K&L GATES

2026 Mid-Year Prediction Market Report: Uncertainty Prevails Amidst Extraordinary Federal Action

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During the first part of 2026, the US Commodity Futures Trading Commission (CFTC or the Commission) has undertaken a sweeping campaign to protect its asserted exclusive jurisdiction over prediction markets—the markets on which event contracts are traded. This effort includes wide-ranging public remarks by its new Chairman outlining a broad regulatory program, a set of lawsuits and case filings across the country, and a series of administrative measures, including proposed rulemakings.

Since 2025, the number of applications to the CFTC for Designated Contract Market (DCM) status and the number of exchanges approved by the CFTC as DCMs have proliferated, and continue to rise. The CFTC has designated 12 new DCMs since 1 January 2025. As of this writing, 14 entities that have applied for DCM status during the same time period have pending applications with the CFTC. Robinhood, a futures commission merchant (FCM), reported that it traded over 12 billion event contracts in 2025 and provided a preliminary report that it traded 3.4 billion event contracts in January 2026 alone. Most of those contracts are traded on stand-alone prediction market platforms regulated by the CFTC. As those platforms continue to develop, they are entering into new markets, including perpetual derivatives contracts.

This mid-year report reviews the following important developments relating to prediction markets:

- the CFTC Chairman's regulatory agenda and the Commission's proposed rulemaking initiatives (Sections I and II);
- legislative developments and congressional investigations (Section III);
- the wave of litigation over product classification and the role of federalism (Section IV);
- federal enforcement actions for insider dealing on prediction markets (Section V);
- implications for investment companies and advisers (Section VI); and
- key takeaways for market participants amidst the uncertainty in prediction markets (Section VII).

In particular, as discussed in detail below, the Commission's efforts to secure broad administrative authority have been met with substantial crosscurrents. In the near term, those subsurface waves have created dislocation in adjacent gaming markets, regulatory uncertainty, and trading asymmetries. Looking ahead, three overarching unresolved questions appear to be taking shape, and those will persist until there is a definitive articulation of the CFTC's authority, whether from Congress or ultimately the US Supreme Court.

First, the CFTC's position regarding its "exclusive jurisdiction" to regulate prediction markets has been questioned as taking an overly expansive reading of the Commodity Exchange Act (CEA) and the amendments under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), without calibrating a number of factors. Those factors include the threshold structural question of whether the Commission has the authority to regulate certain prediction markets under its Dodd-Frank Act swaps-related authority, recent US Supreme Court rulings on the major questions doctrine, and balancing the long history of gaming regulation being largely left to state legislatures.

Second, market participants have raised important questions in connection with the CFTC's rulemaking proposals and seek clarification as to whether the proposed regulations apply additional public interest factors beyond the legislatively mandated findings and purpose provisions of the CEA. Whether the Commission can satisfactorily address those questions will be closely watched.

Third, market observers have cautioned that the CFTC's embrace of prediction markets may understate the risk of manipulation posed by binary option products previously identified by the Commission.[1] Notably, the financial press has pointed to research showing that when market prices are publicly reported on prediction markets, interested actors may have incentives to trade not merely to profit but to influence perceptions. Researchers have warned that political actors, governments, advocacy groups, or large traders can potentially use positions to create narratives about expected contract outcomes. Reported examples include attempts to influence perceptions of election results, efforts to affect public expectations regarding wars or climate events, and trading designed to create apparent momentum around a particular narrative.[2]

I. CFTC CHAIRMAN'S REGULATORY AGENDA

On 29 January 2026, Michael S. Selig delivered his first public remarks as Chairman of the CFTC.[3] Chairman Selig endorsed the continued development of prediction markets, emphasizing that event contracts have existed within the CFTC's regulatory framework for more than two-three decades and should not be viewed as legally novel products.[4] He argued that regulatory uncertainty has hindered the market and announced that the CFTC would support "lawful innovation" by creating clearer rules for event contracts. Specifically, Chairman Selig directed agency staff to withdraw the CFTC's 2024 proposed rule that would have restricted political and sports-related event contracts as well as a 2025 staff advisory that cautioned registrants about sports event contracts. The CFTC aimed to begin a new rulemaking process to establish clear standards for prediction markets and defend its jurisdiction over those event contracts instruments in ongoing litigation.

Overall, Chairman Selig's speech signaled a marked policy shift toward a more permissive federal approach to prediction markets, with an emphasis on regulatory clarity and legal certainty guided by the view that these markets can play a legitimate role in hedging exposure and information aggregation. Chairman Selig reinforced this policy shift in an opinion column in The Wall Street Journal, where he stated that "America is home to the most liquid and vibrant financial markets in the world because our regulators take seriously their obligation to police fraud and institute appropriate investor safeguards" and "[a]ny erosion of the CFTC's ability to regulate transactions in commodity derivatives is a direct threat to the markets and investors Congress intended the agency to oversee."[5]

At the same time, the US Attorney for the Southern District of New York indicated that his office was scrutinizing prediction markets under traditional fraud-related statutes.[6]

II. CFTC REGULATORY ACTIVITY

Withdrawal of Biden-Era Rule Proposal on Event Contracts

Moving to implement Chairman Selig's agenda, on 4 February 2026, the CFTC announced the withdrawal of the 2024 event contracts proposal and a staff advisory cautioning registrants that state litigation involving prediction markets may necessitate contingency planning, including ensuring that customers are aware of liquidation and close-out policies and procedures related to sports event contracts.[7] At issue is the "special rule" in CEA Section 5c(c)(5)(C) that grants the Commission the authority to determine that contracts involving an "enumerated activity" (i.e., terrorism, war, assassination, gaming, activities that are unlawful under federal or state law) and other similar activity determined by the Commission are contrary to the public interest.[8]

Although the CFTC has undertaken various efforts to clarify when certain event contracts are "contrary to the public interest," initial attempts at rulemaking largely went unnoticed by those outside the futures industry, because prediction markets had not yet attracted popularity or were limited in scope as education and research projects based on no-action relief. After the Dodd-Frank Act introduced the special rule, in 2011, the CFTC adopted Regulation 40.11 to implement the statutory language.[9] The final rule imposed a blanket ban on any exchange listing or clearinghouse accepting for clearing an event contract that "involves, relates to, or references" an enumerated activity without the Commission making a public interest determination.[10] The 2024 proposal would have categorically determined that contracts involving gaming were contrary to the public interest by also outright banning those contracts. Unlike the 2011 rulemaking, the 2024 proposal attempted to define the term "gaming," and the Commission explained that its goal was to foster a better understanding of the term as the only contract reviews the Commission had performed under Regulation 40.11 involved gaming-related contracts.[11]

Current Status of Regulation 40.11 and Proposed Rulemaking

Just a month after withdrawing the 2024 proposal, the Commission moved quickly to issue an Advance Notice of Proposed Rulemaking (ANPR) seeking public comment on prediction markets.[12] Spanning approximately 40 questions across six topic areas, the ANPR asked questions about how prediction markets resolve the outcomes of event contracts, if event contracts have unique characteristics regarding susceptibility to manipulation, if event contracts traded on margin have regulatory implications, and what factors the CFTC should consider when making a public interest determination. The CFTC received more than 3,500 comments in response to the ANPR.[13] The Commission then issued a Notice of Proposed Rulemaking (the Proposal), proposing amendments to Regulation 40.11 to clarify when event contracts traded on prediction markets may be determined to be contrary to the public interest and therefore may not be listed, traded, or cleared on or through a CFTC-registered entity.[14]

Under the Proposal, the CFTC would specify the types of event contracts that may be subject to the public interest analysis and set out a multifactor approach to determine if a contract is contrary to the public interest, considering some factors applicable to all event contracts and some only applicable to specific activities and rejecting the economic purpose test.[15] The Proposal would apply the "special rule" to event contracts in excluded commodities based on an occurrence, extent of an occurrence or contingency, except for changes in the price, rate, value, or level of certain financial measures and instruments. The "special rule" applies to event contracts listed as futures as well as event contracts listed as swaps.[16]

The CFTC also proposed that an event contract is subject to the special rule if the contract "involves" one of the underlying activities.[17] The Proposal adopts an event-focused test: whether settlement is determined by an occurrence, extent of an occurrence, or contingency in the activity. While unlawful activities, war, terrorism, and assassination are more straightforward, gaming is more nuanced.[18] The CFTC noted, for example, that a contract settling on whether a terrorist attack occurs involves terrorism, but a contract settling on crude oil shipping volume through the Strait of Hormuz does not involve terrorism or war merely because military conditions could affect oil flows.[19]

The Proposal also defined certain enumerated activities while preserving the Commission's authority to identify additional activities similar to the enumerated activities by rule or regulation. Of note is the Commission's definition of "gaming." It would define "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."[20] So, gaming includes games of chance, games of skill, mixed chance-and-skill games, sports, e-sports, and judged sports where the outcome depends on skills or athletic ability during the activity. Activities that would not be considered gaming include elections, awards, and contests based on broader evaluative judgment. The CFTC noted, for example, that a contract on a football player's touchdowns involves gaming because settlement turns on an occurrence in the game, while a contract on football game attendance does not involve gaming because settlement turns on ticket purchasing decisions.[21]

In its public interest analysis, the CFTC would consider purposes like providing hedging and price-basing utility, yielding economically useful or otherwise meaningful information, or promoting responsible innovation. Additional factors include potential threats to market integrity (e.g., risk of manipulation or market disruption, settlement integrity deficits, information leakage or exploitation of material nonpublic information) and challenges to compliance infrastructure or self-regulatory tools.[22] The Commission noted that no single factor is dispositive, but the weight of factors will depend on the contract and the specific underlying activity.

The Proposal amends the process for Commission review of event contracts subject to the special rule. Interestingly, contracts that are self-certified may be listed shortly after submission, and such contracts may begin trading before the Commission's review is complete. While the CFTC would be permitted to ask an exchange that had listed a contract subject to such a review to suspend the listing or trading of the contract, the exchange would not be required to abide by this request. Under the Proposal, the CFTC may decide to initiate a review of an event contract only when there is a basis to believe that the contract involves an activity subject to the special rule and may be contrary to the public interest.[23] The CFTC would provide a written determination initiating a review within 10 days after an exchange lists the contract, after which the contract would be subject to a 90-day review that may only be extended upon the exchange's request or consent.[24] When contracts involve the same or substantially similar underlying event, the CFTC may consolidate the public interest review of those contracts.

Comments to the Proposal were due on 27 July 2026, and based on the website, the Commission received over 1,393 comments from a diverse segment of the market. The Proposal remains under CFTC consideration.

Professional Sports Leagues MOUs

Professional sports leagues were initially reluctant to partner with prediction markets, worried that an association with "gambling" might be seen as impacting the integrity of their leagues. That position has changed recently.

On 19 March 2026, the CFTC entered into a Memorandum of Understanding (MOU) with Major League Baseball (MLB), establishing a framework "to discuss, cooperate, and exchange information concerning issues of common interest including protecting the integrity of professional baseball and the related prediction markets."[25] One goal of the MOU is to permit the CFTC and the MLB to respond quickly and effectively to any incident and stay abreast of emerging trends. Chairman Selig lauded the MOU as a collaborative step that will promote the integrity of the prediction markets and protect participants from fraud and manipulation.

Although the National Football League has not entered into an MOU with the Commission, it has expressed concerns about market manipulation, and in an effort to prevent manipulation, recommended that certain contracts be prohibited and that the age requirement to trade sports event contracts be raised to 21.[26]

Binary Options to Perpetual Futures: Event Contracts as Hedging Instruments

Discussion has increased about derivatives contracts, including event contracts, shifting from a binary payout structure with a fixed expiration date to a perpetual derivatives format. The CFTC acknowledges that perpetual derivatives contracts are a globally dominant form of cryptocurrency derivative trading. In fact, event contracts are now being traded as perpetual derivatives, compounding the complexity of an already novel instrument. Instead of expiring on a fixed date, the trader's position in the contract can be held indefinitely, so long as the trader continues to pay the required funding rates and margin.

Perpetual contracts seek to mirror the spot price of the underlying asset; the market price of the contract will approach parity with the current value of the underlying asset upon each funding rate interval. The mechanism used to do this is known as a funding rate—a periodic payment between the long and short sides of the contract. The direction and magnitude of the funding rate are determined by the difference between the contract's market price and the asset's spot price. When a perpetual contract trades above spot price, traders with long positions pay while traders with short positions are paid, and vice versa, incentivizing market participants to arbitrage away the differential by taking positions on the side of the market being paid. The funding rate mechanism aligns the contract's price to the underlying asset's price, replacing the expiration-based mechanism futures usually have.

On 29 May 2026, the CFTC announced two actions regarding perpetual contracts. The Commission released a policy statement expressing that perpetual derivative products raise novel questions around the CEA's core principles, especially concerning manipulation. For traditional futures contracts, the susceptibility-to-manipulation analysis directed at the cash settlement reference price typically occurs in one window—expiration. For a perpetual contract, the reference is at every funding interval for as long as the contract is active. Because of those unique perpetual contract characteristics, the Commission stated that perpetual contracts referencing asset classes not addressed in the order should be reviewed and approved on a case-by-case basis pursuant to Commission Regulation 40.3.

At the same time, the CFTC issued an order permitting DCMs to list a perpetual contract referencing the spot price of bitcoin. This signals that, despite some ongoing litigation around perpetuals, the structure of these contracts currently remains viable for CFTC approval.

III. LEGISLATIVE DEVELOPMENTS AND CONGRESSIONAL INVESTIGATIONS

119th Congress Legislative Updates

In the 119th Congress, at least 21 bills introduced in the House of Representatives and Senate Committees involved prediction market regulation. As of this writing, none has made it out of committee. In April 2026, however, a Senate Resolution was adopted in the Senate by unanimous consent to amend the Standing Rules of the Senate to prohibit Senators and Senate employees from trading on prediction markets.[27]

Bills Targeting Government Insider Trading

Acts have been discussed in both chambers to restrict or completely prohibit the ability of various government officials from participating in event contracts. Some Acts have suggested restrictions and penalties for the use of material nonpublic information obtained by one's position when trading in prediction markets. The proposed Acts could prohibit the

President, executive branch officers and officials, the Vice President,[28] employees of the Department of War, armed service members, and campaign officials[29] from “entering into prediction market transactions if (1) at the time of the event, they possessed material nonpublic information relevant to the transaction; or (2) they may reasonably obtain such material nonpublic information in the course of official duties.”[30]

Other Acts propose a complete ban on government officials from “purchasing[ing], sell[ing] or otherwise exchang[ing] an event contract.” Such Acts would apply to the President, Vice President, officers or employees at levels I through V of the executive,[31] Members of Congress,[32] Members' spouses and dependent children,[33] and judicial employees and officials.[34] Some of the Acts also lay out additional enforcement regulations and penalties that can be exercised against violators. One such example is giving the Attorney General power to bring civil actions in district court against individuals that engage in such prohibited conduct.[35] In such actions, the penalties would be publicly published on the supervising Ethics Office websites and could not be paid using funds provided by taxpayers.[36] The Campaign Funds Integrity Act of 2026 would add restrictions to the use of prediction markets for electoral candidates and authorized or political committees. Such Act would create monetary and criminal penalties for use of campaign funds to participate in prediction markets and allow such regulations to be promulgated by the Federal Election Commission.[37]

Bills Targeting Prediction Market Platforms

Certain Acts propose changes to the requirements of prediction market platforms and derivative clearing organizations with the goal of boosting consumer protection. The key points are assuring the integrity of the markets to shield users from fraudulent investors and protect youth from prediction market advertisements and enforce the 18-year-old requirement for use. The Facial Recognition to Protect Children Act would build upon the Prediction Market Act of 2026's amendments to the CEA and require prediction market platforms to use facial recognition software to verify the age of users prior to allowing them to partake in transactions on the platform.[38]

Two Acts propose prohibitions on what event contracts can be listed on or through registered entities and prediction markets. The STOP Corrupt Bets Act of 2026 has seen bicameral traction and would prohibit agreements involving sporting events, military action taken by the United States or foreign countries, political elections, and actions taken by the US government from being made available for trade on registered entities.[39] The Prediction Markets are Gambling Act extends this prohibition to casino style games and athletic competitions, as defined in the Act.[40]

The Prediction Market Act of 2026 imposes limitations on marketing by derivative clearing organizations and prediction markets. Such platforms would be prohibited from using deceptive promotional materials and advertisements containing material misstatements or omissions and from mentioning profit unless it includes statements of past result limitations, including specific statistical information on performance unless allowed by the CFTC, or includes unrepresentative, undisclosed paid, or speculative testimonials.[41]

Bills Targeting CFTC Regulatory Systems

Due to the uncertainty surrounding the regulatory framework of prediction markets, proposed Acts would extend and further define the CFTC's powers under the CEA pertaining to such platforms.[42]

In the bicameral Death Bets Act, CEA Section 5 would be amended to include a prohibition on the listing of contracts relating to “war, death, or similar activities” and give the CFTC power to determine what commodities may be related to such prohibitions and further banned.[43] The Event Contract Enforcement Act would take prohibitions a step further and amend the CEA to make it unlawful to make available contracts through or on a registered entity based on the occurrence or a contingency related to "activity that is unlawful under state or federal law, terrorism, assassination, war, gaming, the result of a vote in an election, conduct by or in branches of the federal government or levels of the state and local government, or other similar activity determined by the Commission to be contrary to public interest."[44]

To achieve consumer protection goals, the Prediction Market Act of 2026 proposes creating two new councils under the CFTC: an Advisory Council on Consumer Protection and an Innovation Advisory Council. The former would be composed of 15 members appointed by the CFTC Chairman and include at least three state attorneys general. Such council would meet at least every 120 days to discuss recommendations to ensure markets promote customer protection based on public comments about retail investor participation in derivatives markets and the design of mobile applications offering event contracts. They then would submit biannual Congressional Reports. The latter Council would advise on matters of concern to firms, exchanges, and regulators regarding derivatives and commodity markets during their biannual public meetings. This Act would also require the CFTC to conduct a study on event contracts and whether the CEA provisions prohibiting fraud and manipulative trading are enough to achieve such goals. In addition, there would be a joint study between the Securities and Exchange Commission (SEC) and the CFTC regarding how to split regulatory jurisdiction over event contracts, how the agencies can harmonize enforcement, and the impact of decentralized blockchain applications offering event contracts.

A key concern of Congress regarding prediction markets is whether there are enough resources to combat the use of the platforms by underage individuals and where to concentrate such enforcement. A notable bill in committee is the Prediction Markets Security and Integrity Act of 2026.[45] Distinct from other proposed legislation, this Act would prohibit operators of prediction markets from engaging in manipulative or deceptive practices that "predetermine the outcome or otherwise materially interfere with the integrity of the markets." This Act contains the following notable provisions:

- The Act would establish that "an online prediction market may not operate in a state unless expressly authorized under a state wagering program that has been approved by the Attorney General" and follows their established requirements.
- Under the Act, the state must submit its wagering program to the US Attorney General demonstrating that the program follows a variety of rules including: banning reload bonuses; prohibiting wagering on commenced sporting events, tier programs, and amateur athletic competitions; and preventing operators of prediction markets from requiring an individual engaged in wagering to participate in publicity as a condition for withdrawal of winnings.
- The state would be required to adhere to other obligations, such as establishing clear standards for advertisements, limiting the use of artificial intelligence in such contracts, requiring licenses and background checks for the regulatory bodies, and requiring operators of platforms to allocate a percentage of the revenue from wagering to gambling disorder treatment and education on responsible gaming while maintaining a minimum reserve of funds.
- Once such a program is submitted, the Attorney General would have 180 days to approve or deny the state a license which would need to be renewed every three years.[46]

Introduced in March 2026, this bill would present the greatest change to the prediction market regulatory scheme and establish a clear opportunity for the CFTC to be the leading regulator on prediction markets.

IV. LITIGATION OVER CLASSIFICATION AND THE ROLE OF FEDERALISM

Federal Jurisdiction Over Swaps Versus State Gaming Laws

The CFTC has moved to defend its asserted jurisdiction over prediction markets in courts throughout the country. On 17 February 2026, in the case *North Am. Derivative Exch., Inc. v. Nevada*, No. 25-7187 (9th Cir.), the Commission filed an amicus brief in the US Court of Appeals for the Ninth Circuit, representing its first formal judicial intervention in prediction market litigation. The CFTC argued in that filing that event contracts are swaps subject to the CFTC's exclusive jurisdiction and that state gambling laws are preempted as applied to contracts traded on CFTC-registered exchanges.

The federal courts have fragmented on this issue, almost guaranteeing eventual review by the US Supreme Court in due course. On 6 April 2026, in the first decision by a US court of appeals, a divided Third Circuit issued a decision in *KalshiEx LLC v. Flaherty*, No. 25-1922 (3d Cir.), granting a preliminary injunction barring the State of New Jersey from enforcing its gambling laws against Kalshi. The Third Circuit held that the CEA preempts state gambling laws as applied to sports-related event contracts traded on DCMs registered with the CFTC. In so ruling, the Third Circuit resolved in the affirmative two primary questions: (i) whether Kalshi's sports-related event contracts qualify as "swaps" under the CEA and (ii) whether the CEA preempts New Jersey's gambling laws as applied to those contracts when traded on a CFTC-registered DCM. Still, this remains a preliminary injunction ruling. The Third Circuit found only that Kalshi has a "reasonable chance, or probability, of winning."

As of this writing, three additional sets of appeals are pending in various US Courts of Appeals throughout the country. Before the US Court of Appeals for the Ninth Circuit are three appeals in cases involving Crypto.com, Kalshi and Robinhood challenging the Nevada Gaming Board.[47] Consolidated oral argument was heard on 16 April 2026. The CFTC filed an amicus brief supporting federal preemption and asserting exclusive federal jurisdiction over DCMs.

Before the US Court of Appeals for the Fourth Circuit is the appeal from the District of Maryland's denial of Kalshi's motion for a preliminary injunction against Maryland gaming regulators.[48] Oral argument was heard on 7 May 2026.

In addition, before the US Court of Appeals for the Sixth Circuit are two parallel appeals: (i) the appeal of the Southern District of Ohio's 9 March 2026 order denying Kalshi's motion for a preliminary injunction against the Ohio Commission's cease-and-desist directive ordering Kalshi to stop offering sports event contracts in Ohio[49] and (ii) the appeal from a Middle District of Tennessee order granting Kalshi's motion for a preliminary injunction and blocking Tennessee officials from enforcing state sports-wagering laws.[50] In a decision that implicitly disagreed with the analysis applied by the Third Circuit, the Southern District of Ohio concluded that Kalshi's sports event contracts "amount to acts of gambling" subject to state regulation and that the CEA did not clearly preempt Ohio's sports-gambling laws.[51] In connection with that appeal, on 24 April 2026, a Sixth Circuit panel issued an unpublished per curiam order denying Kalshi's motion for an injunction pending appeal. A merits panel heard argument on 30 July 2026. The CFTC and the Coalition for Prediction Markets filed amicus briefs in support of Kalshi; the Sixth Circuit however rejected the CFTC's motion to present oral argument.

As parties await results from the appellate courts, developments before the US district courts continue unabated. On 5 May 2026, tracking in many respects the Third Circuit's analysis, the US District Court for

the District of Arizona, granted the CFTC and the US Department of Justice's (DOJ) motion for a preliminary injunction in *Kalshi v. Johnson*, No. CV-26-01715 (D. Ariz.) and enjoined Arizona from enforcing its gambling laws against event contracts listed on CFTC-regulated DCMs. On 18 May 2026, the Arizona US district court issued an order granting the parties' joint stipulation to stay the district court litigation pending the Ninth Circuit's resolution of any of the three consolidated prediction market appeals.

In June and July 2026, a series of district court decisions declined to follow the Third Circuit's decision. On 17 June 2026, the US District Court for the Western District of Michigan denied Polymarket US's motion for a preliminary injunction barring Michigan state officials from enforcing state laws against operating an unlicensed sports betting platform.[52] The district court held that (i) Polymarket's "sports-related products do not fall within the statutory definition of 'swap'" because the CEA's swap definition "requires an inherent connection with potential economic consequences that [Polymarket's] sports products lack" and (ii) Michigan gambling law is not preempted based on the CFTC's claimed "exclusive jurisdiction" over transactions involving swaps. Weeks later, on 7 July 2026, the US District Court for the Southern District of New York denied Kalshi's motion for a temporary restraining order and preliminary injunction blocking New York from enforcing its gambling laws against the prediction market platform's sports-related offerings.[53]

Supremacy Clause, Not Plurality of State Regulation

On 2 April 2026, the CFTC and DOJ jointly filed a series of lawsuits against the states of Arizona, Connecticut, and Illinois in federal court over attempts to regulate prediction markets. As part of this effort, the CFTC asserted that the agency maintains exclusive jurisdiction over the US commodity derivatives markets, including event contract markets, and that Congress expressly preempted the application of state law to futures and swaps markets when it implemented the current regulatory scheme. This series of lawsuits followed the filing of 27 March 2026 lawsuit by the State of Washington against Kalshi, alleging violations of state gambling law by operating and advertising an online platform where users can transact in contracts on sports, elections, and other events.

Thereafter, on 24 April, the CFTC and the DOJ filed a complaint in the US District Court for the Southern District of New York against the New York State Governor, its Attorney General and its Gaming Commission, challenging both a cease-and-desist letter sent to Kalshi in October 2025 and civil enforcement actions filed by the state against Coinbase and Gemini Titan LLC, both federally registered platforms. After agreeing not to take enforcement action through 30 July, the New York Attorney General on 31 July 2026 filed suit in New York State court against Kalshi for operating an allegedly unlawful gambling operation in New York through its prediction market platform.[54] To prevent such a suit, the CFTC and DOJ sought a temporary restraining order and preliminary injunction against New York from seeking to enforce its gambling laws against CFTC-regulated platforms[55] and then sought to remove the newly filed New York State action to the US district court where its prior action was pending.

In the period from 28 April through 23 June 2026, the CFTC filed similar prediction-market lawsuits (or sought in intervene in lawsuits) against the states of Michigan, Minnesota, Rhode Island, New Mexico, and Kentucky. Results in the courts have been inconsistent. For example, on 28 April 2026, the CFTC sued Wisconsin in response to that state's lawsuits against Kalshi, Robinhood, Coinbase, Polymarket, and Crypto.com. Thereafter, on 14 July 2026, in response to the issuance of a temporary restraining order entered against Kalshi by a Michigan state court directing the company to cancel certain previously executed trades involving Michigan

residents,[56] the CFTC exercised its authority to stay an emergency rule change proposed by Kalshi and pursuant to its emergency authority under CEA Section 8a(9) directed Kalshi to fulfill the trades in question in accordance with its normal practices.[57] Reports indicate that Kalshi advised the Michigan court that it complied with the restraining order before the CFTC issued its directive. On 20 July 2026, a Washington state court issued a similar preliminary injunction against Kalshi.[58] In contrast, on 27 July 2026, the US District Court for the District of Minnesota granted a preliminary injunction against a Minnesota state law banning prediction markets, finding that prediction market platforms faced a threat of irreparable harm.[59] The next day, on 28 July 2026, the US District Court for the Eastern District of Wisconsin denied a motion by the CFTC for a preliminary injunction seeking to prevent Wisconsin from enforcing its gambling statute against prediction market platforms; the district court held that the CFTC had not shown a likelihood of success on the argument that sports-related event contracts are swaps.[60]

Tribal Gaming Disputes

Native American tribes have emerged as a distinct plaintiff group in the expanding litigation over prediction markets. In at least three separate actions filed in California, New Mexico and Wisconsin, Native American tribes have sued various prediction market platforms, asserting sovereign rights to govern gambling on their lands

Procedurally, those actions remain in early stages of litigation, but they are already generating threshold rulings that underscore the central jurisdictional controversy. For example, in Wisconsin, in the action *Ho-Chunk Nation v. Kalshi, Inc*., No. 25-cv-698 (D. Wis.), the US District Court denied the Nation's motion for a preliminary injunction seeking to preclude Kalshi from offering class III gaming on the Nation's lands, but at the same time affirmed the that Nation has standing to "sue Kalshi under IGRA [Indian Gaming Regulatory Act] for violating its Tribal-State compact and Gaming Ordinance by offering class III gaming on Indian lands absent authorization from plaintiff." By contrast, in the action *Blue Lake Ranchiera v. Kalshi, Inc.*, No. 3:25-cv-06162 (N.D. Cal.), the district court denied the tribal plaintiffs' application for preliminary injunctive relief, crediting arguments that the CEA and CFTC oversight may preempt tribal and state gaming regimes. This action has been stayed pending the appeals before the Ninth Circuit.

V. COORDINATED DOJ AND CFTC ENFORCEMENT FOR INSIDER DEALING

February 2026 CFTC Enforcement Advisory

On 25 February 2026, the CFTC's Division of Enforcement (the Division) issued an "Advisory on Enforcement Authority over Event Contracts," released in tandem with KalshiEx LLC's public disclosure of two recently closed insider trading disciplinary matters on its CFTC-registered DCM.

In an unusual move for the Division, the advisory used the two Kalshi cases as a vehicle to place prediction market participants on notice that the CFTC retains "full authority" to police illegal trading practices on any DCM listing event contracts and that conduct of the type addressed by Kalshi's internal compliance program—most notably manipulative conduct and the misuse of confidential information—would likely constitute violations of CEA Section 6(c)(1) and CFTC Regulation 180.1(a)(1) and (3).

The advisory enumerated various market practices the Division views as within its enforcement reach on event-contract platforms. Those include (i) misappropriation of confidential information in breach of a pre-existing duty of trust and confidence; (ii) prearranged noncompetitive trading, wash sales, and other disruptive trading practices under CEA Section 4c(a) and CFTC Regulation 1.38(a); and (iii) fraud and manipulation generally under the CEA. While acknowledging that Kalshi's internal enforcement program had appropriately handled the two specific matters, the Division emphasized that DCMs have an independent regulatory obligation to operate as first lines of defense and to maintain audit trails, conduct market surveillance, and enforce their rulebooks, and stated that they would continue coordinating with DCMs on their enforcement dockets and accepting referrals for parallel federal investigation where warranted.

In the first matter, an individual placed highly successful trades on Kalshi event contracts referencing the performance of videos posted to a particular YouTube channel during August and September 2025. Kalshi's surveillance systems flagged the account because of its near-perfect trading success on markets with low pre-trade probabilities. The investigation revealed that the trader was an editor for the YouTube channel underlying the contracts and therefore likely had advance access to the content and release timing of videos before they were publicly posted. Kalshi imposed a US$20,397.58 financial penalty (US$5,397.58 in disgorgement of trading profits plus a US$15,000 penalty) and a two-year suspension from the exchange. The CFTC advisory characterized this conduct as misappropriation-based “insider trading” potentially actionable under CEA Section 6(c)(1) and CFTC Regulation 180.1(a)(1) and (3).

In the second matter, in May 2025, Kalshi identified social-media videos appearing to show a candidate for Governor of California trading on Kalshi event contracts referencing his own candidacy. Kalshi's terms of use prohibited such trading, specifically barring a trader from transacting in any contract over which the trader exercises direct or indirect influence over the outcome. Kalshi's compliance team reportedly contacted the candidate the same day, and he acknowledged the trades were improper. Kalshi froze his account and ultimately imposed a financial penalty of US$2,246.36 (consisting of US$246.36 in disgorgement of trading-related amounts plus a US$2,000 penalty) and a five-year suspension from direct or indirect access to the exchange. The CFTC advisory observed that, on these facts, the trader potentially violated CEA Section 6(c)(1) and CFTC Regulation 180.1(a)(1) and (3) by employing a manipulative scheme or artifice to defraud and engaging in a course of business that operated as a fraud on counterparties.

Notably, Kalshi disclosed in connection with these matters that it had opened more than 200 investigations of suspicious trading activity since launching event contracts, with over a dozen progressing to active cases, and that it had referred both closed matters to the CFTC.[61]

In a subsequent Staff Advisory released on 12 March 2026, the CFTC's Division of Market Oversight (DMO) reinforced the self-regulatory obligations of DCMs for the contract markets they operate. The DMO advised that “[a]s front-line regulators, DCMs should be proactive, ensuring surveillance and oversight of trading in all of the products that they list, accounting for the particular characteristics and attributes of each product.”

CFTC Director of Enforcement Announcement

On 31 March 2026, newly appointed CFTC Director of Enforcement David Miller outlined the agency's five enforcement priorities: insider trading including the prediction markets; market manipulation, especially in energy markets; market abuse and disruptive trading; retail fraud; and willful failures to follow anti-money laundering and know-your-customer rules.[62] As to prediction markets in particular, Director Miller sought to disabuse the “myth” that insider trading laws do not apply, explaining that wrongful use of misappropriated information is unlawful under the CEA through “a straightforward application of the law,” most notably under the Dodd-Frank Act reforms to CEA Section 6(c) and under CFTC Regulation 180.1. Director Miller emphasized the CFTC's expectation that market participants cooperate with enforcement authorities and signaled that prediction markets would remain a priority area for the agency's enforcement program.

Maduro Arrest, Operation Absolut Resolve: *DOJ/CFTC v. Van Dyke*

On 23 April 2026, federal prosecutors in the Southern District of New York unsealed a five-count indictment, charging US Army Master Sergeant Gannon Ken Van Dyke, an active-duty Special Forces soldier stationed at Fort Bragg, with exploiting classified national security information to generate more than US$400,000 in trading profits on the Polymarket platform.[63]

According to the indictment, Van Dyke allegedly participated in the planning and execution of a covert US military mission that culminated in the 3 January 2026 capture of Venezuelan leader Nicolás Maduro and his wife Cilia Flores. As part of his military duties, Van Dyke was bound by a 2018 Sensitive Compartmented Information (SCI) nondisclosure agreement and an 8 December 2025 nondisclosure agreement specifically governing Western Hemisphere operations.

The indictment charged, among other violations, that between approximately 27 December 2025 and 2 January 2026, Van Dyke allegedly used a VPN to access the offshore Polymarket platform and allegedly purchased roughly US$33,934 in USDC stablecoin across multiple Maduro and Venezuela-related binary event contracts—including “Maduro out by 31 January 2026,” “US Forces in Venezuela by 31 January 2026,” “Will the US invade Venezuela by 31 January,” and “Trump invokes War Powers against Venezuela by 31 January”—taking the “Yes” position in each. When the operation concluded successfully on 3 January 2026, the contracts resolved in his favor and Van Dyke allegedly cashed out approximately US$409,881 in profits, thereafter taking steps to obscure the source of the proceeds and his connection to the trading accounts.

This case appears to be the first federal criminal prosecution alleging insider trading in prediction market event contracts under the CEA. It also represents the first criminal application of the so-called “Eddie Murphy rule” to event contract trading. The “Eddie Murphy rule” is the informal name for government insider trading provisions added to Section 4c(a) of the CEA by Section 746 of the Dodd-Frank Act. Those provisions prohibit certain government employees—including members of the armed services—from trading futures, swaps, options, or event contracts while in possession of material nonpublic information obtained through their official duties.

In a coordinated action announced the same day, the CFTC filed a parallel civil complaint against Van Dyke in the Southern District of New York, CFTC v. Van Dyke, No. 26-cv-3369. The complaint alleges the same underlying scheme and charges violations of CEA Sections 4c(a)(3), 4c(a)(4)(C), and 6(c)(1) as well as CFTC Regulation 180.1(a)(1) and (3). The action is notable as it appears to be the first CFTC enforcement action alleging insider trading in event contracts and the agency's first invocation of the Eddie Murphy rule.

Google Engineer: *DOJ/CFTC v. Michele Spagnuolo*

On 27 May 2026, federal prosecutors in the Southern District of New York unsealed a three-count criminal complaint, charging Michele Spagnuolo (known online as “AlphaRaccoon”), a long-time Google staff information security engineer, with allegedly misusing confidential nonpublic corporate data to generate approximately US$1.2 million in trading profits on the Polymarket prediction market platform.[64] Based on DOJ's press release, Spagnuolo, a 36-year-old Italian citizen residing in Switzerland who had worked at Google since 2014, was arrested in New York, where he was released on a US$2.25 million bond. This is the second prediction market insider trading prosecution brought by the SDNY and the CFTC, both charged within a two-month span.

According to the unsealed criminal complaint and parallel pleadings filed by the CFTC, between approximately October and December 2025, Spagnuolo allegedly used a confidential internal Google software tool to access nonpublic data underlying Google's annual “Year in Search” rankings. He then traded in at least 23 Polymarket event contracts tied to those rankings, including “#1 Searched Person on Google this year” and “Top 5 Most Searched People on Google 2025,” with near-perfect accuracy. When Google publicly released its Year in Search results on 4 December 2025, the AlphaRaccoon account resolved its positions at a profit of roughly US$1.2 million, after which Spagnuolo allegedly took steps to obscure the source and ownership of the proceeds by transferring cryptocurrency to a separate wallet. The complaint charges violations premised on the misappropriation theory of insider trading under CEA Section 6(c)(1) and CFTC Regulation 180.1, alleging that Spagnuolo misappropriated confidential business information in breach of duties owed to his employer.

In a coordinated civil action filed the same day in the Southern District of New York, the CFTC sued Spagnuolo for insider trading in event contracts on Polymarket, alleging that he misappropriated sensitive nonpublic information about Google's 2025 “Year in Search” in violation of the antifraud and anti-manipulation provisions of the CEA Section 6(c)(1) and Regulation 180.1.

Taken together, the Van Dyke and Spagnuolo matters demonstrate that the DOJ and CFTC view prediction market event contracts as fully subject to the CEA's anti-fraud and insider trading framework. Although the underlying information differed—classified government intelligence in one case and confidential corporate information in the other—the government relied in both matters on traditional misappropriation principles rather than announcing a prediction-market-specific theory of liability. As a result, participants in event contract markets could expect insider trading enforcement to develop in parallel with established futures and securities jurisprudence.

Investigations Covering Trading in Event Contracts by Politicians

On 22 April 2026, the prediction market Kalshi fined and suspended three congressional candidates for “political insider trading” after they traded in contracts tied to their own elections.[65] Three candidates from Minnesota, Texas, and Virginia received five-year platform bans and fines ranging from US$539 to over US$6,200. Kalshi stated that the conduct at issue in these cases violated its CFTC-approved exchange rules.

Subsequent press reports indicated that the DOJ has initiated investigations into politicians for insider trading on prediction markets.[66] On 31 July 2026, the CFTC announced a settlement of charges against former Congressman George Santos for engaging in manipulative activity in an event contract, the underlying event of which Santos controlled.[67]

Consumer Protection Investigations

In June 2026, the financial press revealed that the CFTC had opened an investigation into prediction markets following reports that prediction markets paid social media influencers to film fake betting videos showing winnings, without making the required disclosures.[68]

On 26 June 2026, following those reports, a consumer advocates group filed a civil action against Polymarket in the District of Columbia Superior Court alleging violations of consumer protection laws, alleging a pattern of deceptive marketing practices by placing “influencer videos using a fake Polymarket site” and by targeting “college students on US campuses to encourage students to gamble on their platform.”[69]

On 30 June 2026, a Massachusetts state court granted state authorities permission to amend its enforcement action against Kalshi for offering sports betting without a license and to add a series of consumer protections claims.[70] Such claims included offering sports wagering to persons under 21 years old, failing to implement responsible gaming measures, offering wagers on certain college sports events, and mislabeling its sports wagering platform.

VI. IMPLICATIONS FOR ASSET MANAGERS

Advisers and Portfolio Managers: Fiduciary Duties, Codes of Ethics, Trading Signals

The rise of prediction markets creates a variety of questions for asset managers. These include conflicts of interest with employee trading of event contracts, fiduciary concerns, and appropriate monitoring and disclosure if portfolio managers use such contracts as investment positions or trading signals. Asset manager firms have been quickly adapting, revising codes of ethics and their disclosure.

Advisers owe a fiduciary duty to their clients, and section 204A of the Investment Advisers Act of 1940 requires that advisers adopt codes of ethics that regulate and supervise employees' personal trading to prevent the misuse of material nonpublic information. The Investment Company Act of 1940 (1940 Act) contains similar codes of ethics requirements. Under these provisions, codes of ethics include requirements to pre-clear certain trades, and include general obligations to ensure that personnel fulfill their fiduciary obligations. Many asset manager's codes of ethics have not historically addressed event contracts, but their explosion in popularity has caused chief compliance officers to take a fresh look and update their codes accordingly.

Rather than banning the use of event contracts by advisory personnel outright, asset managers have generally been taking a more nuanced approach. Codes of ethics revisions typically take into account the types of contracts being used, perhaps permitting the use of contracts referencing sporting events or political outcomes, while restricting the use of contracts that reference securities or that may implicate material nonpublic information held by the employee. These revisions often tie back to the overall fiduciary duty owed and typically caution advisory personnel and portfolio managers to consider if they are taking personal positions adverse to what they are recommending to clients.

Unlike compliance monitoring for personnel stock trades, which can typically be done through established compliance tools that link to brokerage accounts, tools for ongoing compliance monitoring related to event contracts are still in the development stage. Accordingly, codes of ethics revisions have generally taken this into account, relying more on employee certifications and training rather than active monitoring.

Another important area to address is the use of event contracts as a direct investment or a trading tool. Some portfolio managers are already trading event contracts directly for client accounts, or using prediction market pricing as a research signal. Managers should ask if event contracts are within their investment mandates and how they are valued for net asset value purposes, a question that becomes acute when the underlying contract has a binary settlement structure. In addition, it is important that the use of event contracts be appropriately disclosed.

Investment Companies: Novel ETFs and Event Contracts

Event contracts are also poised to create an entirely new asset class for registered funds. In early 2026, several exchange-traded fund (ETF) providers filed with the SEC to launch ETFs built entirely around political event contracts. These funds cover political outcomes for the 2028 presidential race and the 2026 House and Senate midterms. Other fund groups filed near-identical slates of ETFs shortly after. In April 2026, sponsors filed registration statements with the SEC for additional prediction market ETFs on other topics such as the price of cryptocurrencies and oil next year and whether there will be a recession in the future, and ETFs investing in contracts related to sports outcomes are also in registration.

While none of these event contract-based ETFs has yet launched, they raise fundamental questions about how such ETFs would operate, given the binary nature of the underlying assets, as well as their appropriateness for use in the registered fund wrapper. As a result, on 30 June 2026, the SEC issued a request for public comment (RFC) on ETFs seeking to invest in innovative asset classes or engage in novel investment strategies (Novel ETFs), including those that invest in event contracts. In light of the increase in such novel strategies, the SEC seeks comments on whether the existing ETF regulatory framework is appropriate for Novel ETFs and whether modifications are warranted.

The RFC requests comments on many fundamental topics. These include whether certain types of ETFs that do not primarily gain their investment exposure through securities should be considered investment companies under the 1940 Act at all, if the ETF rule should be amended to address concerns arising from Novel ETFs, and whether there should be changes made to the process for registration and review of Novel ETFs. Comments are due on 31 August 2026.

Security Status: Swaps on Single Stocks, CFTC vs. SEC Regulation

At the moment, contracts in the prediction markets are generally regulated under exclusive CFTC jurisdiction via the CEA in the form of event contracts, rather than SEC-regulated securities. But in instances where an event contract references a single-stock or some other narrowly drawn securities interest, the contract may potentially move outside of CFTC jurisdiction if it takes the shape of a security-based swap, mixed swap, or security future.

On June 18, 2026, the SEC and the CFTC issued a joint RFC on potential ways to draw clearer regulatory lines with respect to innovative products that may implicate both SEC and CFTC regulatory interests.[71]

The RFC acknowledged that financial markets are rapidly evolving, growing increasingly interconnected through technological advancements, and have started to generate convergent experiences for market participants within the greater regulatory ecosystem.

The joint RFC seeks input on the following: definitions relating to swaps and security-based swaps, including the scope of certain exclusions from the swap definition; regulatory treatment of mixed swaps; regulatory treatment of novel or emerging products; jurisdictional and interpretive questions; potential areas in need of greater clarity regarding regulatory definitional lines; and potential areas for alternative compliance. Comments are due by 24 August 2026.

VII. KEY TAKEAWAYS: PREDICTION MARKETS IN PRACTICE

Prediction markets stand at a significant point in their development. As these markets experience rapid growth in popularity as a financial asset class, federal agencies and civil regulators have made clear their intent to exercise enforcement authority to ensure market integrity and protect users. Cases in this area are exploring many novel and complex legal and factual issues, and it remains to be seen how aggressive the agencies will continue to be, particularly when additional regulatory guidance is expected to emerge.

To navigate this evolving environment, market participants and those who work in industries that are increasingly tied to prediction markets may wish to consider a number of key principles.

Regulatory Inquiries

Market participants should be aware of the enforcement risks and be prepared to respond to regulatory inquiries if an exchange, CFTC, DOJ, or state regulator initiates an investigation.

Updating Policies and Procedures

Whether a market participant becomes active in prediction markets or not, it needs to consider how these new markets implicate existing obligations and policies and procedures. In particular, asset managers need to consider whether employees have access to material nonpublic information and should be restricted from trading certain types of event contracts. Accordingly, asset managers may need to update their code of ethics and disclosures and provide appropriate training.

CFTC Registration

If a market participant decides to enter into prediction markets, the first consideration is whether it is appropriately registered with the CFTC as a commodity pool operator or commodity trading advisor or exempt from such registration. After the entity determines its CFTC registration obligations, it will need to comply with those obligations.

Prediction Market Membership

Although prediction markets offer click-through membership applications, a market participant likely will prefer reviewing the membership agreement before agreeing to its terms. Alternatively, an entity may decide to trade on prediction markets through its FCM. The entity's agreement with its FCM would likely include key terms about overnight, weekend, and holiday trading. The entity should closely review how the FCM will treat the entity's and other clients' extended hours trading and be aware of any heightened risks that arise during those trading hours, including things like pre-funding positions, auto-liquidation, and other risk management protocols.

ENDNOTES

[1] *See, e.g.,* CFTC Release No. 8025-19, *CFTC Charges Three Individuals with Fraudulently Soliciting U.S. Customers in Binary Options Scheme* (Sept. 30, 2019).

[2] *See* A. Goldenberg, Prediction Market Cheating Gets Creative, Wall St. J. (May 5, 2026); A. Osipovich & S. Schechner, *Did a Mystery Trader Tamper With the Temperature to Win Big on Polymarket?,* Wall St. J. (Apr. 23, 2026); J. Mitts & M. Ofir, *From Iran to Taylor Swift: Informed Trading in Prediction Markets* (Mar. 16, 2026), available at https://ssrn.com/abstract=6426778.

[3] *See* Michael S. Selig, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (Jan. 29, 2026).

[4] Notably, the Commission first designated a prediction market as a DCM in February 2004, but it issued no-action relief from DCM registration to the Iowa Electronic Markets (operated by the University of Iowa) in 1992.

[5] Michael S. Selig, *States Encroach on Prediction Markets*, Wall St. J. (Feb. 16, 2026).

[6] *See Wall Street's Top Cop Expects Enforcement on Prediction Markets*, Bloomberg (Feb. 5, 2026).

[7] *See* CFTC Release No. 9179-26, CFTC Withdraws Event Contracts Rule Proposal and Staff Sports Event Contracts Advisory (Feb. 4, 2026).

[8] 7 U.S.C. § 7a-2(c)(5)(C).

[9] Provisions Common to Registered Entities, 76 Fed. Reg. 44776 (July 27, 2011).

[10] 17 C.F.R. § 40.11(a).

[11] Event Contracts, 89 Fed. Reg. 48968 (proposed June 10, 2024). The CFTC proposed to define "gaming" as: "staking or risking by any person of something of value upon: (i) the outcome of a contest of others; (ii) the outcome of a game involving skill or chance; (iii) the performance of one or more competitors in one or more contests or games; or (iv) any other occurrence or non-occurrence in connection with one or more contests or games." Gaming would have also included "the staking or risking by any person of something of value upon: (i) the outcome of a political contest, including an election or elections; (ii) the outcome of an awards contest; (iii) the outcome of a game in which one or more athletes compete; or (iv) an occurrence or non-occurrence in connection with such a contest or game, regardless of whether it directly affects the outcome."

[12] Prediction Markets, 91 Fed. Reg. 12516 (advance notice proposed Mar. 16, 2026).

[13] Prediction Markets, Docket No. CFTC-2026-0331, Regulations.gov.

[14] Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806 (proposed June 12, 2026) (to be codified at 17 C.F.R. pt. 40).

[15] Unlawful activities raise public interest concerns because their designation as illegal means they pose public harm. Terrorism, assassination, and war-related contracts present national security risks and are highly likely to be contrary to the public interest. Only certain games would be contrary to the public interest, such as games of random chance. Under the Proposal, political elections are not gaming. Sport contracts would not be contrary when they settle based on metrics that may provide useful information. Factors indicating a sports event contract is contrary to the public interest include whether the contract is based on player injury, an official's decision, a physical action's outcome, a fight between players, or

a precollegiate sporting event. Factors indicating a sports event contract is not contrary to the public interest include the contract's containing objective and verifiable settlement data, the sport's being subject to an established integrity infrastructure with a recognized governing body and published rules, and an exchange's formal information-sharing agreement with the relevant governing body.

[16] The CFTC has noted that event contracts traded on prediction markets may fall within the definition in the CEA of the term "swap" and may also be futures contracts subject to the CEA.

[17] 91 Fed. Reg. at 35859.

[18] The CFTC describes gaming as "the game itself, the activity that occurs," and seeks not to make the category "limitless."

[19] 91 Fed. Reg. at 35821.

[20] *Id*. at 35825.

[21] *Id*. at 35826-27.

[22] Price utility and information utility include whether the information can be used when making economic decisions while promoting innovation and fair competition. Threats to market integrity encompass considerations related to settlement integrity, information leakage, and misuse or misappropriation of confidential information. Compliance and regulatory challenges include those arising from a prediction market's ability to administer contracts, including the dispute resolution process and adoption of guardrails against the misuse of nonpublic information (e.g., prohibition on certain categories of traders who are likely to have access to insider information from trading).

[23] The CFTC would delegate authority for ministerial and record-development responsibilities to the director of DMO or the director's designee, which does not extend to the responsibilities in proposed Regulation 40.11(f), such as initiating a public interest review, submitting a recommendation to the CFTC, and issuing a public interest determination.

[24] The determination timing triggers other deadlines at 15 days (DMO's written statement of concerns), 30 days (registered entity's response), 60 days (DMO's, with the General Counsel's concurrence, written recommendations), 70 days (registered entity's response), and 90 days (CFTC's final order). If the CFTC has not issued an order within 100 days, the exchange may list the event contract subject to review and the review is deemed completed.

[25] CFTC Release No. 9199-26, *CFTC and MLB Sign Groundbreaking MOU* (Mar. 19, 2026).

[26] *See* Letter from National Football League to CFTC, *Prediction Markets: Public Interest Determinations* (July 27, 2026).

[27] *See* S. Res. 708. Note that the House has proposed similar prohibitions that have not yet been approved, *see* H.Res.1263.

[28] *See* End Prediction Market Corruption Act, S. 4017, 119th Cong. § 2(d)(B)(2) (2026) (prohibiting senior executive officials from involvement in event contracts, the subject of which is the matter in which they are personally or substantially involved as a government official or employee).

[29] *See* Campaign Event Contract Integrity Act, H.R. 8771, 119th Cong. § 3 (2026) (prohibiting the use of prediction market trading for covered campaign officials when knowingly in possession of material nonpublic campaign information nor tipping someone off to use such information).

[30] *See* Honesty and Trust in Service Act, H.R. 9082, 119th Cong. § 2(a) (2026) (restricting prediction market agreements for DOW employees and armed service members); *see also* the Public Integrity in Financial Prediction Markets Act of 2026, S. 4188, 119th Cong. (2026) (prohibiting insider trading of government officials as a means for making a profit

and requiring ethics reports to be published to the Congressional ethics Offices).

[31] Prediction Market Act of 2026 S. 4469, 119th Cong. (2026) § 3 (prohibiting officers or employees defined under 5 U.S.C.§ 5312 et seq. to enter into an event contract).

[32] *See* End Prediction Market Corruption Act § 2(d)(2)(a) (prohibiting the President, Vice President, Members of Congress from trading on prediction markets).

[33] *See* Stop Lawmakers from Predicting Act, H.R. 9367, 119th Cong. (2026) (prohibiting members of Congress, their spouses and their dependent children from entering into agreements based on specific government policies, government actions, a political outcome or "any other event which has come to the attention of covered individual as a result, directly or indirectly, of the service of the member . . . regardless of any connection to the congressional duties of such [m]ember").

[34] *See* Drain the Swamp Act, S. 23, 119th Cong. (2026).

[35] *See* End Prediction Market Corruption Act.

[36] *See* Drain the Swamp Act § 13163.

[37] *See* Campaign Funds Integrity Act of 2026, H.R. 8912, 119th Cong. (2026) § 3(a).

[38] *See* Facial Recognition to Protect Children Act, H.R. 9706, 119th Cong. (2026) (details additional requirements of disposing of such data for privacy reasons and offering enforcement power of such to the Federal Trade Commission).

[39] Note that there is an exception for agreements made for hedging or mitigating commercial risk. See H.R.8123 and S.4226.

[40] This does not preempt state laws that prohibit such gambling contracts. *See* S.4160.

[41] *See* Prediction Market Act of 2026 § 3.

[42] *See* The Prediction Market RISK Act, H.R. 8148, 119th Cong. (2026) (extending the CFTC's authority to apply 7 U.S.C. § 7a-2(c) to illegal trading practices occurring in prediction market contracts).

[43] *See* H.R.7942 and S.4035; see also Prediction Market Act of 2026 (prohibiting prediction market contracts that relate to violence as the CFTC determines is contrary to public interest based on detailed criteria).

[44] *See* Event Contract Enforcement Act, H.R. 7840, 119th Cong. (2026) (defining gaming and exempting conduct in states that expressly exempt such conducts from the application of such prohibition).

[45] *See* Prediction Market Security and Integrity Act of 2026, S. 4050, 119th Cong. (2026).

[46] Note that nothing in the Prediction Market Act of 2026 "preempts or limits the authority of a State or an Indian Tribe to enact, adopt, promulgate, or enforce any law, rule, regulation, or other measure with respect to online prediction markets that is in addition to, or more stringent than, the requirements of this Act."

[47] *See N. Am. Derivatives Exch., Inc. (Crypto.com) v. Nevada*, Case No. 25-7187 (9th Cir.); *KalshiEx LLC v. Hendrick, No. 25-7516 (9th Cir.); Robinhood Derivatives, LLC v. Dreitzer*, No. 25-7831 (9th Cir.).

[48] *See KalshiEx LLC v. Martin*, No. 25-1892 (4th Cir.).

[49] *See KalshiEx LLC v. Schuler*, No. 26-3196 (6th Cir.).

[50] *See KalshiEx LLC v. Orgel*, No. 26-5235 (6th Cir.).

[51] *See* Opinion and Order, *KalshiEx, LLC v. Schuler*, No. 2:25-cv-1165, slip op., Dkt. 69 (N.D. Ohio Mar. 9, 2026).

[52] *See* Opinion and Order, *QCX LLC v. Nessel*, No. 1:26-cv-710, slip op. (W.D. Mich. June 17, 2026).

[53] *See* Opinion and Order, *KalshiEx LLC v. Williams*, No. 25 Civ. 8846 (AT), slip op., Dkt. 106 (S.D.N.Y. July 7, 2026).

[54] *See* Petition, *People v. KalshiEx LLC*, NYSCEF No. 1 (N.Y. Sup. Ct. July 31, 2026).

[55] *See* Motion for Temporary Restraining Order, *United States v. New York*, Case No. 1:26-cv-3404, Dkt. 118 (S.D.N.Y. July 30, 2026).

[56] Order Granting Temporary Restraining Order, *Nessel v. KalshiEx LLC*, Case No. 26-1087-CZ (Mich. Cir. Ct. Ingham Cnty. June 29, 2026).

[57] *See* CFTC Release No. 9267-26, *Order Staying Emergency Rule Filed by KalshiEx LLC and Directing Kalshi to Fulfill Open Trades Involving Michigan Residents* (July 14, 2026).

[58] Order Granting Amended Motion for Preliminary Injunction, *Washington v. KalshiEx, LLC,* No. 26-2-10264-3 (SEA) (Wash. Super. Ct. King Cnty. July 20, 2026).

[59] Order on Plaintiffs' Motions for Preliminary Injunction, *United States v. Minnesota*, No. 26-cv-2661, slip op., Dkt. 48 (KMM) (D. Minn. July 27, 2026).

[60] Decision and Order, *United States v. Wisconsin*, Case No. 26-C-749, slip op., Dkt. 54 (E.D. Wis. July 28, 2026).

[61] *See Kalshi News* (Feb. 25, 2026), available at https://news.kalshi.com/p/kalshi-trading-violation-enforcement-cases.

[62] *See* David I. Miller, Remarks, New York University School of Law, *CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC* (Mar. 31, 2026).

[63] *See* Indictment, *United States v. Van Dyke*, 26 Cr. 156 (S.D.N.Y.).

[64] *See* Complaint, *United States v. Spagnuolo*, 26 Mag. 2020 (S.D.N.Y.).

[65] *See Enforcement update: Kalshi continues crackdown on political insider trading* (Apr. 22, 2026), available at https://news.kalshi.com/p/kalshi-political-insider-trading-enforcement-update.

[66] *See* A. Sen & P. Srivastava, *DOJ investigating ex-US lawmaker Santos for insider trading on Kalshi, source says*, Reuters (June 2, 2026).

[67] CFTC Release No. 9276-26, CFTC Orders George Santos to Pay $35,000 for Manipulative Trading of State-of-the-Union Event Contract (July 31, 2026).

[68] *See* K. Long, N. Mehta, C. Ostroff, *Lawmakers Call for Investigation Into Deceptive Advertising by Polymarket*, Wall St. J. (June 26, 2026).

[69] *See* Complaint, *Nat'l Ass'n of Consumer Advocs., Inc. v. Blockratize, Inc. d/b/a/ Polymarket*, No. 2026-CAB-004388 (D.C. Super. Ct.) (June 26, 2026).

[70] *See Massachusetts v. KalshiEx LLC*, Civil No. 25-2525 (Suffolk Super. Ct. June 30, 2026).

[71] Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, Securities Act Release No. 11424, Exchange Act Release No. 105735, 91 Fed. Reg. 37873 (June 24, 2026).

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