

## **Industry Alert: Conducting, Advertising, and Promoting Unlicensed Gambling through “Event Contracts” May Subject So-Called “Prediction Markets” to Civil and Criminal Penalties**

As the Super Bowl nears, New York Attorney General Letitia James issues this alert to caution so-called “prediction markets” that unlicensed entities offering sports-related “event contracts” over purported derivatives exchanges constitutes gambling in violation of New York law. This includes, but is not limited to, conducting, advertising, and promoting unlicensed sports wagering in New York in violation of §§1367(2) and 1367-a of the New York Racing, Pari-Mutuel Wagering and Breeding Law (the “Racing Laws”). The failure to abide by New York State law exposes such actors to both civil and criminal liability.

### **Background**

New York has a long history of regulating gambling, and the New York State Constitution prohibits gambling with limited express exceptions.<sup>1</sup> New York’s sports wagering laws became effective in 2019, following the Supreme Court’s decision in *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453 (2018).<sup>2</sup> While recognizing states’ rights to authorize and regulate sports wagering within their boundaries, *Murphy* struck down the Professional and Amateur Sports Protection Act of 1992, 28 U.S.C. §3701 *et seq.*, a federal law that effectively banned commercial sports betting in most states. New York legalized limited licensed mobile sports wagering in 2021.<sup>3</sup>

The New York State Gaming Commission (the “Commission”) has general jurisdiction over all gaming activities within New York State and over the corporations, associations and persons engaged therein, including, specifically, the regulation of sports wagering.<sup>4</sup> There are nine licensed mobile sports operators in New York, and each is subject to significant statutory and regulatory requirements.<sup>5</sup>

The Attorney General is expressly empowered by statute to prosecute those who engage in repeated or persistent illegal conduct in the conduct of business.<sup>6</sup> This includes taking enforcement action when entities operate in New York state without appropriate licensure and when they violate New York state laws, including the Racing Laws.

Notwithstanding New York’s longstanding regulation of gaming and its clear regulatory regime for sports wagering, certain actors are operating illegal gambling platforms in New

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<sup>1</sup> N.Y. Const., art. I, §9.

<sup>2</sup> Racing Law §1367.

<sup>3</sup> Racing Law §1367-a.

<sup>4</sup> Racing Law §§ 104(1) and (24).

<sup>5</sup> See generally, Racing Law Art. 13, titles 3 through 8; 9 NYCRR Part 5330.

<sup>6</sup> Executive Law § 63(12).

York under the guise of offering “event contracts” over purported derivatives exchanges ostensibly subject to federal law.

### **The Conduct, Advertisement, and Promotion of Unlicensed Sports Wagering in New York is Unlawful and Subject to Prosecution by OAG**

The unlicensed conduct, advertisement, and promotion of sports wagering in New York, even when over a derivatives exchange ostensibly subject to federal law, violates the Racing Laws. Those who violate the law may be subject to civil penalties and fines under the Racing Laws,<sup>7</sup> including a penalty of \$25,000 per day.<sup>8</sup>

The unlicensed offering and promotion of sports-related event contracts constitutes gambling within the meaning of New York Penal Law § 225.00(2).<sup>9</sup> Violators who “knowingly advance” gambling may face criminal charges for promoting gambling in the first or second degree, for which the Attorney General may seek both imprisonment and financial penalties.<sup>10</sup>

The Attorney General may also take enforcement action against anyone who engages in fraudulent practices, including anyone who misleads the public as to the legality of their business. Violations of New York’s Executive Law may result in a permanent injunction, disgorgement of profits, restitution to victims and damages.<sup>11</sup>

### **Scope of this Alert**

This alert is not intended to, and does not, confer any additional substantive or procedural rights beyond the underlying statutes, regulations, and case law.

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<sup>7</sup> Racing Law § 104(9).

<sup>8</sup> Racing Law §116.

<sup>9</sup> “Gambling” is defined as staking or risking “something of value upon the outcome of a contest of chance or a future contingent event not under [the individual’s] control or influence, or understanding that [the individual] will receive something of value in the event of a certain outcome.” N.Y. Penal Law § 225.00(2).

<sup>10</sup> N.Y. Penal Law §§ 225.05 and 225.10.

<sup>11</sup> Executive Law § 63(12); *People v. Greenberg*, 27 N.Y.3d 490, 497-98 (2016).