the *substance*—whether those contracts comply with the CEA's requirements. At the heart of that inquiry is not jurisdiction but legality: do these event contracts violate the CEA's public interest restrictions, particularly its treatment of gaming? On that point, Congress was clear. It gave the CFTC the authority to block event contracts involving gaming that go against the public interest (no economic purpose).

However, despite this clear mandate, the CFTC has allowed sports betting-style event contracts to proliferate on federally regulated exchanges. This inaction does not stem from a lack of statutory authority. Rather, it appears to reflect a reluctance to intervene, driven more by political considerations than legal constraints. That hesitation is especially notable not only in light of Kalshi's own courtroom admissions that sports betting contracts fall within the definition of "gaming" and serve no legitimate economic purpose, but also in light of prior public statements from the agency's current leadership.

As Commissioner, Acting Chair Caroline D. Pham publicly emphasized the importance of federalism in the context of gambling regulation. She correctly noted that under the U.S. Constitution, powers not explicitly delegated to the federal government are reserved for the states and that gambling regulation has long been the domain of state governments. This structure allows states to adopt tailored approaches that reflect local economies, values, and cultures. Some states have embraced gaming as a revenue source. Others have adopted more cautious or restrictive models. That diversity is by design.

The argument that federally listed event contracts should override these local choices through regulatory preemption undermines the very principle of state sovereignty that the current Acting Chair has rightly defended. The CFTC was not designed to displace state gaming commissions, nor should it be transformed, intentionally or by neglect, into a de facto national gambling authority.

And even if state laws were swept aside, the federal legal landscape is far from settled. The Federal Wire Act prohibits the interstate transmission of wagers on sporting events, raising serious questions about whether sports event contracts, even on CFTC-regulated platforms, could run afoul of this federal law. There is a strong possibility that sports event contracts, particularly those that match opposing views on a game's outcome, could be viewed as wagers under the Wire Act, especially when traders are located in different states. In such cases, the CFTC-regulated exchange facilitating the transaction may be transmitting information used to place or settle what amounts to a bet on a sporting event. That is precisely the type of conduct the Wire Act was designed to prohibit. Listing these contracts on a federally regulated exchange does not insulate them from liability if their core function mirrors that of an interstate sports betting operation.

The CFTC Must Shut the Door

The CFTC was created to ensure that derivatives markets serve the real economy, not to facilitate wagers on sporting outcomes. When these markets operate as intended, they help farmers lock in crop prices, airlines hedge fuel costs, and consumers benefit from stable prices at the pump, at the grocery store, and in the housing market. It is important to keep these markets focused on risk management and price discovery, not speculative bets disguised as financial innovation. Every time a contract with no economic utility is allowed to trade, it dilutes the integrity of the system and distracts from the instruments that support real businesses and families.

The CFTC's recent actions, or lack thereof, are cause for concern. The agency has permitted sports betting-style contracts to be listed without issuing a public explanation or conducting a meaningful review under federal law. Furthermore, the CFTC canceled its planned roundtable on event contracts, signaling regulatory inaction at a critical juncture.

The CFTC must reaffirm its commitment to its statutory mission and reassert its authority under the CEA. It cannot allow itself to become the federal government's gaming commission by default.

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