Nevada Resort Association
Adam Hosmer-Henner
ahosmerhenner@mcdonaldcarano.com

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Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: ***Joint Request for Comment on Further Definition of `Swap' and `Security-Based Swap and on Alternative Compliance, RIN 3038-AF71 and SEC File Number S7-2026-21***

Mr. Kirkpatrick:

The Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") have requested comment on "potential ways to draw clearer regulatory lines with respect to innovative products that may implicate both SEC and CFTC regulatory interests" and "public comment on potential approaches to enable alternative compliance." CFTC RIN 3038—AF71; SEC File No. S7-2026-21; 91 Fed. Reg. 37873 (June 24, 2026). The Nevada Resort Association offers the following comments to support the conclusion of multiple courts around the country that state governments have the exclusive jurisdiction and authority to authorize or regulate sports betting. The Nevada Resort Association is not affiliated with, invested in, or compensated by any exchange, designated contract market, broker, or trading firm. The Nevada Resort Association does not operate a venue, does not route or facilitate orders, does not hold customer funds, and does not provide trading advice. It is an advocacy group representing the resort casino industry in Nevada.

Historically, the CFTC and SEC have never regulated sports betting or any other type of gaming. Instead, gaming regulation has traditionally been a matter of state and local concern. The Supreme Court explained in *Murphy v. NCAA* that federal law has long embraced a "coherent federal policy" that "respect[s] the policy choices of the people of each State on the controversial issue of gambling," 584 U.S. 453, 484 (2018), and the Ninth Circuit Court of Appeals has likewise reasoned that "[g]ambling does not involve an inherently national system of regulation, given the states' long-understood authority in this area," *Flynt v. Bonta*, 131 F.4th 918, 932 (9th Cir. 2025).

Sports bets are not swaps. First, payment on a swap must "depend[] on" whether "an event or contingency" occurs. 7 U.S.C. § 1a(47)(A)(ii). Second, the event or contingency must be "associated with a potential financial, economic, or commercial consequence." *Id.* These limitations ensure that the definition captures contracts on occurrences that create risks against which businesses have a bona fide need to hedge. Sports bets do not satisfy any of these statutory requirements.

That sports bets are not swaps is especially clear in the context of proposition bets and parlays. Proposition bets can include an almost infinite number of possible outcomes—for example, whether the first score of a football game will be a touchdown, a field goal, or a safety, and whether a football player other than the quarterback will attempt a pass. Meanwhile, parlays allow bettors to add two or more picks to a single prediction, creating a situation in which the odds of winning are lower than a single-pick prediction and the potential payout is higher. A parlay could involve whether the Seattle Mariners, Nashville Predators, and Novak Djokovic all win particular matchups by more than a specified margin—despite playing different sports, in different cities, on different days. *No one* needs to hedge risk on such a parlay.

When considering the public comment, the Nevada Resort Association submits that the CFTC and SEC should consider any actual evidence of any restaurant, hotel, city, or other entity making economics decisions based on the outcomes of sporting events. Further, the CFTC and SEC should consider whether there is any evidence of any entity using point spread bets, proposition bets, or parlay bets or information from these bets to hedge economic risk.

Traditional sports wagers have never been treated as federally regulated financial products. Until 2025, sports wagers had *never* been offered on a futures exchange. There is no support in the statutory text, context (including the Product Definitions Adopting Release, 77 Fed. Reg. 48208), or history for erasing the lines between sports gambling and financial markets. The CFTC and SEC should not attempt to intrude upon this area of state authority as they lack jurisdiction to do so based on, among other reasons, the definition of swap. The Nevada Resort Association reserves all rights and intends to continue its efforts to oppose the assertion of federal authority over sports betting.

The Nevada Resort Association has also collected additional comments from some of its individual members and these comments are included in the attached Addendum.

Sincerely,

Nevada Resort Association
Adam Hosmer-Henner
Adam Hosmer-Henner, Esq.