

No. 25-7187

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NORTH AMERICAN DERIVATIVES EXCHANGE, INC.
D / B / A CRYPTO.COM | DERIVATIVES NORTH AMERICA,
Plaintiff-Appellant,

v.

THE STATE OF NEVADA, ET AL.,
Defendants-Appellees,

NEVADA RESORT ASSOCIATION,
Intervenor-Defendant-Appellee.

On Appeal from the United States District Court
for the District of Nevada,
Case No. 2:25-cv-00978-APG-BNW

**BRIEF OF *AMICI CURIAE* FORMER FEDERAL GOVERNMENT
OFFICIALS AND EXPERTS ON THE SCOPE OF CFTC JURISDICTION
IN SUPPORT OF APPELLANT**

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STATEMENT OF INTEREST OF *AMICI CURIAE*

This brief is filed on behalf of J. Christopher Giancarlo, Kari Larsen, and A. Kristina Littman (collectively, the “*amici*”).¹ *Amici* write in support of Appellant North American Derivatives Exchange, Inc. (d/b/a Crypto.com) and its request for reversal of the district court’s order denying a preliminary injunction.²

Mr. Giancarlo was a Commissioner of the CFTC from June 2014 to January 2017, Acting Chairman of the CFTC from January 2017 to August 2017, and Chairman and Chief Executive of the CFTC from August 2017 to July 2019. In his role as Chairman, Mr. Giancarlo served as a member of the Financial Stability Oversight Committee, the President’s Working Group on Financial Markets, and the Executive Board of the International Organization of Securities Commissions, and he was a designated participant in meetings of the Financial Stability Board.

Ms. Larsen has over 25 years of experience in the derivatives industry and started her legal career with the CFTC in the Chief Counsel’s office of the Division

¹ *Amici* are, respectively, a senior counsel and partners at Willkie Farr & Gallagher LLP. They seek to file this brief in their own capacities as former government officials, with the undersigned serving as counsel for *amici*.

² Because not all parties have consented to the filing of this brief, *amici* have sought the Court’s leave to file. *See* FED. R. APP. P. 29(a)(2); 9TH CIR. R. 29-3. No party’s counsel authored this brief in whole or in part, and no party, person, or entity except *amici* and their counsel made a monetary contribution toward the preparation or submission of this brief. *See* FED. R. APP. P. 29(a)(4)(E).

of Enforcement. She was the general counsel and chief regulatory/compliance officer for a designated contract market, a swap execution facility, and a derivatives clearing organization. Ms. Larsen served as a Director on the Futures Industry Association Board of Directors from 2020 through 2024.

Ms. Littman previously served as the Chief of the Crypto Assets and Cyber Unit in the Division of Enforcement of the Securities and Exchange Commission (“SEC”). She also served as a Senior Advisor to SEC Chairman Jay Clayton on matters relating to enforcement, trading and markets, digital assets, and cybersecurity.

Amici are subject-matter experts who have practiced in the relevant area of law for years, and they have a strong institutional knowledge of CFTC and federal regulatory jurisdiction, practices, and procedures. Given this experience, they have an interest in ensuring that financial markets, especially those involving digital assets, are regulated in accordance with CFTC procedures and with applicable law. They likewise have an interest in ensuring that financial markets are not subjected to unpredictable, fragmented regulation and that the CFTC’s and other federal regulators’ clear authority, expertise, and jurisdiction is preserved.

INTRODUCTION

The CFTC is a federal government agency responsible for regulating derivatives markets in the United States, including the markets for futures contracts.

By statute, it has “exclusive jurisdiction” over such contracts traded on CFTC-regulated platforms. 7 U.S.C. § 2(a)(1)(A). In this case, the district court improperly permitted the State of Nevada to impinge on that exclusive jurisdiction by imposing its own regulations on contracts traded on a CFTC-approved exchange. That decision should be reversed.

Nevada sought to impose its own state gambling regulations on event contracts owned by Appellant North American Derivatives Exchange, Inc. (d/b/a Crypto.com) (“Crypto.com”), a designated contract market (“DCM,” colloquially known as a “futures exchange”) regulated by the CFTC. The district court, reasoning that Crypto.com’s contracts were not “swaps” falling within the CFTC’s exclusive jurisdiction, concluded that the contracts could be subject to state regulation. For all the reasons explained in Crypto.com’s opening brief, as well as the *amicus* briefs of Bitnomial Exchange L.L.C. and Paradigm Operations, L.P., this was error: the contracts at issue are swaps or other types of derivatives subject to exclusive regulation by the CFTC. *See* Dkt. Nos. 12, 15, 19.

Although *amici* join in those arguments, they write separately to emphasize that event contracts, including those offered by Crypto.com, fall within the CFTC’s “exclusive jurisdiction” and are comprehensively regulated by that agency. In concluding that Nevada could regulate Crypto.com’s contracts, the district court overlooked that reality. The district court’s approach improperly permits States like

Nevada to infringe on the CFTC's exclusive jurisdiction and second-guess its regulatory decisions, undermining the CFTC's authority under Congress's holistic regulatory framework for DCMs and exposing DCMs to an unnavigable labyrinth of state-specific regulation.

Accordingly, *amici* respectfully contend that this Court should reverse the district court's order denying Crypto.com's request for a preliminary injunction.

ARGUMENT

Amici make three points. *First*, the CFTC's exclusive jurisdiction over futures markets includes comprehensive regulatory, compliance, market structure, and market surveillance oversight for contracts falling within its jurisdiction. *Second*, the district court upended those exclusive oversight, supervision, and review mechanisms by permitting Nevada to substitute its own regulatory judgment for that of the CFTC, which made the informed decision not to prohibit Crypto.com's contracts from trading subject to CFTC oversight. *Third*, the district court's approach contributes to an untenable situation wherein DCMs seeking to offer event contracts are subjected to a patchwork of different state regulations—a problem exacerbated by conflicting court decisions. That is precisely the type of unpredictable and unworkable system that Congress sought to avoid when it gave the CFTC exclusive jurisdiction over derivatives markets.

I. The CFTC’s Exclusive and Robust Regulatory Framework

Congress has designed a robust system for the CFTC’s regulation of event contracts. There is simply no space or need for state gambling laws to apply to such contracts.

A. Overview of the CFTC and the CEA

The Commodity Exchange Act (“CEA”) “provides a ‘comprehensive regulatory structure’ for the trading of commodities and futures.” *KalshiEX LLC v. CFTC*, No. 23-3257, 2024 WL 4164694, at *2 (D.D.C. Sept. 12, 2024) (“*KalshiEx I*”) (quoting *Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353, 355–56 (1982)), *appeal voluntarily dismissed*, No. 24-5205, 2025 WL 1349979, at *1 (D.C. Cir. May 7, 2025) (per curiam). “The CFTC is an independent federal agency that regulates financial derivatives markets.” *Id.* at *1. In its current form, the CEA gives the CFTC regulatory oversight over all commodity futures, options on futures, and swaps (collectively, derivatives). *See FTC v. Ken Roberts Co.*, 276 F.3d 583, 588 (D.C. Cir. 2001). The agency has “broad powers to regulate futures trading and commodities exchanges,” *id.*, and since 2010 has likewise enjoyed broad powers to regulate swaps under Title VII of the Dodd-Frank Act, *see* Pub. L. No. 111-203, 124 Stat. 1376 (2010).

Crucially for this case, the CFTC’s jurisdiction is “exclusive.” *Ken Roberts Co.*, 276 F.3d at 588. The CEA provides that “[t]he Commission shall have

exclusive jurisdiction . . . with respect to accounts, agreements, . . . , and transactions involving swaps or contracts of sale of a commodity for future delivery . . . traded or executed on a contract market designated pursuant to [the CEA].” 7 U.S.C. § 2(a)(1)(A).³ Thus, “[t]he CFTC is responsible for administering and enforcing the CEA, and the statute vests it with *exclusive jurisdiction* to regulate various types of commodities and futures on regulated exchanges, as well as to establish implementing regulations.” *KalshiEx I*, 2024 WL 4164694, at *2 (emphasis added); *see Hunter v. FERC*, 711 F.3d 155, 157 (D.C. Cir. 2013) (“Congress crafted CEA section 2(a)(1)(A) to give the CFTC exclusive jurisdiction over transactions conducted on futures markets . . .”).

³ The “exclusive jurisdiction” provision includes savings clauses, but they do not impact the exclusivity of the CFTC’s jurisdiction over futures, options on futures, and swaps contracts traded on exchanges. Specifically, the provision goes on to say, “[e]xcept as hereinabove provided, nothing contained in this section shall . . . supersede or limit the jurisdiction at any time conferred on the [SEC] or other regulatory authorities under the laws of the United States or of any State,” and that “[n]othing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.” *Id.* (emphasis added). Because of the “except as hereinabove provided” language, the first savings clause does not divest the CFTC of exclusive jurisdiction. *See KalshiEx LLC v. Flaherty*, No. 25-cv-02152, 2025 WL 1218313, at *5 (D.N.J. Apr. 28, 2025), *appeal docketed*, No. 25-1922 (3d Cir. May 8, 2025); *see also KalshiEx, LLC v. Hendrick*, No. 2:25-cv-00575, 2025 WL 1073495, at *3 (D. Nev. Apr. 9, 2025). As for the second savings clause, it “says little about preemption of state regulation of designated contract markets” and operates mostly so that state courts can “retain jurisdiction over claims such as private fraud actions.” *Flaherty*, 2025 WL 1218313, at *11.

As Appellant explains, the CFTC’s exclusive authority extends to event contracts. *See KalshiEx LLC v. CFTC*, 119 F.4th 58, 61 (D.C. Cir. 2024) (“*KalshiEx I*”); *see also KalshiEx, LLC v. Hendrick*, No. 2:25-cv-00575, 2025 WL 1073495, at *3 (D. Nev. Apr. 9, 2025) (“*Hendrick I*”). “An event contract is a derivative contract for which the ‘payoff is based on a specified event, occurrence, or value’—for example, the level of snowfall from a certain storm or the dollar amount of hurricane damage.” *KalshiEx II*, 119 F.4th at 61 (quoting *Contracts & Products: Event Contracts*, CFTC, <https://perma.cc/4FPT-L2SN>).

The result of this grant of exclusive jurisdiction is that it is the CFTC—and not a state regulator—that has jurisdiction over Crypto.com’s event contracts. Indeed, current CFTC Chairman Michael S. Selig explained just last week that event contracts like the ones at issue in this case fall firmly within the agency’s exclusive jurisdiction. As Chairman Selig stated, event contracts, also known as “prediction markets,” are “not new” and “have operated within the CFTC’s regulatory perimeter for more than two decades.” *Remarks of Chairman Michael S. Selig*, CFTC PUBLIC STATEMENTS & REMARKS (Jan. 29, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1?utm_source=govdelivery (“*Selig Remarks*”). He also indicated that the CFTC would move forward with “drafting an event contracts rulemaking”—a clear indication that the CFTC views the event contracts as falling within its bailiwick and intends to continue to apply its comprehensive regulatory

framework to such contracts. *See id.* Most tellingly, in the context of discussing litigation like this appeal, Chairman Selig indicated that he viewed event contracts such as those at issue in this case as falling within the CFTC’s exclusive jurisdiction, explaining that: “I have directed CFTC staff to reassess the Commission’s participation in matters currently pending before the federal district and circuit courts. Where jurisdictional questions are at issue, the Commission has the expertise and responsibility to defend *its exclusive jurisdiction over commodity derivatives.*” *Id.* (emphasis added).

B. The Framework for Regulating Event Contracts

The CFTC operates a robust regulatory program that includes extensive regulation of a DCM’s operations, ongoing compliance, supervision, and market surveillance, as well as express requirements for listing new contracts on the exchange. The regulatory program includes multiple levels of review and avenues for the CFTC to prevent certain contracts from being traded.

1. Regulatory Approval of Designated Contract Markets

As relevant here, “[a]n entity that lists contracts on a Commodity Futures Trading Commission exchange” must be a “designated contract market,” also known as a DCM. *See Blue Lake Rancheria v. Kalshi, Inc.*, No. 25-cv-06162, 2025 WL 3141202, at *7 (N.D. Cal. Nov. 10, 2025), *appeal docketed*, 25-7504 (9th Cir. Nov. 25, 2025); *KalshiEx I*, 2024 WL 4164694, at *2. To become a DCM, the entity must

“apply to the Commission.” *Blue Lake Rancheria*, 2025 WL 3141202, at *7; *see also* 7 U.S.C. § 7(a). That requirement applies to entities seeking to offer event contracts. *See KalshiEx I*, 2024 WL 4164694, at *2 (“[A]n entity seeking to offer event contracts must seek and receive CFTC designation as a regulated exchange (a designated contract market or ‘DCM’) before listing and publicly trading its contracts.”); *cf. Clarke v. CFTC*, 74 F.4th 627, 634 (5th Cir. 2023) (“Offering these sorts of ‘event contracts’ typically requires registering as a ‘designated contract market or swap execution facility’ under the Commodity Exchange Act . . . and CFTC regulations.”).

Among other things, applicants must make a variety of showings, including that they will comply with the CEA’s twenty-three “core principles” for DCMs and the extensive CFTC rules implementing the core principles. *See* 17 C.F.R. § 38.3(a); *KalshiEx LLC v. Flaherty*, No. 25-cv-02152, 2025 WL 1218313, at *2 (D.N.J. Apr. 28, 2025) (“*Flaherty*”), *appeal docketed*, No. 25-1922 (3d Cir. May 8, 2025). Such core principles include, *inter alia*, that the applicant must establish and enforce disciplinary procedures, establish and enforce rules to minimize conflicts of interest, and meet certain customer protection, capital, liquidity, anti-manipulation, market surveillance, trade risk controls, position limits, trade data reporting and publication, transaction financial integrity, recordkeeping, exchange governance, impartial access, and other criteria. *See* 7 U.S.C. § 7(d). An applicant also must submit a

variety of exhibits supporting its ability to comply with these rigorous standards as implemented by CFTC rulemaking. 17 C.F.R. § 38.3(a)(2). If the applicant's submissions are insufficient, the CFTC can deny or delay its request to become a DCM. *See Designated Contract Markets (DCMs)*, CFTC INDUSTRY OVERSIGHT (last visited Jan. 31, 2026), <https://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm>; *see also, e.g., U.S. Futures Exch. LLC v. Bd. of Trade of the City of Chi.*, No. 04 C 6756, 2012 WL 3155150, at *3–4 (N.D. Ill. Aug. 3, 2012) (describing the process that one applicant faced in seeking to become a DCM). The process for becoming registered as a DCM typically takes between one and two years. Even after initial approval, DCMs are subject to ongoing reporting obligations, and may be subject to CFTC enforcement actions for failure to comply. *See Designated Contract Markets (DCMs)*, CFTC INDUSTRY OVERSIGHT.

The CFTC's comprehensive oversight continues throughout the life of the DCM and includes, *inter alia*, regular examinations to verify DCM compliance with the statutory core principles and CFTC regulations; reviews of daily position and trade reporting; and ongoing market surveillance to identify and address any market disruption, disorderly trading, or suspected manipulation or fraud (in addition to the DCM's mandatory surveillance of its own markets). *See Rule Enforcement Reviews of Designated Contract Markets*, CFTC INDUSTRY OVERSIGHT (last visited Feb. 2, 2026), <https://www.cftc.gov/IndustryOversight/TradingOrganiz>

ations/DCMs/dcmruleenf.html. DCMs are expected to communicate with CFTC Division of Market Oversight staff about major market disruptions, other market developments, and material changes to systems or risk analyses, and to flag new types of products the exchange anticipates listing for the first time well in advance of initiating the self-certification or Commission approval process.

For example, *amicus* Mr. Giancarlo was Chairman of the CFTC when DCMs listed futures on digital assets for the first time. This launch process involved months of discussion with Commission staff under Mr. Giancarlo's oversight to ensure the DCMs and the clearinghouses guaranteeing their trades had instituted appropriate anti-manipulation safeguards, adequate margin levels, and other critical customer safeguards before launching the novel product. CFTC staff closely monitored for manipulation and other market issues during and after the launch of the contracts, in addition to performing their regular surveillance duties. *See Remarks of Chairman J. Christopher Giancarlo to the ABA Derivatives and Futures Section Conference, Naples, Florida, CFTC PUBLIC STATEMENTS & REMARKS* (Jan. 19, 2018), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opicgiancarlo34>; *see generally* GIANCARLO, J. CHRISTOPHER, *CRYPTODAD: THE FIGHT FOR THE FUTURE OF MONEY* 126–28, 131–44 (John Wiley & Sons 2021).

DCMs also coordinate constantly with the clearinghouses guaranteeing the trades executed on the DCM's platform. Whether the clearinghouse is affiliated with

the DCM or is an unaffiliated third party, it must be registered with and is closely overseen and rigorously examined by the CFTC's Division of Clearing and Risk to safeguard customer funds and the financial integrity of contracts executed on the DCM.

2. Review for Conformity with the CEA and CFTC Regulations

Designation as a DCM goes not give an entity *carte blanche* to list any derivatives contract on an exchange. Only contracts that comply with the CEA and its implementing regulations may be listed. Accordingly, “[b]efore listing a contract on a Commodity Futures Trading Commission exchange,” a DCM “must do one of two things.” *Blue Lake Rancheria*, 2025 WL 3141202, at *7.

The first option is for the DCM to request prior approval by the CFTC of any new contract or instrument. *See id.* Generally, the CFTC must act on the application for prior approval within ninety days. *See* 7 U.S.C. § 7a-2(c)(4)(C). During that window, the CFTC may file a notice of non-approval of the contract, which must “specify the nature of the issues raised and the specific provision of the Act or the Commission’s regulations . . . with which the new product is inconsistent or appears to be inconsistent.” 17 C.F.R. § 40.3(d)(2). If such a notice is not filed by the end of the review period, the contract “shall be deemed approved by the Commission.” *Id.* § 40.3(d)(1).

Since 2000, DCMs have had a second option for approval of new contracts: self-certification. *See* 7 U.S.C. § 7a-2(c)(1); *see also KalshiEx I*, 2024 WL 4164694, at *2.⁴ Namely, the DCM “can self-certify its contracts are lawful, which entails providing a submission to the Commission, and immediately begin offering the contracts.” *Blue Lake Rancheria*, 2025 WL 3141202, at *7; *see KalshiEx II*, 119 F.4th at 61. Self-certifying DCMs are required to submit, *inter alia*, a copy of the proposed contract; a “concise explanation and analysis,” accompanied by “documentation” showing that the proposed contract complies with the CEA and the CFTC’s regulations, including the requirement that the contract not be readily susceptible to manipulation; and a certification that the entity posted notice on its website. 17 C.F.R. § 40.2(a)(iv)–(vi).

When the self-certification route is taken, the contracts become effective immediately and may be listed on the exchange the following day—at least, unless and until the CFTC acts to prohibit or halt them. *See id.* § 40.2(a); *KalshiEx LLC v. Martin*, 793 F. Supp. 3d 667, 673 (D. Md. 2025) (“*Martin*”) (“The contracts are

⁴ Under the Commodity Futures Modernization Act of 2000, Congress created this self-certification path for new contract listings to remedy its concern that requiring affirmative CFTC approval for each new contract listing had inhibited innovation and competition in commodity derivatives markets. *See* Pub. L. No. 106-554, 114 Stat. 2763 (2000).

immediately effective unless and until the CFTC initiates review of any contract.”), *appeal docketed*, No. 25-1892 (4th Cir. Aug. 6, 2025).

The CFTC is not required to take a DCM’s self-certification at face value. It may require DCMs to submit “any additional evidence, information, or data that demonstrates that the contract meets, initially or on a continuing basis, the requirements of the [CEA] or the Commission’s regulations or policies thereunder.” 17 C.F.R. § 40.2(b). And it may stay the listing of a contract during the pendency of a Commission petition under Section 8a(7) of the CEA, requesting (and, ultimately, requiring) the exchange to make changes to the contract or to the exchange’s rules. *See id.* § 40.2(c). The CFTC is authorized to bring and has brought enforcement actions for false self-certifications. *See* 7 U.S.C. § 9(2) (providing liability for making a “false or misleading statement of a material fact to the Commission”); 17 C.F.R. § 40.2 (providing for a Commission stay of a listed contract during the pendency of Commission proceedings for a false self-certification); *CFTC v. Gemini Tr. Co., LLC*, No. 22 Civ. 4563, 2024 WL 4826992, at *6 (S.D.N.Y. Nov. 18, 2024) (enforcement action for alleged false statements made in self-certification documents).

3. Special Rule for Certain Event Contracts: Review for Public Interest

The CFTC has an additional layer of review specifically for certain event contracts. As discussed above, most contracts are reviewed solely to ensure that

they comply with the CEA and applicable regulations. *See Martin*, 793 F. Supp. 3d at 673. However, Congress amended the CEA to “include[] a ‘Special Rule’ under which the Commission can review and prohibit specific types of event contracts if it determines those contracts are ‘contrary to the public interest.’” *KalshiEx II*, 119 F.4th at 61 (quoting 7 U.S.C. § 7a-2(c)(5)(C)(i)). Specifically, “[i]n connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon [an] occurrence, extent of an occurrence, or contingency . . . , by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(i). This review applies to event contracts that “involve”: (1) “activity that is unlawful under any Federal or State law,” (2) “terrorism,” (3) “assassination,” (4) “war,” (5) “gaming,” or (6) “other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.” *Id.*

The governing CFTC regulation provides that, across the board, contracts that “involve,” “relate to,” or “reference” the aforementioned activities—war, terrorism, gaming, etc.—are against the public interest and cannot be approved. *See* 17 C.F.R. § 40.11(a)(1) (citation modified). The same regulation states that the Commission may determine by rule or regulation that event contracts that “involve,” “relate to,” or “reference” “an activity that is similar” to the statutorily listed activities is against

the public interest. *Id.* § 40.11(a)(2). But the CFTC has not to date issued any rules pursuant to § 40.11(a)(2) regarding further prohibited event contracts.

If the CFTC determines that an event contract is contrary to the public interest under the Special Rule, the contract may not be listed on an exchange. *See* 7 U.S.C. § 7a-2(c)(5)(C)(ii) (“No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.”). To be sure, the public-interest review contemplated by the Special Rule does not apply to *all* event contracts. Instead, it applies only when, in the CFTC’s view, the contract involves one of the enumerated topics. *See id.* § 7a-2(c)(5)(C)(ii); *see also KalshiEx I*, 2024 WL 4164694, at *3 (“On the other hand, if the agreement, contract, or transaction *does not* involve one of the enumerated topics, the special rule is not implicated, the CFTC has no occasion to make any public interest determination, and the contract should be listed for trading.”). The determination of whether the CFTC may prohibit a contract as contrary to the public interest under the Special Rule is subject to judicial review pursuant to the Administrative Procedure Act (“APA”), *see* 5 U.S.C. § 706(2). *See KalshiEX I*, 2024 WL 4164694, at *7–8, 13 (concluding that the CFTC acted arbitrarily and capriciously in prohibiting an event contract related to congressional control contracts because those contracts did not “involve” “gaming”).

The CFTC’s public-interest review is layered on top of the self-certification or affirmative approval process that applies to all CFTC-regulated contracts. Thus, a DCM may self-certify compliance with the Special Rule. *See Martin*, 793 F. Supp. 3d at 673. “But in doing so the statute requires a DCM to certify that a new contract or rule is not ‘unlawful,’ does not involve terrorism, assassination, war or gaming, and is not otherwise ‘contrary to the public interest.’” *Id.* at 673–74. As with the self-certification procedure for all derivatives contracts discussed above, the CFTC is not bound by a DCM’s self-certification that its contract is not subject to the Special Rule.

Procedurally, when a DCM self-certifies or seeks direct approval of an event contract, the CFTC may determine that the event contract be subject to a ninety-day review and issue a notice to that effect. *See* 17 C.F.R. § 40.11(c). During that ninety-day period, the CFTC may request that the DCM suspend the listing or trading of the event contract. *See id.* At the end of the ninety-day period, the CFTC “shall issue an order approving or disapproving” the event contract. *See id.* § 40.11(c)(2).

On the other hand, if an event contract is self-certified to fall outside the Special Rule, and the CFTC does not initiate such a ninety-day review, the event contract may continue to be listed as with any other contract. *See Martin*, 793 F. Supp. 3d at 673 (“The [event] contracts are immediately effective unless and until the CFTC initiates review of any contract.”). In essence, then, the CFTC’s non-

action in response to an event contract operates as a tacit determination that the contract should not be prohibited from trading. *See Flaherty*, 2025 WL 1218313, at *6 (“Kalshi’s sports-related contracts evidence—by their very existence—the CFTC’s exercise of its discretion and implicit decision to permit them.”); *KalshiEX, LLC v. Hendrick*, No. 2:25-cv-00575, 2025 WL 3286282, at *4 (D. Nev. Nov. 24, 2025) (“*Hendrick II*”) (“[T]he CEA does not require the CFTC to act on self-certifications. Rather, the self-certified contracts go forward unless the CFTC acts to prohibit them.”), *appeal docketed*, No. 25-7516 (9th Cir. Nov. 28, 2025).

II. The District Court’s Decision Invaded the CFTC’s Exclusive Jurisdiction

A. The District Court Gave Insufficient Weight to the CFTC’s Tacit Determination that the Event Contracts are Swaps

The district court should not have permitted a state regulator to assert regulatory jurisdiction over the event contracts. That is because, as Appellant explains, the contracts are swaps or otherwise subject to the CFTC’s exclusive jurisdiction. *See* Dkt. No. 12 at 46–48, 54–64 (Opening Brief of Crypto.com); *see also* Dkt. No. 15-1 at 22–30 (*Amicus* Brief of Paradigm Operations LP). In considering that question, the district court should have given significant consideration to the CFTC’s determination likewise concluding that the contracts are “swaps” falling within the agency’s exclusive jurisdiction.

The contracts were self-certified as swaps with the CFTC; they proceeded to be listed; and the CFTC took no action indicating that it disagreed with that classification. *See* ER-161, 172. It is therefore appropriate to infer that the CFTC deemed the contracts swaps. More generally, the CFTC has taken the position that binary options such as the event contracts at issue in this case are swaps. *See* Letter from Rahul Varma, Acting Director of CFTC Division of Market Oversight & Richard Haynes, Acting Director of CFTC Division of Clearing and Risk, CFTC Letter No. 25-48, at *2–3 (Dec. 11, 2025), <https://www.cftc.gov/node/257381> (indicating that binary option event contracts constitute swaps within CFTC jurisdiction); Letter from Amir Zaidi, Director of CFTC Division of Market Oversight & John C. Lawton, Acting Director of CFTC Division of Clearing and Risk, CFTC Letter No. 17-31, at *1 (June 30, 2017), <https://www.cftc.gov/node/214691> (providing relief from swap regulatory requirements with respect to binary options traded on CDNA and referring to the contracts as “swaps”). And in recent remarks, the CFTC Chairman indicated that he considers event contracts of the type at issue in this litigation to be subject to the CFTC’s exclusive jurisdiction, implying that they are swaps. *Selig Remarks, supra* pp. 7–8.

The district court erred in declining to give any weight to the CFTC’s views on this point. As the Supreme Court recently explained, “although an agency’s

interpretation of a statute ‘cannot bind a court,’ it may be especially informative ‘to the extent it rests on factual premises within [the agency’s] expertise.’ Such expertise has always been one of the factors which may give an Executive Branch interpretation particular ‘power to persuade, if lacking power to control.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024) (citations omitted). Because the question whether the event contracts constitute “swaps” is within the CFTC’s substantive expertise, the district court erred in adopting Nevada’s understanding of that term rather than giving weight to the agency’s views. *Cf. City of Arlington v. FCC*, 569 U.S. 290, 296–305 (2013) (rejecting argument that agency views regarding the scope of the agency’s own jurisdiction cannot receive deference).

B. The District Court’s Decision Improperly Countermanded the CFTC’s Informed Decision Not to Prohibit the Contracts

Because the district court wrongly decided that the contracts were not swaps, it improperly ignored that the contracts underwent the especially robust process under the Special Rule and the CFTC decided not to prohibit them.

As discussed above, Crypto.com self-certified the event contracts as complying with the CEA and the CFTC’s regulations on January 30, 2025. *See* ER-126. That included certifying that the contracts were consistent with the DCM “core principles” set out by the CEA. *See* ER-137.

After receiving these materials, the CFTC chose not to prohibit the event contracts or even commence a 90-day review pursuant to the Special Rule for

reviewing event contracts that may be contrary to the public interest. *See* ER-161, 172. Again, that was tantamount to a determination by the CFTC, in its exclusive authority, that such contracts should not be prohibited from trading on the DCM subject to CFTC oversight. *See supra* pp. 13, 17–18; *cf. Hendrick I*, 2025 WL 1073495, at *6 (“Because the CFTC has approved (or at least not yet disapproved) Kalshi’s sports-related contracts, defendants cannot pursue civil or criminal liability against Kalshi for offering those contracts.”).

The CFTC’s deliberate non-action is illuminating and controlling because it indicates that, in the view of the expert regulatory agency—indeed, the agency with “exclusive jurisdiction”—Crypto.com’s event contracts did not fall within the Special Rule. After all, if the CFTC had been concerned that the event contracts involved violations of state or federal law,⁵ or fell within one of the other bases for a contrary-to-the-public-interest determination, it could have taken action.

⁵ The district court in *Martin* concluded that because the Special Rule itself lists a conflict with state or federal law as one of the bases for an event contract being “contrary to the public interest,” the CFTC’s jurisdiction is not wholly “exclusive” and state law cannot be preempted. *See* 793 F. Supp. 3d at 680–81. But that is backwards. If the contracts could be prohibited by state law, there would be no reason for this portion of the Special Rule to exist at all; instead, the contracts could simply be prohibited by the application of state law. Rather, the better way to view this provision is indicating that the CFTC’s public-interest review of event contracts can be guided by how those contracts would be treated under state law. That is, the CFTC *could* have concluded that if the event contracts at issue would be prohibited under state law if it applied, that would be a reason for the CFTC to disallow the

Nevada is not free to substitute its own view for that of the expert agency with exclusive jurisdiction. The decision in *Blue Lake Rancheria* is instructive on this point. In that case, several Indian tribes brought an action against Kalshi Inc., a DCM offering sports-related event contracts similar to those offered by Crypto.com. *See* 2025 WL 3141202, at *1. The tribes argued, *inter alia*, that because Kalshi’s event contracts did not comply with the CEA, Kalshi had violated the Unlawful Internet Gambling Enforcement Act. *See id.* at *4, 7. As support, they argued that (1) Kalshi’s CFTC submissions did not comply with the statutory requirements and (2) the event contracts “involve gaming” and were thus “presumptively unlawful” as contrary to the public interest. *Id.* at *7.

The district court rejected those arguments, concluding that the tribes “have not shown the Court has jurisdiction to decide whether Kalshi’s event contracts violate the [CEA].” *Id.* Instead, such a decision “belongs to the Commodity Futures Trading Commission, which has ‘exclusive jurisdiction,’ over its contract markets.” *Id.* The district court went on to discuss the comprehensive regulatory scheme applicable to event contracts, including the Special Rule, and concluded that only the CFTC could decide if a contract was contrary to the public interest. *See id.* The district court concluded: “To the extent the States or other interested parties object

contracts. But the CFTC did not do so in this case. And as noted, this determination is within the CFTC’s sole discretion.

to Kalshi offering sports . . . event contracts, they must take that up with the [Commodity Futures Trading Commission] and Congress. Such policy issues are beyond the jurisdiction of this court.” *Id.* (alterations in original).

So too here. If Nevada considers event contracts to be pernicious gambling, it has a number of options. It could weigh in during the public comment period for future event contracts subject to the CFTC’s 90-day review. It could advocate for the CFTC to pass a new rule regulating the conduct at issue. *See Selig Remarks* (indicating that the CFTC will “move forward with drafting an event contracts rulemaking” that would “establish[] clear standards for event contracts that provide certainty to market participants”). Or it could seek a remedy through Congress, which has repeatedly overhauled the CFTC’s jurisdiction and scope of review in response to novel developments.⁶ But what Nevada cannot do is usurp the CFTC’s federal prerogatives under the CEA by overriding the CFTC’s judgment regarding Crypto.com’s contracts.

⁶ Congress is currently considering revising the scope of the CFTC’s jurisdiction over digital asset markets. *See, e.g.,* Talia Kaplan, *Senate panel passes crypto CFTC regulation bill*, CNBC (Jan. 29, 2026), <https://www.cnbc.com/2026/01/29/senate-ag-committee-advances-crypto-bill-to-establish-cftc-regulatory-authority.html>.

III. If Affirmed, The District Court's Decision Will Exacerbate Market Uncertainty

Finally, the district court's error in permitting Nevada to regulate contracts that fall within the CFTC's exclusive jurisdiction will have deleterious effects. Allowing States to elbow their way into the CFTC's zone of authority is antithetical to the purposes of the CEA and harms market participants.

Congress's goal in passing the CEA and giving the CFTC exclusive jurisdiction was to "bring the markets under a uniform set of regulations." *See Am. Agric. Movement, Inc. v. Bd. of Trade of City of Chi.*, 977 F.2d 1147, 1156 (7th Cir. 1992); *Hunter*, 711 F.3d at 148 (discussing "Congress's very clear goal of centralizing oversight of futures contracts"). This intent "followed from a fear that states might attempt to regulate futures markets themselves and thus 'subject [] the national futures trading apparatus to conflicting regulatory demands.'" *DGM Invs., Inc. v. N.Y. Futures Exch., Inc.*, No. 01 Civ. 11602, 2002 WL 31356362, at *4 (S.D.N.Y. Oct. 17, 2002) (alteration in original) (citation omitted).

But, contrary to the design of the CEA, that is exactly what is happening with event contracts. Nevada and a slew of other States have sought to prevent DCMs like Crypto.com from trading event contracts even though those contracts fall within the CFTC's jurisdiction. Some, such as Nevada's attempts to regulate Crypto.com at issue here or New Jersey's attempts to regulate Kalshi, have been adjudicated by courts. Others are still only nascent enforcement actions, like Nevada's recent

announcement that it would seek to prevent Polymarket from trading in the State.⁷ In total, over a dozen States have taken some form of regulatory action against event contracts like Crypto.com's.⁸ Allowing Nevada—or any of the other forty-nine States—to sit as a super-CFTC and dictate the rules for federally regulated entities erodes federal supremacy and the CFTC's national authority, undermines the comprehensive regulatory scheme that Congress created nearly a century ago and the CFTC has developed through decades of rulemaking, and will contribute to widespread “uncertainty” in CFTC-regulated markets. *See Selig Remarks; supra* pp. 7–8.

These developments have left DCMs in an untenable position, where they are subject to “conflicting regulatory demands” depending on the jurisdiction in which the contracts are purchased or sold. The same event contract that has raised no red flags in one State may be prohibited or highly regulated just across the state line,

⁷ *See Nevada Gaming Control Board Files Civil Enforcement Action Against Polymarket*, NEVADA GAMING CONTROL BOARD (Jan. 16, 2026), <https://www.gaming.nv.gov/siteassets/content/about/press-release/ngcb-files-civil-enforcement-action-against-polymarket.pdf>.

⁸ These include, but are not limited to, Arkansas, Connecticut, Georgia, Hawaii, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Montana, Nevada, New Jersey, New York, Ohio, and Tennessee.

despite the objective of preserving a nationwide market for derivatives trading.⁹ And these problems have been exacerbated by a stark divide in how courts have treated States' attempts to regulate event contracts. Federal courts in Tennessee and New Jersey have enjoined state regulators from prohibiting or regulating event contracts traded on CFTC exchanges. *See Kalshiex LLC v. Orgel*, No. 3:26-cv-00034, 2026 WL 93137, at *1 (M.D. Tenn. Jan. 12, 2026) (temporary restraining order); *Flaherty*, 2025 WL 1218313, at *8. A federal court in Maryland reached the opposite conclusion. *See Martin*, 793 F. Supp. 3d at 686–87. So did a state court in Massachusetts, *see Massachusetts v. Kalshiex, LLC*, No. 2584CV02525, 2026 WL 188019, at *1 (Mass. Super. Ct. Jan. 20, 2026), which prompted the DCM to seek relief in federal court. Most confusing of all has been the federal court in Nevada. In *Hendrick I*, that court enjoined Nevada from regulating sports-related event contracts. *See* 2025 WL 1073495, at *8. But, in the decision on appeal and in

⁹ This uniform nationwide market is critical to the health of commodity derivatives markets generally and event contract markets specifically. When States are excluded from participating in a market, the available pool of liquidity for the market may be sharply curtailed, undermining the market's price discovery function and making it more difficult for market participants to transact at prices they consider reflective of market fundamentals. Less liquid markets can also prove less resistant to manipulation and disruption from disorderly trading. Finally, event contract markets specifically require large and diverse participant sets to fulfill their informational or predictive value proposition, similar to the way that polls require many participants in order to provide a fair estimation of real-world outcomes.

Hendrick II, see 2025 WL 3286282, at *14, the court reversed itself and allowed the Nevada laws to take effect.

As a consequence of this, DCMs now confront a hopelessly fragmented field. This is the exact type of market uncertainty and inconsistent regulation that the CEA was designed to protect against. Indeed, the current CFTC Chairman recently bemoaned this reality, indicating that the current landscape had resulted in increasing “uncertainty in our markets.” *Selig Remarks*.

Although this Court cannot cure the market uncertainty that other States and courts have created, it can take steps to mitigate it. *Amici* respectfully request that this Court recognize the importance of the CFTC’s exclusive jurisdiction in this sphere and reverse.

CONCLUSION

For the reasons stated above, this Court should reverse the district court's order denying a preliminary injunction.

Dated: February 3, 2026

Respectfully submitted,

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In accordance with the Federal Rules of Appellate Procedure and the Local Rules of this Court, I certify that:

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Dated: February 3, 2026

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I hereby certify that I electronically filed the foregoing *Amici* Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 3, 2026.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 3, 2026

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