



August 8th, 2024

via Electronic Submission

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 2151 Street, NW
Washington, DC 20581

Re: 17 CFR Part 40 Event Contracts; Comment for Proposed Rule 89 FR 48968

Dear Mr. Kirkpatrick:

RSBIX, Inc (“RSBIX”) appreciates the opportunity to submit public comment on Proposed Rule PR 8907-24 (the “Proposed Rule” or the “Proposal”), which pertains to the Commodity Futures Trading Commission’s (“CFTC” or the “Commission”) regulations pursuant to the Commodity Exchange Act (“CEA”) section 5c(c)(5)(C).

RSBIX aims to be the first CFTC-Regulated Futures Exchange that offers sports event futures contracts to allow the sports and sports betting industries access to financial instruments and hedging mechanisms to better manage the risks associated with their operations. Specifically, RSBIX seeks to become a regulated designated contract market (“DCM”) with contracts cleared through a CFTC-regulated entity. CFTC-regulated DCMs and clearinghouses are widely recognized as the best-regulated derivatives exchanges in the world. CFTC regulation benefits hedgers, customers, industry participants, and serves the broader U.S. economy by ensuring market integrity and financial stability.

Many issues raised in the Proposal relevant to gaming or the sports betting industry are not novel to our ongoing dialogue with the Commission. Since December 2018, we have engaged in thoughtful discussions with the CFTC and its staff, consistently providing written materials addressing potential concerns on these matters. We have provided continuous feedback and plan to continue with future dialogue in the hope that we can find the solution that serves both the public interest and the legal sports betting market industry’s interest. We hope that this comment letter furthers that purpose.

I. Contracts Involving Gaming Are Not Categorically Contrary to Public Interest

Nowhere in the CEA, including in the Dodd-Frank provisions relating to event contracts in section 5c(c)(5)(C), is it stated that contracts involving the enumerated activities are categorically contrary to the public interest. The statute does not establish a blanket prohibition on contracts involving gaming, recognizing that not all such contracts are contrary to the public interest.



This view is supported by Commissioner Mersinger's Dissenting Statement which states: "The Proposal would allow the Commission to make the substantive policy determination that entire categories of event contracts, regardless of their terms and conditions, are contrary to the public interest. And the consequences of such a determination are severe – a complete prohibition on exchanges' ability to list event contracts, and on market participants' ability to trade them. If Congress had intended for the Commission to wield this immense authority, surely it would have said so."

Similarly, we cite former SEC General Counsel, CFTC General Counsel, and former CFTC Commissioner Dan Berkovitz's Statement Related to Review of ErisX Certification of NFL Futures Contracts, in which he states the following:

"Notably, however, the CEA gaming provision does not require the Commission to prohibit contracts involving gaming or to prohibit a contract simply because it involves gaming; it provides the Commission with the discretion to prohibit them. In my view, the Commission should recognize the significant growth of sports betting as a legalized activity in recent years with significant underlying commercial activity. The Commission should permit a DCM to list contracts involving sports events where a DCM demonstrates that such contracts have an economic purpose and hedging utility related to such commercial activity... Because in many states sports betting is now legal under both state and federal law, it would not be 'contrary to the public interest' for the Commission to permit the listing of sports event contracts if an exchange can demonstrate that the contracts will be used to hedge commercial risks arising from lawful commercial activity related to sports betting."¹

It should be noted that Commissioner Berkovitz's comments were published in April 2021, when only 25 states plus the District of Columbia had legalized sports betting, many of which were in only their first or second year of having operational markets. The industry has significantly matured in the meantime, much of which we touch upon through this comment letter.

CEA Section 5c(c)(5)(C) grants the Commission discretion to prohibit an event contract from being listed for trading on an exchange (1) if the contract involves one of five enumerated activities—(i) activity that is unlawful under any Federal or State law; (ii) terrorism; (iii) assassination; (iv) war; or (v) gaming;—and (2) if the Commission determines that the contract is contrary to public interest. The same CEA section also provides the Commission, by rule or regulation, the discretion to determine that an event contract involves "other similar activity" to the five enumerated activities to be contrary to public interest. The section was added to the CEA in 2010 by the Dodd-Frank Act. One year after Dodd-Frank's enactment, Rule 40.11 was adopted by the Commission to implement these provisions.

Proposed Rule 89 FR 48968 amends Rule 40.11. Rule 40.11(a) prohibits the listing of an agreement, contract, or transaction that involves, relates to, or references the enumerated activities. Rule 40.11(c) provides for a 90-day review period for any such contract that the Commission determines involves an enumerated activity referenced in 40.11(a). The Proposal, among other things, folds the two distinct discretionary determinations

¹ <https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement040721>.



of CEA Section 5c(c)(5)(C)(i) into one: by the mere fact of involving one of the enumerated activities, such an event contract is categorically contrary to the public interest. On its face, we take this to mean that the enumerated activities themselves are, in some sense, contrary to the public interest.

This interpretation goes beyond the statutory text. Even if the enumerated activities list demonstrates congressional intent to “empower the Commission to prohibit event contracts that would effectively serve as a wagering vehicle, subject to a Commission determination that such contracts are contrary to public interest,” as the Commission states, that does not support a blanket prohibition of all contracts “involving” gaming, however defined. The statute itself recognizes that not all such contracts are contrary to the public interest by requiring a separate determination.

Additionally, one of these five enumerated activities is not like the others and the others are all markedly like each other. Among the five enumerated activities, gaming is the only activity that currently has a widespread, legal, and regulated industry in many jurisdictions, whether on a nationwide or international level, and which enjoys a high degree of participation among Americans. The other items on the list are either strictly illegal, like assassination and terrorism, or, in the case of war, not a commercial industry in the conventional sense of the term. All three pertain to some form of political violence, which is universally abhorred. Additionally, we consider “activity that is unlawful under any Federal or State law” to be a purposeful means of ensuring that the Commission has the discretion to prohibit an event contract involving activities either not worthy of explicit consideration by Congress or not within the present or future consideration of Congress at the time of writing. The items on this list created in 2010 illustrates the Congressional intent to ensure markets would not be used to facilitate or promote illegal activity. The inclusion of gaming as an enumerated activity in this list is thus a relic of time buried by legal developments in the form of widespread legalization and regulation of gaming.

The Commission interprets gaming activity’s presence on the enumerated activities list as Congressional intent to “empower the Commission to prohibit event contracts that would effectively serve as a wagering vehicle, subject to a Commission determination that such contracts are contrary to public interest” because gaming was identified as an enumerated activity separate and apart from activity that is unlawful under federal or state law.² In so doing, the Commission relies on a 2010 Colloquy between the late Senator Diane Feinstein and Senator Blanche Lincoln regarding the proposed Dodd-Frank Act provision that ultimately was enacted as CEA section 5c(c)(5)(C): “[t]he Commission needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed ‘event contracts.’”³

With respect to gaming being included separate and apart from activity illegal under any federal or state law, we believe that this distinction likely reflects Congress’s intent to make its specific concerns explicit. For

² Footnote 115 of the Proposal.

³ Ibid.



instance, terrorism is, by definition, illegal and so could have just as easily fallen under the umbrella of an activity illegal under federal or state law. Nevertheless, Congress included it as an enumerated activity in order to *necessitate* that the Commission evaluates any contract involving terrorism according to the public interest standard and to make its specific concern with respect to terrorism evident.⁴ Similar analysis can be extended to assassination and war as well.

By including gaming as an enumerated activity, Congress intended to make its concerns clear regarding gaming-involved contracts *qua* a broadly illegal and federally banned activity at the time Dodd-Frank Act was passed. The Colloquy provides evidence of this both in form and substance.

As a matter of substance, Congress mandated the Commission exercise discretion to evaluate gaming-related contracts according to the public interest standard, rather than mandating blanket prohibition, precisely because such contracts *could* predominantly function to inappropriately enable gaming at the time when gaming *was* broadly illegal and sports betting *was* banned from being legalized in any state where it was not already legal, i.e. in 46 out of 50 states.⁵ But that function is longer the potentially predominant one.

We agree with the Commission that the cited Colloquy sentence is particularly instructive as a matter of determining intent. But we respectfully believe that deeper analysis leads to a different implication than the Commission's own. The 2010 Colloquy occurred in a vastly different legal landscape with respect to gaming and sports betting, when the Professional and Amateur Sports Protection Act (PASPA) banned states from legalizing sports betting, with Nevada being the primary exception.⁶ In this context, the capacity for derivatives contracts to "predominantly function as a means to enable gaming," rather than as legitimate hedging tools, was significantly heightened due to the extremely limited legal sports betting industry. This was so in two immediate respects. First, the want of a legal hedging mechanism for the sports betting industry was minor relative to today precisely because of the limited nature of sportsbook operations, which were confined to Nevada. As a result, sportsbook operators, which themselves were casinos, faced less absolute exposure and risk from the outcomes of sporting events. Second, that only Nevada held legal sports betting markets meant that most prospective bettors were unable to place legal bets in their resident states, leaving them wanting for some legal means to do so, like a derivatives market existent only "predominantly to enable gaming."

⁴ We concur with Commissioner Mersinger's sentiment expressed in her dissenting statement on the Proposal: "I admit that I am not going to lose sleep over a determination that all event contracts involving terrorism, assassination, and war are contrary to the public interest."

⁵ Delaware, Nevada, Oregon, and Montana were exempt from parts of PASPA. Delaware, Oregon, and Montana hosted sports lotteries and/or permitted sports pools rather than sports betting in the typical sense of the term.

⁶ We respectfully correct the Commission's statement that there were casino sportsbooks in New Jersey when CEA section 5c(c)(5)(C) was enacted. PASPA was at issue before the Supreme Court in *Murphy v. National Collegiate Athletic Association* (2018) because New Jersey attempted to legalize sports betting, i.e. have legalized sportsbooks, casinos included.



The use of the phrase “predominantly to enable gaming” is especially noteworthy in the Colloquy. It implies facilitating an activity that faces substantial barriers or impediments — in this case, the near-universal prohibition of sports betting under PASPA. Now, the premise underlying the 2010 statement has been fundamentally altered. Such impediments are no longer. The sports betting industry, now in its sixth year of legal existence, has evolved into a robust economic sector with legitimate risk management needs and a wealth of consumers across nearly 40 states.

On this latter point, we cite an illustrative example by the American Gaming Association (“AGA”) who reported that a record 67.8 million American adults (26%) were expected to bet on Super Bowl LVIII, a 35 percent increase from 2023.⁷ Further statistics show that 42.7 million American adults plan to place a traditional sports wager online, at a retail sportsbook or with a bookie, up 41 percent from 2023, and that 28.7 million adults, or 11 percent, intend to place online wagers using a legal U.S. sportsbook.⁸

In this new context, there is scant functional need for derivatives markets that exist “predominantly to enable gaming,” because gaming, or sports betting, is now widespread and legally accessible in most states. Even still, those who do not have access to legal markets in their resident state readily find illegal, offshore online platforms through which they can wager on sports, but which do not offer them or their state any of the protections or benefits of a regulated platform.⁹

Crucially, the causal relationship expressed in the statement — that potential contracts may exist “contrary to the public interest because they exist predominantly to enable gambling” — warrants careful examination. The function of “predominantly enabling gaming” was the very reason these contracts were deemed contrary to the public interest. However, today this potential function is completely vestigial: if the primary reason for these contracts being contrary to the public interest is no longer relevant — with broad legalization and regulation of sports betting in most states and illegal, offshore online platforms illicitly enabling gaming in the others to the detriments of those states and their residents — it follows that the event contracts are no longer contrary to the public interest on these grounds. The entire gaming landscape has changed. There is no need for event contracts to exist to predominantly enable gaming because gaming is already broadly accessible.

Now, the predominant function of such event contracts would be to serve legitimate hedging purposes for the sports betting industry such that they can better manage their financial risks and stay competitive with the illegal, offshore bookmakers who predate on American citizens. Both purposes protect the interests of American citizens and the states in which they live, and therefore the public interest. We respectfully urge the

⁷ <https://www.americangaming.org/new/record-68-million-americans-to-wager-23-1b-on-super-bowl-lviii>.

⁸ Ibid.

⁹ Advertisements for offshore online bookies abound on the Internet and are often interspersed among advertisements for legal and regulated sportsbooks, with no evident distinction between the legal status of the two platforms. This is an issue that the legal sports betting industry has been combatting.



Commission to consider the current economic and legal reality of the gaming industry rather than the sentiments of a restrictive legal landscape that more than a supermajority of states have displaced.

While the Commission has the authority to prohibit certain gaming-related contracts that it determines to be contrary to the public interest, this authority does not extend to a blanket prohibition. The text of the statute, the statements of current and former Commissioners, the changed legal landscape, and the legitimate economic purposes of such contracts all support a more nuanced approach that considers each contract on its merits.

II. The Sports Betting Industry Needs Hedging Tools

The Commission offers in its Proposal two statements addressing the potential for event contracts involving gaming to be used as legitimate hedging tools, both with which we contend below:

- (1) That “the economic impact of an occurrence (or non-occurrence) in connection with a contest of others, or a game of skill or chance – including the outcome of such a contest or game – generally is too diffuse and unpredictable to correlate to direct and quantifiable changes in the price of commodities or other financial assets or instruments, limiting the hedging and price-basing utility of an event contract involving such an occurrence.”
- (2) That “the Commission believes that contracts involving such occurrences are likely to be traded predominantly ‘to enable gambling’ and ‘used predominantly by speculators or participants not having a commercial or hedging interest,’ and cannot reasonably expected to be ‘used for hedging and/or price basing on more than an occasional basis.’”

We respectfully disagree with the Commission. Both evidence and industry members have contradicted such notions.

The need for a legitimate hedging tool is inherent to how sportsbook conduct operations and is quantifiably foreseen for each event.

Sportsbooks do not themselves engage in wagers or bets on the outcome of sporting events. Operators instead aim to create a “balanced book” where the money wagered on both sides of a sporting event outcome are equal, usually by incentivizing or disincentivizing prospective bettors one way or the other through more attractive or less favorable odds, respectively. This means that on an event where the money on each side is equal, the money from the loser goes toward paying the winner, no matter which group is which. In this ideal scenario, the sportsbook’s revenue is captured in minor odds disparities. This revenue, known in the industry as the “vigorous” or “vig,” is essentially the sportsbook’s commission for facilitating the wager. For example, in a typical point spread bet with -110 odds on both sides, a bettor must wager \$110 to win \$100. If the book is perfectly balanced and \$1,100 is bet on each side, the sportsbook collects \$2,200 total. When paying out \$1,100 to the winning side, the sportsbook retains \$100 as its vig, or commission, representing a theoretical



“hold” of about 4.55% of the total amount wagered. This commission structure allows sportsbooks to generate revenue regardless of the event’s outcome, provided they maintain a balanced book.

But there is a reason this situation is only an ideal one. Sportsbooks frequently encounter situations where there’s a disproportionate amount of money wagered on one side of an event. When such an imbalance occurs, the sportsbook adjusts its odds. They typically respond by making odds more attractive for the less popular side and less favorable for the heavily backed side, to encourage a more balanced distribution of wagers. This may mean losing bettors to other sportsbooks or offshore operators as a result. The state-by-state regulatory scheme of the sports betting industry amplifies this issue.

Consider the following example: New York-licensed sportsbooks are prohibited from accepting out-of-state wagers, creating a natural imbalance in the book on any given game involving a home team. Bills fans, the majority of whom are presumably in New York, would rarely consider betting against their team, especially on a home game, and the same could be said for fans of the Giants or Jets. For these games, the sportsbook must either operate with an imbalanced book or offer unattractive odds in an attempt to artificially balance it, attempts which are rarely successful as fans are more likely to turn to another platform or forego the bet altogether. This imbalance is readily perceptible and easily identified as exposure to the outcome of the sporting event because, if the Bills win, the sportsbook may not have enough money on the other side to cover the winnings. More attractive odds are generally insufficient to induce fans to overcome hometown sentiments.

This scenario demonstrates why sportsbooks need effective risk management tools. The exposure is quantifiable, foreseeable, and directly linked to specific sporting event outcomes. Sportsbook operations strive to be outcome-indifferent by design, but aspects of the current regulatory landscape and consumer tendencies often prevent them from achieving this goal.

In contrast, other entities in the sports industry, such as stadium owners and other vendors, necessarily have a vested interest in their home team’s performance and which they have no means to attempt to mitigate or offset like sportsbooks. Their economic success is inherently tied to how well a team does, creating a different kind of exposure that could also benefit from risk management tools. For instance, potential playoff prospects, especially deep ones, energize a fanbase into higher attendance, ticket prices, and merchandise sales, among other things, for regular season games. Home playoff games are themselves boons to revenue in like manner. These effects are also present downstream for businesses like hotels and restaurants within radius of the stadium and the home team’s city, as individuals from within the state or fans from out-of-state travel to watch games in person.

As Ari Rubenstein, Co-Founder and CEO of GTS Securities, put so appropriately in his comments concerning CFTC Review of Proposed RSBIX NFL Futures Contracts:

“In this way, these businesses are like any other commercial user of the commodities market: they must invest capital upfront for facilities upkeep, staffing, purchasing inventory, marketing, and the like in order to secure a future profit that is uncertain, and the success of which depends on factors beyond



their control. Their team's collapse is the sporting equivalent of a drought-induced crop failure – an event that may undo even the most diligently-executed business plan. The Contracts are a mechanism for the venue owners and vendors to hedge their risk exposure, in the same way that farmers use the commodities markets to protect the prices for their crops.”¹⁰

Commissioner Mersinger herself has also substantiated this notion with respect to venue hosts and other vendors securing future opportunities to host events in her Dissenting Statement on the Proposed Rule, in which she combats the Proposed Rule’s notion that “that contracts involving such occurrences are likely to be traded predominantly ‘to enable gambling’ and ‘used predominantly by speculators or participants not having a commercial or hedging interest’” Therein, Commissioner Mersinger states the following: “These assertions are entirely conjectural, as the Proposal does not cite any support for these statements. One can readily envision an event contract involving whether a particular US city will be awarded the summer or winter Olympic games in a given year, which would be used by hotel and restaurant owners, as well as other businesses, that would make money if their city gets the Olympics but not if the Olympics are awarded elsewhere. Such an event contract would not necessarily be used predominantly for entertainment or speculative purposes.”¹¹

Exposure to the outcome of sporting events is not isolated to the quality of performance of a relevant home team, however. There is also a general tendency for an imbalance to exist on the basis of which team is favored to win, no matter the states or sportsbooks in question. Aggregated data shows that these imbalances are the rule rather than the exception to the rule.

For instance, according to proprietary estimates using aggregated data collected and provided by Sports Insights on NFL games covering the first 170 games of the 2021 football season from around 50 participating large and small sportsbook operators, none of the games had wagers that were completely balanced across all the different kinds of wagers (i.e., moneyline, point spread, or total points) at the same time. Additionally, around 98% (or virtually all the games) had significant wager imbalances with 60% or more of the total amount wagered on an individual game was wagered on one team and 20% of the games had 90% or more of the total amount wagered on one team for at least one type of bet.

Recent public statements and operational strategies adopted by a leading sportsbook operator illustrate the necessity of instruments to manage commercial risk. DraftKings announced the implementation of a “winnings surcharge” in high-tax states. This move, as explained by CEO Jason Robins, is a direct response to the growing challenge of state-imposed revenue taxes exceeding 20%. The surcharge is designed to offset the substantial tax burden in states like New York, where the tax rate is 51%, and Illinois, where a recent tax hike could cost the company an estimated \$100 million in incremental taxes next year. According to Legal Sports Report analysis, the “change is the practical equivalent of moving the odds to -114, moving the standard

¹⁰ Comment No: 64793.

¹¹ <https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement051024>.



breakeven win rate from 52.4% to 53.3%.”¹² In this context, legitimate hedging tools are crucial for the sports betting industry. They not only bolster operational efficiency by allowing sportsbooks to mitigate risk exposure from event outcomes, but also benefit consumers by enabling operators to offer better odds or forego surcharges on winning bets. Without access to such risk management instruments, operators face a critical dilemma: choosing between maintaining profitability and offering competitive products to consumers, both of which have implications for competition with the illegal, offshore industry. The introduction of hedging tools could alleviate this tension, supporting a healthier and more sustainable regulated sports betting market that balances operator profitability with attractive services for bettors.

In his Statement Related to Review of ErisX Certification of RSBIX NFL Futures Contracts, former Commissioner Berkovitz broached that the AGA informed the Commission that “some AGA members also believe these proposed contracts will have limited utility for their individual operations” and that the Contracts “pose complex legal and policy questions.”¹³ The ErisX-RSBIX NFL Futures Contract self-certification was submitted only two years after *Murphy v. National Collegiate Athletic Association* overturned PASPA and states began legalizing sports betting.

Four years later, and so six years after *Murphy*, the AGA has weighed in more definitively on potential event contracts on sporting events and their utility for industry members: “the AGA urges the Commission to revise the Proposal to clearly allow licensed gaming entities to use event contracts on sports contests to hedge against legitimate commercial risk. As the Commission notes, gaming is a rapidly evolving field, and *institutions in the space should have access to a safe, regulated market to hedge commercial risk*” (emphasis added).¹⁴ The AGA is the unrivaled national trade organization for the U.S. casino industry, valued at \$329 billion. According to the AGA’s own numbers, the industry supports 1.8 million jobs and generates \$53 billion in annual tax revenue. AGA membership encompasses commercial and tribal casino operators, gaming suppliers and manufacturers, legal sportsbooks, and other gaming-affiliated entities in 47 states and the District of Columbia. This shift in the AGA’s stance reflects the rapid evolution of the sports betting industry and a growing recognition of the need for risk management tools as the market matures.

The Sports Betting Alliance (“SBA”), a coalition of the leading sports betting operators in the United States, including BetMGM, DraftKings, Fanatics, and FanDuel, has expressed desire to be able to manage the risks associated with their sportsbook operations, evincing a legitimate hedging need for the industry, and contradicting the Commission’s notion that cannot reasonably be expected to be ‘used for hedging and/or price basing on more than an occasional basis. In its comment letter on Proposed Rule 89 FR 48968, the SBA states that the “Commission should allow for an institutional futures market accessible to licensed sports betting

¹² <https://www.legalsportsreport.com/194653/analysis-how-draftkings-surcharge-will-affect-sports-betting-customers>.

¹³ <https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement040721>

¹⁴ Comment No. 74361.



operators. Currently, the proposed rule overlooks the compelling economic purpose that an institutional futures market could serve in allowing operators to hedge commercial risks.”¹⁵

From former Commissioner Brian Quintenz’ Statement Regarding ErisX RSBIX NFL Contracts and Certain Event Contracts, he stated that “The Commission requested public comments and received twenty-five comment letters. At least thirteen of these commented that the NFL contracts have hedging utility, and many described how... However, the Order’s hedge to blame the ‘record’ for failing to establish a hedging utility ignored the comments completely.” Accordingly, we cite portions of some relevant comment letters from Industry Filing 20-004 concerning Review of Proposed RSBIX NFL Futures Contracts to bring them to the attention of the Commission once again:

Both Mark Lipparelli, Chairman and CEO of SBOpc LLC d/b/a SuperBook, and Jason Crane, Senior Vice-President and General Counsel of the Seneca Gaming Corporation d/b/a Seneca Resorts and Casinos, each of which operate licensed sportsbooks in their respective states of New Jersey and New York, have stated in separate comment letters that the “the RSBIX NFL Futures Contracts will serve an important economic purpose for our industry by allowing regulated sportsbooks to better manage economic risk. These contracts are not bets or wagers by any measure; rather they will allow our industry access to the same kinds of valuable hedging tools that are used by many other industries. We urge the Commission to determine that the listing of these contracts is in the public interest.”¹⁶

Steve Callender, President of the Casino Association of New Jersey, stated that the then-Proposed RSBIX NFL “Futures Contracts will also serve an important economic purpose by allowing regulated sportsbooks to better manage their economic risk and offset exposure created by unbalanced wagering on one side of a sporting event. We urge the Commission to determine that the listing of these Futures Contracts is in the public interest.”¹⁷

James Angell, Associate Professor of Finance at Georgetown University McDonough School of Business, has stated the same contracts “will help legal sports betting markets function better by providing risk management for legal sports betting operations.”¹⁸

Ari Rubenstein, Co-Founder and CEO of GTS Securities, has also said of the same contracts: “we believe that the proposed Contracts are a well-designed solution to a genuine economic problem affecting enterprises engaged in businesses that are lawful in the jurisdictions where they operate... The Contracts are not random

¹⁵ Comment No: 74296.

¹⁶ Comment No: 63786; Comment No: 63793.

¹⁷ Comment No: 63798.

¹⁸ Comment No: 64796.



games of chance; they are financial instruments designed for actual commercial market participants to hedge financial risks that largely are beyond their control.”¹⁹

Taken as a whole, we respectfully believe that the above discussions, comments, and representations establish the opposite of the Commission’s conclusions regarding event contracts involving sporting events. We believe that the economic impact of an occurrence or non-occurrence in connection with a sports event is quantifiable, predictable, and directly correlated to financial outcomes for sportsbooks and other industry participants. Furthermore, we contend that these contracts would serve a legitimate hedging purpose, being used primarily by entities with genuine commercial interests. The evidence presented demonstrates that such contracts would be consistently utilized for hedging and price basing, addressing real and ongoing risk management needs in the sports betting industry.

III. The Legal Sports Betting Industry Exists to Serve the Public Interest and Protects Sports Integrity

The premise behind the legalization and regulation of the sports betting industry is that doing so promotes the public interest. A legalized and regulated sports betting industry protects consumers through responsible gaming measures and other regulatory provisions, ensures fair play, bolsters state tax revenue, provides jobs to American citizens, and keeps revenue inside of the United States. The legalized market also competes with illegal, offshore bookmakers who harm the public interest by employing predatory practices against American citizens and offer none of the above benefits. By foreclosing the opportunity for companies within this industry to manage their risk through CFTC-regulated event contracts, the Commission would be acting contrary to the public interest it seeks to protect by harming the legal industry’s ability to compete with the offshore industry.

In the time since the Supreme Court overturned PASPA in *Murphy v. National Collegiate Athletic Association*,³⁸ 38 states plus the District of Columbia have legalized sports betting in some capacity. In some cases, legalization efforts were determined directly by voters or required state constitutions to be amended. More than two-thirds of Americans at the age of majority have access to legalized sports betting in their state of residence at the time of writing.²⁰ We expect that number to grow to above 95% by 2030.²¹

As a result, responsible gaming protections are abundant across the United States, generally on the basis of state statutory and regulatory requirements. Again, pulling from the AGA’s Super Bowl LVIII survey, most traditional Super Bowl bettors (75%) report seeing a responsible gambling message in the last year, up from 71 percent in 2023, and 47 percent of all American adults recall hearing or seeing a responsible gambling

¹⁹ Comment No: 64793.

²⁰ <https://www.americangaming.org/new/record-68-million-americans-to-wager-23-1b-on-super-bowl-lviii>.

²¹ Proprietary RSBIX estimations based on internal legalization projections and the 2020 census.



message in the past year, up from 40 percent last year.²² Additionally, operators generally implement voluntary responsible gaming programs beyond measures mandated by statute or regulation.

Contrast this with the responsible gaming protections offered by offshore bookmakers: none. The well-known scandal involving Dodgers-superstar Shohei Ohtani and his former translator Ippei Mizuhara is a perfect example of everything wrong with offshore industry and everything right with the regulated industry:

“Mizuhara was the well-known interpreter and best friend of the world’s biggest baseball star, whom everyone in the sports world anticipated to be receiving the largest sports contract in history. Mizuhara’s offshore bookmaker certainly exploited these facts in choosing to allow Mizuhara to steep himself deeper and deeper in debt despite clear signs of gambling addiction. Ohtani likely would have never been roped in, at least not more than by association...By the very nature of operating illegally, the bookmaker evades the very consumer protections and regulatory accountability inherent in heavily regulated industries like sports betting. Legalized sportsbooks don’t offer credit, so Mizuhara would have never been able to accumulate such mountainous debt if he could and would have used one. And further, responsible gaming regulations and protections would have long prevented such monumental losses and chasing behavior, since legalized sportsbooks are obligated by law to actively identify potential problem gamblers and prevent them from betting. In a hypothetical (and, hopefully, future) world where illegal, off-shore bookmakers don’t operate in the U.S., Mizuhara’s issues would have never reached scandalous heights. Put this way, Mizuhara himself is another victim to the offshore market who was not afforded protections already in place in other states.”²³

In a survey published on September 5th, 2023, the AGA provided statistics regarding consumer trends in responsible gaming awareness. Those statistics show that “[m]ore than eight in 10 (84) of past-year gamblers aware of at least one responsible gaming resource, including 91 percent of sports bettors” and that “three-quarters or more of players consider the following measures effective ways to encourage responsible play: deposit limits (85%), time limits (78%), wager limits (77%), employee training (77%), and industry code of conduct (75%).”²⁴

Beyond responsible gaming protections, the regulated sports betting industry creates jobs for Americans, provides tax revenue often earmarked for educational initiatives, and ensures sports integrity, each of which independently support the public interest.

For instance, the iDevelopment and Economic Association (“iDEA”), a non-profit association supporting the online gaming industry through education and advocacy, commissioned independent researchers Alan Meister, Ph.D. of Meister Economic Consulting, and Gene Johnson of Victor-Strategies to quantify the

²² <https://www.americangaming.org/new/record-68-million-americans-to-wager-23-1b-on-super-bowl-lviii>.

²³ <https://www.ifrahlaw.com/ifrah-on-igaming/ohtani-mizuhara-scandal-a-case-for-regulated-sports-betting-not-against-it/>.

²⁴ <https://www.americangaming.org/resources/consumer-trends-in-responsible-gaming-awareness/>.



economic impact and assess the social impact of legal online gaming in the state of New Jersey.²⁵ The updated-2020 figure shows that the online gaming industry has created approximately 6,600 jobs in the state.

State tax revenue has been substantial since PASPA was overturned in *Murphy*. Legal Sports Report maintains a running total of total handle, total revenue, and state tax revenue for each state since their markets launched. Excepting Florida, Nebraska, New Mexico, North Dakota, Washington, and Wisconsin, which have not publicly reported any data concerning their sports betting markets, \$5.9 billion dollars in state tax revenue has been reported across all active markets from \$32 billion in sports betting operator revenue.²⁶ In many states, portions of this state tax revenue are allocated to educational initiatives. In the District of Columbia, the sports betting tax revenue is allocated to support early childhood education programs, specifically focusing on childcare and early education initiatives. In Indiana, a percentage of sports betting tax revenue is directed to the state's Teachers' Retirement Fund. In Michigan, a percentage of online sports betting tax revenue is earmarked for the School Aid Fund, which supports K-12 education. There are many other such examples and one common use of sports betting tax revenue is the support of gambling addiction and responsible gaming initiatives within the states. Notably, this tax revenue would be *lost* to offshore bookmakers without the legalized and regulated industry.

By improving the operational efficiency and allowing regulated sportsbooks to offset their risk, we combat the offshore industry and protect the public interest. Offshore sportsbooks may offer more attractive odds than their regulated US counterparts due to the offshore industry's ability to operate with fewer restrictions and access to foreign exchanges whereby they can hedge risks caused by imbalanced wagers. They also benefit from a single, global pool of bettors, unencumbered by state-by-state regulations and divisions. By sidestepping regulatory compliance, taxes, and consumer protection measures, these offshore operators may seem to provide better odds to bettors, but in reality, they pose significant risks to the public interest. They operate without accountability, leaving bettors vulnerable to potential fraud or non-payment of winnings. Moreover, they contribute nothing to state economies, depriving communities of tax revenue that could fund essential public services. Their lack of responsible gaming measures also puts vulnerable individuals at greater risk of developing gambling problems. In essence, while offshore books might occasionally offer superficially attractive odds, they do so at the cost of public safety, economic contribution, and social responsibility that regulated U.S. sportsbooks are required to uphold. Enabling regulated sportsbooks to hedge risks associated with the outcomes of sporting events means that they can offer more competitive odds and products, enhancing their ability to compete with offshore operators. This, in turn, would help protect consumers, ensure responsible gaming practices, contribute to state economies through tax revenue, and maintain the integrity of sports betting – all while operating within a regulated framework that prioritizes public interest and safety. Without such a mechanism, the offshore industry has a head start. Such contracts serve the public interest directly because the regulated industry protects the public interest directly.

²⁵ <https://ideagrowth.org/nj-economic-impact/>.

²⁶ <https://www.lsg.com/sports-betting/revenue/>.



The regulated sports betting industry also prevents violations of sports integrity and therefore “market manipulation” as the contended in the Proposed Rule. In the case that event contracts involving outcomes on sporting events were approved by the Commission, there would be no need for the CFTC to oversee or regulate sporting events. Doing so would be entirely superfluous because there are already state gaming regulators who ensure the integrity of sports, betting markets, and their relations to each other. Sports integrity and sports betting markets are each heavily policed and monitored, and entire companies exist within the industry to support regulators and sportsbooks in their efforts to maintain integrity. We echo the sentiments of Commissioner Mersinger in this regard:

“After all, the CFTC has anti-fraud and anti-manipulation enforcement authority with respect to futures contracts on broad-based security indices, but that does not mean the CFTC regulates the securities markets or that it is tasked with the protection of the integrity of the securities markets or enforcement of securities laws – the Securities and Exchange Commission (“SEC”) does all that. The CFTC similarly has enforcement authority with respect to natural gas and electricity since there are futures contracts on those commodities, but that does not mean the CFTC regulates the transmission of natural gas or electricity or that it is tasked with the protection of the integrity of physical natural gas or power markets, or enforcement of the Natural Gas Act or the Federal Power Act – the Federal Energy Regulatory Commission (“FERC”) does all that.”²⁷

U.S. Integrity—a technology-driven sports wagering monitoring company that provides protection against betting-related fraud and corruption and the trusted partner to over 95 operators, 150 colleges and universities, 50 gaming suppliers and 25 professional sports leagues—provides evidence that the concerns broached by the Proposal are misplaced. In his comment letter regarding the Review of Proposed RSBIX NFL Futures Contracts, Matthew Holt, President of U.S. Integrity, stated that the company “does **not** believe that the trading of these contracts will create incentives for the manipulation of sporting event outcomes. There is already in place a robust set of mechanisms to prevent such manipulation. The advent of lawful, licensed sports betting throughout much of the country has lead to an increase in resources and attention devoted to these efforts. A national futures market of the sort contemplated here will neither add to the incentive for unlawful activity nor make it more difficult to detect or to prevent.”²⁸

Contrary to common misconceptions, regulated sportsbooks play a vital role in maintaining sports integrity. Their comprehensive data collection and betting market monitoring practices serve not only their commercial interests but also act as a safeguard against potential manipulation of sporting events. These sportsbooks effectively function as integrity watchdogs, often working in tandem with companies like U.S. Integrity and professional sports leagues. This collaboration stems from a shared vested interest: both entities depend on fair and unpredictable sporting outcomes to maintain the integrity and profitability of their respective products. As such, regulated sportsbooks contribute significantly to the detection and prevention of suspicious betting patterns or potential match-fixing attempts, thereby bolstering rather than undermining

²⁷ <https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement051024>.

²⁸ Comment No. 63788.



sports integrity efforts. The legalization of sports betting has been a boon to the data visibility and analytics used to sniff out attempts at market manipulation.

An example from UFC in 2022 illustrates this process well. An update to the UFC's Athlete Conduct Policy in October 2022 prevents wagering on any UFC fights by athletes, members of their teams, and other affiliates. On November 5th, 2022, several sportsbooks detected a dramatic odds shift in favor of Shayilan Nuerdanbieke in the hours before his fight versus Darrick Miner in Las Vegas. Aaron Bronsteter, an MMA reporter, noted the average odds shifted from -237 to -362 over only 90 minutes, and ESPN reported shifts from -220 to -420 over four hours before the fight.²⁹ Regulated sportsbooks were quick to flag the activity in coordination with U.S. Integrity, who subsequently conducted an investigation. According to the report from US Integrity, wagering on Nuerdanbieke persisted even after the odds shifted to considerably less favorable terms (such as -420 for Nuerdanbieke to win). Moreover, US Integrity's analysis revealed a disproportionate volume of bets specifically on Nuerdanbieke to secure victory in the first round — an outcome that ultimately materialized. This betting pattern, particularly the continued influx of wagers despite worsening odds and the specific focus on a first-round win, raised significant suspicions about the integrity of the event. Nuerdanbieke won by technical knockout 67 seconds into the fight. Miner threw a left leg kick, then visibly winced and grabbed his leg. Surprisingly, he immediately kicked with the same leg again. Nuerdanbieke quickly capitalized on Miner's apparent injury, leading the referee to stop the fight. Reports stated that rumors circulated before the fight that Miner injured his left leg and betting insiders attempted to seize the opportunity.³⁰

Following these suspicious betting patterns, regulatory bodies took swift action. On November 18th, the Nevada State Athletic Commission (NSAC) suspended the corner license of James Krause, Miner's coach, and remains suspended to this day. Notably, Krause, a former UFC fighter turned coach, was known for running a sports betting handicapping service through a Discord server, charging up to \$2,000 for wagering advice. New Jersey's Division of Gaming Enforcement (NJDGE) prohibited its licensed sportsbooks from accepting wagers on any fight involving Krause. In response, the UFC took decisive action. They released Miner from his contract and banned Krause from attending or cornering UFC events. Furthermore, they prohibited any of Krause's trainees from participating in UFC events while under his guidance, taking away the need for regulatory action similar to that of NJDGE.

Statistics also do away with concerns over sports integrity in a world of legalized sports betting. In March 2024, Sportradar's Integrity Services Division released its "Betting Corruption and Match-Fixing Report," analyzing approximately 850,000 sporting events across 70 sports.³¹ The findings revealed 1,329 suspicious matches in 2023, spanning 11 sports in 105 countries — a slight increase from the 1,212 suspicious matches

²⁹ <https://twitter.com/aaronbronsteter/status/1589024482991431680>; https://www.espn.com/chalk/story/_/id/34968905/ufc-fight-investigation-suspicious-betting-detected.

³⁰ https://www.espn.com/chalk/story/_/id/34968905/ufc-fight-investigation-suspicious-betting-detected.

³¹ https://goto.sportradar.com/1/533382/2024-03-01/7p9m9d/533382/170929916597HjWoHQ/Betting_Corruption_and_Match_Fixing_in_2023.pdf.

detected in 2022. Notably, 99.5% of sporting events showed no suspicious betting activity, and no single sport had a suspicious match ratio exceeding 1%. Importantly, only 35 of the matches exhibiting suspicious betting activity in 2023 occurred in North America. These statistics underscore both the effectiveness of existing monitoring systems and the relatively low incidence of suspicious activity in the vast majority of sporting events. Importantly, these incidents are only of suspicious activity, rather than confirmed cases of match-fixing or betting corruption. This distinction is crucial as it highlights the proactive nature of integrity monitoring systems in flagging potential issues for further investigation, rather than definitive proof of wrongdoing.

Commissioner Mersinger's discussion within her Dissenting Statement on the same point highlights the inconsistency in the Commission's approach to event contracts on sporting events versus traditional futures contracts. She notes that the Proposal's rationale for deeming these contracts contrary to the public interest — the potential for athletes or coaches to spread misinformation — could equally apply to many traditional exchange-traded futures contracts. For example, she cites that oil companies or agricultural firms "also have 'access to media, combined with public perception as an authoritative source of information regarding' the oil (or other) industry, 'that could be used to disseminate misinformation that could artificially impact the market in the contract for additional financial gain,'" and yet futures contracts in these sectors are permitted and widely traded. The Commissioner rightly questions this inconsistency, pointing out that while an event contract allowing players or coaches to trade would indeed be contrary to the public interest, the Proposal overreaches by concluding that such contracts are contrary to the public interest even when their terms and conditions explicitly prohibit these individuals from trading.³² This stance seems to disregard the effectiveness of contractual prohibitions and regulatory oversight that are common practice in other futures markets, and applies a different standard to sports event contracts without clear justification.

This comparison underscores a critical flaw in the Proposal's reasoning. It overlooks the fact that the regulated sports betting industry, like traditional futures markets, has developed robust mechanisms to detect and prevent market manipulation. As we've shown, the collaboration between sportsbooks, integrity monitoring services, and regulatory bodies has created a vigilant ecosystem capable of quickly identifying, investigating, and addressing suspicious activities. Given the statistical evidence we've presented on the low incidence of suspicious activity in sports betting, and the industry's demonstrated ability to self-regulate effectively, we contend that sports event contracts should be evaluated using the same nuanced approach as other futures contracts.

The regulated sports betting industry's ability to effectively monitor and address integrity concerns, coupled with the statistical evidence of low incidence of suspicious activity, demonstrates that event contracts on sporting events do not pose a unique or outsized risk to market integrity. Moreover, these contracts serve the

³² It is already standard practice in the sports betting industry to prohibit players, coaches, and other potential insiders from wagering on their own sport. This prohibition is typically enforced through league policies, state regulations, and sportsbooks' own terms of service, demonstrating that such restrictions are both feasible and effective in maintaining market integrity. Companies such as US Integrity play an integral role in enforcing this practice.



public interest by enhancing the competitiveness and risk management capabilities of regulated operators, especially in their fight against the offshore industry, all of which in turn strengthens consumer protections and contributes to state economies. We respectfully urge the Commission to consider the robust safeguards already in place within the sports betting ecosystem, the public interest benefits of a well-regulated industry, and to approach the evaluation of sports event contracts with the same nuanced perspective applied to other futures markets.

IV. Conclusion

The sports betting landscape in the United States has undergone a seismic shift since the enactment of CEA section 5c(c)(5)(C) in 2010. What was once a predominantly illegal activity is now a legal, thriving, regulated \$100 billion plus industry that serves the public interest through consumer protections, economic contributions, and integrity safeguards.³³ The Commission's Proposal to categorically prohibit event contracts involving gaming, however defined, fails to account for these fundamental changes and overlooks the legitimate hedging needs of industry participants.

We respectfully urge the Commission to reconsider its approach to event contracts involving sporting event outcomes and gaming more broadly. The text of the CEA does not mandate a blanket prohibition, and such a sweeping measure would be contrary to the public interest it seeks to protect in the context we discussed throughout this letter. Instead, we advocate for a nuanced evaluation of each contract on its merits, taking into account the changed legal landscape, the demonstrated and declared hedging utility for industry participants, and the robust integrity monitoring systems already in place. By allowing CFTC-regulated event contracts, the Commission would empower the legal sports betting industry to better manage risks, compete more effectively with illegal and unregulated offshore operators, and ultimately better serve and protect American consumers and the public interest at large.

Sincerely,

A handwritten signature in black ink that reads "Jeff Ifrah".

Jeff Ifrah
CEO & Founder, RSBIX

³³ <https://www.americangaming.org/wp-content/uploads/2024/05/AGA-State-of-the-States-2024.pdf>.