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CFTC ISSUES REQUEST FOR COMMENT AND STAFF ADVISORY ON PREDICTION MARKETS

On March 12, 2026, the Commodity Futures Trading Commission (“CFTC”) released two documents regarding “event contract” derivatives traded on prediction markets. The CFTC issued an [Advance Notice of Proposed Rulemaking](#) (“ANPRM”) requesting public comment on the regulation of prediction markets. The CFTC’s Division of Market Oversight (“DMO”) issued a [staff advisory](#) providing guidance to designated contract markets (“DCMs”) on the listing and trading of event contracts (the “Staff Advisory”).

Comments on the ANPRM are due 45 days after publication in the *Federal Register*, which is expected shortly. We provide background on key aspects of the ANPRM and Staff Advisory.

BACKGROUND

Prediction markets are trading platforms through which participants enter event contracts. “Event contracts” are instruments that pay out based on the occurrence or non-occurrence of a specified event. For example, an event contract might pay \$1 if a particular candidate wins an election or if a certain team wins a championship, and \$0 if they do not. The price at which these contracts trade—say, \$0.60—can be interpreted as the market’s collective assessment of the probability of the event’s occurrence (in this case, a 60% likelihood).

While the term “event contract” is not defined in the Commodity Exchange Act (“CEA”) or the CFTC’s regulations, the CFTC has sometimes associated it with contracts having a payoff, typically a binary option, based on the outcome of a referenced occurrence or event. Some argue that event contracts fall within the CEA’s definition of a “swap” or a futures contract, while others maintain that event contracts are neither swaps nor futures contracts.¹ Litigation regarding this distinction remains active.

A market that offers futures contracts or swaps for trading by the general public must register with the CFTC as a DCM. DCMs are subject to statutory “Core Principles” that govern how these trading venues operate, including requirements related to market access, manipulation prevention, market surveillance, and position limits.

Under a part of the CEA that is known as the “Special Rule” (and implemented in CFTC Rule 40.11), the CFTC may, but is not required to, prohibit prediction markets from listing for trading or making available for clearing particular types of contracts (regardless of status) if it determines that such contracts are contrary to the public interest. Specifically, the CFTC may make this determination if the contracts involve: (i) activity that is unlawful under any federal or state law; (ii) terrorism; (iii) assassination; (iv) war; (v) gaming; or (vi) other similar activity determined by the CFTC to be contrary to the public interest.

In 2024, the CFTC proposed rules to further specify the types of contracts that are contrary to the public interest. However, in February 2026, the CFTC withdrew those proposed rules to reconsider them in light

¹ See e.g., Dustin Gouker, *A Legal Setback for Prediction Markets* (Oct. 15, 2025), <https://nexteventhorizon.substack.com/p/a-legal-setback-for-prediction-markets>.

of various state regulatory actions and litigation concerning the CFTC's jurisdiction over certain event contracts.

ADVANCE NOTICE OF PROPOSED RULEMAKING

Given the significant increase in DCM registration applications from entities interested in operating prediction markets, the CFTC issued the ANPRM to seek information on key emerging issues. The ANPRM asks commenters to address how the DCM Core Principles in the CEA should be applied to prediction markets. Specific areas of inquiry 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 whether there are particular risks of abusive trading.
- **Contract Terms and Resolution Criteria (Core Principle 2):** What factors the CFTC should 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 a determination of whether an event contract is "readily susceptible to manipulation" should be made, and whether there are particular aspects of event contracts that make this determination different from other listed contracts.
- **Market Surveillance (Core Principle 4):** Whether any aspects of prediction markets pose challenges to market surveillance, compliance, and enforcement practices, and whether existing surveillance practices for detecting suspicious activity would be useful in prediction markets.
- **Position Limits (Core Principle 5):** What factors a DCM should consider in adopting position limitations or position accountability for prediction markets, including how position limits across similar event contracts should be aggregated.
- **Margin Trading (Core Principle 11):** Whether prediction markets should be permitted to offer trading on margin. Currently, event contracts are fully collateralized, and the ANPRM asks what factors the CFTC should consider in determining whether margin trading should be permitted for retail versus institutional customers.
- **Blockchain-Based Markets:** What factors under the Core Principles should generally be considered with respect to blockchain-based prediction markets, and whether there are challenges or advantages in applying existing regulations to such platforms.

The ANPRM also seeks comment on what factors the CFTC should consider in making 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.

The ANPRM also solicits comment on the scope of the five listed activities in the Special Rule that may render an event contract contrary to the public interest. Regarding gaming, the ANPRM asks:

- What sources should inform the CFTC's determination of the scope of the term "gaming," including whether gaming is synonymous with activities covered by state and federal gambling statutes.
- How the CFTC should distinguish among various types of contests (e.g., sports competitions versus award competitions) and market participants (e.g., younger individuals versus institutional traders).
- What aspects of responsible gaming standards, such as self-exclusion programs, monetary or time limits, and advertising warnings, the CFTC should consider.

Finally, the ANPRM addresses the complex issue of trading by informed participants, often referred to as insider trading. Prediction market prices could be more reliable indicators of probability if the people trading have insight into how likely the underlying event is to occur. However, trading by these informed participants may lead to manipulation, unfairness, and the misuse of inside information. The ANPRM asks how the CFTC should balance these considerations and whether prediction markets are more susceptible to manipulation than other DCMs or swap execution facilities.

DIVISION OF MARKET OVERSIGHT STAFF ADVISORY

The Staff Advisory provides guidance to DCMs and reminds them of their obligations under the statutory Core Principles. Under DCM 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.

The Staff Advisory emphasizes that 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. This prohibition includes insider trading.

The Staff Advisory also highlights prior guidance that outlines considerations for DCMs when designing contracts. With respect to cash-settled contracts (which it states include event contracts), DCMs are encouraged to recognize that such contracts may create an incentive to manipulate or artificially influence the data from which the cash-settlement price is derived.

DMO staff encourages DCMs to consider whether certain categories of event contracts create a heightened potential for manipulation or price distortion. In the context of sports-related event contracts, for example, 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. DMO staff encourages DCMs to engage with staff in the early phases of designing such contracts to determine if heightened manipulation or price distortion risks exist.

The Staff Advisory reiterates the product submission requirements under CFTC Regulation 40.2 (self-certification) and 40.3 (prior CFTC approval). A DCM must submit an explanation and analysis demonstrating the contract's compliance with the CEA and CFTC regulations. The Staff Advisory notes

that 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.

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

- Engaging in pre-self-certification communications with relevant sports governing bodies.
- Including, as part of the self-certified product submission, an explanation of whether the contract is consistent with the relevant league's integrity standards.
- Establishing information-sharing and data arrangements with relevant sports integrity monitoring organizations.
- Relying on official data provided by the relevant league or governing body as the settlement source.

Finally, the Staff Advisory 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.

TAKEAWAYS

DCMs operating or seeking to operate prediction markets should pay close attention to the Staff Advisory guidance, particularly Core Principle compliance, product submission requirements, and engagement with sports leagues and other relevant organizations. The Staff Advisory's emphasis on proactive engagement with DMO staff suggests that the CFTC is prepared to work collaboratively with market participants in developing compliant event contracts.

Market participants interested in shaping the federal regulatory landscape for prediction markets should consider submitting comments on the ANPRM within 45 days of publication in the *Federal Register*. It is unclear how, or the extent to which, these products would be subject to any regulation or oversight by the Securities and Exchange Commission ("SEC"). Recent comments by the SEC Chair in Congressional testimony suggest that some event contracts may be security-based swaps or securities. The CFTC and the SEC have recently indicated that the agencies will take a more coordinated and collaborative approach to the regulation of products as to which there may be overlapping jurisdiction. This may be such a product.



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