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## *States Encroach on Prediction Markets*

The CFTC, the legitimate regulator of these financial instruments, backs Crypto.com in a lawsuit appeal.

By Michael S. Selig

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ANDREW KELLY/REUTERS

The Commodity Futures Trading Commission for decades has overseen regulation of prediction markets—or event contracts, as we refer to them—that help market participants hedge risk, aggregate information and test hypotheses about future outcomes.

In recent years, states have waged legal attacks on the CFTC's authority to regulate these financial instruments. If they succeed, participants would be barred from access to federally regulated event-contract markets. So it should come as no surprise that the commission is filing a friend-of-the-court brief Tuesday supporting Crypto.com in the Ninth U.S. Circuit Court of Appeals.

Well-known CFTC-registered exchanges used by tens of millions of Americans—including Kalshi, Polymarket, [Coinbase](#) and Crypto.com—face an onslaught of state-driven litigation across the country, with nearly 50 active cases presenting a range of legal challenges. The most common allegation is that these contracts are a form of gambling and therefore subject to state laws. The CFTC will no longer sit idly by while overzealous state governments undermine the agency’s exclusive jurisdiction over these markets by seeking to establish statewide prohibitions on these exciting products.

Event contracts serve legitimate economic functions. They allow businesses and individuals to hedge event-driven risks, enable investors to manage portfolio exposure, and provide the public with information about the outcome of future events. Farmers can manage risk related to temperature changes that may affect crops, and small-business owners can hedge against tax increases or energy-price spikes, to name two examples.

Markets that pay out based on the outcome of real-world events such as these emerged through academic and experimental platforms before moving into the commercial sector. In 1992 the CFTC issued its first official recognition of event contracts by granting relief to the Iowa Electronic Markets, a futures market at the University of Iowa in which traders can buy and sell contracts pegged to events such as presidential elections and corporate earnings. Years later, HedgeStreet, now known as Nadex, became the first marketplace to offer event-driven binary contracts that allowed retail traders to speculate on mortgage rates and gasoline prices.

Under the plain language of the Commodity Exchange Act, event contracts are “swaps.” They are derivative instruments that allow two parties to speculate on future market conditions without owning the underlying asset. In the wake of the 2008 financial crisis, Congress expressly granted the CFTC comprehensive authority over any such contract based on a commodity. The statutory definition of “commodity” is extraordinarily broad and includes practically all goods, articles, services, rights and interests except for onions (due to a history of market manipulation) and movie box-office receipts (because of Hollywood lobbying).

The CEA’s text is designed to account for financial innovation. Futures were novel at one point. So were swaps and exchange-traded funds. Even as derivatives markets have developed and grown, Congress has chosen to vest the CFTC with broad jurisdiction. That a derivative is novel or different is no excuse for a court to rewrite existing law. The CFTC has been overseeing the integrity of these markets the whole

time, ensuring its rules remain durable and flexible in the face of rapid transformation.

The public also benefits from these markets. For anyone tracking prediction markets ahead of the 2024 presidential election, the scale of President Trump's victory was hardly unexpected. It's clear that Americans like the product and want to participate. Noting the exponential growth of transactions in the last two years, one recent industry report estimates the global number of users has quadrupled to 15 million.

Like all markets under the CFTC's exclusive jurisdiction, event-contracts markets are subject to rules and regulations that ensure fair outcomes for market participants. Trading exchanges are required to conduct market surveillance to safeguard against fraud and manipulation. Bank Secrecy Act rules also apply, meaning that CFTC-registered entities must collect customer information to enforce anti-money-laundering measures and prevent insider trading.

These exchanges aren't the Wild West, as some critics claim, but self-regulatory organizations that are examined and supervised by experienced CFTC staff.

America is home to the most liquid and vibrant financial markets in the world because our regulators take seriously their obligation to police fraud and institute appropriate investor safeguards. Any erosion of the CFTC's ability to regulate transactions in commodity derivatives is a direct threat to the markets and investors Congress intended the agency to oversee.

*Mr. Selig is chairman of the U.S. Commodity Futures Trading Commission.*

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