CFTC Files Amicus Brief Asserting Exclusive Jurisdiction over Listed Sporting Event Contracts

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On February 17, 2026, the CFTC filed an amicus brief in *North American Derivatives Exchange, Inc. et al v. The State of Nevada on relation of the Nevada Gaming Control Board et al.*, asserting its exclusive jurisdiction over event contract markets (a.k.a., prediction markets). The amicus brief outlined the historical legislative case for the CFTC's exclusive jurisdiction over futures trading and its extension to swaps by the Dodd-Frank Act, presented the CFTC's arguments on the substantive legal questions raised in the case and in other litigation involving prediction markets, and warned against the potential for destabilizing economic effects if the vast majority of event contracts, which are tied to non-sport, economic outcomes, listed on CFTC-registered designated contract markets (DCMs) were to become subject to the jurisdiction of multiple states. The amicus brief was filed in support of the North American Derivatives Exchange, Inc. (NADEX) (doing business as Crypto.com) in NADEX'S appeal to the Ninth Circuit Court of Appeals from a district court order[1] that denied NADEX's motion for a preliminary injunction to prevent the Nevada Gaming Control Board and the Nevada Attorney General from pursuing civil or criminal enforcement against NADEX for offering certain event contracts in Nevada.

The District Court's decision hinged largely on the issue of whether certain sporting event contracts listed on NADEX, a CFTC-registered designated contract market (DCM), were "swaps" under a prong of the statutory definition for any "agreement, contract or transaction…that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an *event or contingency* associated with a potential financial, economic, or commercial consequence"(emphasis added).[2]

The District Court reasoned that the sporting event contracts were not "swaps" because the winning team's victory is an "outcome," not an "event" (i.e., the "event" is the sporting event itself), noting that the Merriam-Webster's Dictionary classified "outcome" as an "archaic" meaning of "event." The District Court did not definitively decide on the meaning of "contingency" in this context because the parties had not addressed the issue. However, the District Court preliminarily interpreted the term to refer to a contingent event, e.g., whether a fifth game of the Stanley Cup finals will be held. The District Court was concerned that, without its narrow construction, nearly all sports wagering would be swept into the CFTC's exclusive jurisdiction.

In its amicus brief, the CFTC cited the dictionary definitions of "event" and "contingency" as, respectively, a happening or occurrence and an event that is not certain to occur. Thus, the "final score of a sporting event is a future occurrence whose outcome is uncertain until the game concludes and falls easily within the broad language of the swap definition as well as the broad definitions of 'event' or 'contingency.'" The CFTC contended that the District Court's interpretation risked destabilizing markets by calling into question the regulatory status of currently listed event contracts, including those on "cryptocurrency price levels and related indices, GDP releases, benchmark interest-rate decisions, election outcomes, temperature forecasts, electricity usage, and the price movements of precious metals," all of which "rest on objectively measurable outcomes no less than sports event contracts."

Beyond the narrow definitional issues that were the focus of the District Court's order, the CFTC's amicus brief addresses various issues raised in other event contract litigation involving state gaming regulators.

Regarding the "financial consequence" prong of the definition, the CFTC cited sources claiming that sporting events generate considerable economic activity, such as hospitality revenue for surrounding businesses. While tacitly acknowledging the outer limits of the swap definition and the swap v. wager distinction as legitimate questions, the

CFTC argued that the issues presented on appeal do not require the Court of Appeals to resolve these questions. "That line drawing exercise presents complicated fact questions concerning the exact structure and mechanics of the instruments, who is the price maker, the difference between an open exchange and a bilateral arrangement, and unrelated legal questions, including the applicability of the CEA to purely intrastate transactions, among others. It is sufficient to resolve this case that the transactions conducted on a CFTC-registered DCM qualify as swaps under the CEA."

The CFTC asserted that its exclusive jurisdiction under CEA 2(a)(1)(A) follows from the contracts' status as swaps, contending that a statutory "savings clause" from exclusivity should be interpreted to mean that the "CEA does not displace traditional state authority to enforce state criminal or civil antifraud laws, nor does it displace state authority to regulate purely intrastate conduct or transactions. But the CEA explicitly displaces state attempts to regulate swaps that are conducted on a CFTC-registered contract market."

As to federal preemption, the CFTC argued that Congress' grant of exclusive jurisdiction establishes field preemption, and that conflict preemption (under both the "impossibility" and "obstacle" doctrines) also applies to state gambling laws. As for impossibility, the CFTC noted that a DCM is required by CFTC Rule 38.151(b) to provide "impartial access" to all eligible participants nationwide, a mandate that a DCM could not fulfill if a State could ban a contract. As for obstacle preemption, applying state-by-state local requirements, such as local licensing, fees, and specific hardware (like localized servers), to national commodity exchanges would "create the very 'patchwork' that Congress set out to prevent."

Market participants considering developing platforms, venues, or other products in the prediction markets space face significant regulatory uncertainty due to ongoing disputes between federal and state authorities. Although the impact of state jurisdiction will depend on the nature of the requirements imposed by each State on gaming venues, a lack of uniformity and legal certainty under the status quo threatens to fragment the market, drain liquidity, and potentially undermine the informational value of prediction markets. Although ultimate resolution of these issues may be a long way off, possibly requiring the US Supreme Court to resolve inconsistent Circuit Court decisions, the outcome of the current litigation should at least provide an initial indication of how appellate courts will approach the myriad, intertwined definitional and federalism issues involved in this class of litigation.

For More Information

We are available at any time to answer questions, discuss scenarios, and provide guidance. If you would like further information concerning the matters discussed in this article, please contact the following attorneys or the Chapman attorney with whom you regularly work.

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1 N. Am. Derivatives Exch., Inc. v. Nev. on Rel. of the Nev. Gaming Control Bd., No. 2:25-cv-00978-APG-BNW, 2025 U.S. Dist. LEXIS 202104 (D. Nev. Oct. 14, 2025)

2 Section 1a(47)(A)(ii) of the Commodity Exchange Act (CEA).

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