

# Prediction Markets: CFTC Issues New Advisory and Advance Notice of Proposed Rulemaking *Comments Deadline April 30, 2026*

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On March 12, 2026, the Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) issued two coordinated actions on prediction markets: a Division of Market Oversight (“**DMO**”) staff advisory to designated contract markets (“**DCMs**”) that sets near-term supervisory expectations for listing and overseeing event contracts (the “**Advisory**”),<sup>1</sup> and an Advance Notice of Proposed Rulemaking (RIN 3038-AF65) (the “**ANPR**”) inviting public comment on how the Commodity Exchange Act (the “**CEA**”) and existing CFTC regulations should apply to event contracts traded on prediction markets.<sup>2</sup>

The CEA sets forth a special rule for event contracts at Section 5c(c)(5)(C), which authorizes the Commission to conduct public interest reviews to determine whether a particular event contract is contrary to the public interest if

<sup>1</sup> Div. of Mkt. Oversight, Commodity Futures Trading Comm’n, Prediction Markets Advisory, CFTC Staff Letter No. 26-08 (Mar. 12, 2026), available [here](#).

<sup>2</sup> *Notice of Proposed Rulemaking; Prediction Markets*, Commodity Futures Trading Comm’n (Mar. 12, 2026), available [here](#).

it involves certain enumerated activities, such as gaming, terrorism, assassination, war, or activity that is unlawful under federal or state law.<sup>3</sup> If the Commission determines that such a contract is contrary to the public interest, no DCM or other registered entity may list the contract.

The Commission's approach to event contracts has evolved over more than three decades, beginning in the 1990s with no-action relief for non-profit or otherwise scope-limited prediction markets,<sup>4</sup> followed by its 2008 concept release on event contracts,<sup>5</sup> a 2024 proposed rule addressing event contracts and public interest determinations,<sup>6</sup> and the subsequent withdrawal of that proposal in February 2026 to reassess in light of state actions and litigation concerning exclusive CFTC jurisdiction and definitional issues under the CEA.<sup>7</sup> The dual release of the ANPR and the Advisory also closely follows CFTC Chairman Michael Selig's March 9, 2026 remarks at the FIA Global Cleared Markets Conference, where he reaffirmed the CFTC's primary role in regulating prediction markets, consistent with the CFTC's arguments in an amicus brief filed in one of the ongoing state litigations,<sup>8</sup> and previewed the forthcoming Advisory and ANPR.<sup>9</sup>

## Key Takeaways

- **Near-Term Supervisory Expectations.** The Advisory sets immediate guidance for DCMs on listing and overseeing event contracts, with particular focus on manipulation risk, sports-related micro-events, resolution criteria, and data sources.
- **Public Interest Review and Product Classification.** The ANPR seeks input on Section 5c(c)(5)(C) public interest determinations—including how to define unlawful activity, gaming, terrorism, and war—and on classifying event contracts as swaps or futures.
- **Core Principles and Inside Information.** The ANPR asks whether to amend exchange and clearing core principles for prediction markets, as discussed below, and whether trading by persons with asymmetric information serves the public interest.

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<sup>3</sup> 7 U.S.C. § 7a-2(c)(5)(C). The statutory term for prediction market listings, "event contracts," refers to "agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency." Please see below for a discussion of the term "excluded commodity."

<sup>4</sup> See CFTC No-Action Letter No. 93-66 (Feb. 5, 1992) (issued to the University of Iowa regarding Iowa Electronic Markets).

<sup>5</sup> Concept Release on Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25,669 (May 7, 2008).

<sup>6</sup> Event Contracts; Proposed Rule, 89 Fed. Reg. 48,968 (June 10, 2024).

<sup>7</sup> Event Contracts; Withdrawal of Proposed Regulatory Action, 91 Fed. Reg. 5386 (Feb. 6, 2026).

<sup>8</sup> Brief for CFTC as Amicus Curiae Supporting Appellant, *N. Am. Derivatives Exch., Inc. v. State of Nevada*, No. 25-7187 (9th Cir. Feb. 17, 2026); see also Brief for Former Federal Government Officials and Experts on the Scope of CFTC Jurisdiction as Amici Curiae Supporting Appellant, *N. Am. Derivatives Exch., Inc. v. State of Nevada*, No. 25-7187 (9th Cir. Feb. 3, 2026) (written by Willkie partners J. Christopher Giancarlo, Kari Larsen, and A. Kristina Littman).

<sup>9</sup> Michael S. Selig, Chairman, Commodity Futures Trading Comm'n, *The Next Era of American Markets Leadership* (Mar. 9, 2026), available [here](#). For more information on Chairman Selig's remarks, see Giancarlo et al., *CFTC Chairman Michael Selig Unveils the Agency's Comprehensive Regulatory Agenda at FIA Conference* (Mar. 2026), available [here](#).

- **Comment Deadline.** Comments on the ANPR can be submitted via the CFTC’s [Public Comments Portal](#) and are due April 30, 2026.

### The Advisory: Compliance Imperatives

The Advisory establishes immediate expectations for DCMs operating or applying for a license to operate prediction markets, signaling compliance benchmarks against which product submissions will be evaluated. DCMs should prioritize the following:

- *Contract Design and Manipulation Analysis.* Pursuant to DCM Core Principle 3, DCMs must not list contracts that are readily susceptible to manipulation. The Advisory directs DCMs to the Appendix C guidance and flags heightened manipulation risks for sports contracts tied to injuries, unsportsmanlike conduct, officiating, or outcomes controlled by a single individual or small group.<sup>10</sup> DMO staff expect early engagement to mitigate these risks.
- *Settlement Methodology and Data Sources.* Product submissions must specify resolution methodologies, identify data sources, and assess manipulation resistance. Statements that a contract will settle based on a “consensus of yet-to-be-determined sources” may not satisfy Core Principle 3 requirements.<sup>11</sup>
- *Overly Broad Contract Specifications.* DMO staff expressed concern that or generalized contract specifications may impede a DCM’s ability to analyze and fully explain the contract’s compliance with the CEA and Commission regulations, including the contract’s resistance to manipulation, given the possibility of many different permutations of the contract with differing manipulation risks and other considerations<sup>12</sup>
- *Sports League and Governing Body Engagement.* For sports-related event contracts, DMO staff recommends pre-submission engagement with relevant leagues and their governing bodies, inclusion of explanations regarding consistency with league integrity frameworks, establishment of information-sharing arrangements with sports integrity monitoring organizations, and reliance on official league data as settlement sources. Notably, the CFTC signed a Memorandum of Understanding with Major League Baseball on March 19, 2026 that may set the tone for such collaborations, establishing ongoing information sharing and monthly coordination meetings to protect the integrity of both professional baseball and related event contracts.<sup>13</sup>
- *Surveillance and Enforcement.* DCMs must conduct real-time monitoring of trading activity to identify disorderly trading and anomalies, maintain robust inquiry and disciplinary procedures, and enforce rules

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<sup>10</sup> See 17 C.F.R. pt. 38, app. C.

<sup>11</sup> See *supra* note 1, at 5; 17 C.F.R. § 40.2(a)(3)(v); 17 C.F.R. pt. 38, app. C.

<sup>12</sup> *supra* note 1, at 5; 17 C.F.R. §§ 40.2(a)(3)(v), (b), 40.3(a)(4), 40.3(a)(10).

<sup>13</sup> *CFTC and MLB Sign Groundbreaking MOU*, Commodity Futures Trading Comm’n (Mar. 19, 2026), available [here](#).

against abusive practices. The Advisory reminds DCMs of their self-regulatory obligations under Core Principles 3, 4, and 12.<sup>14</sup>

- *Anti-Manipulation and Anti-Fraud Compliance.* DCMs should calibrate surveillance tools and abusive-trading rules to detect and deter misuse of inside information and control-of-outcome risks.<sup>15</sup>
- *Risk of Stay.* CFTC Rule 40.2(c) authorizes the Commission to stay the listing a self-certified contract pending Commission proceedings for filing a false certification or pending a petition to alter or amend contract terms and conditions under CEA section 8a(7).<sup>16</sup> Proactive engagement with DMO staff and relevant sports authorities may reduce the likelihood of such action.

## The ANPR

The ANPR solicits input on event contracts listed on DCMs and swap execution facilities (“SEFs”), and cleared by DCOs. In addition, the ANPR covers public interest determinations, inside information, classification of event contracts, and exchange and clearing core principles.

### *Public Interest Section 5c(c)(5)(C) Considerations*

As noted, Section 5c(c)(5)(C) of the CEA authorizes the CFTC to determine whether a particular event contract is contrary to the public interest, and thus ineligible for listing, if it involves activity that is unlawful under federal or state law, terrorism, assassination, war, gaming, or other similar activity designated by rule or regulation.<sup>17</sup> The ANPR asks what general factors should inform these determinations and how the public interests and purposes set forth in CEA Section 3—managing and assuming price risks, price discovery, dissemination of pricing information, deterring manipulation, protecting market participants, ensuring financial integrity and avoiding systemic risk, and promoting responsible innovation and fair competition—should guide analysis.<sup>18</sup> In addition, it asks whether and how event contracts substitute for or complement insurance, whether insurance coverage for specific events should affect the public interest analysis, and what changes to CFTC regulations would be appropriate.<sup>19</sup>

The ANPR requests definitional input and public interest considerations for Section 5c(c)(5)(C) activities. Among the most notable:

- *Unlawful Activity.* The ANPR asks how to identify relevant state and federal laws and resolve conflicts where activity may be unlawful in some states but not others.

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<sup>14</sup> 7 U.S.C. § 7(d)(3), (4), (12); 17 C.F.R. §§ 38.153, 38.157, 38.158.

<sup>15</sup> See 7 U.S.C. § 9(1); 17 C.F.R. §§ 180.1, 180.2.

<sup>16</sup> 7 U.S.C. § 12a(7).

<sup>17</sup> 7 U.S.C. § 7a-2(c)(5)(C).

<sup>18</sup> 7 U.S.C. § 5(a)–(b).

<sup>19</sup> 7 U.S.C. § 19(a).

- *Terrorism, assassination, and war.* The ANPR asks whether definitions from other domains (such as insurance) are useful, how to distinguish cyberterrorism from other cyberattacks, and how to differentiate war from civil unrest or political events.
- *Gaming.* The ANPR requests views on sources that should inform scope, how to distinguish sports from awards or other contests, and whether responsible-gaming standards such as self-exclusion or advertising limits should factor into judgments.<sup>20</sup>

In addition, the ANPR poses inquiries on what occurs in “connection with the listing” and when public interest determinations could be made, whether elements could be decided for categories rather than specific listings, what it means for a contract to “involve” a listed activity, and how to structure a process that meets the 90-day deadline for final action from commencement of review.<sup>21</sup> The ANPR also invites views on whether to propose procedural rules under Section 5c(c)(5)(C) and the associated cost-benefit considerations and alternatives under Section 15(a).<sup>22</sup>

### Inside Information

The ANPR highlights the unique information advantage and environment that prediction markets provide. It asks whether allowing trading by persons with asymmetric information that improves market forecasts serves the public interest, and how to balance this against risks of manipulation, unfairness, and misuse of inside information. The ANPR anchors this discussion in existing authorities, seeking input on how the general anti-manipulation and anti-fraud prohibition in CEA Section 6(c)(1) and CFTC Regulation 180.1 should apply.<sup>23</sup> It also requests comment on CEA Sections 4c(a)(3) and (4), which prohibit certain federal officials and employees from using nonpublic government information for personal trading in futures, options, or swaps, and asks how those provisions should inform the regulation of prediction markets.<sup>24</sup>

### Types of Event Contracts and Other Issues

The ANPR solicits comment on the proper classification of event contracts—whether as swaps under CEA Section 1a(47)(A)(i)–(ii), futures contracts, or commodity options. Notably, commodity options are covered by the statutory swap definition in CEA Section 1a(47)(A)(i), and the ANPR invites comment on how event contracts are similar to, or different from, other types of commodity options.<sup>25</sup> Further, the ANPR asks whether the underlying events fall

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<sup>20</sup> 7 U.S.C. § 7a-2(c)(5)(C)(i).

<sup>21</sup> See *supra* note 2, at 24; 7 U.S.C. § 7a-2(c)(5)(C)(i), (iv).

<sup>22</sup> 7 U.S.C. § 19(a).

<sup>23</sup> U.S.C. § 9(1); 17 C.F.R. § 180.1.

<sup>24</sup> 7 U.S.C. § 6c(a)(3)–(4).

<sup>25</sup> 7 U.S.C. § 1a(47)(A)(i)–(ii); 7 U.S.C. § 2(a)(1)(A); 7 U.S.C. § 1a(47)(A)(i).

within the “excluded commodity” definition in CEA Section 1a(19) and how any contracts outside that definition should be treated.<sup>26</sup>

The ANPR also draws attention to the CFTC and SEC’s 2012 joint rulemaking further defining the term “swap,” in which the agencies adopted an interpretation listing certain types of consumer agreements that “will not be considered swaps or security-based swaps when entered into by consumers (natural persons) . . . primarily for personal, family, or household purposes.”<sup>27</sup> The ANPR invites comment on whether any event contracts are similar to, or different from, these excluded consumer agreements and how such similarities or differences may be relevant to the CFTC’s regulation of those event contracts.<sup>28</sup>

### **Core Principles Considerations for DCMs, SEFs, and DCOs**

The ANPR asks whether to amend DCM, SEF, and DCO core principles for prediction markets. Key topics include contract design and manipulation susceptibility, market surveillance, position limits, financial integrity (including margin for event contracts versus fully collateralized models), operational risk, and blockchain-based markets.<sup>29</sup> For DCOs, the ANPR addresses clearing implications if event contracts were traded on margin, including siloed clearing versus cross-margining.<sup>30</sup> For SEFs, the ANPR asks how core principles should apply to institutional trading and how SEF trading would interact with DCM liquidity.<sup>31</sup> Beyond core principles, the ANPR seeks comments on swap-data reporting and public dissemination, prearranged and wash trades and the competitive-execution requirement, and disruptive trading.<sup>32</sup>

### **Comment Process and Next Steps**

Comments may be submitted via the CFTC’s [Public Comments Portal](#) and must be received by April 30, 2026, and should reference “Prediction Markets” and RIN 3038-AF65. Meaningful and early engagement provides the best opportunity to influence implementation details that will shape the prediction markets industry for years to come.

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<sup>26</sup> 7 U.S.C. § 1a(19). An “excluded commodity” includes, among other things, 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.” 7 U.S.C. § 1a(19)(iv).

<sup>27</sup> Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208, 48,246 (Aug. 13, 2012).

<sup>28</sup> *Id.*

<sup>29</sup> 7 U.S.C. § 7(d)(2)–(5), (11), (20); 17 C.F.R. § 38.151; *see also* 7 U.S.C. § 7(d)(11).

<sup>30</sup> 7 U.S.C. § 7a-1(c)(2)(C), (D), (H), (I).

<sup>31</sup> 7 U.S.C. § 7b-3(f).

<sup>32</sup> 7 U.S.C. § 2(a)(13); 17 C.F.R. pts. 43, 45; 7 U.S.C. § 6c(a)(1)–(2); 17 C.F.R. § 1.38; 7 U.S.C. § 6c(a)(5).

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If you have any questions regarding this alert, please contact one of the authors, any member of our event contracts team listed below, or the Willkie attorney with whom you regularly work.

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**Willkie has an international, cross-disciplinary team of attorneys advising companies and their principals on a broad array of issues involving event contracts. We would be pleased to assist on your matters.**

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