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THE ODDS ARE IN: CFTC PROPOSES FRAMEWORK FOR EVENT CONTRACTS AND PREDICTION MARKETS

On June 10, 2026, the Commodity Futures Trading Commission (the "CFTC" or the "Commission") published a notice of proposed rulemaking (the "Proposal") suggesting comprehensive amendments to CFTC Regulation 40.11 and adding a new Appendix F to Part 40 concerning event contracts traded on prediction markets.[1] The Proposal would further specify the types of event contracts that may be determined contrary to the public interest under Section 5c(c)(5)(C) of the Commodity Exchange Act of 1936, as amended (the "CEA"), and, therefore, may not be listed for trading or accepted for clearing on or through a CFTC-registered entity. Public comments on the Proposal are due by July 27, 2026.

The Proposal arrives at a time of extraordinary growth in prediction markets. The CFTC describes event contracts as potentially valuable tools for price discovery, information aggregation, and hedging in connection with events that may not be addressed by traditional financial instruments. At the same time, the rapid proliferation of these products—spanning macroeconomics, politics, weather, sports, public health, scientific discoveries, awards, and other topics—has presented the Commission with difficult questions about where to draw the line between legitimate economic activity and activity contrary to the public interest.

BACKGROUND

CEA Section 2(a)(1)(A) grants the CFTC exclusive jurisdiction over transactions involving swaps or commodity futures traded or executed on designated contract markets ("DCMs"). Swaps offered to persons other than eligible contract participants and all futures contracts generally must trade on a CFTC-registered DCM. Some argue event contracts may be structured as swaps or futures contracts, because the CEA's "swap" definition includes agreements, contracts, or transactions for which payment or delivery depends on the occurrence, nonoccurrence or extent of occurrence of an event or contingency associated with a potential financial, economic or commercial consequence. Some event contracts have been traded on a limited basis (*e.g.*, educational projects) for decades, but their recent explosive growth raises novel regulatory questions.

THE SPECIAL RULE

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: (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 Commission by rule or regulation (collectively, the "Enumerated Activities"). No contract determined contrary to the public interest under the Special Rule may be listed for trading or made available for clearing through a registered entity.

REGULATION 40.11

The CFTC adopted Regulation 40.11 in 2011 to implement the Special Rule. However, the existing regulation has generated interpretive uncertainty that has impeded its application. Section 40.11(a) states that a registered entity "shall not list" certain contracts involving Enumerated Activities, while Section 40.11(c) establishes a 90-day review process under which the Commission "may" subject event contracts to review, creating ambiguity as to whether the rule operates as a *per se* prohibition or a discretionary framework. This tension has been central to recent litigation.

KEY REGULATORY & JUDICIAL HISTORY

The prediction market landscape has been shaped by a series of regulatory actions and judicial decisions:

- In September 2023, the CFTC disapproved a DCM's event contracts tied to congressional control, finding they involved gaming and activity that is unlawful under state law and were contrary to the public interest.
- The DCM challenged the disapproval under the Administrative Procedure Act. In September 2024, the U.S. District Court for the District of Columbia granted summary judgment to the DCM and vacated the order, ruling the contracts did not involve unlawful activity or gaming; the court did not reach whether the contracts were contrary to the public interest. The CFTC's appeal was dismissed in May 2025 by the agency following a change in Presidential administration.
- In June 2024, the CFTC proposed rules to further specify the types of event contracts that fall within the scope of the Special Rule as contrary to the public interest. In February 2026, the Commission withdrew that proposal to reconsider it in light of state regulatory actions and litigation concerning the CFTC's exclusive jurisdiction over event contract derivatives listed on DCMs and the application of the CEA's definitions of swap and excluded commodity.
- In February 2026, the CFTC's Division of Enforcement issued a Prediction Markets Advisory after a DCM closed two cases alleging trading on material non-public information ("MNPI") against its own members, reflecting heightened scrutiny of insider trading, manipulation, and surveillance sufficiency in prediction markets.
- In March 2026, the CFTC issued (i) an advance notice of proposed rulemaking ("ANPRM") in light of the increase in DCM registration applications from entities focused on prediction markets and to

seek information on issues that had emerged since the 2024 proposal, and (ii) a staff advisory providing guidance to DCMs on the listing and trading of event contracts (see our Legal Update for additional information). The ANPRM comment period closed on April 30, 2026. The Commission received approximately 3,500 comments, including approximately 300 detailed submissions.

The Proposal draws on these post-2023 developments by proposing a settlement-based definition of when event contracts "involve" an Enumerated Activity, a definition of "gaming," public interest factors applicable to contracts within the Special Rule, and revised procedures to initiate and conduct a 90-day review.

THE PROPOSED THREE-STEP ANALYTICAL FRAMEWORK

The Commission proposes to interpret the Special Rule as requiring a three-step inquiry before it may determine that an event contract is contrary to the public interest and therefore prohibited. This framework resolves the existing ambiguity in Regulation 40.11 in favor of a discretionary, contract-specific analysis rather than a *per se* prohibition.

Step 1: Is the Instrument an Event Contract Subject to the Special Rule?	The Commission must first determine whether the instrument is an "event contract"—that is, a contract based upon an occurrence, extent of an occurrence, or contingency in an excluded commodity.
Step 2: Does the Event Contract "Involve" an Enumerated Activity?	Under proposed Section 40.11(a)(3), event contracts "involve an activity if their settlement is determined by an occurrence, extent of an occurrence, or contingency in the activity." The Commission emphasizes that this inquiry focuses on the underlying event or settlement trigger and not on whether trading in the contract is itself gambling or otherwise unlawful.
Step 3: Is the Event Contract Contrary to the Public Interest?	Even if an event contract involves an Enumerated Activity, the CFTC may prohibit the contract only if it undertakes a public interest analysis and affirmatively determines that the event contract is contrary to the public interest. This is not a *per se* prohibition. The CFTC emphasizes that its review is discretionary, contract-specific and that no single public interest factor is dispositive.

The principal difference between current Regulation 40.11 and the proposed amendments is that the revised rule would "more clearly follow the plain language of the Special Rule" by stating that the Commission "may determine" that event contracts subject to the Special Rule are contrary to the public interest, removing uncertainty as to whether a formal finding is required before listing is prohibited. The Commission describes this event-focused "involves" standard as resulting in greater clarity and certainty. The Commission acknowledges incremental documentation and workflow costs from analyzing the underlying event for each contract and supplementing template self-certifications under Section 40.2 but expects those costs to be modest and mitigated by the added certainty.

KEY DEFINITIONS AND SCOPE

DEFINITION OF "GAMING"

Proposed Section 40.11(b) defines "gaming" as any activity that: (i) one or more participants typically engage in for purposes of recreation or to entertain others; (ii) is governed by rules; and (iii) includes measurable occurrences or outcomes that depend on the participants' luck, skill, or athletic ability during the activity.

The Commission expressly rejects defining gaming as all gambling or wagering (*i.e.*, the risking of something of value for a chance to win a prize), because such a definition would be overbroad and, in its view, would render the Special Rule's gaming category limitless. Instead, the proposed definition distinguishes games (structured activities with participants exercising luck, skill, or athletic ability) from contests (broader competitive processes that do not meet all three elements).

The Commission views the proposed gaming definition as beneficial, because it would reduce interpretive variance, streamline staff review, and help prediction markets apply the Special Rule in their self-regulatory capacity.

The Commission states its belief that political elections are not gaming. Elections serve the purpose of selecting political leadership, not recreation or entertainment, and their outcomes do not turn on the participants' luck, skill, or athletic ability. Voters exercise political judgment. Accordingly, event contracts on political elections generally would fall outside the scope of the Special Rule.

Contests such as the Nobel Prize and the Academy Awards are generally not gaming, because they are based on broad merit evaluations rather than on luck, skill, or athletic ability exercised during a defined activity. The CFTC requests comment on whether game shows, reality competitions, pageants, and music or talent competitions should be treated as gaming.

WHEN EVENT CONTRACTS "INVOLVE" AN ACTIVITY

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. Several examples illustrate its application:

- A contract on whether a specified terrorist attack will occur involves terrorism, because settlement is determined by the occurrence of terrorism.
- A contract on crude oil volumes transiting the Strait of Hormuz does not involve war or terrorism, even though volumes might be affected by military conditions, because settlement is determined by commercial shipping activity.
- A contract on whether Nicolas Maduro will be out of office by a certain date may involve assassination, because assassination is among the settlement pathways. However, a contract

limited to "electoral defeat, resignation, constitutional removal, negotiated departure, or natural death" would *not* involve assassination, because that pathway is expressly excluded.

This last example highlights an important drafting point that facially neutral contracts may involve an Enumerated Activity if settlement could occur through a prohibited pathway unless the contract terms expressly exclude that pathway.

CONTRACTS GENERALLY OUTSIDE THE SCOPE OF THE SPECIAL RULE

The Proposal identifies categories of event 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).

Proposed Regulation 40.11 would move away from the current rule's reference to CEA Section 1a(19)(iv) and, instead, refer to all excluded commodities based upon the occurrence, extent of an occurrence, or contingency, with the exception of any change in the price, rate, value, or levels of a commodity described in CEA Section 1a(19)(i).[2] The Commission also frames its authority to identify "similar" activities as a flexibility benefit, allowing it to respond to novel event contract designs with risk profiles comparable to the Enumerated Activities.

PUBLIC INTEREST ANALYSIS UNDER PROPOSED APPENDIX F

Proposed Appendix F to Part 40 establishes a multifactor framework for the Commission's public interest determination. Rather than applying a single static test, 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.

GENERAL PUBLIC INTEREST FACTORS

FACTOR CATEGORY	KEY CONSIDERATIONS
Price Discovery and Information Aggregation Utility	Whether the contract provides meaningful hedging or price-basing utility; yields economically, financially, or commercially useful information; or promotes responsible innovation and fair competition. A reasonable potential for hedging or pricing function is significant evidence against finding the contract contrary to the public interest but is not required.

FACTOR CATEGORY	KEY CONSIDERATIONS
Market Integrity Threats	Whether the contract poses particular risk of manipulation or market disruption, settlement integrity deficits or risk of information leakage or exploitation of MNPI by insiders. Settlement criteria should be clear, objective, and publicly verifiable.
Compliance and Self-Regulatory Challenges	Whether trading or clearing would strain the prediction market's surveillance, dispute resolution, customer identification, prohibited trader policies, and MNPI guardrails.

Importantly, the CFTC does not propose to reinstate the economic purpose test applied prior to the Commodity Futures Modernization Act of 2000. A contract need not demonstrate a hedging or pricing function to be permissible. The Commission frames this as part of a broader, multifactor public interest inquiry: meaningful hedging or price-basing utility; economically, financially, or commercially useful information; or other meaningful information aggregation value would weigh against a finding that the contract is contrary to the public interest, but the absence of such utility would not itself be dispositive.

For these generally applicable public interest factors, the Commission expects the price discovery and information aggregation factor to steer listings toward contracts with demonstrable information value and objective data, while increasing Section 40.2 documentation and data integrity coordination costs. The market integrity and compliance capacity factors are expected to improve settlement reliability, surveillance, customer identification, and dispute resolution but may require investment in verified data feeds, redundant systems, eligibility screens, staffing, surveillance technology, and other operational infrastructure.

SPECIFIC PUBLIC INTEREST FACTORS BY ENUMERATED ACTIVITY

UNLAWFUL ACTIVITY

Event contracts involving specific unlawful conduct are likely to raise public interest concerns. Contracts involving activity that is unlawful under federal law are "highly likely" to be found contrary to the public interest. However, generalized crime rate contracts that do not incentivize specific criminal conduct may not be. For state law unlawfulness, the Commission would survey relevant state laws and assess potential public harm on a case-by-case basis. The Commission identifies the principal benefit of these factors as discouraging event contracts that could incentivize criminal conduct or exploit crime-adjacent information asymmetries, thereby protecting market participants and the public. The corresponding costs include documenting legality, public harm considerations, and integrity controls in Section 40.2 submissions, as well as conducting jurisdictional surveys for broader-measure products, such as indices.

TERRORISM, ASSASSINATION, AND WAR

The Commission interprets these terms broadly, covering foreign events and non-U.S. persons. "War" includes belligerent military activity and organized violent activity, not limited to declared wars. All event contracts involving terrorism, assassination, and war are "highly likely" to be against the public interest.

GAMING: PURE GAMES OF CHANCE

Event contracts involving games that depend entirely on random chance (*e.g.*, roulette, random number generators) are "highly likely" to be found contrary to the public interest, because they are "by definition, devoid of informational content." However, the Commission distinguishes pure random chance from games involving a high degree of luck that are also significantly affected by skill, leaving open the possibility that contracts on such games as poker, particularly organized tournament play, could be permissible.

For gaming, the Commission expects the functional definition and activity-specific factors to provide a clearer taxonomy that permits aggregate sports outcomes supported by objective data while screening out pure chance games and high-risk sports-adjacent designs.

SPORTS EVENT CONTRACTS

Likely the most commercially significant aspect of the Proposal is the Commission's preliminary guidance on event contracts involving sports. The CFTC makes it clear that sports are "gaming" within the meaning of the proposed definition and proceeds to analyze which sports-related contracts may satisfy the public interest standard. The Commission states that event contracts based on the aggregate outcomes of professional or collegiate sports events are unlikely to be contrary to the public interest, provided they are based on objective and verifiable settlement criteria and listed by prediction markets that maintain appropriate surveillance, trading prohibitions, and coordination with relevant sports-governing bodies. This is not, however, a safe harbor. All sports event contracts remain subject to the full factor-by-factor weighing of public interest considerations.

For sports contracts specifically, the Commission expects benefits from greater clarity, objective settlement data, information-sharing arrangements, suspicious activity reporting, and integrity coordination with leagues or governing bodies. The Commission also notes limitations and costs, including residual subjectivity in some sports outcomes, persistent MNPI concerns, uneven league cooperation or data standards, vendor costs, and legal or administrative burdens associated with information-sharing agreements.

SPORTS EVENT CONTRACT CLASSIFICATIONS

UNLIKELY CONTRARY TO PUBLIC INTEREST	LIKELY CONTRARY TO PUBLIC INTEREST
▪ Final scores ▪ Point differentials ▪ Win-loss results ▪ Tournament advancement ▪ Individual/team stats ▪ Season-long metrics	▪ Player injury contracts ▪ Officiating outcomes ▪ Discrete action contracts ▪ Physical altercations(excluding combat sports) ▪ Pre-collegiate sports

The following characteristics weigh in favor of permissibility:

- Settlement on aggregate, publicly reported outcomes (final scores, point differentials, win-loss results, tournament advancement);
- Use of objective, league-verified data as settlement sources;
- Established sport-level integrity infrastructure (anticorruption policies, data monitoring);
- Formal information-sharing agreements and coordination with leagues and governing bodies; and
- Individual or team statistical performance and season-long performance metrics.

PROCEDURES FOR 90-DAY REVIEW

Self-certification remains the central mechanism for listing event contracts. Under Section 40.2, DCMs can list contracts after self-certifying compliance with applicable requirements. The Special Rule review generally occurs after submission or listing. The CFTC states that there is no statutory requirement that a prediction market suspend trading during the review period, although the Commission may request suspension.

90-DAY REVIEW TIMELINE

DAY	ACTION
Day 0–10	The Commission may initiate review by written determination that there is a basis to believe the contract both involves an Enumerated Activity and may be contrary to the public interest. The review must commence within 10 days of listing.
Day 15	The Division of Market Oversight ("DMO") provides a written statement of concerns identifying contracts, Enumerated Activity, terms at issue, and factors warranting review.
Day 30	The prediction market may submit a written response, supporting data, expert submissions, economic analyses, and proposed modifications or mitigating safeguards.
Day 60	The DMO Director, with General Counsel concurrence, may submit a recommendation to the Commission and prediction market.
Day 70	The prediction market may respond to the DMO recommendation.
Day 90	The Commission may issue an order finding the event contract(s) contrary to the public interest. Extensions are to be issued only by request/agreement of the prediction market. If no order is issued, the review is deemed concluded.

Proposed Section 40.11(e)(1)(ii) provides an outside point for finality: if the Commission does not issue an order before the end of the 90-day review period, or if 100 days have passed since the date of the contracts' listing and any extension has concluded, the contracts may be listed or continue trading and the review is deemed concluded.

The CFTC may consolidate review of multiple event contracts involving the same or substantially similar underlying events, including across markets, and may issue a single order covering a group of related contracts. Proposed Section 40.11(f) limits delegation for initiation, recommendation, and final determination decisions, while Section 40.7 would delegate ministerial and record development functions to the DMO Director or designee.

COMMENT PERIOD

The Commission has specifically requested comment on the following topics, among others:

- The proposed definition of "gaming" and whether alternative definitions would be more appropriate.
- The treatment of specific sports categories and whether additional categories should be identified.
- Whether the Commission should adopt prospective categorical determinations for certain classes of event contracts, although the Commission preliminarily believes such determinations are not permissible under the structure of CEA Section 5c and the Administrative Procedure Act and seeks comment on an alternative reading rather than proposing that approach.
- Whether CEA Section 4(c) exemptive authority should be used to permit defined classes without individualized review.
- The burdens and practical implications of the self-certification process for event contracts.
- Data, surveillance, and information-sharing requirements for prediction markets listing sports contracts.
- State and tribal regulatory implications.
- Treatment of product categories near the boundary (game shows, reality show competitions, pageants, and music or talent competitions).

Adoption of a final rule may proceed relatively quickly. Interested parties (including states and members of Congress) are expected to engage actively in the comment process, and litigation challenging the final rule is widely anticipated.

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ENDNOTES

[1] Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 (proposed Jun. 10, 2026; published in Federal Register Jun. 12, 2026) (to be codified at 17 C.F.R. pt. 40).

[2] CEA Section 1a(19) defines "excluded commodity" to mean: (i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure; (ii) any other rate, differential, index, or measure of economic or commercial risk return, or value that is—(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or (II) based solely on one or more commodities that have no cash market; (iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or (iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence. Proposed Section 40.11(a)(2) would refer to all excluded commodities based upon the occurrence, extent of an occurrence, or contingency, with the exception of any change in the price, rate, value, or levels of a commodity described in CEA Section 1a(19)(i). According to the Proposal, this exception gives effect to the language in the Special Rule which excepts "a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i) of [the CEA]."