



MAYER | BROWN

CAPITAL MARKETS
KNOW-HOW SERIES

THE PREDICTION MARKET

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OVERVIEW

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2. EU / German Legal Analysis
3. The Market and Regulatory Framework in the United States
4. CFTC Advisory and Advance Notice of Proposed Rulemaking (ANPR)
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01

OVERVIEW OF PREDICTION MARKET

THE PREDICTION MARKET HAS BECOME UBIQUITOUS

- Growth of the prediction market
 - **Prediction market volume exceeded \$44 billion** in 2025 (Kalshi and Polymarket accounting for over \$37 billion in predictions placed). Weekly volumes exceed \$5 billion through March 2026 and it's only growing.
 - Prediction markets "did not burst into the mainstream until the 2024 presidential election," according to *The New York Times*.
 - Regulatory victories have fueled this growth, including Kalshi's win against the Commodity Futures Trading Commission ("CFTC"), which, in many respects, allowed these contracts to go mainstream.
 - Institutional investment and distribution partnerships have also helped drive adoption.
 - But, beyond this, you might say that these markets, and the enthusiasm and fervor are a continuation of the gamification of markets that we've seen accelerate from 2020 on.
- The prediction markets have drawn entrants from various sectors and now they are coalescing (just some examples):
 - **CFTC-regulated entities:** Kalshi (first CFTC-approved Designated Contract Market ("DCM") for event contracts), Crypto.com, and recently acquired entities like QCEX (purchased by Polymarket). Market participants also register as Derivatives Clearing Organizations ("DCOs").
 - **Brokerage firms:** Robinhood, Interactive Brokers and Webull operating as intermediaries (e.g., CFTC-registered introducing brokers or futures commission merchants).
 - **Sports betting and fantasy sports operators:** DraftKings (acquired Railbird Exchange), FanDuel (via partnership with CME Group), Fanatics Markets, PrizePicks and Underdog.
 - **Hybrid/crypto-native platforms:** Polymarket, Coinbase, Myriad, Limitless, and others operating on Polygon and other blockchains.

THE PREDICTION MARKET HAS BECOME UBIQUITOUS (CONT'D)

- Types of contracts

The types of contracts are evolving almost daily and becoming more complex and perhaps less “suitable” for retail

- **Winner-take-all (binary) contracts:** The most common format—contracts pay a fixed amount (typically \$1) if a specific event occurs and \$0 if it does not; the contract price reflects implied probability.
 - **Index contracts:** Payouts vary continuously based on a measurable outcome (*e.g.*, percentage of votes, sales figures, or a financial indicator).
 - **Spread contracts:** Traders select a cutoff level, and the contract pays based on whether the actual outcome exceeds or falls below that threshold (commonly used in sports totals and point spreads).
 - **Event categories covered:** Politics and elections, sports outcomes, economic indicators (Fed rate decisions, CPI, unemployment), weather, entertainment, crypto prices, and tech/science milestones.
- More new contract types are regularly introduced

THE GENERAL FEATURES OF AN EVENT CONTRACT

- There must always be a Seller or Purchaser; otherwise there is no market in the event and the probability is 1 or 0. This is different from a betting system.
- Contract Size: USD/EUR 1
- Binary Option style: yes / no
- Event Yes: Buyer receives 1
- Event No: Buyer loses entry purchase price.
- Purchase Price: sell and ask prices, similar to futures. Price is determined based on the probability judgment of the market participants prior to the event; price may constantly change based on new information



All kinds of Events are possible; style of questions are relevant for legal determination:

Related to typical derivative underlyings	Related to other measures / political events with economic impacts / pure sport or social events
Will DAX exceed 20000 points in 2027? (index underlying)	Will UK re-enter the EU? (economic impact; hedging perspective possible)
Will ECB raise the interest rate in 2027 to X %. (interest underlying)	Will the German government reduce the petrol taxes? (relevant for transportation costs)
Will UniCredit's offer to take over Commerzbank fail? (share underlying)	Will XY be elected president in 2027? (social, sometimes, economic)
Will butter prices fall in 2027? (commodity underlying)	Will Dortmund win the Champions League? (sports, but also commercially relevant given Dortmund shares are listed)
Will XY become insolvent? (credit underlying)	Will Dortmund's profit in 2027 exceed XY million (Dortmund shares are listed)
Will a 2027 hurricane result in losses beyond XY billion? (weather underlying)	Will X and Y marry in 2027? (social impact only)

EXAMPLES

iticsSportsCryptoEsportsIranFinance

Bitcoin above ___ on September 25?

70,000100%

YesNo

72,000100%

YesNo

LIVE

 · Bitcoin

What price will Bitcoin hit in September?

↓ 82,50068%

YesNo

↑ 87,50026%

YesNo

LIVE

 · Bitcoin

What price will Ethereum hit in September?

↓ 2,60054%

YesNo

↑ 2,80042%

YesNo

LIVE

 · Ethereum

ingNewPoliticsSportsCryptoEsports

Sports Live

CLF

4:30 PM\$12.00K Vol

VfB Stuttgart

0-0

1. FC Heidenheim

0-0

VfB 65€

DRAW 20€

FCH 18€

TechCultureEconomyWeatherMentions

U.S. tariff rate on China on December 31, 2026?

5–15%55%

YesNo

<5%16%

YesNo

NEW

US x Cuba economic deal by December 31, 2026?

Yes

No

\$24K Vol.

Trump announces Canada tariff decrease by...?

December 31-

YesNo

October 3123%

YesNo

NEW

TechCultureEconomyWeatherMentions

Fed Decision in October?

25 bps increase66%

YesNo

No change34%

YesNo

\$14M Vol.

How many Fed rate cuts in 2026?

0 (0 bps)97%

YesNo

1 (25 bps)2%

YesNo

\$53M Vol.

Fed Decision in December?

25 bps increase71%

YesNo

No change27%

YesNo

\$1M Vol.

ingNewPoliticsSportsCryptoEsports

Republican Presidential Nominee 2028

J.D. Vance51%

YesNo

Marco Rubio15%

YesNo

\$708M Vol.

Next French Presidential Election

Marine Le Pen38%

YesNo

Édouard Philippe24%

YesNo

\$138M Vol.

Brazil Presidential Election

Flávio Bolsonaro55%

YesNo

Luiz Inácio Lula da Silva44%

YesNo

\$155M Vol.

EconomyWeatherMentionsElectionsArt

Will any Category 4 hurricane make landfall in the US in before 2027?

Yes

No

\$344K Vol.

Natural Disaster in 2026?

Yes

No

\$247K Vol.

Will any Category 5 hurricane make landfall in the US in before 2027?

Yes

No

\$142K Vol.

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EVENT CONTRACTS TRADING BY CATEGORY (ESMA TRV RISK MONITOR OF 10 SEPTEMBER 2026)

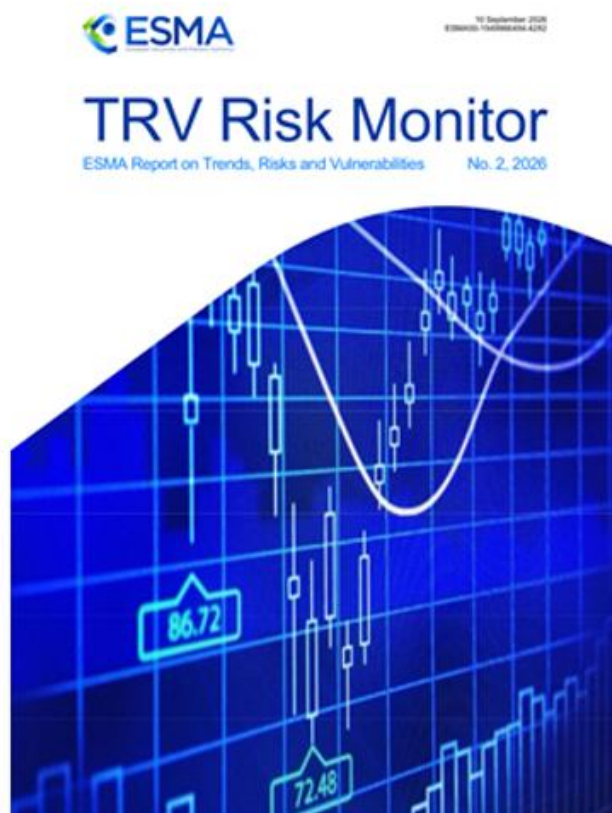
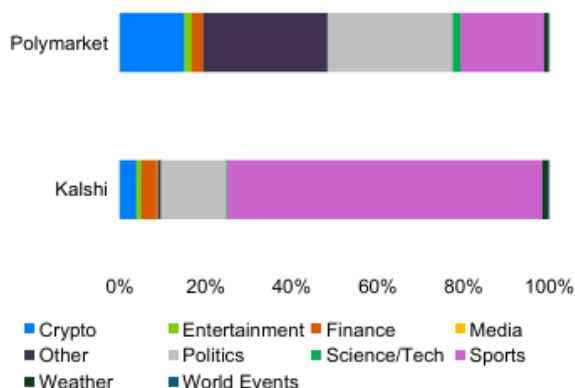


Chart 72

Kalshi and Polymarket trading volumes by category
Sports drive Kalshi, Polymarket is more diversified



Note: Trading volumes on Kalshi and Polymarket, breakdown by category, percentage out of total trading volumes. Kalshi data as of 25/11/2025. Polymarket data as of 31/01/2026.
Sources: Kalshi API, Polymarket API, JBecker, ESMA.

Prediction markets may offer **informational and analytical benefits** by generating real-time, continuously updated signals regarding market expectations of future events and developments. Prediction market prices can provide economically interpretable signals on political, economic or social outcomes, potentially supporting forecasting, sentiment analysis and the assessment of macroeconomic uncertainty.⁷¹

Prediction markets remain relatively limited in scale within the EU. Nevertheless, recent developments suggest increasing institutional interest, growing integration with crypto-asset ecosystems, and expanding retail participation globally. **Continued monitoring is warranted** given the rapid pace of market developments, the emergence of new risks, and evolving regulatory approaches outside Europe.

Malta is the first EU Member State to publicly explore a dedicated regulatory framework for prediction markets. In March 2026, the Maltese government described the sector as an area of rapid global momentum offering significant opportunities for innovation, subject to an appropriate legislative framework.⁷⁰

Prediction markets raise a range of **investor protection and market integrity concerns**. To

Market manipulation and insider trading risks



02

EU / GERMAN LEGAL ANALYSIS

LEGAL ANALYSIS FROM A EU / GERMAN VIEW

- Conceptually, an event contract works like a binary option which is a standard derivative financial instrument under MiFID, if the conditions for underlying and settlement type are fulfilled.
- So is it a Derivative / Financial Instrument?
 - This is an EU harmonised question
- And/Or social betting?
 - Based on EU Member State laws (public law/civil law/criminal laws); no EU wide harmonisation
- So if it is an EU harmonised Derivative /Financial Instrument, is therefore an illegal betting and criminal offense excluded?

LEGAL ANALYSIS FROM A EU / GERMAN VIEW (CONT'D)



- Press Release of 5.09.2025 and FAQ of 13.08.2026:
- Illegal betting / criminal offence
- Very broad definition of social bets (see right side)
- But: No differentiation from Derivatives/Financial Instruments !
- For example: event based derivatives linked to shares, credit derivatives/weather derivatives
- For example, **economic developments** based on certain market data (like market prices)?

- GGL: definition of Gemeinschaftswetten (social bets):

“Social bets are bets on non-sporting events in public life. They encompass a wide range of events, for example:

- Political elections or election outcomes (political bets)
- Court rulings
- **Natural disasters or weather events**
- **Economic developments**
- The outcome of current TV shows, such as the jungle camp (Dschungelcamp), DSDS, Germany's Next Topmodel, etc.
- Winners of award ceremonies or contests, such as the Eurovision Song Contest (ESC), the Oscar Awards
- Celebrity events (e.g. weddings, separations)

In summary, social bets — also known as entertainment bets or special bets — refer to all types of bets that are classified as neither sports bets nor horse racing bets.”

IN PARTICULAR SPORT EVENTS

- In Germany, sport betting is legal if the provider holds an official license from the Gemeinsame Glücksspielbehörde der Länder (GGL).
- Basis: Glücksspielstaatsvertrag (State Treaty on Gambling)
- Official warning of EU gambling regulations in respect of the 2026 FIFA World Cup in 17 June 2026

[20260617 Joint Statement by gambling regulators.pdf](#)



Joint Statement by gambling regulators of Belgium, France, Germany, Italy, the Netherlands, Poland, Portugal, Spain and Switzerland

It is now the 2026 Men's FIFA World Cup.

We recognize that this is one of the most important and high-profile tournaments in the world and that we are therefore likely to see an increase in betting activity.

During this competition, alongside consumer protection issues, a form of gambling that is relatively new to many jurisdictions is sure to be the talk of the town: prediction market platforms. They have become increasingly popular over the last few years, particularly for young adults.

By allowing users to place bets on the outcome of political, sporting or geopolitical events, prediction markets have several addictive features, which are worsened by the fact that, in those countries where these platforms are not licensed they don't offer any safeguards: platforms are open 24 hours a day, there are no built-in betting limits apart from the amounts staked, no time limits, light identity checks to verify that users are of legal age, etc. The combination of visibility, accessibility and the viral nature inherent to this type of platform creates a significant addictive cycle.

As regulators, we have a key role to play in ensuring player protection throughout the tournament and that prediction markets must operate in accordance with the licensing and regulatory requirements of a given jurisdiction. It is important to emphasize that this type of platform involves serious risks of illegality, fund blocking, fraud through insider information, and financial volatility. Furthermore, because they are unregulated in most countries, they can create serious addiction problems.

We will therefore be working closely together on this issue during this period; and in doing so we will not only ensure that gambling operators comply with regulations on advertising, betting integrity and player protection, but also act, where necessary, against prediction markets platforms that fail to comply with our local regulations.

We would also like to remind the various stakeholders in the sporting world, particularly sports federations, leagues and teams, to ensure that these platforms are lawful within their jurisdiction before entering into major partnerships with them.

Of course, throughout the tournament and beyond, we will be developing greater cross-border cooperation, particularly through the exchange of information, expertise and best practice, and most of us will step up our social media activity during the competition to promote safe gambling.



BUT § 99 WPHG

Section 99

Exclusion of the objection under section 762 of the Civil Code

1Objections under section 762 of the Civil Code may not be made against claims arising from financial derivatives transactions involving at least one party that is an undertaking that enters into financial derivatives transactions on a commercial basis or on a scale that requires commercially organised business operations or that buys, sells or brokers financial derivatives transactions. 2Financial derivatives transactions within the meaning of sentence 1 and sections 100 and 101 mean derivatives within the meaning of section 2 (3) and warrants.

- Excludes civil law invalidity
- Excludes a criminal offence under StGB 284, 285
- Background and purpose of StGB 284 in Germany (heavily debated);
- German BVerfG held some gambling restriction/prohibitions in the past as void , in particular in 2006 the State Monopoly on sports betting
- Art. 12 GG (freedom of occupation): protected rights, interests in connection with betting are
 - Avoidance of gambling addiction / channeling of the gambling instinct into regulated outlets
 - Avoidance of manipulation / prevention of criminal side effects (such as fraud and money laundering)
 - maintenance of effective state oversight over gambling operations / not necessarily the individual financial property
- BVerfG questioned whether betting results in a gambling addiction; rather manipulation or criminal effects are often more relevant for the justification of certain betting prohibitions.
 - **But relevant in case an organised and supervised prediction market is involved?**
 - **§ 3 and 4 of the Glücksspielstaatsvertrag could therefore be likely void if a licensed and regulated prediction market is not in conflict with the rationale of the gambling prohibition.**

WHAT IS A DERIVATIVE UNDER GERMAN WPHG?

(3) Derivatives within the meaning of this Act are

1. firm contracts or option contracts in the form of purchases or swaps or in other forms that are to be settled at a future date and whose values are derived directly or indirectly from the price or dimension of an underlying instrument (forward transactions) relating to the following underlying instruments:

a) securities or money market instruments,

b) foreign exchange, to the extent that the transaction does not meet the conditions set out in Article 10 of Delegated Regulation (EU) 2017/565, or units of account,

c) interest rates or other yields,

d) indices of the underlying instruments specified in a), b), c) or f), other financial indices or financial measures,

e) derivatives or

f) allowances, emission reduction units and certified emission reductions within the meaning of section 3 numbers 3, 6 and 16 of the Greenhouse Gas Emissions Trading Act (Treibhausgas-Emissionshandelsgesetz), to the extent that they may be held in the EU emissions trading registry (emission allowances);

2. forward transactions relating to commodities, freight rates, climatic or other physical variables, inflation rates or other economic variables or other assets, indices or measures as underlying instruments, provided that they

a) are cash-settled or grant the party to a contract the right to demand cash settlement without this right being contingent on default or another termination event;

b) are entered into on an organised market or a multilateral or organised trading liability and are not wholesale energy products within the meaning of subsection 20 that are traded on an organised trading facility and must be physically settled, or

c) that have characteristics of other derivative contracts within the meaning of Article 7 of Delegated Regulation (EU) 2017/565 and are not for commercial purposes, and are not spot contracts within the meaning of Article 7 of Delegated Regulation (EU) 2017/565;

3. financial contracts for differences;

4. firm contracts or option contracts in the form of purchases or swaps or in other forms that are to be settled at a future date and are used to transfer credit risk (credit derivatives);

5. forward transactions relating to the underlying instruments referred to in Article 8 of Delegated Regulation (EU) 2017/565 if they satisfy the conditions of number 2.



WHAT IS A FINANCIAL INSTRUMENT UNDER MIFID I?

SECTION C

Financial instruments

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;
- (4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
- (5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
- (6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;
- (7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;
- (8) Derivative instruments for the transfer of credit risk;
- (9) Financial contracts for differences;
- (10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;
- (11) Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).



ADDITIONAL DERIVATIVES PURSUANT TO DELREG (EU) 2017/565

Article 8

Derivatives under Section C(10) of Annex I to Directive 2014/65/EU

(Article 4(1)(2) of Directive 2014/65/EU)

In addition to derivative contracts expressly referred to in Section C(10) of Annex I to Directive 2014/65/EU, a derivative contract shall be subject to the provisions in that Section where it meets the criteria set out in that Section and in Article 7(3) of this Regulation and it relates to any of the following:

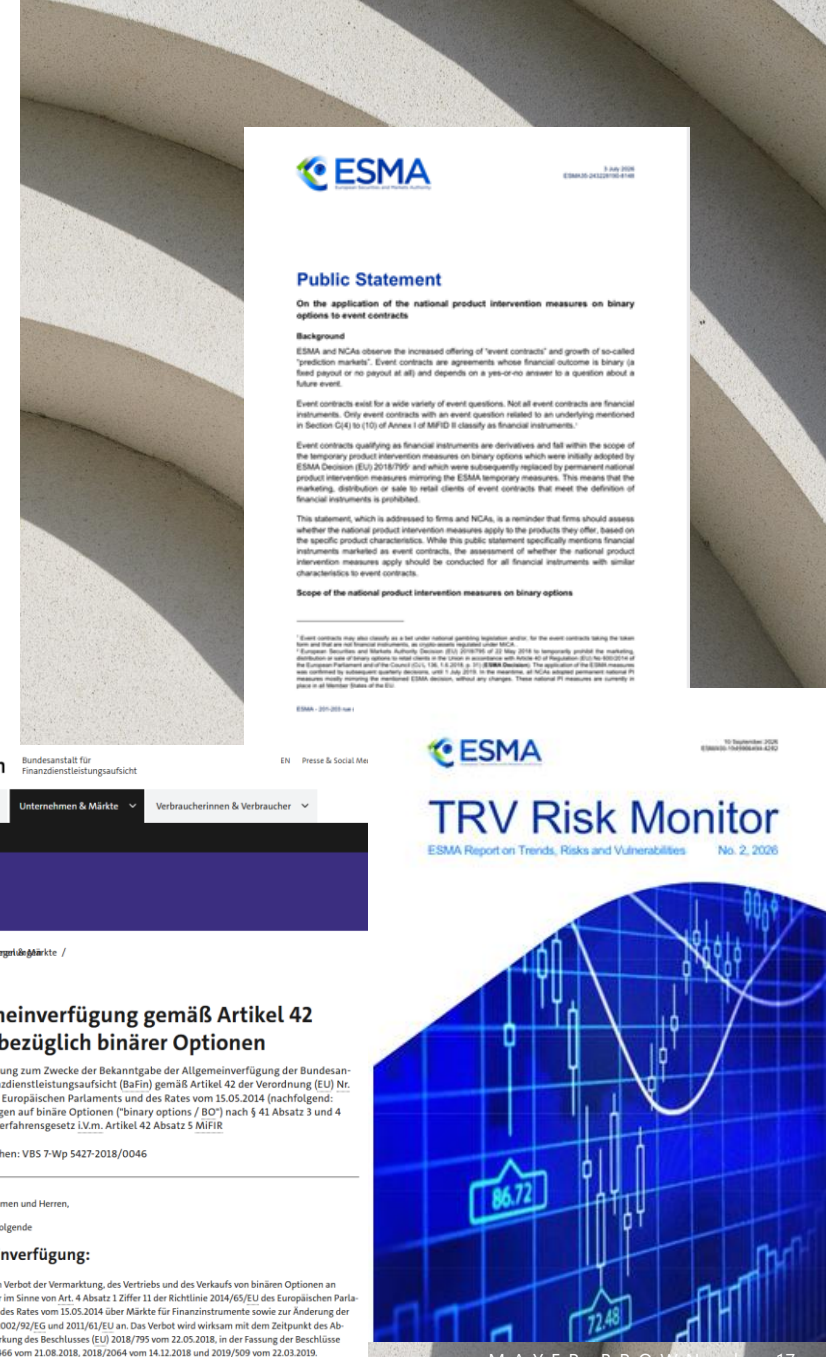
- (a) telecommunications bandwidth;
- (b) commodity storage capacity;
- (c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;
- (d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except where the contract is already within the scope of Section C of Annex I to Directive 2014/65/EU;
- (e) a geological, environmental or other physical variable, except if the contract is relating to any units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council ⁽¹⁾;
- (f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
- (g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;
- (h) an index or measure based on actuarial statistics.

BINARY OPTIONS IN THE EU – ESMA WARNINGS ON PREDICTION MARKETS

- In the EU, in many EU jurisdictions, Binary Options to Retail are subject to specific product prohibitions (product intervention measures act. To MiFIR Art. 42); BaFin Order as of 1 July 2019
- There are exemptions to the prohibitions.
- ESMA Public Statement of 3 July 2026 on Prediction Markets (ESMA35-243228190-8148) ; ESMA TRV Risk Monitor of 10 September 2026 (ESMA50-1949966494-4282):
 - „Not all event contracts are financial instruments“; “as event contracts with a binary outcome and binary pay-out **are likely to be derivatives** that are financial instruments, they are likely to fall in scope of the product intervention measures.”
 - Reminder in respect of Binary Option Product Intervention Measures):

“This means that the marketing, distribution or sale **to retail clients** of event contracts that meet the definition of financial instruments is prohibited.”

This statement, which is addressed to firms and NCAs, is a reminder that firms should assess whether the national product intervention measures apply to the products they offer, **based on the specific product characteristics**.
 - **MiFID** authorisation required for distribution to non-retail clients



SO IS AN EVENT CONTRACT ON CERTAIN ECONOMIC DEVELOPMENTS RELATING TO AN UNDERLYING ILLEGAL?

- Very difficult border lines; definition of GGL is not clear enough and not sufficiently clear in respect of the definition of derivatives and binary options.
- **Some event contracts set out above are very likely MiFID Derivatives.**
- BaFin:
 - A binary option is any cash settled derivative in which the payment of a fixed basic amount depends on whether one or more specified events in relation to the price, level or value of the underlying occurs at, or prior to, the derivative's expiry. For example, this will be the case if the underlying has reached a specified price at the derivative's expiry.
 - Binary options are also referred to as digital options. The term binary options derives from the mathematical binary system, which always operates on the basis of two states which are expressed by means of the numbers 0 and 1. **With binary options, the investor makes a bet on the occurrence of a specified event (generally a fall or a rise in the underlying up to a specified value, within a prescribed period of time) in relation to the price, level or value of one or more underlyings.** If the event does not occur, the investor loses their investment. This non-occurrence corresponds to a "0" in the binary system. If the event occurs, the option pays out or the investor can continue to trade. This outcome corresponds to a "1" in the binary system.
- **In Germany: BaFin prohibition on binary options to retail clients**
 - Order a prohibition of the marketing, distribution and sale of binary options to retail clients within the meaning of Art. 4(1)(11) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU. This prohibition will come into effect upon expiry of the validity of Decision (EU) 2018/795 of 22 May 2018, as amended by Decisions (EU) 2018/1466 of 21 September 2018, 2018/2064 of 14 December 2018 and 2019/509 of 22 March 2019.
 - Binary options within the meaning of no.1 are derivative financial instruments.
 - Which must be settled in cash.
 - For which payment is only envisaged following close-out or expiry and
 - Whose payment is limited to a predetermined fixed amount or zero, in the event that the underlying of the financial instrument meets one or more predetermined conditions and in the event that it does not meet one or more predetermined conditions.

SO IS AN EVENT CONTRACT ON CERTAIN ECONOMIC DEVELOPMENTS RELATING TO AN UNDERLYING ILLEGAL? (CONT'D)

- **BaFin Order relevant for Prediction Markets?**
- BaFin's arguments were based on a two-person relationship "Offeror and its client"
 - Betting against the Clients; Offeror's win is directly related to client's loss
 - Special case of a conflict of interest

But: there is no "Offeror/Client" relationship in prediction markets.
- **Does the exemption under 3 apply?**
 - The prohibition set out in no. 1 does not apply for binary options which meet the following conditions:
 - The term from issuance to maturity is at least 90 calendar days;
 - A prospectus drawn up and approved in accordance with the German Securities Prospectus Act (*Wertpapierprospektgesetz – WpPG*) or a similar statutory regulation of another Member State of the European Union or Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 July 2017 is available to the public; and
 - **The binary option does not expose the provider to market risk throughout the term of the binary option and the provider or any of its group entities do not make a profit or loss from the binary option, other than previously disclosed commissions, transaction fees or other related charges.**
- **GGL and BaFin should find an adequate border line**
- **Regulated prediction markets in the EU are legally possible, but changes to MiFID I definitions would be needed to be on the safe side**
- **Economic relevance and benefits of prediction markets should be further assessed: "economical relevant betting" as border line for legality**
- The very specific State Monopoly on sports betting in Germany was often discussed; is there a valid assumption based on experiences in the USA that there is a relevant risk of gambling addiction? Or a risk of manipulation? If a orderly and fair conduct of betting is ensured via financial market supervisions?
- And insider risks? There have been examples in the US; EU Insider Prohibition under MAR is applicable!
- **The financial markets regulation is very likely able to ensure a prediction market on terms that exclude manipulation, insider dealing and risks for retail investors by adequate protection measures like daily limits etc.**
- This speaks again against the validity of a prohibition in Germany **as less restrictive regulatory measures are not excluded to be taken.**



03

THE MARKET AND REGULATORY FRAMEWORK IN THE
UNITED STATES

LEGAL ANALYSIS

- An outcome from an event — an “event contract” — may be a “commodity.”
- The CFTC has non-exclusive anti-fraud jurisdiction over “commodities” — meaning other regulators and states also can exercise their jurisdiction over contracts in commodities.
- If contracts on the commodities are standardized, and they trade on a centralized, registered DCM and are cleared through a DCO, these could be “futures” or “options” or “swaps” (so, derivatives).
- Under the Commodity Exchange Act of 1936 (“CEA”), the CFTC has exclusive jurisdiction over commodity derivatives, meaning that no other regulator or State may regulate these derivatives.
- DCMs can operate and list commodity futures, options and swaps (including event contracts) anywhere in the United States.
- Retail participants are prohibited from trading derivatives unless they are “listed” on a DCM.

CFTC AUTHORITY TO REVIEW EVENT CONTRACTS

- A DCM can list new products either through:
 - Self-certification (CFTC Rule 40.2); or
 - CFTC review and approval (CFTC Rule 40.3).
- Congress gave authority to the CFTC to review “event contracts.”
- CEA §5c(c)(5)(C) authorizes the CFTC to prohibit futures, options or swaps on an excluded commodity that involves terrorism, assassination, war, gaming, unlawful activity (under State or federal law) or other “similar activity” if the CFTC determines that the contract is “contrary to the public interest.”
- CFTC adopted Rule 40.11(a) in 2011 to implement this statute, but the rule is arguably inconsistent with §5c(c)(5)(C) of the enabling statute and is susceptible to legal challenge.
- The Rule:
 - Provides a 90-day review period for contracts the CFTC determines “may involve, relate to, or reference” an activity mentioned in the statute.
 - Specifies that the CFTC request suspension of trading during the review period.
 - Requires the CFTC to dis/approve the contract within the 90-day period or an agreed-upon extended period.

CFTC AUTHORITY TO REVIEW EVENT CONTRACTS (CONT'D)

- When the rule was adopted, there was acknowledgment that the term “gaming” required clarification.
- The statute that established the CFTC gave the agency authority to review every contract to determine whether a DCM demonstrated the contract would not be contrary to the public interest.
- Public interest has been understood to include an economic purpose test.
- In 2000, the Commodity Futures Modernization Act eliminated the CFTC’s broad authority to review and block the listing of futures contracts; DCMs had the ability to self-certify compliance of contracts with the CEA.

2024 CFTC PROPOSED RULE

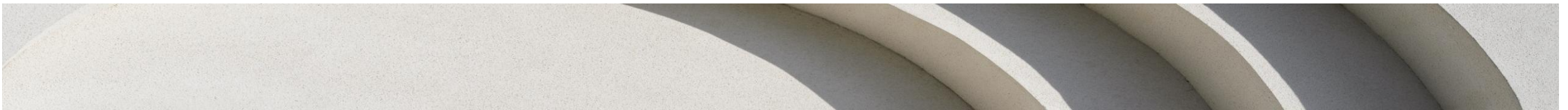
In 2024, the CFTC proposed an amendment to Rule 40.11(a)(1).

- Would have defined “gaming.”
 - Under the proposed rule, gaming would have included the staking or risking by any person of something of value on any of the following:
 - The outcome of a political contest, including an election;
 - The outcome of an awards contest;
 - The outcome of a game in which one or more athletes compete; or
 - An occurrence or non-occurrence in connection with such a contest or game, regardless of whether it directly affects the outcome.
- Event contracts involving “gaming” would have been prohibited by Rule 40.11(a)(1).
- Amended rule would have prohibited event contracts based on sports, elections, award contests.

In 2026, the CFTC withdrew the proposal, stating that it would have been “merit regulation” of commodity derivatives.

THE KALSHI SAGA

- In 2023, Kalshi self-certified event contracts based on election outcomes.
- The CFTC announced it would review these contracts under Rule 40.11.
 - CFTC prohibited Kalshi from listing the contracts.
 - Contracts, it argued, involved “gaming” and “wagering on elections.”
 - This also involved unlawful activity under state law; states prohibit betting on, or wagering on, elections.
 - Contracts were “contrary to the public interest.”
 - No economic utility and might affect election outcomes.
- Kalshi sued the CFTC in DC federal court; Kalshi won.
- The court held:
 - For an event contract to “involve” an activity enumerated in CEA § 5c(c)(5)(C), that activity must be the subject of the contract.
 - The contracts did not “involve” gaming solely because the CFTC alleged the contracts constituted gaming.
 - The CFTC appealed.
- Administration changes.
- In May 2025, CFTC voluntarily dismissed its appeal.

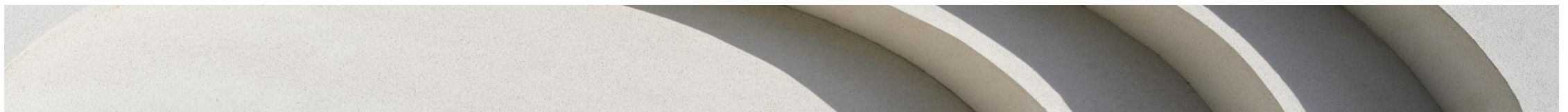


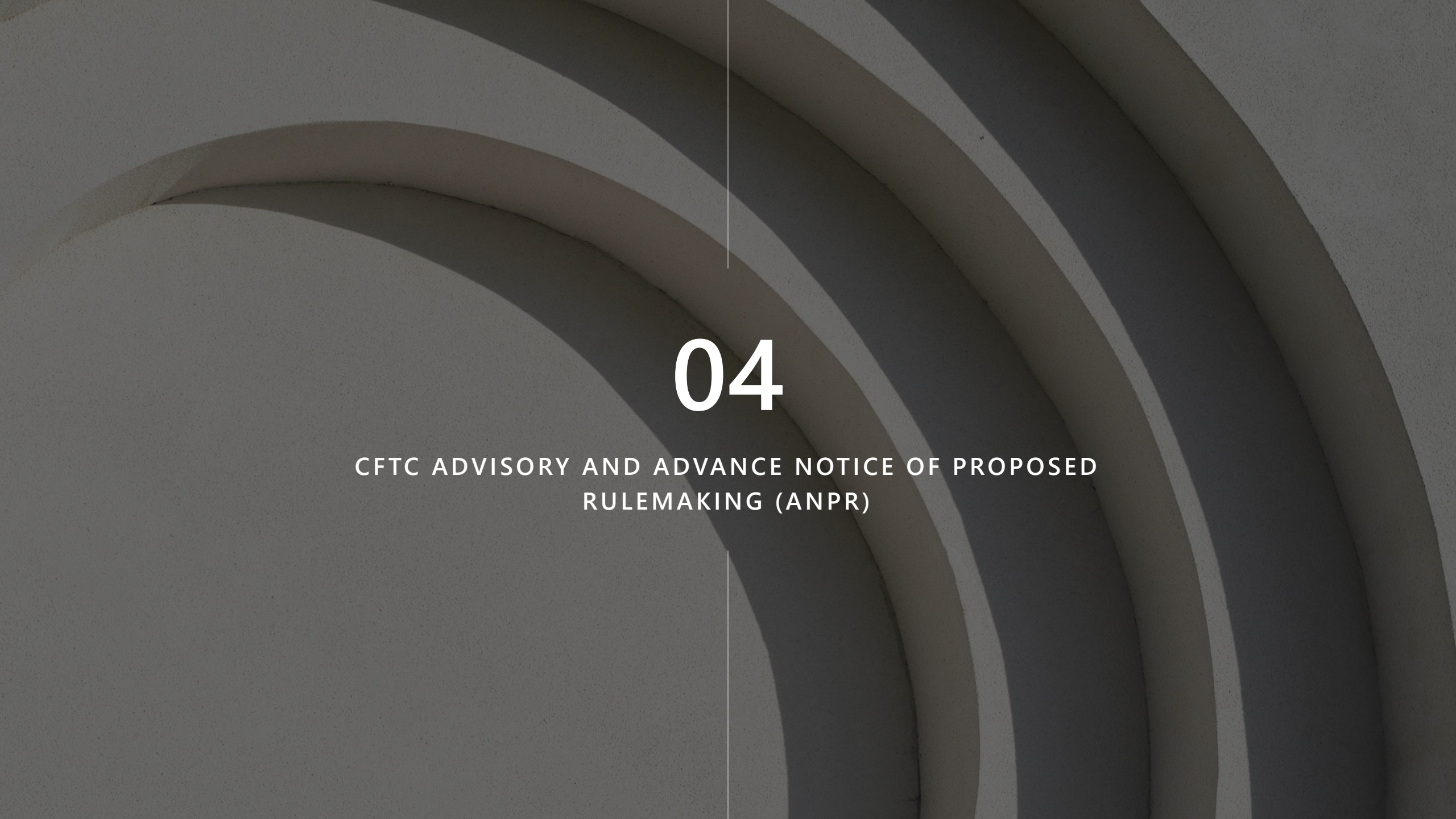
SEC REGULATION

- What does the SEC focus on in the context of these markets?
 - Is the instrument a “security” or a “security-based swap”?
 - This generally requires an analysis of the Dodd-Frank Act product definitions.
 - The SEC Staff and most recently SEC Chair Atkins have emphasized that certain event contracts may be “securities” or “security-based swaps” (“SBS”, which are securities).
 - SEC Chair Atkins’ testimony to Congressional Committee:
“A security is a security regardless how it is and some of the nuance with prediction markets and the

products depends on wording,” he told the committee. “Prediction markets are exactly one thing where there’s overlapping jurisdiction potentially,” between CFTC and SEC.

- To the extent that an instrument is a security or a SBS, then, has it been offered and sold in compliance with the securities laws? Is there a valid exemption?
- Was the instrument offered to persons other than eligible contract participants?
- Who is offering the SBS? And is the entity appropriately registered?





04

CFTC ADVISORY AND ADVANCE NOTICE OF PROPOSED
RULEMAKING (ANPR)

STAFF ADVISORY

- The Staff Advisory provides guidance to DCMs and reminds them of their obligations under the statutory Core Principles
- Core Principle 3: each DCM has a specific statutory obligation to list for trading contracts only if they are not readily susceptible to manipulation
- Core Principle 4: requires a DCM to have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the cash settlement process through market surveillance, compliance, and enforcement practices
- Core Principle 12: requires a DCM to establish and enforce rules to protect markets and market participants from abusive practices and to promote fair and equitable trading

Focus on Insider Trading Concerns

- The Staff Advisory emphasizes CFTC Rule 180.1 makes it unlawful for any person to employ any device, scheme, or artifice to defraud or manipulate the price of any contract listed on a DCM
- Highlights prior guidance that outlines considerations for DCMs when designing contracts
- Cash-settled contracts (including event contracts): recognize that such contracts may create an incentive to manipulate or artificially influence the data from which the cash-settlement price is derived



STAFF ADVISORY (CONT'D)

- Certain categories of event contracts may create a heightened potential for manipulation or price distortion
- For example, with sports-related event contracts, heightened risks may exist for contracts that resolve or settle based on:
 - Injuries to individual sports participants,
 - Unsportsmanlike conduct,
 - Physical altercations, or
 - The actions of a single individual or small group, such as officiating decisions.
- Encourages DCMs to engage with Staff in the early phases of designing such contracts to determine if heightened manipulation or price distortion risks exist
- Reiterates the product submission requirements under Regulation 40.2 (self-certification) and 40.3 (prior Commission approval)
- DCM must submit an explanation and analysis demonstrating the contract's compliance with the CEA and CFTC regulations. Overly broad or general contract specifications may affect a DCM's ability to analyze the contract's compliance with the CEA and regulations, including susceptibility to manipulation.



STAFF ADVISORY (*CONT'D*)



The Advisory recommends that DCMs consider engaging with relevant sports leagues and their integrity units when developing terms and conditions for sports-related event contracts.



Reminds DCMs that the CFTC retains authority to stay the listing of a self-certified contract pending CFTC proceedings for filing a false certification or pending a petition to alter or amend the contract terms and conditions.

ANPR

ANPR of March 12, 2026

On March 12, 2026, the CFTC issued an ANPR requesting public comment on the regulation of the prediction markets. The ANPR asks a series of questions of the public relating to how the DCM Core Principles in the CEA should be applied to prediction markets

Key questions include:

- **Access and Abusive Practices (Core Principle 2):** What aspects of prediction markets affect how a DCM provides impartial access and prohibits abusive trade practices, and are there particular risks of abusive trading?
- **Contract Terms and Resolution Criteria (Core Principle 2):** What factors should the CFTC consider regarding a DCM's rules related to resolution criteria for event contracts, including dispute resolution procedures when there is a disagreement about whether an underlying event has occurred?
- **Manipulation (Core Principle 3):** How should a determination of whether an event contract is "readily susceptible to manipulation" be made?
- **Market Surveillance (Core Principle 4):** Are there aspects of the prediction markets that pose challenges to market surveillance, compliance and enforcement practices?
- **Position Limits (Core Principle 5):** What factors should a DCM consider in adopting position limits?
- **Margin Trading (Core Principle 11):** Should prediction markets be permitted to offer trading on margin?
- **Blockchain-Based Markets:** What factors under the Core Principles should be considered with respect to blockchain-based prediction markets?

ANPR (CONT'D)

The ANPR also address public interest determinations under the Special Rule

Key questions include:

- How the public interests set out in other parts of the CEA, including the public interests in providing a means for managing and assuming price risks, discovering prices, and disseminating pricing information, should inform the CFTC's public interest determination under the Special Rule.
- What role event contracts play in hedging, price discovery, and price dissemination, and how the CFTC should incorporate these considerations.
- How event contracts compare to, or substitute for, insurance contracts, and whether the liquidity and availability of insurance with respect to a particular event should be a factor.



05

CFTC NPR AND AMENDMENTS TO REGULATION 40.11



NPR

- In June 2026, the CFTC published a notice of proposed rulemaking (NPR) suggesting comprehensive amendments to CFTC Regulation 40.11; adding a new Appendix F to Part 40 concerning event contracts traded on prediction markets; and further specifying the types of contracts that may be determined contrary to the public interest under Section 5c(c)(5)(C) of the CEA
- Section 5c(c)(5)(C) of the CEA (the “Special Rule”) authorizes the CFTC to determine that event contracts in excluded commodities based on occurrences or contingencies are contrary to the public interest if they involve an Enumerated Activity:
 - Unlawful activity under any federal or state law;
 - terrorism;
 - assassination;
 - war;
 - gaming; or
 - other similar activity determined by the CFTC by rule or regulation
- In 2011, Regulation 40.11 was adopted to implement the Special Rule, but controversy and ambiguity remains



NPR (*CONT'D*)

- Proposal would interpret the Special Rule to require a three-step inquiry before a determination that contract is contrary to the public interest; this would resolve the ambiguity in Regulation 40.11 in favor of a discretionary, contract-specific analysis. Three steps:
 - Step 1: Is the Instrument an Event Contract Subject to the Special Rule?
 - Step 2: Does the Event Contract “Involve” an Enumerated Activity?
 - Step 3: Is the Event Contract Contrary to the Public Interest?
- The Proposal clarifies that an event contract “involves” an Enumerated Activity when its settlement is determined by an occurrence, extent of occurrence, or contingency in that activity. This is a focused, settlement-based test
- The Proposal identifies categories of contracts that would generally fall outside the Special Rule entirely:
 - Economic indicators (GDP, unemployment, inflation);
 - Financial indicators (interest rates, equity indices, credit spreads);
 - Foreign exchange rates and currencies;
 - Political elections and political activities (legislative votes, enactments, appointments); and
 - Honor and award contests (Nobel Prize, Academy Awards, similar merit-based awards).



NPR (*CONT'D*)

- Proposed Appendix F to Part 40 establishes a multifactor framework for the CFTC's public interest determination
- The CFTC would weigh three broad categories of factors on a contract-specific basis; no single factor is dispositive, and the analysis is designed to be flexible across the event contracts that DCMs may seek to list
- There was an extraordinarily high volume of public comment generated by the proposals
- The CFTC is weighing the comments
- In the interim, the CFTC Staff has reacted to other developments in the market by issuing advisories, such as a recent advisory on mention markets

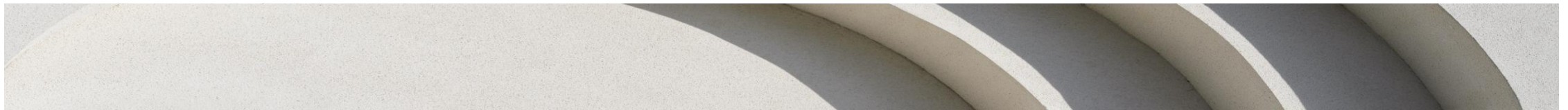


06

STATE REGULATION AND PREDICTION MARKET
LITIGATION: *WHAT'S AT ISSUE AND WHO'S SUING WHOM?*

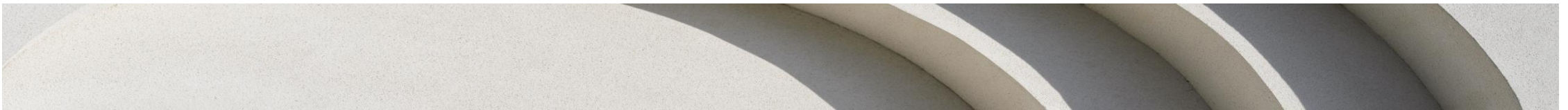
STATE REGULATION

- Historically, states have enacted laws that prohibit gambling.
- The *Board of Trade v. Christie Grain* case (1905) involved allegations of illegal gambling in Illinois. The Court's approach became the 1922 Grain Futures Act that required the trading of futures only on registered exchanges.
 - It is also a seminal case in that it introduced the considerations that help distinguish gambling and wagering from legitimate derivatives or hedging activities, which now form part of what is reflected in CFTC Rule 40.11.
 - Since, as well, derivatives have been addressed by federal law (with state laws being preempted); this is evidenced in the CEA Section 12(e)(2).
- States have maintained their jurisdiction over gambling activities.
- Sports betting has been distinguished from gambling.
 - The Professional Amateur Sports Protection Act of 1992 (PASPA) prohibited states from allowing sports betting subject to certain exceptions.
 - The Supreme Court struck PASPA down in 2018 in *Murphy v. NCAA*.
 - States may enact laws allowing sports betting; some state laws prohibiting gambling are still in effect.
 - The Federal Wire Act of 1961 still prohibits interstate wagering and betting, including on sports, and *Murphy* does not supersede the application of the CEA or the Wire Act.



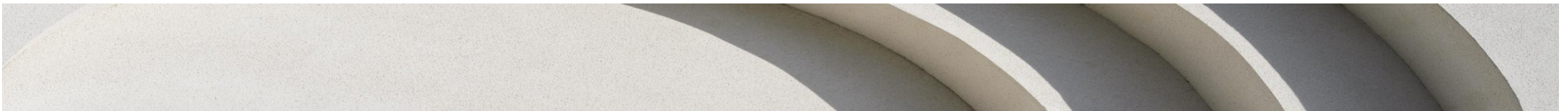
STATE AND TRIBAL LITIGATION

- For decades, *sports betting* has been regulated exclusively by states and Native American tribes.
 - *Bookmakers must register* with *each* state or tribe where they do business. This makes it difficult to offer sports bets on a nationwide basis.
 - Sports betting/gaming is subject to extensive regulation (e.g., addiction warnings, age restrictions) and supervision.
- The CFTC has exclusive authority to regulate swaps and futures contracts, including those based on the occurrence or non-occurrence of a specific event (known as an “event contract”) as discussed on the prior slides.
 - The Dodd-Frank Act authorized the CFTC to prohibit exchange trading of swaps and futures contracts that reference terrorism, assassination, war, gaming, or an activity that is unlawful under any state or federal law.
 - The CFTC implemented this ban in CFTC Rule 40.11, but the ban is primarily self-policed by futures exchanges (i.e., DCMs).
- A few years ago, startups, including Kalshi and Crypto.com, established or acquired DCMs to list event contracts.
- As discussed, in 2024, the CFTC attempted to prohibit Kalshi from listing event contracts that referenced Congressional elections. Kalshi sued the CFTC in district court and won. The CFTC appealed the loss, but then dropped the appeal once President Trump took office.



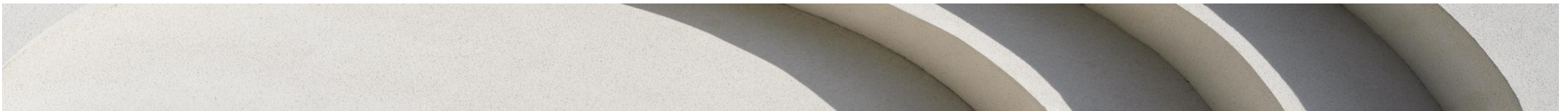
STATE AND TRIBAL LITIGATION (CONT'D)

- Certain states and tribes maintain that event contracts that reference sporting events are sports betting subject to state/tribal regulation.
 - As described below, states/tribes assert that even if an event contract is regulated by the CFTC as a swap, the CFTC does not have exclusive authority to regulate event contracts and the DCMs that list such contracts.
- Kalshi, Crypto.com, and other DCMs assert that because the CFTC exclusively regulates DCMs under federal law, state regulation is pre-empted. This would arguably address states, but not tribes.
- Several states/tribes have sued or threatened to issue, or issued, cease-and-desist orders to Kalshi, Crypto.com, and others involved in event contracts referencing sporting events.
- The states'/tribes' arguments generally have focused on: (i) the event contracts not being swaps, and therefore, not being subject to exclusive regulation by the CFTC; (ii) the event contracts being prohibited by the CFTC's regulation against swaps that involve, relate to or reference gaming or unlawful activities under any state or federal law; and/or (iii) the preemptive effect of the CFTC's exclusive regulation of swaps not extending to state/tribal gaming laws.



STATE AND TRIBAL LITIGATION (*CONT'D*)

- Kalshi and Crypto.com have sued the states in federal court to prevent the issuance of, or enjoin, cease-and-desist orders or prevent the states from investigating their conduct.
- The US Court of Appeals for the Ninth Circuit ruled Nevada can enforce state gambling laws against Kalshi's sports event contracts. This creates a circuit split with the Third Circuit's decision that favored Kalshi and opined that sports event contracts are subject to exclusive CFTC oversight and jurisdiction. More recently, the Sixth Circuit ruled against Kalshi.
- The looming question: will the Supreme Court choose to hear a case?



“

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RESOURCES

Legal Update: [The Odds Are In: CFTC Proposes Framework for Event Contracts and Prediction Markets](#) (June 23, 2026)

Legal Update: [CFTC Issues Request for Comment and Staff Advisory on Prediction Markets](#) (March 13, 2026)

Blog Post: [Event Contracts at the SEC-CFTC Crossroads: Exchange Proposals to List and Trade Contracts Structured as Binary Options](#) (August 28, 2026)

Blog Post: [Sports, Speculation, and the Public Interest: CFTC Proposes Rules Specifying When Event Contracts Are Contrary to the Public Interest](#) (June 10, 2026)

Blog Post: [CFTC and Major League Baseball Cooperate on Prediction Markets Oversight](#) (March 30, 2026)



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